

EXHIBIT A

Renewal Certificate

LPL-F878124-1

Policy Number:

Professional Liability Insurance Policy
 Attach to your expiring declarations.



This is a claims made Policy. Please review the Policy carefully.

The Policy is limited to liability for only those claims that are first made against the Insured during the policy period.

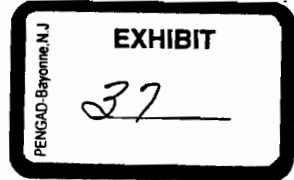
Insured by the stock company below and hereinafter called the company

THE HOME INSURANCE COMPANY OF INDIANA INDIANAPOLIS, INDIANA

Item 1. Named Insured and Address (Number, Street, Town or City, County, State, Zip Code) JAMES F. SCHERR L.L.P. <i>James F. Scherr, P.C.</i> 109 N. Oregon Ave. and James F. Scherr individually 109 N. OREGON, SUITE 800 EL PASO TX 79901		Producer Name DANIELS-HEAD INSURANCE AGENCY INC.	
Item 2. Policy Period From (Day-Mon-Yr) 11-Jun-1993 To (Day-Mon-Yr) 11-Jun-1994		12:01 A.M. Standard Time at the address of the Named Insured as stated herein.	
Item 3. Form of Named Insured's Business Insured is PARTNERSHIP		and Those Professionals Listed on the Application.	

Part of Regal individually + Discount Legal Services of Scherr & Legato, P.C. see # 3

Item 4. Limit of Liability	200,000
Aggregate \$	600,000
Item 5. Deductible	5,000
Per Claim \$	



Item 6. Premium	PREMIUM \$11,006.00	NO. OF PROFESSIONALS 3
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- Item 7. Policy Changes and Endorsements** (The endorsements noted below are part of this policy and either became effective at the inception of or during the preceding Policy Period(s), or will become effective at the inception of the Renewal Period.)
- H36581 05/86 LPL POLICY JACKET
 - H37530 07/92 CANCEL/NONRENEW
 - H37683 10/88 ARBITRATION ENDST
 - H37973 07/91 REG ENDORSEMENT
 - H40552 05/92 POLICYHOLDER NOTICE

RECEIVED
 MAY 27 1993
 P.L.U.M.

Not to be In This Box	Remarks ✓ 11/23/93	Countersigned at AUSTIN, TX	Issue Date 24-May-1993
		Authorized Representative	Countersign Date 11/23/93

6-11-93 ill

Renewal Certificate

LPL-F878124-1

Policy Number:

Professional Liability Insurance Policy
Attach to your expiring declarations.



This is a claims made Policy. Please review the Policy carefully.

The Policy is limited to liability for only those claims that are first made against the Insured during the policy period.

Insured by the stock company below and hereinafter called the company

THE HOME INSURANCE COMPANY OF INDIANA INDIANAPOLIS, INDIANA

Item 1. Named Insured and Address (Number, Street, Town or City, County, State, Zip Code)

James F. Scherr, P.C. and James F. Scherr individually
JAMES F. SCHERR L.L.P.
 109 N. OREGON, SUITE 800
 EL PASO TX 79901
EL PASO

Producer Name

DANIELS-HEAD INSURANCE AGENCY INC.

Item 2. Policy Period

From (Day-Mon-Yr)

11-Jun-1993

To (Day-Mon-Yr)

11-Jun-1994

12:01 A.M. Standard Time at the address of the Named Insured as stated herein.

Item 3. Form of Named Insured's Business

Insured is **PARTNERSHIP**

And Those Professionals Listed on the Application.

Item 4. Limit of Liability

Each Claim \$ **200,000**

Aggregate \$ **600,000**

Item 5. Deductible

5,000

Per Claim \$

Item 6. Premium

PREMIUM \$11,006.00

NO. OF PROFESSIONALS 3

Item 7. Policy Changes and Endorsements (The endorsements noted below are part of this policy and either became effective at the inception of or during the preceding Policy Period(s), or will become effective at the inception of the Renewal Period.)

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 H40552 05/92 POLICYHOLDER NOTICE

RECEIVED
MAY 27 1993
P.L.U.M.

Do Not Write In This Box

Remarks

Countersigned at
AUSTIN, TX

Issue Date
24-May-1993

Authorized Representative

Countersign Date

11/23/93

5/5/93

Professional Liability Insurance Policy
Lawyers



THE HOME INSURANCE COMPANIES



Provisions

(A stock insurance company, hereinafter called the Company)

consideration of the undertaking of the Named Insured to pay, when due, the premium and the deductible as described herein and in the amounts stated in the Declarations, and in reliance upon the statements in the application attached hereto and made a part hereof, and subject to the limits of liability shown in the Declarations, and subject to all of the terms of this insurance, the company agrees with the Named Insured as follows:

This is a Claims Made Policy — Please Read Carefully

Section A — Insured

The Insured: The word "Insured," whenever used in this policy, means:

(a) The Named Insured firm or persons named in the Declarations, or any lawyer or professional legal corporation who during the policy period becomes a partner, officer, director or employee of the firm;

(b) any lawyer or professional legal corporation who was a former partner, officer, director or employee of the firm or predecessor firm(s) solely while acting in a professional capacity on behalf of such firms;

(c) any lawyer or professional legal corporation who was a partner, officer, director or employee of the firm or predecessor firm(s) who has retired from the practice of law, but only for those professional services rendered prior to the date of retirement from the Insured firm;

(d) any non-lawyer who was, is now, or hereinafter becomes an employee of the firm or predecessor firm(s) solely while acting within the scope of such person's duties as an employee;

(e) as respects to the liability of each Insured as is otherwise covered herein, the heirs, executors, administrators, assigns and legal representatives of each Insured in the event of death, incapacity or bankruptcy;

(f) any lawyer acting as "of counsel," but only while performing services on behalf of the Insured, any employed lawyer or any other employee.

Firm Changes: Any material change among the partners or stockholders of the Named Insured during the policy period should be reported to the Company immediately, and the Company given the right to decline to continue coverage or to charge an additional premium therefor.

Section B — Coverage

I. Professional Liability and Claims Made Clause:
To pay on behalf of the Insured all sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD caused by any act, error or omission for which the Insured is legally responsible, and arising out of the rendering or failure to render professional services for others in the Insured's capacity as a lawyer or notary public.

It is a condition precedent to coverage under this policy that all claims be reported in compliance with the Section F CLAIMS I. NOTICE OF CLAIMS.

PROVIDED ALWAYS THAT such act, error or omission happens:

(a) during the policy period; or,

(b) prior to the policy period, provided that prior to the effective date of the first Lawyers Professional Liability Insurance Policy issued by this Company to the Named Insured or predecessor law firm and continuously renewed and maintained in effect to the inception of this policy period:

1) The Insured did not give notice to any prior insurer of any such act or error, and

2) the Named Insured, any partner, shareholder, employee, or where appropriate the Named Insured's management committee or any member thereof, had no reasonable basis to believe that the Insured had breached a professional duty or to foresee that a claim would be made against the Insured; and

3) there is no prior policy or policies which provide insurance for such liability or claim, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability or claim, in which event this

policy will be excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

When the Insured renders or fails to render services as an administrator, conservator, receiver, executor, guardian, trustee, or in any similar fiduciary capacity, the Insured's acts and omissions in such capacity shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer, provided that this coverage shall not apply to any loss sustained by the Insured as the beneficiary or distributee of any trust or estate.

Services performed by the Insured in a lawyer-client relationship on behalf of one or more clients shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer, although such services could be performed wholly or in part by non-lawyers.

It is a condition precedent to coverage under this policy that all claims be reported in compliance with the Section F CLAIMS I. NOTICE OF CLAIMS.

Claim, whenever used in this policy, means a demand received by the Insured for money or services, including the service of suit or institution of arbitration proceedings against the Insured.

Damages, whenever used in this policy, means a monetary judgement or settlement, including any such judgement or settlement for personal injury, and does not include fines or statutory penalties, or sanctions whether imposed by law or otherwise, nor the return of or restitution of legal fees, costs and expenses.

Predecessor Firms, whenever used in this policy, means any lawyer, law firm or professional legal corporation engaged in the practice of law to whose financial assets and liabilities the firm listed as Named Insured in the Declarations is the majority successor in interest.

Policy Period, whenever used in this policy, means the period from the inception date of this policy to the policy expiration date as set forth in the Declarations or its earlier termination date, if any.

II. Consent to Settle, Defense: With respect to the insurance afforded by this policy, the Company shall defend any claim against the Insured including the appeal thereof seeking damages to which this insurance applies even if any of the allegations of the suit are groundless, false, or fraudulent. The Company shall not settle any claim without the consent of the Insured unless otherwise agreed between the Insured and the

Company. If the Insured shall refuse to consent to any settlement or compromise recommended by the Company and acceptable to the claimant and shall elect to contest the claim or proceeding, then the Company's liability under this policy shall not exceed and shall be limited to the amount for which the claim or proceedings could have been settled or compromised. It is further agreed that the Company may make such investigation of any claim as it deems expedient, but the Company shall not be obligated to pay any claim or judgement or to defend or to continue to defend any claim after the limits of the Company's liability have been exhausted. Thus, when the claims expenses equal the amount for which the case could have been settled or compromised, the Company shall have the right to withdraw from the further investigation and/or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition of the issuance of this policy, to accept such tender.

III. Discovery Clause: If, during the policy or any optional Reporting Period purchased hereunder, the Insured first becomes aware that an Insured has committed a specific act, error or omission in professional services for which coverage is otherwise provided hereunder, and if the Insured shall during the policy period or the optional Reporting Period purchased hereunder give notice to the Company of:

- (a) the specific act, error or omission; and
- (b) the injury or damage which has or may result from such act, error or omission; and
- (c) the circumstances by which the Insured first becomes aware of such act, error or omission

then any claim that may subsequently be made against the Insured arising out of such act, error or omission shall be deemed for the purposes of this insurance to have been made during the policy period or the optional Reporting Period purchased hereunder. The Insured shall cooperate fully with the Company as provided in Section F CLAIMS I. and II. and any investigation conducted by the Company or its representatives shall be subject to the terms set forth in this policy.

IV. Options to Extend Claims Reporting Period: If the Named Insured does not renew this policy after complying with all the terms and conditions thereof, including the payment of all premiums and/or deductibles when due, or if the Company shall cancel or refuse to renew the policy for reasons other than the Named Insured's non-payment of premiums and/or deductibles or non-compliance with the terms and conditions of

is policy, then the Named Insured upon payment of an additional premium as set forth herein shall have the option to extend the insurance afforded by this policy subject otherwise to its terms, limit of liability, exclusions and conditions, to apply to CLAIMS FIRST MADE AGAINST THE INSURED DURING (a) 12 MONTHS, (b) 24 MONTHS, or (c) 36 MONTHS, as elected by the Named Insured, following immediately upon the effective date of such termination, but only by reason of any act, error or omission in professional services rendered before such effective termination date and otherwise covered by this insurance.

The extension of coverage for claims made subsequent to termination of the policy shall be endorsed hereto, if purchased, and shall hereinafter be referred to as the OPTIONAL REPORTING PERIOD.

The premium for the optional Reporting Period elected by the Named Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, or (c) 185% for 36 MONTHS, of the full annual premium for this policy.

This coverage will be renewable annually at the expiration of the optional Reporting Period at the option of the Insured upon payment of an additional premium determined by the Company in accordance with the rates in effect at each annual renewal date.

At the commencement of any optional Reporting Period, the entire premium therefor shall be deemed earned, and in the event the Insured terminates the optional Reporting Period before its term for any reason, the Company shall not be liable to return to the Insured any portion of the premium for the optional Reporting Period.

The fact that the period during which claims must be first made against the Insured under this policy is extended by virtue of the optional Reporting Period shall not in any way increase the limits of liability of this policy.

V. Option to Purchase Non-Practicing Reporting Period: If any Insured retires or otherwise ceases the private practice of law during the policy period, then upon payment of an additional premium as set forth herein, the Insured shall have the option to extend the insurance afforded by this policy to apply to CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING (a) 12 MONTHS, (b) 24 MONTHS, (c) 36 MONTHS or (d) an unlimited period immediately following the expiration date of this policy as stated in the Declarations, but only by reason of an act, error or omission in professional services

rendered before the Insured's date of retirement or termination of private practice and otherwise covered by the insurance, PROVIDED there is no other insurance procured on or after the Insured's date of retirement or termination of practice which covers the Insured for such liability or claim. Such other insurance shall render this coverage inapplicable, even though the limits of liability of such other insurance may be inadequate to pay all losses and claim expenses and/or the deductible amount and deductible provisions of such other insurance may be different from those of this policy.

The extension of coverage elected by the Insured for claims made subsequent to the Insured's date of retirement or termination of private practice shall be endorsed hereto, if purchased, and shall hereinafter be referred to as the NON-PRACTICING REPORTING PERIOD.

The premium for the Non-Practicing Reporting Period elected by the Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, (c) 185% for 36 MONTHS, or (d) 225% for an unlimited period of the full annual premium for this policy.

The deductible amount and deductible provisions of this policy will be waived with respect to claims first made against the Insured during the Non-Practicing Reporting Period purchased by the Insured.

The limits of liability stated in the Declarations and described in Section E LIMITS OF LIABILITY I. and II. shall not apply to the optional reporting period available herein. The limits of liability stated in the following schedule shall apply to claims first made against the Insured during the Non-Practicing Reporting Period, if purchased and shall apply as described in said schedule.

The limits of liability in effect at the inception of this policy as stated in the Declarations shall be used to compute the limits of liability provided during the Non-Practicing Reporting Period if purchased.

In the event of the death of an Insured or for those Insureds with three consecutive full years of coverage by the Company who become permanently, totally disabled preventing further practice of an Insured as defined by item (a) in Section A INSURED I. THE INSURED, such Insured shall be entitled, at no additional premium, to a Non-Practicing Reporting Period for all claims first made after the termination of the policy period arising out of any act, error or omission occurring prior to the termination of the policy period and otherwise covered by this policy. However, those

identified by items (b) thru (l) of Section A INSURED I. THE INSURED are specifically excluded from exercising this option.

"Totally and permanently disabled" means that the Insured has become so disabled as to be wholly prevented from rendering professional services for others in the capacity as a lawyer or notary public provided that such disability:

- A. has existed continuously for not less than 6 months; and
- B. is expected to be continuous and permanent.

"Totally and permanently disabled" shall not include any condition which:

- A. is a result of war or acts of war, whether or not declared;
- B. occurred during active service in the armed forces of any country; or
- C. results from:
 - 1. intentionally self-inflicted injuries;
 - 2. actual or attempted suicide, whether or not sane; or

3. the abuse or misuse of addictive chemical compounds or alcohol.

If the Insured exercises the Non-Practicing Reporting Period option:

(a) The liability of the Company for each claim FIRST MADE AGAINST THE INSURED DURING THE NON-PRACTICING REPORTING PERIOD purchased by the Insured shall not exceed the amount(s) stated in the applicable schedule for "each claim"; and

(b) Subject to the limits of liability for "each claim," the liability of the Company for all claims FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD INCLUDING THE NON-PRACTICING REPORTING PERIOD shall not exceed the amount(s) stated in the schedule below as "policy aggregate."

If any "aggregate" or "policy aggregate" limit of liability becomes exhausted by payment of claims expenses, judgments and/or settlements, this policy, including the Non-Practicing Reporting Period, may be cancelled by the Company. The Company also shall not be obligated to defend or continue to defend any claim for which the applicable "aggregate" or "policy aggregate" has been exhausted by payment of claims expenses, judgments or settlements.

V (SCHEDULE)

- 1. \$100,000 each claim/\$300,000 aggregate, then Column I of the following schedule applies.
- 2. \$200,000 each claim/\$600,000 aggregate, then Column II of the following schedule applies.
- 3. Other than those indicated in I or II, then such limits as shown in the Declarations shall also apply during the total Non-Practicing Reporting Period purchased and the "aggregate" limit shall be deemed the "policy aggregate" as referred to in subparagraph (b) above.

Effective as of
and applicable to
CLAIMS FIRST MADE
AGAINST THE INSURED DURING

	I	II
A. Each Claim:	\$100,000	\$ 200,000
Policy Aggregate:	300,000	600,000
B. Each Claim:	110,000	220,000
Policy Aggregate:	350,000	600,000
C. Each Claim:	120,000	240,000
Policy Aggregate:	400,000	600,000
D. Each Claim:	130,000	260,000
Policy Aggregate:	500,000	600,000
Each Claim:	140,000	280,000
Policy Aggregate:	500,000	600,000

First 12 month period immediately following expiration, if a 12 month extension is purchased;

Second 12 month period immediately following expiration, if a 24 month extension is purchased (Also subject to A);

Third 12 month period immediately following expiration, if a 36 month extension is purchased (Also subject to A and B);

Fourth 12 month period immediately following expiration;

and thereafter, if the unlimited extension is purchased (Also subject to A, B and C).

VI. **Exercising The Options:** As a condition precedent to the Insured's right to exercise these options, the full annual premium of this policy and any deductibles that are due must have been paid. Neither the Optional Reporting Period nor the Non-Practicing Reporting Period shall be available when any Insured's license or right to practice his profession is revoked, suspended by or surrendered at the request of any regulatory authority.

The Insured's right to purchase any extension option must be exercised by notice in writing not later than thirty (30) days after the cancellation or termination date of this policy. Effective notice must indicate the total extension period desired **AND MUST INCLUDE PAYMENT OF PREMIUM FOR SUCH EXTENSION PERIOD** as well as all deductibles due the Company.

If such notice, premium and deductible payment are not so given to the Company, the Insured shall not at a later date be able to exercise such rights.

Section C — Exclusions

I. This policy does not apply:

(a) to any judgement or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured;

(b) to any claim made by or against any business enterprise not named in the Declarations which is owned by the Insured or in which the Insured is a partner or employee, or which is controlled, operated or managed by the Insured, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property in connection therewith, or to any claim made against the Insured solely because the Insured is a partner, officer, director, stockholder employee or employee of any firm or corporation not named in the Declarations;

(c) to liability arising out of the Insured's services and/or capacity as:

1) an officer, director, partner, trustee, or employee of a business enterprise or charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust;

2) a public official, or an employee of a governmental body, subdivision, or agency;

3) a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, except if an Insured is deemed to be a fiduciary solely by reason of legal advice rendered with respect to an employee benefit plan;

(d) to any liability for bodily injury, sickness, disease or death of any person, or injury to or destruction of any tangible property or loss of use resulting therefrom;

(e) to any claims arising out of notarized certification or acknowledgement of a signature without the physical appearance before such notary public as Insured hereunder of the person who is or claims to be the person signing said instrument;

(f) to any claim made by a present, former or prospective partner, officer, director, stockholder employee or employee of the Insured unless such claim arises out of the professional services of the Insured in a lawyer-client relationship except as otherwise excluded under Exclusion (h);

(g) to any claim based upon or arising out of discrimination by the Insured on the basis of race, creed, age, sex or marital status;

(h) to any claim based upon or arising out of the work performed by the Insured, with or without compensation, with respect to any corporation, fund, trust, association, partnership, limited partnership, business enterprise or other venture, be it charitable or otherwise, of any kind or nature in which any Insured has any pecuniary or beneficial interest, irrespective of whether or not an attorney-client relationship exists, unless such entity is named in the Declarations. For purposes of this policy, ownership or shares in a corporation shall not be considered a "pecuniary or beneficial interest"-unless one Named Insured or members of the immediate family of the Named Insured own(s) 10% of the issued and outstanding shares of such corporation;

(i) to any claim for property damage arising out of Insured's act, error or omission while acting as attorney, officer, director, partner, trustee or employee of a business enterprise which is liable or may be held liable for the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon

land, the atmosphere or any water course or body of water.

II. Waiver of Exclusion and Breach of Conditions: Whenever coverage under any provision of this policy would be excluded, suspended or lost

(a) because of exclusion (a) relating to any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, malicious or deliberately wrongful acts or omissions by any Insured, or

(b) because of noncompliance with Section F CLAIMS I. NOTICE OF CLAIMS relating to the giving of notice to the Company with respect to which any other Insured shall be in default solely because of the default or concealment of such default by one or more partners or employees responsible for the loss or damage otherwise insured hereunder,

the Company agrees that such insurance as would otherwise be afforded under this policy shall apply with respect to each and every Insured who did not personally commit or personally participate in committing one or more of the acts, errors or omissions described in any such exclusion or condition; provided that if the condition be one with which such Insured can comply, after receiving knowledge thereof, the Insured entitled to the benefit of the Waiver of Exclusions and Breach of Conditions shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured or employee to comply therewith. However, related acts, errors or omissions shall be treated as a single claim, and suits brought by more than one person or organization shall not operate to increase the Company's limit of liability.

With respect to provision II. (a) above, the Company's obligation to pay in the event of such waiver shall be in excess of the deductible and in the excess of the full extent of any assets in the firm of any Insured who is not a beneficiary to the waiver.

Section D — Territory

The insurance afforded applies worldwide.

Section E — Limits of Liability

I. Limits of Liability — Each Claim: The liability of the Company for each claim FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD, including the Optional Reporting Period, if such is purchased, shall not exceed the amount stated in the Declaration for each claim, and shall include

all claim expenses. If the limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition to the issuance of this policy, to accept such tender.

II. Limits of Liability/Aggregate: Subject to Section E I. LIMITS OF LIABILITY — EACH CLAIM, the liability of the Company shall not exceed the amount stated in the Declarations as aggregate as a result of all claims FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD including the Optional Reporting Period, if such is purchased.

III. Deductible: The deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all damages and claim expenses, for each and every claim, whether or not loss payment is made for claims first made during the policy period. The deductible shall be deemed to be applied first to the damages and/or claim expenses.

If the Optional Reporting Period is purchased, the deductible will be applicable in the full amount shown in the Declarations and shall be applicable to all damages and claim expenses, for each and every claim whether or not loss payment is made, for all claims first made during the Optional Reporting Period.

Such amounts shall upon written demand by the Company be paid by the Named Insured within thirty (30) days regardless of the number of claims first made during the policy period.

The determination of the Company as to the reasonableness of the claim expenses shall be conclusive on the Named Insured.

IV. Multiple Insureds, Claims and Claimants: The inclusion herein of more than one Insured or the making of claims or the bringing of suits by more than one person or organization shall not operate to increase the Company's limit of liability. Related acts, errors or omissions shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the policy period or optional Reporting Period in which the earliest claim arising out of such act, error or omission was first made, and all such claims shall be subject to the same limits of liability.

V. Payment and Apportionment of Claim Expenses: All claim expenses shall first be

abstracted from the limit of liability with the remainder, if any, being the amount available to pay as damages. If the limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition to the issuance of this policy, to accept such tender.

Claim expenses, whenever used in this policy, means:

- (a) fees charged by any lawyer designated by the Company;
- (b) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim, if incurred by the Company.

However, "claim expenses" does not include salary charges of regular employees or of the officials of the Company or any supervisory counsel retained by the Company.

Section F — Claims

Notice of Claims: As a condition precedent to the right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice of any claim made against the Insured.

In the event suit is brought against the Insured, the Insured shall immediately forward to the Company every demand notice, summons or other process received directly or by the Insured's representatives.

Assistance and Cooperation of the Insured: The Insured shall cooperate with the Company and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials, and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all without charge to the Company. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the Insured may have. The Insured shall exercise the Insured's right to either reject or demand the arbitration of any claim made against the Insured in accordance with the written instructions of the

Company. The Insured shall not, except at the Insured's own cost, make any payment, admit any liability, settle any claims, assume any obligation or incur any expense without the written consent of the Company.

III. Subrogation: In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice such rights.

The Company shall not exercise any such rights against any persons, firms or corporations included in the definition of Insured. Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured with respect to any claim brought about or contributed to by the intentional, dishonest, fraudulent, criminal or malicious act or omission of such Insured.

Any amount so recovered shall be apportioned as follows:

Any recovery shall first be used for the repayment of expenses incurred toward subrogation; second, to loss and/or claim expenses paid by the Company; third, to any loss and expense payment by the Insured in excess of any deductible(s); fourth, to any loss and expense payments by an excess carrier on behalf of the Insured; fifth, to any loss and expense payments by any primary carrier on behalf of the Insured; and last, to repayment of the Insured's deductible.

IV. Action Against the Company: No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been fully and finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the Claimant and the Company.

Nothing contained in this policy shall give any person or organization the right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

V. False or Fraudulent Claims: If any Insured shall commit fraud in proffering any claim as regards

amount or otherwise, this insurance shall become void as to such Insured from the date such fraudulent claim is proffered.

Section G — Conditions

I. Application: By acceptance of this policy, the Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any of its agents, relating to this insurance.

II. Other Insurance: Subject to the limitation of coverage as set forth in Section B COVERAGE I. (b) for prior insurance, and Section B COVERAGE V. for insurance procured subsequent to termination of practice, this insurance shall be in excess of the amount of the applicable deductible of this policy and any other valid and collectible insurance available to the Insured whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the limits of liability provided in the policy.

III. Changes: Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not affect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of the policy, nor shall the terms of the policy be waived or changed, except by written endorsement issued to form a part of this policy.

IV. Assignment: Assignment of interest under this policy shall not bind the Company unless its consent is endorsed in writing hereon.

V. Cancellations: This policy may be cancelled by the Named Insured by surrender thereof to the

Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. If cancelled by the Insured, the Company shall retain the customary short rate proportion of the premium.

This policy may be cancelled by the Company by mailing to the Named Insured in the Declarations written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Such notice shall be conclusive on all Named Insureds.

However, if the Company cancels the policy because the Insured has failed to pay a premium or deductible when due, this policy may be cancelled by the Company by mailing a written notice of cancellation to the Insured stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in any notices shall become the end of the policy period. Delivery of such written notice by the Named Insured or the Company shall be the equivalent to mailing.

If cancelled by the Company, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

Definitions-Reference

Certain words are specifically defined for the policy and the definitions are to be found in the sections set forth below:

(a) Claim, damages, policy period — see Section B COVERAGE I.

(b) Claim expenses — see Section E LIMITS OF LIABILITY V.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

James J. Meenan
James J. Meenan
President
THE HOME INSURANCE COMPANY
THE HOME INSURANCE COMPANY
OF WISCONSIN

William L. Munson
William L. Munson
President
THE HOME INDEMNITY COMPANY

F.A. Mina
F.A. Mina
President
CITY INSURANCE COMPANY

Arthur Phillips
Arthur Phillips
President
THE HOME INSURANCE COMPANY
OF INDIANA
THE HOME INSURANCE COMPANY
OF ILLINOIS

Roger M. Moak
Roger M. Moak
Corporate Secretary
THE HOME INSURANCE COMPANY
THE HOME INDEMNITY COMPANY
CITY INSURANCE COMPANY
THE HOME INSURANCE COMPANY
OF INDIANA
THE HOME INSURANCE COMPANY
OF ILLINOIS
THE HOME INSURANCE COMPANY
OF WISCONSIN

**Nuclear Energy Liability
Exclusion Endorsement (BROAD FORM)**

This endorsement modifies the provisions of this policy.

read that:

This policy does not apply:

(A) Under any Liability Coverage, to bodily injury or property damage

1) with respect to which an Insured under this Policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or

2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

Under any Medical Payments Coverage, or any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

(C) Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if

1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of an Insured or (b) has been discharged or dispersed therefrom;

2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or

3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if

such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

II. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

EXHIBIT B

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
168 JUDICIAL DISTRICT

Filed 7-25 A.D. 1988
at 1:10 o'clock P M
EDIE RUBALCABA, Clerk, Dist. Courts
El Paso County, Texas

#62

DR. W.C. LAROCK, DR. JOSEPH SUPERVILLE)
and CORONADO CHIROPRACTIC CLINIC)
Individually and as REPRESENTATIVE OF)
ALL TEXAS CHIROPRACTORS,)

SMM
BY _____ DEPUTY

Plaintiffs,)

vs.)

NO. 88-07707

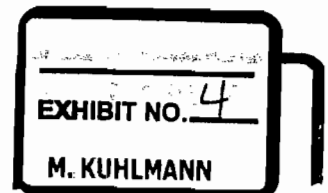
AMERICAN GENERAL FIRE & CASUALTY)
COMPANY, THE HOME INSURANCE COMPANY,)
ALLSTATE INSURANCE CO., KEMPER GROUP)
INSURANCE COMPANIES, LUMBERMEN'S)
MUTUAL CASUALTY COMPANY, CRAWFORD &)
COMPANY, CRUM & FOSTER, U.S.)
INSURANCE GROUP, U.S. FIRE INSURANCE)
CO., TEXAS EMPLOYERS INSURANCE)
ASSOCIATION, TEXAS EMPLOYERS NATIONAL)
INSURANCE CO., NATIONAL STANDARD)
INSURANCE CO., COMMERCIAL UNION)
INSURANCE CO., NATIONAL UNION FIRE)
INSURANCE OF PITTSBURGH, PENNSYLVANIA,)
INTRACORP, INC, SAFECO INSURANCE)
COMPANY OF AMERICA, HARTFORD FIRE)
INSURANCE COMPANY, LIBERTY MUTUAL)
INSURANCE COMPANY, NORTH RIVER)
INSURANCE COMPANY, NEW JERSEY,)
DR. WILLIAM W. TIMBERLAKE, and ALL)
OTHER INSURANCE COMPANIES WHO)
WRONGFULLY CUT CHIROPRACTOR BILLS,)

Defendants.)

PLAINTIFF'S ORIGINAL CLASS ACTION PETITION

COMES NOW DR. W.C. LAROCK, DR. JOSEPH SUPERVILLE and CORONADO CHIROPRACTIC
CLINIC, Plaintiffs, individually and on behalf of all other Texas Chiropractors,
and bring this class action against THE HOME INSURANCE COMPANY, ALLSTATE
INSURANCE CO., KEMPER GROUP INSURANCE COMPANIES, LUMBERMEN'S MUTUAL CASUALTY
COMPANY, CRAWFORD & COMPANY, CRUM & FOSTER, U.S. INSURANCE GROUP, U.S. FIRE

04569



INSURANCE COMPANY, TEXAS EMPLOYERS INSURANCE ASSOCIATION, TEXAS EMPLOYERS NATIONAL INSURANCE CO., NATIONAL STANDARD INSURANCE CO., COMMERCIAL UNION INSURANCE CO., AMERICAN GENERAL FIRE AND CASUALTY COMPANY, NATIONAL UNION FIRE INSURANCE OF PITTSBURGH, PENNSYLVANIA, INTRACORP, INC., SAFECO INSURANCE COMPANY OF AMERICA, HARTFORD FIRE INSURANCE COMPANY, LIBERTY MUTUAL INSURANCE COMPANY, NORTH RIVER INSURANCE COMPANY, NEW JERSEY, DR. WILLIAM W. TIMBERLAKE, and ALL OTHER INSURANCE COMPANIES WHO WRONGFULLY CUT CHIROPRACTOR BILLS, and show the following:

I.

The named Plaintiffs reside in El Paso County, Texas. Plaintiffs sue not only for themselves, but also on behalf of all Texas Chiropractors who have been denied payment for services rendered to patients covered by workers compensation insurance and other forms of insurance for payment of health care bills. Plaintiffs would show that: 1) the class is so numerous that joinder of all members is impracticable; 2) there are questions of law or fact common to the class; 3) the claims of Plaintiffs are typical of the claims of the class; 4) Plaintiffs, as the representative party, will fairly and adequately protect the interests of the class. Further, Plaintiffs would show that this class action is maintainable pursuant to T.R.C.P. 42 (b) for the reason that the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, and the common questions of law or fact concerning the refusal to pay for chiropractic services by Defendants predominate over any questions affecting only individual members and the class action is superior to

other methods available for the fair and efficient adjudication of the controversy.

Defendant THE HOME INSURANCE COMPANY is a corporation doing business in the State of Texas and may be served by serving its agent, JAMES STITT, 1225 Greenville Ave. Suite 1001, Dallas, Texas 75234.

Defendant ALLSTATE INSURANCE CO. is an Illinois corporation doing business in Texas and may be served with process by serving its registered agent GARY E. BRIGGS, 222 W. Las Colinas Blvd., Suite 1500, Irving, Texas 75039-5403.

Defendant KEMPER GROUP INSURANCE COMPANIES is a group of insurance companies doing business in the State of Texas and may be served with process by serving its registered agent.

Defendant LUMBERMEN'S MUTUAL CASUALTY COMPANY is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent, DAVID E. LEE, 1800 E. Gate Drive, Garland, Texas 75041-5513.

Defendant CRAWFORD & COMPANY LANDMARK LIFE INS. CO., is a corporation doing business in the State of Texas and may be served with process by serving its registered agent O.C. JARVIS or any other authorized officer or agent at 211 W. Commerce, P. O. Box 40, Brownwood, Texas 76804-0040.

Defendant CRUM & FOSTER is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent.

Defendant U.S. INSURANCE GROUP is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent.

Defendant U.S. FIRE INSURANCE CO., is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent, KENNETH B. MOODY, at 4040 N. Central Expressway, Dallas, Texas 75204.

Defendant TEXAS EMPLOYERS INSURANCE ASSOCIATION is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent TOM R. COFFIELD, JR., or any other authorized officer or agent at 1301 Young Street, Dallas, Texas 75221.

Defendant TEXAS EMPLOYERS NATIONAL INSURANCE CO., is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent.

Defendant LIBERTY MUTUAL INSURANCE CO. is an insurance company doing business in El Paso County, Texas and may be served with process by serving its registered agent ALBERT L. BREELAND, or any other authorized officer or agent at 2110 Walnut Hill Lane, Suite 160, Irving, Texas 75038.

Defendant NATIONAL STANDARD INSURANCE CO. is an insurance company doing business in the State of Texas and may be served by serving its registered agent, COMMISSIONER OF INSURANCE, 1110 San Jacinto, Austin, Texas 78701-1998.

Defendant COMMERCIAL UNION INSURANCE CO. is an insurance company doing business in the State of Texas and may be served by serving its registered agent JAMES ROYAL, 9330 Ameherton Parkway, Dallas, Texas 75243.

Defendant AMERICAN GENERAL FIRE AND CASUALTY COMPANY is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent WILLIAM ALEXANDER, II, 2919 Allen Parkway, Houston, Texas 77001.

Defendant NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent WILLIAM P. KANE, JR., 2001 Bryon Tower, Dallas, Texas 75201.

Defendant SAFECO INSURANCE CO. OF AMERICA is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent DAVID B. DURHAM, 2701 N. Central Expressway, Richardson, Texas 75080.

Defendant HARTFORD FIRE INSURANCE COMPANY, is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent GLEN E. DAMSTRA, JR., 5001 LBJ Freeway, Dallas, Texas 75221.

Defendant NORTH RIVER INSURANCE COMPANY, NEW JERSEY is an insurance company doing business in the State of Texas and may be served with process by serving its registered agent KENNETH B. MOODY, 4010 N. Central Expressway, Dallas, Texas 75204.

Defendant INIRACORP, INC. is a Texas corporation doing business in Texas and may be served with process by serving its registered agent RICHARD VICTOR TAWTEL, 5100 Westheimer, Suite 275, Houston, Texas 77056.

Defendant WILLIAM W. TIMBERLAKE is a doctor of chiropractic doing business in the State of Texas and may be served with process at 3016 Jim Miller Rd. Dallas, Texas 75227.

II.

Plaintiffs are doctors of chiropractic and were at all times pertinent to this case, licensed by the Texas Board of Chiropractic Examiners to practice chiropractic. Plaintiffs provided necessary chiropractic care to a number of patients who were injured or while insured by Defendants under policies of insurance, automobile insurance, health insurance, worker's compensation insurance and other insurance.

It was the choice of these patients to secure the services and to contract with Plaintiffs for treatment of their injuries. These patients had a right to choose chiropractic treatment for their injuries and Defendants were required to provide for payment of the reasonable and necessary chiropractic fees in the respective local areas for treatment of their injuries.

III.

Plaintiffs would show that Defendants have engaged in a civil conspiracy aimed at cutting chiropractic services and charges. Defendants have engaged in a continuing course of conduct to cut chiropractic bills, disparage the care and treatment by chiropractors, interfere with the business relationship between Plaintiffs and their patients, restrain trade between Plaintiffs and their patients and engage in bad faith. Plaintiffs have suffered actual damages, loss of patients and future treatment, non-payment of bills, staff time to document and respond to the actions of Defendants, suffered damage to their business reputation and credit, mental anguish and legal fees and other damages for which Defendants are liable, together with punitive damages and prejudgment interest.

IV.

Plaintiffs would show that Defendants have engaged in unfair practices in the business of insurance (as defined by Article 21.21 et seq. of the Texas Insurance Code) and deceptive trade practices (as defined by Article 17.46 of the Texas Business and Commerce Code).

Plaintiffs would show that Defendants have engaged in one or more of the following acts:

1. Denying a claim without a reasonable basis for such denial.
2. Delaying payment of a claim without a reasonable basis for such delay.

3. Failing to promptly determine whether there was any reasonable basis for a denial or delay of a claim.
4. Withholding benefits by paying less than due.
5. Failure to pay Plaintiffs bills.
6. Refusing to pay claims without conducting a reasonable investigation based upon all available information. State Board of Insurance Amendment of unfair competition and unfair practices of insurers rules, Docket No. 41454 (8/10/82).
7. Discriminating against doctors of chiropractic. (Article 21.52 of the Texas Insurance Code).
8. Refusal to pay chiropractic services within 30 days or to controvert the services as required by Board Rules 41.160, 41.165 and 41.175 of the Texas Industrial Accident Board and Article 8306 §7 of the Texas Civil Statutes.
9. Refusing to accept the opinion of a chiropractor in adjusting or settling a claim by requiring another doctor's opinion.
10. Discriminating against doctors of chiropractic (Article 21.52 of the Texas Insurance Code).
11. Refusing to settle with claimants who received chiropractic care on the basis the fees of chiropractors are excessive and unreasonable without a timely and reasonable investigation concerning the claim. (Article 21.52 of the Texas Insurance Code)
12. Adjusting chiropractic bills and treatment in a different manner than those of other health care providers. (Article 21.52 of the Texas Insurance Code).
13. Arbitrarily refusing payment of chiropractic bills and then justifying refusal by subsequently retaining a doctor who has never seen the patient, the x-rays or the entire history of the patient to justify not paying the bill.
14. Refusing payment of chiropractic bills without any objective, grade or standard.
15. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies (Article 21.21-2 §2(b)).
16. Failing to adopt and implement reasonable standards for prompt investigations of claims arising under its policies (Article 21.21-2 §2(c)).
17. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear.
18. Compelling claimants covered by the policy of insurance to institute suits to recover amounts due under Defendants policies by offering substantially less than the amounts ultimately recovered in suits brought by them. (Article 21.21-2 §2(e)).
19. Refusing to settle workers compensation claims with future medical benefits provided by chiropractors.
20. Attempting to switch patients from treatment by a chiropractor to other types of doctors.

21. Disparaging the services of chiropractors by false or misleading representation of fact. (Deceptive Trade Practices Act 17.46 (a)(8)).
22. Breach of express warranty. (Texas Deceptive Trade Practices Act 17.50(a)(2)).
23. Breach of implied warranty. (Texas Deceptive Trade Practices Act 17.50(a)(2)).
24. Engaging in unconscionable action (Texas Deceptive Trade Practices Act 17.50(a)(3)).

The conduct of Defendants was a producing cause of Plaintiff's actual damages listed below. Plaintiff would further show the conduct of Defendants as described in this petition was committed knowingly. Pursuant to §17.505, giving 30 days written notice is rendered impractical by reason of the necessity of filing suit to prevent expiration of the statute of limitations. Further, Plaintiffs have given notice of the individual claims.

Defendants are liable to Plaintiffs and the others in the class for damages, prejudgment interest, reasonable attorney's fees and treble damages.

V.

Alternatively, and without waiving the foregoing, the conduct of Defendants constituted a willful, intentional, unwarranted, wrongful and unjustified interference by Defendants in the business of Plaintiffs and others in the class with their patients, as well as with prospective patients. As a proximate result of Defendants conduct, Plaintiffs and others in the class have been damaged as set forth herein.

VI.

Alternatively, and without waiving the foregoing, Plaintiffs and others in the class in good faith rendered services to their patients. Although Defendants had an obligation to act in good faith in respect to the handling of their

claims, Defendants breached that duty and acted in bad faith, which proximately caused damages to Plaintiffs.

VII.

Plaintiffs would show that Defendants have engaged in a continuing course of conduct as alleged above. After notice and hearing, a temporary injunction and thereafter a permanent injunction should be issued against Defendants to prohibit their bad faith conduct against chiropractors. Plaintiffs have no adequate remedy at law. After hearing and during the pendency of this suit, Plaintiffs request that the Court enjoin Defendants as follows:

1. Cutting, reducing, eliminating or refusing to pay chiropractic bills. In the event such Defendant contests any such bill, such Defendant shall deposit all monies in dispute into the registry of the Court, together with its written justification for the contest and the evidence to justify reduction.
2. Diverting patients of Plaintiffs or attempting to change treatment plans or health care providers.
3. Refusing, unreasonably limiting, diverting, switching or making an issue of future medical care with chiropractors in negotiation or settlement of workers' compensation claims.
4. Interfering with the doctor-patient relationship in any way.
5. Delaying payment of chiropractor bills.
6. Contacting patients of Plaintiffs concerning treatment or bills or any matter relating to chiropractors.
7. Making any derogatory remarks (orally or in writing) concerning chiropractors' treatment or bills.
8. Politiking, advertising, lobbying, donating money or soliciting political support to change the system or sway public opinion during the pendency of this suit.
9. Such other and further orders as the Court may deem necessary.

Upon final trial hereof, Plaintiffs pray this temporary injunction be made permanent.

VIII.

Alternatively, and without waiving the foregoing, Plaintiffs would show that Defendant INTRACORP, INC. and Defendant Dr. TIMBERLAKE were negligent and grossly negligent which negligence is a proximate cause of Plaintiffs damages.

IX.

Alternatively and without waiving the foregoing, Defendants are in violation of Article 8306 §7 for non-payment of medical services rendered by Plaintiffs and others in the class. As such, Plaintiffs are entitled to recover damages, interest thereon at the rate of twelve percent (12%) of the amount unpaid, and reasonable attorney's fees.

X.

Alternatively, and without waiving the foregoing, Plaintiffs would show that Defendants violated Article 3.62 of the Texas Insurance Code. Plaintiffs are entitled to damages, statutory penalty, interest and reasonable attorneys fees.

XI.

Plaintiffs and members of the class have suffered damages in excess of the minimum jurisdictional limits of this Court.

XII.

Plaintiffs would show that Defendants acted willfully and maliciously in the handling of these claims, and that the conduct of Defendants as aforesaid was of such character as to make Defendants liable for exemplary or punitive damages.

XIII.

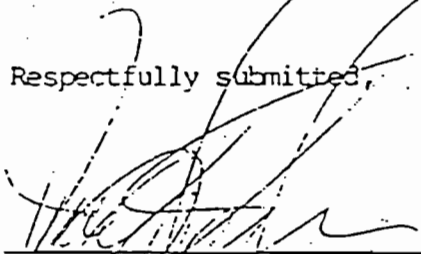
It was necessary to secure the services of JAMES F. SCHERR, a licensed Texas attorney, to prepare and prosecute this suit to protect the rights of Plaintiff

and members of the class. Judgment should be rendered in favor of this attorney and against Defendants for reasonable attorney's fees.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer and that upon final trial Plaintiffs have:

- A. Judgment against Defendants in a sum in excess of the minimum jurisdictional limits of this court;
- B. Treble damages;
- C. Exemplary or punitive damages;
- D. Temporary and permanent injunctive relief;
- E. Prejudgment interest on the amount awarded as damages at the legal rate to the date of judgment;
- F. Post judgment interest thereafter at the legal rate until paid;
- G. Attorney's fees;
- H. Costs of this suit;
- I. Expert witness costs.
- J. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,



JAMES F. SCHEPP
Attorney for Plaintiffs
425 Myrtle
El Paso, Texas 79901
(915) 544-0100
Texas Bar No. 17745400

EXHIBIT C

EXHIBIT NO. 5
M. KUHLMANN

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

243RD JUDICIAL DISTRICT

Filed 3-28 A.D. 1994
at 10:14 o'clock A M

DR. WALTER RHODES, ET AL..)

Plaintiffs.)

v.)

AMERICAN GENERAL FIRE AND)
CASUALTY COMPANY, ET AL..)

Defendants.)

Cause No. 88-7707

Mdo

JUDGMENT

This case came before the Court for a final adjudication. the full names of the parties being as follows: Plaintiffs. Dr. David Bailey, Dr. Ben Beard, Dr. Dan Petrosky and the remaining defendants. American General Fire & Casualty Company; Allstate Insurance Company; American Motorists Insurance Company; Kemper Group Insurance Companies; Lumbermens Mutual Casualty Company; CIGNA Insurance Company of Texas; Crawford & Company Insurance Adjusters. Crum & Forster; Argonaut Insurance Company; U.S. Insurance Group; U.S. Fire Insurance Company; National Standard Insurance Company; National Union Fire Insurance of Pittsburgh. Pennsylvania; International Rehabilitation Associates, Inc. ("Intracorp"); Safeco Insurance Company of America; Hartford Fire Insurance Company; Liberty Mutual Insurance Company; Liberty Mutual Fire Insurance Company; North River Insurance Company. New Jersey; Aetna Casualty & Surety Company; and Dr. Bill W. Timberlake. The parties appeared, waived trial by jury, and jointly moved to dismiss and for entry of a judgment since all matters in controversy had been settled and the consideration for

EXHIBIT

the settlement had been paid in full. The parties also requested that the Court approve the settlement and dismissal of this action and requested from the Court a judgment that the plaintiffs take nothing, with the parties to bear their own court costs.

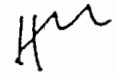
After considering the verified Joint Motion to Dismiss and for Entry of a Judgment and argument of counsel, the Court hereby grants the motion and approves the settlement and dismissal of this action. The Court further finds that this action shall not be considered as a class action under Tex. R. Civ. P. 42, since no class has been certified and no hearing has been held on class certification, and no prejudice would be caused to the putative class members by entry of a Judgment. The Court further finds that the consideration for the settlement of the individual claims is fair and reasonable.

It is, therefore, ADJUDGED that Dr. David Bailey, Dr. Ben Beard, and Dr. Dan Petrosky take nothing by reason of this suit against the defendants and the parties bear their own costs of court.

It is further ADJUDGED that the parties are denied all relief not expressly granted by this judgment, whether the relief was requested or whether it could have been requested in this case.

The parties, in open court and through their undersigned counsel, waive the provisions of Rule 306a(4) of the Texas Rules of Civil Procedure, as amended.

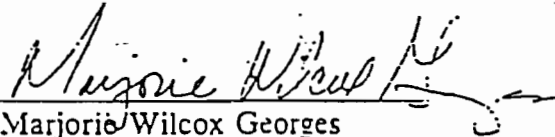
SIGNED on this 21 day of January, 1994.



PRESIDING JUDGE

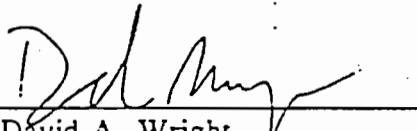
APPROVED AND AGREED TO:

JONES & GEORGES

By: 
Marjorie Wilcox Georges
State Bar No. 21453075

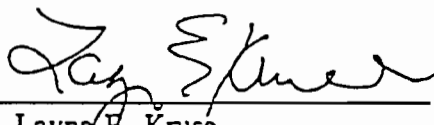
7500 Viscount, Suite 210
El Paso, Texas 79925-4851
Telephone: 915/779-0200
Telecopy: 915/770-0313
Attorneys for Plaintiffs
Dr. David Bailey, Dr. Ben
Beard and Dr. Dan Petrosky

DAVIS & WILKERSON

By: 
David A. Wright
State Bar No. 22026300

P.O. Box 2283
Austin, Texas 78768-2283
Telephone: 512/482-0614
Telecopier: 512/482-0342
Counsel for Defendant Hartford
Insurance Company

FULBRIGHT & JAWORSKI L.L.P.

By: 
Layne E. Kruse
State Bar No. 11742550

Anne M. Rodgers
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1031 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: 713/651-5151
Telecopier: 713/651-5246
Counsel for Defendant Aetna
Casualty and Surety Co.

MOUNCE & GALATZAN

By: 

Carl H. Green
State Bar No. 08347330

P.O. Drawer 1977
El Paso, Texas 79950-1977
Telephone: 915/532-3911
Telecopier: 915/541-1597
Counsel for Defendants American
General Fire & Casualty Co. and
National Standard Insurance Co.

STUDDARD & MELBY, INC.

By: 

Christopher R. Johnston
State Bar No. 18834200

415 North Mesa
Third Floor, Franklin Plaza
El Paso, Texas 79901
Telephone: 915/533-5938
Telecopier: 915/533-6225
Counsel for Defendant International
Rehabilitation Associates, Inc. and
CIGNA Insurance Company of Texas

VINSON & ELKINS L.L.P.

By: 

John L. Murchison
State Bar No. 14682000
Page I. Austin
State Bar No. 14345000
James A. Reeder, Jr.
State Bar No. 16695010

1001 Fannin, Suite 3300
Houston, Texas 77002-6760
Telephone: 713/758-2222
Telecopier: 713/651-2346
Counsel for Defendant International
Rehabilitation Associates, Inc.

RICHARD. LEE. ROWLEY, COBB
& HALL

By: 

Bryan Hall
State Bar No. 08744800

123 West Mills, Suite 330
El Paso, Texas 79901
Telephone: 915/532-6997
Telecopier: 915/532-7046
Counsel for Defendants Crum &
Forster, U.S. Insurance Group,
U.S. Fire Insurance Company, and
North River Insurance Company,
New Jersey

SHAFER, DAVIS, McCOLLUM, ASHLEY,
O'LEARY & STOKER

By: 

James M. O'Leary
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Counsel for Defendants Lumbermens Mutual
Casualty Company, American Motorists
Insurance Company, and Kemper Group
Insurance Companies

WILDMAN, HARROLD, ALLEN &
DIXON

By: 

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Telephone: 312/201-2000
Telecopier: 312/201-2555
Counsel for Defendants Lumbermens
Mutual Casualty Company and
American Motorists Insurance
Company

GWIN & ROBY

By: 

Max E. Freeman III
State Bar No. 07427000
Scott W. MacLaren
State Bar No. 12762900
4100 Renaissance Tower
1201 Elm Street, Suite 4100
Dallas, Texas 75270
Telephone: 214/698-4100
Telecopier: 214/747-2904
Counsel for Dr. Bill W. Timberlake

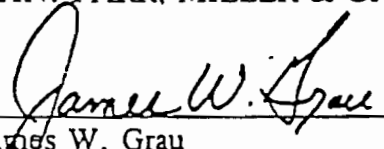
DUDLEY, DUDLEY, WINDLE &
STEVENS

By: 

Lawrence M. Jordan
State Bar No. 11014950
2501 N. Mesa, Suite 200
El Paso, Texas 79902
Telephone: 915/544-3090
Telecopier: 915/542-2651
Counsel for Defendant National
Union Fire Insurance Company of
Pittsburgh, Pennsylvania

MARTIN, FARR, MILLER & GRAU

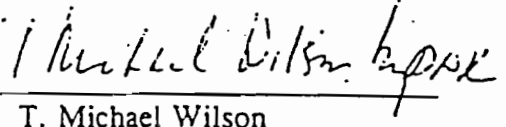
By:


James W. Grau
State Bar No. 08306350

Two Turtle Creek Village, Suite 1700
Dallas, Texas 75219-4537
Telephone: 214/528-0890
Telecopier: 214/528-0896
Counsel for Defendant Argonaut
Insurance Company

JACKSON & WALKER

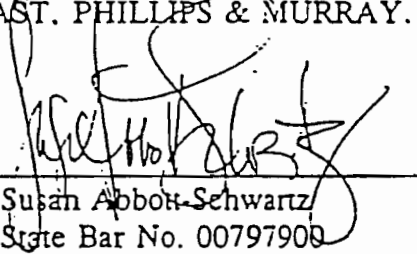
By:


T. Michael Wilson
State Bar No. 21724000
D. Paul Dalton
State Bar No. 05333200
Russell H. Roden
State Bar No. 17132070

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Dallas, Texas 75202-3797
Telephone: 214-953-6000
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Counsel for Defendant Allstate
Insurance Company

GLAST, PHILLIPS & MURRAY, P.C.


By:


Susan Abbott-Schwartz
State Bar No. 00797900

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1601 Elm Street
Dallas, Texas 75201-4721
Telephone: 214/978-4300
Telecopier: 214/978-4370
Counsel for Defendant Crawford & Company

SONNENSCHNEN, NATH AND
ROSENTHAL

By:


Jeffrey Lennard

8000 Sears Tower
Chicago, Illinois 60606-6404
Telephone: 312/876-8000
Telecopier: 312/876-7934
Counsel for Defendant Allstate
Insurance Company

STEWART, COLANERI & RENWICK, P.C.

By: Malcolm G. Renwick

Malcolm G. Renwick
State Bar No. 08649200

2021 East Lamar Boulevard, Suite 100
Arlington, Texas 76006
Telephone: 817/261-7381
Telecopier: 817/265-9278
Counsel for Defendant Safeco Insurance
Company of America
Liberty Mutual Fire Insurance

SKELTON & ASSOCIATES

By: Mark Bowie

For J. Hampton Skelton
State Bar No. 18457700

100 Congress Avenue, Suite 1800
Austin, Texas 78701
Telephone: 512/469-5520
Telecopier: 512/469-5525
Counsel for Defendants Liberty
Mutual Insurance Company and
Company

BAKER & BOTTS, L.L.P.

By: Allister M. Waldrop

Allister M. Waldrop
State Bar No. 20685500

One Shell Plaza
910 Louisiana Street
Houston, Texas 77002-4995
Telephone: 713/229-1234
Telecopier: 713/229-1522
Counsel for Defendant CIGNA Insurance
Company of Texas

EXHIBIT D

the following reasons:

Negotiations that formed the basis of the contract between Ben Beard and Defendant Scherr occurred in Harris County, Texas. Therefore, venue is appropriate in Harris County.

FACTS

3. Defendants are attorneys licensed to practice law in the state of Texas. Defendant James Scherr entered into Contingency fee contracts to represent Plaintiffs in certain causes of action against numerous insurance companies. Defendant Scherr entered into an agreement with Defendant Gage and Defendant Gage, Beach & Ager to assist him in representing defendants. During the course of representing the plaintiffs, Defendants failed to properly account for monies collected by Defendants on behalf of the Plaintiffs and favored specific other clients at the expense of Plaintiffs. Further, it is believed by Plaintiffs that Defendants wrongfully appropriated, for the benefit of Defendants, certain funds collected on behalf of Plaintiffs.

4. Defendants have an aggregate of approximately \$170,000.00 in their respective trust accounts and have failed to distribute the funds to Plaintiffs and further have failed and refused to account for expenses claimed by Defendants despite repeated requests from Plaintiffs for such accounting.

BREACH OF FIDUCIARY DUTY

5. In failing to deliver the collected settlement proceeds, Defendants have breached their fiduciary duty to promptly pay to Plaintiffs all funds in their possession to which Plaintiffs were entitled to receive. Defendants further breached their fiduciary duty to Plaintiffs in failing to provide accountings of claimed expenses as requested by Plaintiffs. In breaching their fiduciary

duty as described, Defendants have caused damage to Plaintiffs in a sum in excess of the minimum jurisdiction of this Court.

CONVERSION

6. Defendants have collected substantial sums of money on behalf of Plaintiffs in the past and have appropriated funds to which Plaintiffs were entitled for their own use and benefit in the form of expenses. Defendants have wrongfully converted funds belonging to Plaintiffs and in doing so have damaged Plaintiffs in a sum in excess of the minimum jurisdiction of this Court.

ACTION TO VOID CONTRACT

7. Plaintiffs signed a contingency fee contract with Defendant Scherr for which they now request the Court to void due to the misconduct of Defendants.

EXEMPLARY DAMAGES

8. Defendants conduct as described above was intentional, egregious, wanton and malicious with a flagrant disregard for the rights of Plaintiffs. Therefore, Plaintiffs request that the Court assess punitive damages against Defendants.

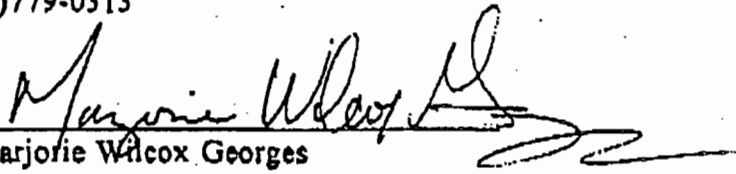
WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer, and that, after trial, plaintiff have judgment against Defendants for the following:

1. Damages within the jurisdictional limits of this court for the breach of fiduciary duty by defendants as described above.
2. Damages for conversion as described above.
3. A Court order that the contingent fee contracts signed by Plaintiffs are void.
4. Exemplary damages in a sum in excess of the minimum jurisdiction of this Court.

- 5. Pre-judgment and post-judgment interest as allowed by law.
- 6. Such further relief to which Plaintiffs may be entitled.

Respectfully submitted,

Jones & Georges
7400 Viscount, #210
El Paso, TX 79925-4851
(915)779-0200
(915)779-0313

By: 
Marjorie Wilcox Georges
State Bar No. 21453075
Attorney for Plaintiffs

CAUSE NO. 9402

RECEIPT No. 384480
91-21-94

.00 FCH

MTA

TR # 60286047

PLAINTIFF: BEARD, BEN *
vs.
DEFENDANT: SCHERR, JAMES *

In The 129th
Judicial District Court
of Harris County, Texas
1819 Congress, 16th Floor
Houston, TX

* Additional parties are named in the attached petition.

CITATION

THE STATE OF TEXAS
County Of Harris

TO ANY SHERIFF OR CONSTABLE OF TEXAS
Or Other Authorized Person

TO: SCHERR, JAMES
109 N OREGON

EL PASO TX 79901

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION INTERROGATORIES REQUEST FOR ADMISSIONS AND PRODUCTION

This instrument was filed on the 21st day of January, 1994, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 27th day of January, 1994, under my hand and seal of said Court.

Issued at request of: (Seal)
WILCOX, MARJORIE
7400 VISCOUNT #218
EL PASO TX 79925

KATHERINE TYRA, District Clerk
Harris County, Texas
301 Fannin Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Bar No.: 21452075

By Tracey Mitchell
Deputy MITCHELL, TRACEY HY/HR/1965547

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at ___ o'clock ___ .M., on the ___ day of _____, 19__.

Executed at (address) _____ in _____

County at ___ o'clock ___ .M., on the ___ day of _____,

19__, by delivering to _____ defendant, in person, a copy of this Citation together with the accompanying _____ copy(ies) of the Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this ___ day of _____, 19__.

FEES: \$ _____

_____ of _____ County, Texas

Affiant

By _____ Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this ___ day of _____, 19__.

Notary Public

00467

EXHIBIT E

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Ben Beard, David Bailey, and Dan Petrosky, Plaintiffs, and file this their First Amended Original Petition against James Scherr, Noel Gage, and Gage, Beach and Ager, and show the Court the following:

PARTIES

1. Ben Beard is an individual residing in Houston, Texas and David Bailey is an individual residing in Bryan, Texas. Dan Petrosky is an individual residing in El Paso, Texas. Defendant James Scherr is an attorney who has previously been served in this case and has filed an answer. Noel Gage is an attorney who has previously been served and who has filed an answer and Gage, Beach & Ager is a partnership which also has been served and has filed an answer.

VENUE

2. Plaintiffs' action against Defendants is properly maintainable in the county of suit for the following reasons:

Negotiations that formed the basis of the contract between Ben Beard and Defendant Scherr occurred in Harris County, Texas. Therefore, venue is appropriate in Harris County.

FACTS

3. Defendants are attorneys licensed to practice law in the state of Texas. Defendant

James Scherr entered into Contingency fee contracts to represent Plaintiffs in certain causes of action against numerous insurance companies. Defendant Scherr entered into an agreement with Defendant Gage and Defendant Gage, Beach & Ager to assist him in representing defendants. During the course of representing the plaintiffs, Defendants failed to properly account for monies collected by Defendants on behalf of the Plaintiffs and favored specific other clients at the expense of Plaintiffs. Further, it is believed by Plaintiffs that Defendants wrongfully appropriated, for the benefit of Defendants, certain funds collected on behalf of Plaintiffs.

*SP
Acceptance
which
monies
from
other
clients
of
Gage
Beach
&
Ager
funds
not appropriate*

4. Defendants have an aggregate of approximately \$170,000.00 in their respective trust accounts and have failed to distribute the funds to Plaintiffs and further have failed and refused to account for expenses claimed by Defendants despite repeated requests from Plaintiffs for such accounting.

5. Defendant Scherr and Defendant Gage, acting in his personal capacity as an agent for the law firm of Gage, Beach & Ager, negligently released confidential information regarding Plaintiff Ben Beard during the pendency of this case which was unnecessary for their defense.

*SP etc
No named
action
released to
whom?
confidential
info?*

BREACH OF FIDUCIARY DUTY

6. Defendants breached their fiduciary duty to plaintiffs in one or more of the following respects:

- (1) in failing to promptly and accurately account for settlement proceeds;

- (2) in failing to promptly deliver collected settlement proceeds;
- (3) in failing to provide plaintiffs with an accurate account of claimed expenses;
- (4) in failing to provide plaintiffs with accurate information concerning one or more settlement negotiations; and
- (5) in favoring one client to the detriment of and against the interests of plaintiffs.

As a consequence of the aforementioned breaches of their fiduciary duties, defendants, jointly and severally caused plaintiffs to suffer actual damages in the following amounts:

(1) Plaintiff Ben Beard	\$61,300.00
(2) Plaintiff David Bailey	\$61,300.00
(3) Plaintiff Dan Petrosky	\$61,300.00

HN - incorrect

CONVERSION

7. Defendants have appropriated as expenses substantial sums of money collected on behalf of plaintiffs, expenses for which there is no accounting in the case of Defendant Gage and/or inadequate or no accounting in the case of Defendant Scherr. Defendants have wrongfully converted all sums they claim as expenses in Cause No. 88-7707, and accordingly, Plaintiffs seek a judgment of this Court denying defendants claims for expenses in Cause No. 88-7707.

How converted? what right for illiquid assets

NEGLIGENT RELEASE OF CONFIDENTIAL INFORMATION

8. Defendants Scherr and Noel Gage, acting individually and as a duly authorized

agent of the firm of Gage, Beach & Ager, negligently released confidential information regarding Ben Beard without justification and with the consent of Plaintiff Beard. The confidential information was revealed to Defendants during their legal representation of Plaintiff Beard and was protected by the attorney-client privilege. Defendants' negligent conduct in releasing said confidential information was predicated upon a conscious indifference to the rights of Plaintiff Beard and upon an actual awareness of the extreme degree of risk to be suffered by Plaintiff Beard if said confidential information were released. Defendants' negligence herein caused Plaintiff Ben Beard to suffer actual damages in the form of physical pain, mental anguish and emotional distress in the sum of \$300,000.00.

What info?
From confidential
What must Plaintiff
show?
Allowed to know

ACTION TO VOID CONTRACT

9. Because of the various acts of misconduct and/or negligence previously stated herein, plaintiffs seek a judgment of this court that the contingency fee contracts executed in connection with Cause No. 88-7707, be declared null and void ab initio and that the lien of Defendants Scherr and Gage against the \$200,000.00 in the registry of the Court be extinguished.

What legal basis

EXEMPLARY DAMAGES

10. Defendants' conduct as described above was intentional, egregious, wanton and malicious with a flagrant disregard for the rights of Plaintiffs. Further, the negligence of Defendants in releasing the confidential information of Ben Beard was gross negligence. Therefore, Plaintiffs request that the Court assess punitive damages against Defendants in

the following amounts:

- | | |
|----------------------------|----------------|
| (1) Plaintiff Ben Beard | \$1,445,200.00 |
| (2) Plaintiff David Bailey | \$245,200.00 |
| (3) Plaintiff Dan Petrosky | \$245,200.00 |

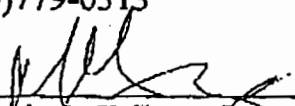
How calculated

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer, and that, after trial, plaintiffs have judgment against Defendants for the following:

1. \$188,900.00 in actual damages for the breach of fiduciary duty by defendants as described above.
2. Damages for conversion as described above.
3. Judgment declaring the contingency fee contracts signed by Plaintiffs in Cause No. 88-7707 be declared null and void.
4. \$300,000.00 in actual damages for Defendants' negligent release of confidential information concerning Plaintiff Ben Beard.
5. \$1,935,600.00 in exemplary damages.
5. Pre-judgment and post-judgment interest as allowed by law.
6. Such further relief to which Plaintiffs may be entitled.

Respectfully submitted,

Jones & Georges
7400 Viscount, #210
El Paso, TX 79925-4851
(915)779-0200
(915)779-0313

By: 
Marjorie Wilcox Georges
State Bar No. 21453075

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to James Franklin Scherr at 109 N. Oregon, 8th Floor, El Paso, Texas 79901, fax number 532-1759, Noel Gage at 6044 Gateway E., Ste. 800, El Paso, Texas 79905 fax number 532-2423 and Leigh Whelan and Phillip Werner at 1300 Post Oak Blvd., Ste. 700, Houston, Texas 77056, fax number (713)961-3542 on this, the 28th day of September, 1994.

- regular mail
- certified mail
- hand delivery
- telecopier transmission


Martie Georges

B18-2.161

EXHIBIT F

PLAINTIFFS' THIRD AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Ben Beard, David Bailey, and Dan Petrosky, Plaintiffs, and file this their First Amended Original Petition against James Scherr, Noel Gage, and Gage, Beach and Ager, and show the Court the following:

PARTIES

1. Ben Beard is an individual residing in Houston, Texas and David Bailey is an individual residing in Houston, Texas. Dan Petrosky is an individual residing in El Paso, Texas. Defendant James Scherr is an attorney who has previously been served in this case and has filed an answer. Noel Gage is an attorney who has previously been served and who has filed an answer and Gage, Beach & Ager is a partnership which also has been served and has filed an answer.

VENUE

2. Plaintiffs' action against Defendants is properly maintainable in the county of suit for the following reasons:

Negotiations that formed the basis of the contract between Ben Beard and Defendant Scherr occurred in Harris County, Texas. Therefore, venue is appropriate in Harris County.

FACTS

3. Defendants are attorneys licensed to practice law in the state of Texas. Defendant

James Scherr entered into Contingency fee contracts to represent Plaintiffs in certain causes of action against numerous insurance companies. Defendant Scherr entered into an agreement with Defendant Gage and Defendant Gage, Beach & Ager to assist him in representing defendants. During the course of representing the plaintiffs, Defendants failed to properly account for monies collected by Defendants on behalf of the Plaintiffs and favored specific other clients at the expense of Plaintiffs. Further, it is believed by Plaintiffs that Defendants wrongfully appropriated, for the benefit of Defendants, certain funds collected on behalf of Plaintiffs. More specifically, and in response to special exceptions of defendant James Franklin Scherr, plaintiffs allege the following facts: 1) in violation of the agreement of the plaintiffs in Cause No. 88-7707 that all funds recovered would be divided equally among the various plaintiffs therein, defendant James Franklin Scherr paid over to William LaRock and Joseph Superville a share greater than they were entitled to receive pursuant to said agreement; 2) in violation of his contingent fee contract with the plaintiffs in Cause No. 88-7707, defendants James Franklin Scherr and Noel Gage paid to themselves legal fees in the amount of \$42,667.75, a sum in excess of that authorized by the contingent fee contract executed between James Franklin Scherr and the plaintiffs; 3) in violation of the contingent fee contract between James Franklin Scherr and the plaintiffs herein, said James Franklin Scherr and Noel Gage paid to themselves one hundred percent of all monies recovered in a settlement negotiated with T.E.L.A.; 4) defendant James Franklin Scherr and Noel Gage are currently wrongfully withholding disbursement of funds

recovered in settlements with Home Insurance company in the amount of \$75,000.00 and Commercial Union Insurance Company in the amount of \$95,000.00 the pretext for which is a claim for expenses which defendants have failed to validate or document in spite of repeated requests that they provide proper documentation.

4. Defendants have an aggregate of approximately \$170,000.00 in their respective trust accounts and have failed to distribute the funds to Plaintiffs and further have failed and refused to account for expenses claimed by Defendants despite repeated requests from Plaintiffs for such accounting.

5. Defendant Scherr and Defendant Gage, acting in his personal capacity and as an agent for the law firm of Gage, Beach & Ager, negligently released confidential information regarding Plaintiff Ben Beard during the pendency of this case which was unnecessary for their defense.

BREACH OF FIDUCIARY DUTY

6. Defendants James Franklin Scherr and Noel A. Gage acting individually and as an agent for the law firm Gage, Beach and Ager, jointly and severally breached their fiduciary duty to plaintiffs in one or more of the following respects:

- (1) in failing to promptly and accurately account for settlement proceeds;
- (2) in failing to promptly deliver collected settlement proceeds;
- (3) in failing to provide plaintiffs with an accurate account of claimed expenses;

(4) in failing to provide plaintiffs with accurate information concerning one or more settlement negotiations; and

(5) in favoring one client to the detriment of and against the interests of plaintiffs.

As a consequence of the aforementioned breaches of their fiduciary duties, defendants, jointly and severally caused plaintiffs to suffer actual damages in the following amounts:

(1) Plaintiff Ben Beard	\$61,300.00
(2) Plaintiff David Bailey	\$61,300.00
(3) Plaintiff Don Peckham	\$61,300.00

CONVERSION

7. Defendants have appropriated and/or are attempting to appropriate as expenses substantial sums of money collected on behalf of plaintiffs -- more specifically the sums of \$86,500.00 received in a settlement with Travelers Insurance Company, \$50,000.00 received in settlement with T.E.I.A. insurance company, \$75,000.00 received in settlement with Home Insurance Company, and \$95,000.00 received in settlement with Commercial Union Insurance Company -- expenses for which there is no accounting in the case of Defendant Gage and the law firm Gage, Beach & Ager and/or inadequate or no accounting in the case of Defendant Scherr. All Defendants have wrongfully converted all sums they claim as expenses in Cause No. 88-7707, and accordingly, Plaintiffs seek a judgment of this Court denying defendants claims for expenses in Cause No. 88-7707.

NEGLIGENT RELEASE OF CONFIDENTIAL INFORMATION

8. Defendants Scherr and Noel Gage, acting individually and as a duly authorized agent of the firm of Gage, Beach & Ager, were negligent in releasing confidential information regarding Ben Beard without justification and without the consent of Plaintiff Beard. Specifically, defendant Gage acting as an authorized agent for the law firm of Gage, Beach, & Ager released confidential information about plaintiff's medical conditions during plaintiff's deposition taken on February 25, 1994. Subsequent to the deposition herein related, defendant Gage acting as an authorized agent for the law firm of Gage, Beach, and Ager filed pleadings in this cause in which he negligently revealed extremely confidential information concerning plaintiff's physical and mental health. These pleadings were filed of record in this cause and are now subject to review by any person. Defendant Gage, again acting as an agent for his firm Gage, Beach, and Ager negligently informed the plaintiff that for the purpose of defeating his claims in this cause there would be additional efforts made to make the information public concerning his health. Defendant Gage's conduct, acting as an authorized agent for the defendant Gage, Beach & Ager, was negligent and/or gross negligence because said defendants knew, or in the exercise of ordinary care, should have known that the public release of information about plaintiff's mental health would in no way support any claim of defense made by said defendants, nor would it support any claim for affirmative relief pled by said defendants by way of cross-action or cross-claims.

The confidential information was revealed to Defendants during their legal

representation of Plaintiff Beard and was protected by the attorney-client privilege. Defendants' negligent conduct in releasing said confidential information was predicated upon a conscious indifference to the rights of Plaintiff Beard and upon an actual awareness of the extreme degree of risk to be suffered by Plaintiff Beard if said confidential information were released. Defendants' negligence herein caused Plaintiff Ben Beard to suffer actual damages in the form of physical pain, mental anguish and emotional distress in the sum of \$300,000.00.

ACTION TO VOID CONTRACT

9. Because of the various acts of misconduct and/or negligence previously stated herein, plaintiffs seek a judgment of this court that the contingency fee contracts executed in connection with Cause No. 88-7707, be declared null and void ab initio and that the lien of Defendants Scherr and Gage against the \$200,000.00 in the registry of the Court be extinguished.

EXEMPLARY DAMAGES

10. Defendants' conduct as described above was intentional, egregious, wanton and malicious with a flagrant disregard for the rights of Plaintiffs. Further, the negligence of Defendants in releasing the confidential information of Ben Beard was gross negligence. Therefore, Plaintiffs request that the Court assess punitive damages against Defendants in the following amounts:

(1) Plaintiff Ben Beard	\$1,445,200.00
-------------------------	----------------

(2) Plaintiff David Bailey \$245,200.00

(3) Plaintiff Dan Petrosky \$245,200.00

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer, and that, after trial, plaintiffs have judgment against Defendants for the following:

1. \$183,900.00 in actual damages for the breach of fiduciary duty by defendants as described above.

2. Damages for conversion as described above.

3. Judgment declaring the court's previous order signed by Plaintiff in Cause No. 88-7707 be declared null and void.

4. \$300,000.00 in actual damages for Defendants' negligent release of confidential information concerning Plaintiff Ben Beard.

5. \$1,935,600.00 in exemplary damages.

5. Pre-judgment and post-judgment interest as allowed by law.

6. Such further relief to which Plaintiffs may be entitled.

Respectfully submitted,

Jones & Georges
7400 Viscount, #210
El Paso, TX 79925-4851
(915)779-0200
(915)779-0313

By: Marjorie W. R. Georges
Marjorie Wilcox Georges
State Bar No. 21453075
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to James Franklin Scherr at 109 N. Oregon, 8th Floor, El Paso, Texas 79901, fax number 532-1759, Noel Gage at 6044 Gateway E., Ste. 800, El Paso, Texas 79905 fax number 532-2423 and Leigh Whelan and Phillip Werner at 1300 Post Oak Blvd., Ste. 700, Houston, Texas 77056, fax number (713)961-3542 and Donald M. Hudgins, 24 Greenway Plaza, Suite 1007, Houston, Texas 77046, fax number (713) 623-2793 on this, the 18th day of October, 1994.

- regular mail
- certified mail
- hand delivery
- telecopier transmission


Marie George

B18-2.161

00466

01-21-94

TR # 60236047

FF: BEARD, BEN *

In The 129th
Judicial District Court
of Harris County, Texas
1019 Congress, 16th Floor
Houston, TX

IT: SCHERR, JAMES *

All parties are named in the attached petition.

CITATION

*Served
Feb 9, 1994*

STATE OF TEXAS
County of Harris

SHERIFF OR CONSTABLE OF TEXAS
or Authorized Person

SCHERR, JAMES
of Oregon

EL PASO

TX 79901

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION INTERROGATORIES REQUEST
ADMISSIONS AND PRODUCTION

Instrument was filed on the 27th day of January, 1994 in the above cited cause number
[redacted]. The instrument attached describes the claim against you.

HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file an
answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday
following the expiration of 20 days after you were served this citation and petition,
lit judgment may be taken against you.

DEALER SERVING:

This citation was issued on 27th day of January, 1994, under my hand and
Seal of Court.

at request of:
MARJORIE
SCOUNT #210
TX 79925

(Seal)

KATHERINE TYRA, District Clerk
Harris County, Texas
301 Fannin Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

By Tracey Mitchell
Deputy MITCHELL, TRACEY HY/HR/1966647

OFFICER/AUTHORIZED PERSON RETURN

hand at _____ o'clock _____ M., on the _____ day of _____, 19____.

in...