

1 MR. DARNELL: Okay.

2 MR. HAYES: Counsel agrees, I will be
3 provided the backup documentation.

4 Why don't we say this: I will be provided
5 the backup documentation for items 2, 3 and 4 on
6 interrogatory response 7 to Exhibit 44.

7 (Requested item, 3)

8 MR. DARNELL: We'll get you those bills,
9 and the checks that paid them.

10 MR. HAYES: I told you 5:00. It is 5:05.
11 I apologize. I'm done.

12 MR. DARNELL: We'll reserve. We do want to
13 read and sign.

14 (Deposition concluded 5:05 p.m.)

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NO. 98-377

JAMES F. SCHERR,)	IN THE DISTRICT COURT
)	
Plaintiff,)	
)	
vs.)	EL PASO COUNTY, TEXAS
)	
THE HOME INSURANCE COMPANY,)	
)	
Defendant.)	205TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
DEPOSITION OF JAMES F. SCHERR
JANUARY 20, 2003

I, Rhonda McCay, Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
following:

That the witness, JAMES F. SCHERR, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
February 3rd, 2003 to the witness or to the
attorney for the witness for examination, signature and
return to me by February 23rd, 2003;

That the amount of time used by each party at
the deposition is as follows:

Mr. Jim Darnell - 0 minute(s)

Mr. Burgain G. Hayes - 3 hour(s), 56 minute(s)

1 That pursuant to information given to the
2 deposition officer at the time said testimony was taken,
3 the following includes counsel for all parties of
4 record:

5 Mr. Jim Darnell, Attorney for Plaintiff

6 Mr. Burgain G. Hayes, Attorney for Defendant

7 I further certify that I am neither counsel
8 for, related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Further certification requirements pursuant to
13 Rule 203 of TRCP will be certified to after they have
14 occurred.

15 Certified to by me this 29th day of January,
16 2003.

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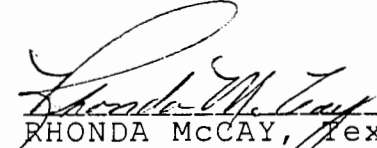
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RHONDA MCCAY, Texas CSR 4457
Expiration Date: 12/31/2004
BRANNON RASBERRY & ASSOCIATES
300 East Main, Suite 1024
El Paso, Texas 79901
(915) 533-1199

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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Burgain G. Hayes, Custodial Attorney;

That \$ 799.50 is the deposition officer's charges to the Defendant for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on _____ and filed with the Clerk.

Certified to by me this ____ day of _____, 2003.

RHONDA McCAY, Texas CSR 4457
Expiration Date: 12/31/2004
BRANNON RASBERRY & ASSOCIATES
300 E. Main, Suite 1024
El Paso, Texas 79901
(915) 533-1199

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CORRECTIONS AND SIGNATURE

PAGE LINE CORRECTION REASON

PAGE	LINE	CORRECTION	REASON

1 I, **JAMES F. SCHERR**, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4
5

6 **JAMES F. SCHERR**

7 THE STATE OF TEXAS)

8 COUNTY OF EL PASO)

9

10 Before me, _____, on this
11 day personally appeared **JAMES F. SCHERR** known to me (or
12 proved to me under oath or through _____)
13 (description of identity card or other document) to be
14 the person whose name is subscribed to the foregoing
15 instrument and acknowledged to me that they executed the
16 same for the purposes and consideration therein
17 expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, 2003.

20

21

22 NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

23

My commission expires: _____

24

25

RM

S T I P U L A T I O N S

The attorneys for all the parties present stipulate and agree that the deposition(s) of the following witness(es):

Will be taken according to the following:

- Make the objections in accordance to the Rules of Civil Procedure. Objections as to the form of the question and the responsiveness of the answer are waived if not made at the taking of the deposition. All other objections reserved until time of trial or hearing.
- Reserve all objections until time of trial.

N O T I C E O F D E L I V E R Y

- Pursuant to Rules of Civil Procedure with waiver of certified mail requirements.
- Pursuant to Rules of Civil Procedure.

E X A M I N A T I O N A N D S I G N A T U R E

- Signature waived by all parties present and witness.
- Signature requested pursuant to Rules of Civil Procedure.

Date: / /

ATTORNEY	REPRESENTING	REGULAR	PAGE SAVER	VIDEO	E-MAIL FILL BELOW	DISK FORMAT: E/A/S/P
<i>B. Hay</i>	<i>Hone Inc</i>	✓	✓		✓	
<i>Jim Lameo</i>	<i>Plaintiff</i>	✓	✓			Ascii

FORMATS AVAILABLE	(E) E-TRANS (executable file)	(A) AMICUS	(S) SUMMATION	(P) PTX
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E-MAIL ADDRESSES:		

B R A N N O N R A S B E R R Y & A S S O C I A T E S , I N C .

CERTIFIED COURT REPORTERS AND PROCESS SERVERS
 300 EAST MAIN, SUITE 1024, EL PASO, TEXAS 79901
 915-533-1199 800-526-5913 915-542-1661 - fax www.rasberry.com e-mail:rasberry@rasberry.com

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**THE HOME
INSURANCE
COMPANY**

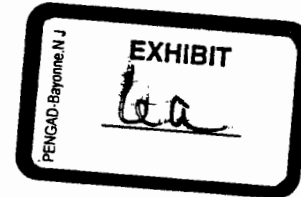


2925 BRIARPARK
SUITE 800
HOUSTON, TEXAS 77042
713-787-7800

P.O. BOX 4357
HOUSTON, TX 77210

March 2, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



James F. Scherr
109 North Oregon, Suite 800
El Paso, TX 79901

Re: Claim No.: 640-L-600813-174
Insured: James Scherr
Claimant: Ben Beard, et al.
Policy No.: LPL-F878124
Policy Limits: \$200,000 Each Claim/\$600,000 Aggregate
Deductible: \$5,000

Dear Mr. Scherr:

This correspondence confirms our telephone conversation of February 25, 1994 and February 28, 1994, relative to the captioned matter. Your fax of February 22, 1994 transmitted the following documents: plaintiff's original petition, plaintiff's first set of interrogatories, request for production, order for service and plaintiff's request for admissions to defendant, James Scherr. Please use the claim number noted above on all correspondence related to this matter.

According to you, the petition was served on February 9, 1994. Therefore, it appears that an answer for you is due on or before March 7, 1994. The fax cover letter indicated depositions were set for February 25, 1994. You informed me that you noticed the plaintiff's depositions on your own initiative.

On February 25, 1994, you requested that we allow you to represent yourself in this matter. The request was made on the day you were in the process of deposing the plaintiff. I consented to your request, however, we agreed if this matter is not resolved within 45 days, the Home would assign counsel to handle your defense.

Our file has been established under your Lawyers Professional Liability insurance policy No. LPL-F878124. This policy was issued on a claims made and reported basis effective June 11, 1993 through June 11, 1994.

The policy's limits of liability are \$200,000 each claim and \$600,000 aggregate. Your \$5,000 deductible applies to defense costs and loss payments per claim. Please recognize that your limits of liability are self-liquidating. Accordingly, as defense costs accrue, your available limits for continued defense and indemnity are correspondingly decreased.

00123

A review of the plaintiff's original petition reveals allegations of conversion and intentional conduct. Therefore, a bona fide dispute exists between you and the Company concerning whether the Company has a duty to defend the lawsuit or has liability or coverage under your policy LPL-F878124, for the allegations made against you in the lawsuit. Therefore, we are accepting this claim under a reservation of rights. At this time, I refer you to the following provisions of your policy:

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 Section F Claim 1-Notice of Claims.

Damages, whenever used in this policy, means a monetary judgment or settlement, including any such judgment 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.

Section C-Exclusions

I. This policy does not apply:

- (a) to any judgment 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;

We also point out that the plaintiff seeks punitive damages. In this regard, we advise you that Home is reserving its rights for any payment, judgment, or award of this nature.

Furthermore, Home reserves any and all other rights it may now have or subsequently acquires, including the right to deny coverage and withdraw from the defense of this matter. Home shall assert such rights if and when circumstances warrant. Home also reserves its right to reimbursement from you of any expenses paid in the defense of this action, if it is later determined that this claim is not covered under your policy.

Therefore, for the reasons set forth above, and for other good and sufficient reasons as may hereafter appear, this Company is accepting

Page 3
March 2, 1994

this claim and is providing you with a defense, under a full reservation of all of its rights with respect to coverage.

Should you feel that any of the information upon which this reservation has been based is in error, or there is any further information you wish to bring to our attention which may impact our coverage determination, please forward same promptly and we will review our position at that time. Please do not hesitate to contact the undersigned directly should you determine that such a reevaluation is in order.

We look forward to working with you toward a satisfactory conclusion to this matter.

Very truly yours,



Oscar Allen
Professional Liability Department

OA:la

00125

SCHERR & LEGATE, P.C.

ATTORNEYS AT LAW
1 TEXAS TOWER
109 N. OREGON 8TH FLOOR
EL PASO, TEXAS 79901
(915) 544-0100
FAX TEL (915) 532-1759

HOUSTON OFFICE:
705 MAIN STREET
HOUSTON, TEXAS 77002
(713) 223-8582
FAX TEL (713) 225-0723

JAMES F. SCHERR
SAM JACKSON LEGATE*
JAMES BRYCE KENNEDY

*ALSO MEMBER OKLAHOMA BAR

640-600813-174

October 16, 1995



The Home Insurance Company
Professional Liability Claims Dept.
2925 Briar Park, Suite 800
Houston, Texas 77042

UPS OVERNIGHT

RE: POLICY NO.: LPL-F878124-2
PLEA IN INTERVENTION
BEARD v. JAMES F. SCHERR,
CAUSE NO. 94-03110, 129TH
JUDICIAL DISTRICT, HARRIS
COUNTY, TEXAS

Gentlemen:

I enclose a copy of the Plea in Intervention filed by Joe Archer making claim for seventeen (17) chiropractors in the above cause. I'm presently in trial in the underlying case in Houston. The Court severed the Plea in Intervention to a separate trail. Request is hereby made to defend me on the Plea in Intervention and pay any judgement that may be assessed.

If you have any questions, please feel free to contact me.

Very truly yours,

James F. Scherr
JAMES F. SCHERR

JFS/ypc

Encl.

RECEIVED

OCT 18 1995

PROF. LIAB.
CLAIMS - HOUSTON

REM

Risk Enterprise
Management
Limited



October 20, 1995

SENT VIA AIRBORNE EXPRESS AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED P174 714 388
James F. Scherr
109 North Oregon, Suite 800
El Paso, TX 79901

Re: REM's Principal: The Home Insurance Company
Claim No.: 640-L-600813-174
Insured: James Scherr
Claimant: Ben Beard, et al.
Policy Limits: \$200,000 each claim/\$600,000 aggregate
Deductible: \$5,000

Dear Mr. Scherr:

Please be advised that Risk Enterprise Management Limited (REM) has been appointed to manage the business of The Home Insurance Companies. Future correspondence on this matter will be on REM letterhead.

This correspondence confirms our telephone conversation of October 19, 1995, relative to the captioned matter.

The Home Insurance Company is providing you with a defense under reservation of rights. The reservation of rights is based upon allegations in plaintiff's seventh amended original petition. The petition alleges actual and constructive fraud; conversion; action to avoid contingency fee contract; among other allegations. Additionally, the petition seeks to recover exemplary damages and compensatory damages in excess of your policy limits.

Please refer to the following provisions in your policy:

Section B - Coverage

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;

Damages:

Whenever used in this policy, means a monetary judgment or settlement, including any such judgment 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.

Section C - Exclusions:

I. This policy does not apply:

- (a) To any judgment 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;

This case proceeded to trial on October 5, 1995. It is the Home Insurance Company's understanding that the defendants extended an offer that involved giving up their claim for expenses and attorney fees, concerning the funds deposited into the registry of the court. The offer also involved a contribution from the Home Insurance Company and Coregis Insurance Company (insurer for Noel Gage). However, the offer was rejected with a counter by the plaintiffs in the amount of \$900,000. Nothing the company may have done in connection with the investigation or defense of any matter arising out of the allegations made against you in the lawsuit or in connection with the handling of any claim or litigation through the courts, including investigation or negotiations for settlement, shall be construed or considered as a waiver of any of the company's rights or defenses under its policy of insurance, nor shall such action require it to pay any claim or judgment which may be rendered against you.

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, and 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.

The policy's limits of liability are \$200,000 per claim and \$600,000 in the aggregate. Your \$5,000 deductible applies to defense costs and lost payments per claim. Please recognize that your limits of liability are self-liquidating. Accordingly, as defense costs accrue, your available limit for continued defense and indemnity are correspondingly decreased.

Section E - Limits of Liability:

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 and including the optional reporting period, if such is purchased.

III. Deductible:

00048

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.

On October 18, 1995, we received your letter of October 16, 1995, forwarding us the Plea in Intervention filed by Joe Archer for 17 chiropractors in the above-captioned matter. The court severed the Plea in Intervention to a separate trial. Please be advised that it is the Home Insurance Company's position that the Plea in Intervention suit does not represent a new claim because related acts, errors or omissions are treated as a single claim. Please refer to the following provision in your policy:

Section E - Limits of Liability

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, 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.

Again, the damages sought exceed your per claim or aggregate limit of liability. If you have relevant excess insurance, you should place that carrier on notice. Similarly, you have, at your own cost and expense, the right to retain counsel to represent your uninsured interests in this matter. Should you decide to do so, please have your counsel communicate directly with counsel retained on your behalf by the company.

Furthermore, the Home reserves any and all other rights it may now have or subsequently acquire, and including the right to deny coverage and withdraw from the defense of this matter. The Home shall assert such rights if and when circumstances warrant. The Home also reserves its right to reimbursement from you of any expenses paid in the defense of this action, if it is later determined that this claim is not covered under your policy.

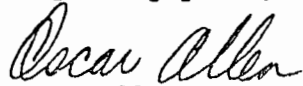
Therefore, for the reasons set forth above, and for such other good and sufficient reasons as may hereafter appear, this company is continuing to provide you with a defense under a full reservation of all of its rights with respect to coverage.

Should you feel that any of the information upon which this reservation has been made is in error, or there is any further information you wish to bring to our attention which may impact our coverage determination, please forward same promptly and we will review our position at that time. Please do not hesitate to contact the undersigned directly should you determine that such a re-evaluation is in order.

Page 4
October 20, 1995

We look forward to continuing working with you toward an amicable and satisfactory conclusion to this matter.

Very truly yours,



Oscar Allen
Claim Analyst
(713) 787-5940

OA:pbcc-2

00050

Page 5
October 20, 1995

cc: Don Huggins
Hudgins, Hudgins & Warwick
24 Greenway Plaza, Suite 1007
Houston, TX 77046

00051

ENTERED *Adrian*
RECEIVED

CAUSE NO 94-03110

**BEN BEARD, DAVID BAILEY and
DAN PETROSKY,**

Plaintiffs,

v.

**JAMES FRANKLIN SCHERR, NOEL
GAGE and GAGE, BEACH & AGER,**

Defendants.

AND

JAMES F. SCHERR

Counter-Plaintiff,

v.

**BEN BEARD, DAVID BAILEY and
DAN PETROSKY**

Counter-Defendants,

and

**MARJORIE GEORGES and
JONES & GEORGES, P.C.**

Third Party Defendants.

NOEL A. GAGE

Counter Plaintiff

vs.

**BEN BEARD, DAVID BAILEY, AND
DAN PETROSKY**

Counter Defendants

and

**MARJORIE GEORGES, LUTHER JONES
AND JONES & GEORGES,**

Third Party Defendants

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
129TH JUDICIAL DISTRICT

EXHIBIT
36
PENGAD-Bayonne NJ

PLAINTIFFS' EIGHTH AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Ben Beard, David Bailey, and Dan Petrosky, Plaintiffs, and file this their

~~PLAINTIFFS' SEVENTH AMENDED PETITION (11/13/02)~~

Page 1

Seventh Amended Original Petition against James Scherr, Noel Gage, and Gage, Beach and Ager, Defendants and Third Party Defendants Marjorie Georges, Luther Jones and Jones & Georges and file this their Answer to all Third Party Claims of James Franklin Scherr, Noel A. Gage and Gage Beach & Ager and in support thereof would respectfully present the following:

PARTIES

1. Ben Beard is an individual residing in Houston, Texas and David Bailey is an individual residing in College Station, 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. Third Party Defendants Marjorie Georges, Luther Jones and Jones & Georges are all residents of El Paso County, Texas.

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 enumerated in Cause No. 88-7707, *Dr. Walter Rhodes et al v. American General Fire and Casualty Company et al* in the 243rd Judicial

~~PLAINTIFFS' SEVENTH AMENDED PETITION (01/23/03)~~ Page 1

District Court of El Paso County, Texas, hereinafter referred to as "Cause No. 88-7707".
 Defendant Scherr entered into an agreement with Defendant Gage, and his law firm Defendant Gage, Beach & Agar, to assist him in representing Plaintiffs. 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, Defendants paid over to William LaRock

Respectfully submitted,

Jones & Georges, P.C.
 303 Texas Avenue, Ste. 200
 El Paso, TX 79901
 (915)534-0040
 Fax: 534-0055

By: _____

Martie Georges

State Bar No. 21453075

Attorney for and Joseph Superville a share

~~PLAINTIFFS' SEVENTH AMENDED PETITION (011-0346)~~

NELLYS CT RESEARCH I PAGE 31

11/26/2002 17:12 7136707196

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 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, Defendants paid to themselves one hundred percent of all monies recovered in a settlement negotiated with one particular insurance company; 4) Defendants are currently wrongfully withholding disbursement of funds recovered in settlements in the amounts of \$75,000.00 and \$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 intentionally defrauded Plaintiffs by causing them to become plaintiffs in the Class Action lawsuit upon the false representation that its prosecution would lead to an end of the discriminatory practices of various insurance companies and further by failing to inform the Plaintiffs of their relationship with two Co-Plaintiff class representatives -- LaRock and Superville -- in Cause No. 88-7707.

BREACH OF FIDUCIARY DUTY

5. In addition to the negligence committed by Defendants in Cause No. 88-7707, Defendants 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;

~~PLAINTIFFS SEVERALLY BREACHED FIDUCIARY DUTY TO DEFENDANTS~~

- (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.
- (6) in violating the contingency fee contract by taking more in attorneys fees than allowed.
- (7) in placing the interests of Cause No. 88-7707 Co-Plaintiffs' Dr. LaRock and Dr. Superville ahead of the interests of Plaintiffs and other members of the class.
- (8) in placing their own interests ahead of the interests of Plaintiffs and other members of the class.

In response to Defendant Gage, and Gage, Beach & Ager's Special Exceptions to this paragraph, Plaintiffs assert the following specific acts of conduct. Defendants Gage failed to inform Plaintiffs that he had a special relationship with LaRock and Superville. More specifically, Defendant Gage failed to inform the Plaintiffs that he served in a special corporate counsel relationship to Coronado Chiropractic Clinic, that he was engaged in extensive litigation involving Coronado Chiropractic including defense of a suit by the Attorney General of Texas alleging deceptive trade practices and fraud against LaRock and Superville, that he was representing the clinic in at least a dozen other causes of action both offensive and defensive; that he was counsel for LaRock and Superville in a cause of action against other members of the putative class; that his principal purpose in participating in the class action litigation was collection of unpaid charges claimed by Coronado Chiropractic; that he communicated on a regular basis with LaRock and Superville but not with other members of the class; or that he was the recipient of referrals of legal business from Coronado Chiropractic.

In further response to the special exceptions of Gage and Gage, Beach & Ager, Plaintiffs assert that Defendants principal motivation in pursuing the alleged class action lawsuit was collection of unpaid bills of their client LaRock and Superville to the end of enriching themselves at the expense of the uncertified class; and further that Defendants at no time prosecuted the class action for the purpose of achieving the goals which they promised Plaintiffs would be accomplished.

~~PLAINTIFFS' SEVENTH AMENDED PETITION (08/23/02)~~

Page 3

As a consequence of the aforementioned breaches of their fiduciary duties, defendants, jointly and severally caused Plaintiffs to suffer actual damages and have unjustly enriched themselves.

In connection with the allegations of negligence contained in this paragraph, Plaintiffs specifically plead the following specific acts of negligence:

(1) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs and members of the putative class in that they assigned the principal responsibility for the management of the class to an attorney who admitted under oath that she had no experience in this type of litigation;

(2) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in that failing to keep them adequately informed of the progress of the litigation;

(3) Defendant Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in that they negotiated settlements that did not achieve the stated purposes of the litigation;

(4) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in that they did not adequately prepare them for their respective depositions;

(5) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in failing to exhaust their administrative remedies prior to commencement of the litigation;

(6) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in that they never conducted a hearing for the purposes of certification; and

(7) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in failing to maintain records required by the Texas Rules of Civil Procedure in class action litigation;

(8) Defendants Scherr and Gage were negligent breached their fiduciary duty to Plaintiffs in failing to inform the named members of the class of the legal consequences of the settlements they negotiated;

~~PLAINTIFFS SEVERALLY ALLEGED VIOLATION (8/13/02)~~ Page 6

(9) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in failing to acknowledge and respond to objections made by various class members to the settlements that were being negotiated;

(10) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in undertaking a class action of the nature envisioned in Cause No. 88-7707 when they did not have adequate financial capacity to maintain the class action; and

(11) Defendants Scherr and Gage were negligent and breached their fiduciary duty to Plaintiffs in obtaining the participation of Ben Beard, David Bailey and Dan Petrosky upon the false pretext of what the class action would accomplish and that their principal clients LaRock and Superville would advance \$100,000.00 of the initial costs.

ACTUAL AND CONSTRUCTIVE FRAUD

6. Defendants committed fraud against the Plaintiffs by collecting more attorneys fees than those to which they were entitled under the terms of the contingency fee contract. Further Defendants fraudulently misrepresented their intentions in filing Cause No. 88-7707 as indicated in paragraph IV above. Defendants also fraudulently concealed their true relationship with two of the other class representatives.

7. During the time Plaintiff's were represented by Defendants in Cause No. 88-7707, Defendants knowingly concealed their special relationship with class members LaRock and Superville to the detriment of the Plaintiffs in this cause. Had Plaintiffs known of the special relationship they would not have engaged themselves as Plaintiffs in Cause 88-7707 nor would they have executed the contingency fee contract with Defendant James Franklin Scherr.

8. Defendants knowingly made false representations as to material facts to Plaintiffs with

~~PLAINTIFFS SEVENTH AND EIGHTH PETITION (8/12/06)~~

the intent of inducing Plaintiffs to enter the contingency fee contract and to participate in Cause No. 88-7707. Defendants knowingly made the following representations:

1. That Defendants intended to represent the class of all Texas Chiropractors for the benefit of all Texas Chiropractors in Cause No. 88-7707, instead of the sole benefit of Dr. LaRock and Dr. Supervilla, two Co-Plaintiffs in 88-7707;

2. That any proceeds from Cause No. 88-7707 would be divided by the Court in Cause No. 88-7707 and would be divided equally amongst the Plaintiffs.

9. Plaintiffs would not have entered into the contingency fee contract with Defendants on Cause No. 88-7707 had they known the falsity of the above representations. Plaintiffs relied on the misrepresentations to their substantial injury and damage.

10. By reason of Plaintiffs reliance upon Defendants' representations, Plaintiffs have been damaged in an amount in excess of the minimum jurisdiction of the Court.

11. Defendants breached the above stated fiduciary duties owed to Plaintiffs as a result of the Attorney Client relationship and as such committed constructive fraud as well as actual fraud upon Plaintiffs. In Response to Special Exceptions of Gage and Gage, Beach & Ager, Plaintiffs herein assert specific acts of conduct.

Defendant Gage and Gage, Beach & Ager

(1) Defendants Gage and Gage, Beach & Ager acted fraudulently in failing to reveal to Plaintiffs herein their special relationship with LaRock and Supervilla;

(2) Defendants Gage and Gage, Beach & Ager acted fraudulently in claiming expenses that were not incurred or not authenticated;

~~PLAINTIFFS' SEVENTH AMENDED PETITION (08/11/02)~~

Page 8

inadequate accounting. Each Defendants has wrongfully converted all sums presently or previously claimed 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.

ACTION TO VOID CONTRACT

15. 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 also be declared as against the public policy of this State. and that the lien of Defendants' Scherr and Gage against the \$200,000.00 in the registry of the Court be extinguished.

EXEMPLARY DAMAGES

16. 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.

PREJUDGMENT INTEREST

Plaintiffs would show that they are entitled to recover prejudgment interest in this cause and specifically plead for prejudgment interest recovery.

GENERAL DENIAL

Third Party Defendants Marjorie Georges, Luther Jones and Jones & Georges deny each and every third party claim asserted by Noel A. Gage or Gage, Beach & Ager, and demand strict proof thereof. Third Party Defendants Marjorie Georges and Jones & Georges deny each and every third party claim asserted by James Franklin Scherr.

~~PLAINTIFFS REQUEST THAT THE COURT GRANT THEM COSTS AND ATTORNEY'S FEES.~~

AFFIRMATIVE DEFENSE

Third-Party Defendants Marjorie Georges, Luther Jones and Jones & Georges, and counter-defendant Ben Beard each were legally justified in engaging in the conduct Counter-Plaintiff James Franklin Scherr charges is the basis of their tortious interference with his contract for legal services with David Bailey and Dan Petrosky and/or civil conspiracy to deprive him of his fees, services, and expenses in that said conduct was legally justified.

Plaintiffs plead the *DISCOVERY RULE* in connection with defendants affirmative defense of *Statute of Limitations*. Plaintiffs assert that the limitations defense is meritless in that the statute does not begin to run until the attorney client relationship is terminated or until the litigation in which the attorney client relationship existed is terminated. *Hughes v. Mahoney and Higgins*, 821 S.W.2d 154, 157 (Tex. 1991). *Willis v. Maverick*, 760 S.W.2d 642 (Tex. 1988)

EQUITABLE ESTOPPEL

(Dosaneo's 70.164)

DENIAL OF SWORN ACCOUNT

Plaintiffs specially deny each and every item in defendant James Franklin Scherr's sworn account, and demands strict proof of all items in the account. In denying this sworn account Defendants further plead that defendant James Franklin Scherr has forfeited all right to compensation based upon his contingency fee contract with Plaintiffs for the reason that James Franklin Scherr is guilty of fraud, breach of fiduciary duty and conversion of client funds, the factual basis for which can be found in Paragraphs 5 and 11 herein. Plaintiffs further deny Scherr's sworn account for the reason that said account is in nearly all respects fraudulent, defendant James Franklin Scherr having fabricated all or nearly all of the expenses contained

~~PLAINTIFFS' SEVERAL/AMENDED PETITION (01-03-124)~~ Page 11

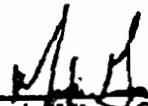
therein, and for the further reason that any expenses lawfully incurred are the responsibility of all class members which defendant Scherr negligently attempted to represent. Plaintiffs further deny that all lawful offsets, credits and payments have been allowed and finally, demand strict proof of any legitimate expense and what pro rata share, if any, should be assigned to the Plaintiffs.

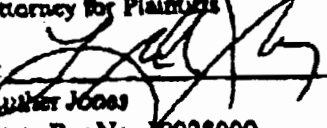
WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer, and that, after trial, plaintiffs have judgment against Defendants for the maximum amount of \$2,303,900.00, that Counter Plaintiffs take nothing in their suit against Third Party Defendants and further.

1. Cancellation of Defendant James Franklin Scherr's attorney lien in the \$200,000.00 recovered by Martie Georges in Cause No. 88-7707;
2. Pre and post judgment interest as allowed by law;
3. Such further relief to which Plaintiffs may be entitled.

Respectfully submitted,

Jones & Georges
303 Texas Ave., Ste. 800
El Paso, TX 79901
(915)534-0040
FAX: 534-0055

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

BY: 
Luther Jones
State Bar No. 10928000
Attorney for Plaintiffs and Third
Party Defendants

~~PLAINTIFFS REQUESTS AWARD OF COSTS (\$14,340)~~

Page 13

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. James F Scherr, P.C.
~~Law Firm of Joseph A. and James F. Scherr individually~~
 109 N. OREGON, SUITE 800
 EL PASO TX 79901
 EL PASO 2

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

Aggregate Limit \$ 200,000

Per Occurrence Limit \$ 600,000

Item 5. Deductible

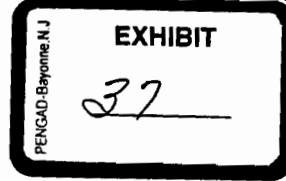
5,000

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.)

- 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

Countersigned at

AUSTIN, TX

Issue Date

24-May-1993

Authorized Representative

Countersign Date

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 L.L.P. James F Scherr, P.C.
~~James F Scherr and James F Scherr individually~~
109 N. OREGON, SUITE 800
EL PASO 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.

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And Those Professionals Listed on the Application.

Item 4. Limit of Liability

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Aggregate \$ 600,000

Item 5. Deductible

Per Claim \$ 5,000

Item 6. Premium

PREMIUM \$11,006.00

NO. OF PROFESSIONALS 3

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H37973 07/91 REG ENDORSEMENT
H40552 05/92 POLICYHOLDER NOTICE

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

Do Not Write In This Box

Remarks

Countersigned at

AUSTIN, TX

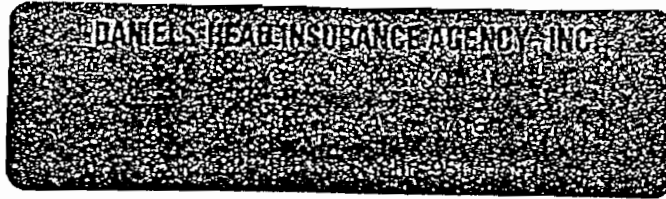
Issue Date

24-May-1993

Authorized Representative

Countersign Date

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 amounts 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, limits 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 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 (f) 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.

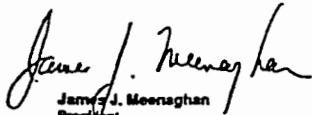
If cancelled by the Company, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

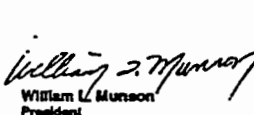
Definitions-Reference

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. Meenaghan
President
THE HOME INSURANCE COMPANY
OF WISCONSIN


William L. Munson
President
THE HOME INDEMNITY COMPANY


F.A. Mina
President
CITY INSURANCE COMPANY


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


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.

Claim Notice (15)
Professional Liability

PENGAD-Bayonne, N.J.
EXHIBIT
38

LOG
Plum
FRC
DOC 18
Ranis



640-600813

Was Coverage confirmed? Yes No
Screen 1 - ACORD Complete this section only if ACORD form is incomplete or not available.

Producer/OPC: 39154 1351

Prefix Policy No. CPLIF 878124	Inception Date 6/1/93	Expiration Date 6/1/94
Insured name James Scherr		
Address Street 109 N. Oregon		
City El Paso	State TX	Zip Code 79901
Date of loss 6/1/93		
Loss Payee		

- D/L must fall within retro & exp. date
- Claims made date must fall within incept. & exp.
OR
If tail date present, must fall within incept. & tail date
- Claims made date must be the same or after the D/L.

Screen 1 - Supplemental Information

P/C: C Co: K Risk: 63 Acc: 63

Date Claim Made 2/9/94	Per code table or dailies	Retro Date	Tail Date
Date Received 2/22/94	Date Assigned 2/23/94		
Occ. Cd. 636			
		Cross Ref. Claim No.	

For POL. incepting 1/1/87 & subsequent.

Description of Occurrence

Screen 2

Additional Suffix

Reporting Category CR

Coverage: \$200,000 Ea. Claim (DED) NO DED
\$600,000 Agg 5,000 L&D LOSS ONLY

ENTERED 3/1
ENTERED 2/23/94

Suf-fix	Claimant Name (Last/First)	Line	Reserve Amount	No. Clm	Type/ Cause of Loss	Adj Type	Desk No	P/C	Prepared By
1.	Beard, Ben	2,9,1	7500		3,4	3	174	C	Oscar Allen
2.									Date 2/23/94
3.									

LPL	REL
1. Size B	1. Size
2. Exp. C	2. Exp.
3. Rel. C	3. Rel.
4. Fee B	4. Fee N/A
5. Area D	5. Func.
6. Maj P	6. Maj N/A
7. Err V	7. Err
8. Exp 7,500	8. Exp
9. Stat A	9. Stat
10. Client James Scherr	10. Client

ACT	TAG
1. Size	1. Size
2. Exp.	2. Exp.
3. Rel.	3. Rel.
4. Fee	4. Fee N/A
5. Area	5. Area N/A
6. CLT	6. Maj
7. Err	7. Err
8. Exp	8. Exp
9. Stat	9. Stat
10. Client	10. Client

SUPPLEMENTAL CLAIM INFORMATION



INSTRUCTIONS:

1. This form is to be completed by an Applicant or Insured who has been involved in any claim or suit or is aware of an incident which may give rise to a claim.
2. COMPLETE ONE FORM FOR EACH CLAIM OR INCIDENT.
3. If space is insufficient to fully answer any question, attach a separate sheet.
4. Answer all questions completely.
5. DO NOT ATTACH COPIES OF SUIT PAPERS:

(PLEASE TYPE OR PRINT)

1. Full name of Applicant or Insured:

SCHERR & LEGATE, P.C.

2. Full name of individual(s) or firm involved in the claim:

JAMES F. SCHERR

3. Full name of Claimant:

DR. BEN BEARD; DR. DAVID BAILEY & DR. DAN PETROSKY

4. Indicate whether:

CLAIM/SUIT, or INCIDENT

5. Date and location of alleged error:

UNKNOWN

6. Date of claim:

JANUARY 1994

7. Additional defendants:

NOEL GAGE & GAGE BEACH & AGER

8. IF CLOSED:

Total loss paid including deductible(s) \$ NONE

Indicate whether: COURT JUDGEMENT or OUT OF COURT SETTLEMENT

9. IF PENDING:

Claimant's settlement demand \$ UNKNOWN

DHIA - TX

Defendant's offer for settlement \$ - - -

APR 21 1994

Insurer's loss reserve \$ UNKNOWN

Name of Insurer responding to this claim or incident: HOME INSURANCE

Policy Number: LPL - F878124-1

Limits of Liability: \$700,000 / \$600,000 | Deductible: \$5,000

The Insurance Company will not accept suit papers. Each question on the form must be answered completely.

10. DESCRIPTION OF CLAIM, SUIT OR INCIDENT:

CLASS ACTION PETITION FOR CHIROPRACTORS AGAINST INSURANCE COMPANIES TO PREVENT DISCALMINATION - CASE SETTLED - NOW 3 OF THE PARTIES ARE NOW TRYING TO AVOID PAYING FEES & EXPENSES

A. Description of alleged act, error or omission upon which claim is based:

FEE DISPUTE - CLAIMANTS ARE TRYING TO AVOID PAYING FEES & EXPENSES DUE APPLICANT

B. Description of the type and extent of injury or damage allegedly sustained:

UNKNOWN

C. Explain what action has been taken to prevent reoccurrence of a similar claim:

UNKNOWN

UNITA - IX

APR 21 1994

I declare that the information submitted herein is true to the best of my knowledge and becomes a part of my Professional Liability Application. I understand that an incorrect or incomplete statement could void my protection.

Signature of Applicant or Insured:

Date:

Must be signed by a Principal, Partner or Officer of the Firm.)

Docket Control/Engagement Letter Supplement

Firm Name: SCHERR & LEGATE, P.C.

Policy Number: LPL-F878124-1

DHIA-1X

MAR 02 1994

Docket Control

1. a. Does your firm maintain a docket control system?

Yes No

If "Yes," does the system encompass the following? (Please check all applicable categories.)

Single Calendar Yes No Master Listing Yes No

Dual Calendar Yes No Tickler Cards Yes No

Computer Yes No Other (Describe) _____

b. Are at least two individuals responsible for maintaining your docket control system?

Yes No

c. Please indicate how frequently time deadlines are cross-checked.

Daily Weekly Monthly Other (Describe) _____

d. Does the ultimate responsibility for the docket control of a matter rest with the lawyer handling the matter?

Yes No

Engagement Letters

a. Does the firm require the use of engagement letters including fee agreement on all new matters undertaken by the firm?

Yes No

b. Are declination or non-engagement letters issued on all matters declined by the firm?

Yes No

Sign and date below. Must be signed and dated in ink by owner, partner or officer.

I, the undersigned, being authorized by Applicant, understands and agrees that the information contained herein is true, complete, and accurate, and further agrees and understands that such information becomes part of Applicant's Professional Liability Application and is subject to the same warranties and conditions.

Applicant's Signature: _____ Title: PRESIDENT Date: 3/1/94

Instructions: Complete only if any member of the firm serves as a director, officer, trustee, partner or employee of any client or if any firm member exercises fiduciary control or possesses any ownership interest in any client or in any joint venture with any client. If your firm has already completed the financial institution questions on the Area of Practice Supplement, the information provided on that form need not be duplicated below.

Name of Lawyer	Position Held (including Committee)	Service Performed	Name of Business	Nature of Business	Equity Interest		% of Firms Gross Billing	D & O Insurance	
					\$ Amount	% of Interest		Yes	No
JAMES F. SUTHER	Pres	CEO	ARISTO COAT COMPANY	WHOLESALE RETAIL COATS	\$ N/A	% 100	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	Pres	CEO	THE BROKER COMPANY	RENTAL ESTATE	\$ N/A	% 100	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	Pres	CEO	DAVID G. FRANKLIN COOP. OF 1883	RENTAL ESTATE	\$ N/A	% 100	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	Pres	CEO	FRANKLIN NOTES INC.	FINANCIAL SERVICES	\$ N/A	% 100	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	VICE PRES	-	KELLY LAND COMPANY	RENTAL ESTATE	\$ N/A	% 25	0%	<input type="checkbox"/>	<input type="checkbox"/>
SAM J. LEGATE	Pres	CEO	KELLY LAND COMPANY	RENTAL ESTATE	\$ N/A	% 25	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	Pres	CEO	UT BARBARA INDUSTRIAL CO.	RENTAL ESTATE	\$ N/A	% 100	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	VICE PRES	-	VALUE DE BRAND INVESTMENTS	RENTAL ESTATE	\$ N/A	% 50	0%	<input type="checkbox"/>	<input type="checkbox"/>
SAM J. LEGATE	Pres	CEO	VALUE DE BRAND INVESTMENTS	RENTAL ESTATE	\$ N/A	% 50	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	Sec	-	BS JOINT VENTURE, INC.	RENTAL ESTATE	\$ N/A	% 50	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	GEN. PART.	CEO	AGS JOINT VENTURE	RENTAL ESTATE	\$ N/A	% 67	0%	<input type="checkbox"/>	<input type="checkbox"/>
JAMES F. SUTHER	PART	-	EMPIRE FINANCIAL SVC	RENTAL ESTATE	\$ N/A	% 50	0%	<input type="checkbox"/>	<input type="checkbox"/>
					\$	%		<input type="checkbox"/>	<input type="checkbox"/>
					\$	%		<input type="checkbox"/>	<input type="checkbox"/>

SUPPLEMENTAL CLAIM INFORMATION



ZURICH-AMERICAN
INSURANCE GROUP

INSTRUCTIONS:

1. This form is to be completed by an Applicant or Insured who has been involved in any claim or suit or is aware of an incident which may give rise to a claim.
2. COMPLETE ONE FORM FOR EACH CLAIM OR INCIDENT.
3. If space is insufficient to fully answer any question, attach a separate sheet.
4. Answer all questions completely.
5. DO NOT ATTACH COPIES OF SUIT PAPERS.

(PLEASE TYPE OR PRINT)

1. Full name of Applicant or Insured:

SCHERR & LEGATE, P.C.

2. Full name of individual(s) or firm involved in the claim:

JAMES F. SCHERR

3. Full name of Claimant:

DR. BEN BEARD, DR. DAVID BAILEY & DR DAN PETROSKY

4. Indicate whether: CLAIM(SUIT), or INCIDENT

& GRIEVANCE

Date and location of alleged error:

UNKNOWN

6. Date of claim:

JANUARY 1994

7. Additional defendants:

NOEL GAGE & GAGE, BEACH & AGER

8. IF CLOSED:

Total loss paid including deductible(s) \$ _____

Indicate whether: COURT JUDGEMENT or OUT OF COURT SETTLEMENT

9. IF PENDING:

Claimant's settlement demand \$ UNKNOWN

Defendant's offer for settlement \$ - 0 -

Insurer's loss reserve \$ UNKNOWN

Name of Insurer responding to this claim or incident. HOME INSURANCE

Policy Number: LPL-F878124-1

Limits of Liability: \$200,000 / \$600,000 Deductible: \$5000

(over)

The Insurance Company will not accept suit papers. Each question on the form must be answered completely.

10. DESCRIPTION OF CLAIM, SUIT OR INCIDENT:

I HANDLED A CLASS ACTION LAWSUIT FOR CHIROPRACTORS TO PREVENT DISCRIMINATION - CASE SETTLED - NOW 3 OF THE PARTIES ARE TRYING TO AVOID PAYING MY FEES & EXPENSES. THEY ARE ALLEGING FAVORING 1 CLIENT OVER ANOTHER. I HAVE FILED A COUNTERCLAIM & CROSS CLAIM.

A. Description of alleged act, error or omission upon which claim is based:

FEE DISPUTE - CLAIMANTS ARE TRYING TO AVOID PAYING FEES & EXPENSES DUE JAMES F. SCHERR

B. Description of the type and extent of injury or damage allegedly sustained:

UNKNOWN, HOWEVER, THEY ARE TRYING TO AVOID PAYMENT OF MY FEES & EXPENSES

C. Explain what action has been taken to prevent reoccurrence of a similar claim:

UNKNOWN - I AM NOT CERTAIN WHAT I CAN DO TO TRY TO PREDICT WHAT A CLIENT WILL ASSERT WHEN THEY ARE TRYING TO BEAT ME OUT OF A FEE.

I declare that the information submitted herein is true to the best of my knowledge and becomes a part of my Professional Liability Application. I understand that an incorrect or incomplete statement could void my protection.

Signature of Applicant or Insured:

Date:

4/19/95

(Must be signed by a Principal, Partner or Officer of the Firm.)

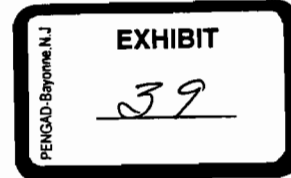
JIM DARNELL
A Professional Corporation
ATTORNEY AND COUNSELOR AT LAW

SUITE 212
310 NORTH MESA STREET
EL PASO, TEXAS 79901

AREA CODE 915
TELEPHONE 532-2442
FACSIMILE 532-4549

December 10, 1995

Oscar Allen
Claims Analyst and Agent of
Home Insurance Company of Indiana
REM
2925 Briar Park
Houston, TX 77042



Re: Beard, et al. v. Scherr, et al.

Dear Mr. Allen:

I represent James F. Scherr in his claim against Home Insurance Company of Indiana for reimbursement of \$117,500.00 under the claims made policy that you are handling. As you know, as part of the settlement of the above case, Mr. Scherr paid \$117,500.00 from his personal funds to complete the settlement. It is my understanding from a review of the policy that the aggregate limit for the above case is \$600,000.00. Accordingly, the policy limit is not exhausted and Mr. Scherr should be reimbursed the \$117,500.00. Please immediately forward a check in the amount of \$117,500.00, payable to Jim Scherr, to conclude this matter. Thank you for your cooperation.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jim Darnell".

Jim Darnell

JOD/lad
2783

xc: James F. Scherr

RECEIVED

DEC 14 1995

PROF. LIAB.
CLAIMS - HOUSTON

00027

TO: SUDAM JERSEYCI SUGA WITIAM
FROM: PEPEM JERSEYCI Pepe Michele
DATE: October 19, 1995
SUBJECT: Ben Beard v. Sherr et.al,
REFERENCE: 640-600813

I received a call from Oscar regarding the status of this trial. The case is continuing. The judge has issued some favorable rulings for us which include disqualifying the plaintiffs expert and essentially disallowing plaintiffs line of questioning relating to personal issues which have no bearing on the case at hand.

The insured testified for three days and apparently did well for himself. The insured retracted consent to settle after the plaintiffs expert was disqualified. We have advised the insured in writing that his policy limits are only \$200,000 and have been eroded by approximately \$125,000 in defense costs. This information did nothing towards getting his consent to settle again.

Last, another suit has surfaced against the insured relating to the same matter. the plaintiffs in this new matter attempted to intervene in this trial but the denied the request. We have advised the insured that if this trial erodes all of his limits, there will be no coverage for this loss going forward unless we settle for the balance of the limits and obtain a "global" settlement.

Counsel expects to rest tomorrow with the verdict by the beginning of the week. As further information becomes available, I will advise.

COPY LIST: ALLENO HOUSTON Allen Oscar

Clarity
Never retracted his consent, but took his money off the table.



TO: PEPEM RSEYCI Pepe Michele
SUDAW ERSEYCI Suda William

FROM: ALLENO HOUSTON Allen Oscar

DATE: October 19, 1995
SUBJECT: Ben Beard, et al vs. Scherr, et al
REFERENCE: 640-L-600813-174



My apology for this late report concerning the trial of this matter. Although your e-mail of this date does provide a concise summary of the trial events, I do need to add some corrections and expand the report.

This case proceeded to trial on 10/5/95. The defendants extended an offer that involved giving up their claim for expenses and attorney fees, and the plaintiff would get all funds (\$370,000) deposited in the registry of the court. Additionally, the insurers involved, Coregis (Ben Beard) and Home (Scherr) offered a combined \$80,000; \$50,000 from Home and \$30,000 from Coregis. The plaintiffs countered with a \$900,000 demand. The plaintiffs believe they have a shot at punitive damages. On 10/18, the defendants offered \$400,000 which was rejected.

The judge did disqualify plaintiffs expert but he allowed into evidence the affair between the insured and his secretary. The insured cried when he was questioned about the affair. Defense counsel attempted to diminish any potential adverse affect by asking the insured whether the relationship with the secretary affected his attorney client relationship with the plaintiffs, and the insured responded that it did not.

The plaintiffs wanted to establish that the insured committed fraud by padding expenses. The secretary testified that the insured inflated his charges and padded bills. Our expert, Jeff Roberts, was excellent in establishing that no breach occurred and no fraud occurred. He also testified that all bills were proper and correct.

The judge has been very controlling by limiting the time for evidence to both sides. The court recessed on 10/12 and 10/19, and the court was in session for only 1/2 day on 10/11 and 10/18.

A Plea In Intervention was filed by seventeen Chiropractors, who are making the same allegations as the Beard Plaintiffs. They were represented by the insured in the underlying class action suit. The court severed the Plea, therefore, we are looking at another suit after this trial.

The insured has a 200/600 policy. We have paid \$89,222 to date and counsel estimates unbilled fees and expenses to be approximately \$35,000. I have discussed this situation with the insured and will confirm by overnight and certified mail tomorrow. The insured is taking the position that the suit by the seventeen chiropractors is a new claim and subject to a new \$200,000 limit. I have taken the position that this is all one claim. Our coverage position will not change except that the policy may be eroded and we would have no further obligation.

We expect the case to go to the jury on 10/23/95.

00011

BEN BEARD, DAVID BAILEY and
DAN PETROSKY,

Plaintiffs,

v.

JAMES FRANKLIN SCHERR, NOEL
GAGE and GAGE, BEACH & AGER,

Defendants.

IN THE 129TH JUDICIAL DISTRICT
COURT OF HARRIS COUNTY, TEXAS

FILED
CLERK
HARRIS COUNTY
TEXAS
MAY 13 1994

PLAINTIFFS' NINTH AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Ben Beard, David Bailey, and Dan Petrosky, Plaintiffs, and file this their Ninth Amended Original Petition against James Scherr, Noel Gage, and Gage, Beach and Ager, Defendants, and in support thereof would respectfully present the following:

PARTIES

1. Ben Beard is an individual residing in Houston, Texas and David Bailey is an individual residing in College Station, 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.

PENGAD-Bayonne N J
EXHIBIT
42

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 enumerated in Cause No. 88-7707, *Dr. Walter Rhodes et al v. American General Fire and Casualty Company et al* in the 243rd Judicial District Court of El Paso County, Texas, hereinafter referred to as "Cause No. 88-7707". Defendant Scherr entered into an agreement with Defendant Gage, and his law firm Defendant Gage, Beach & Ager, to assist him in representing Plaintiffs. All of the Defendants acted as counsel of record for Plaintiffs in Cause No. 88-7707 and an attorney-client relationship existed between each Plaintiff and each Defendant. During the course of representing the Plaintiffs, Defendants violated the duty owed to plaintiffs to exercise the ordinary care and diligence exercised by other attorneys practicing in the same or similar circumstances, and was negligent in the following particulars: failing to properly account for monies collected by Defendants on behalf of the Plaintiffs and favoring 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. Defendants were negligent by causing Plaintiffs to become involved in the Class Action lawsuit upon the false representation that its prosecution would lead to an end of the discriminatory practices of various insurance companies and further by failing to inform the Plaintiffs of their relationship with two Co-Plaintiff class representatives -- LaRock and Superville -- in Cause No. 88-7707.

NEGLIGENCE

4. Defendants were specifically negligent in their representation of Plaintiffs in the

following respects:

- (1) Defendants were negligent in that they assigned the principal responsibility for the management of the class to an attorney who admitted under oath that she had no experience in this type of litigation;
- (2) Defendants were negligent in failing to keep Plaintiffs adequately informed of the progress of the litigation;
- (3) Defendants were negligent in that they negotiated settlements that did not achieve the stated purposes of the litigation;
- (4) Defendants Scherr and Gage were negligent in that they did not adequately prepare Plaintiffs for their respective depositions;
- (5) Defendants were negligent in failing to exhaust their administrative remedies prior to commencement of the litigation;
- (6) Defendants were negligent in that they never conducted a hearing for the purposes of certification; and
- (7) Defendants were negligent in failing to maintain records required by the Texas Rules of Civil Procedure in class action litigation;
- (8) Defendants were negligent in failing to inform the named members of the class of the legal consequences of the settlements they negotiated;
- (9) Defendants were negligent in failing to acknowledge and respond to objections made by various class members to the settlements that were being negotiated;
- (10) Defendants were negligent in undertaking a class action of the nature envisioned in Cause No. 88-7707 when they did not have adequate financial capacity to maintain the class action; and
- (11) Defendants were negligent in obtaining the participation of Ben Beard, David Bailey and Dan Petrosky upon the false pretext of what the class action would accomplish and that their principal clients LaRock and Superville would advance \$100,000.00 of the initial costs.

MENTAL ANGUISH AND DAMAGES

5. As a direct and proximate result of Defendants' negligence as described above, Plaintiffs have suffered damages in the form of mental anguish in an amount in excess of this Court's minimum jurisdictional limits.

PREJUDGMENT INTEREST

6. Plaintiffs would show that they are entitled to recover prejudgment interest in this cause and specifically plead for prejudgment interest recovery.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer, and that, after trial, plaintiffs have judgment against Defendants for the maximum amount of \$2,303,900.00 and further:

1. Cancellation of Defendant James Franklin Scherr's attorney lien in the \$200,000.00 recovered by Martie Georges in Cause No. 88-7707;
2. Pre and post judgment interest as allowed by law;
3. Such further relief to which Plaintiffs may be entitled.

Respectfully submitted,

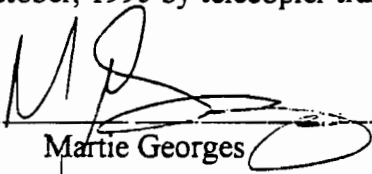
Jones & Georges
303 Texas Ave., Ste. 800
El Paso, TX 79901
(915)534-0040
FAX: 534-0055

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 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 31st day of October, 1995 by telecopier transmission.


Martie Georges

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
210th JUDICIAL DISTRICT

FILED
EDIE PUGALCANA
DISTRICT CLERK

98 JAN 29 PM 4:26

EL PASO COUNTY, TEXAS

JAMES F. SCHERR,

Plaintiff,

vs.

The Home Insurance Company,

Defendant.

§
§
§
§
§
§
§
§
§
§

98-377

BY _____
DEPUTY
CO.

EXHIBIT
43
DELGADO-Byrdone, N.J.

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Plaintiff, James F. Scherr, by and through the undersigned attorneys of record, and files his Original Petition complaining of defendant The Home Insurance Company, and in support thereof would show the Court as follows:

I.

Plaintiff is an attorney licensed to practice law in Texas with his principal place of business located at 1 Texas Tower, 6th Floor, El Paso, TX 79901. Defendant The Home Insurance Company is an insurance company authorized to do business in the State of Texas with its principal place of business located at 59 Maiden Lane, New York, New York 10038, and whose agent for service of process is C T Corporation Systems, 350 N. St. Paul St., Dallas, TX 75201.

II.

JURISDICTION

Jurisdiction and venue is proper in this Court because the events underlying the claims of the Plaintiff took place in El

Paso County, Texas, and the damages claimed herein greatly exceed the minimum jurisdictional limits of this Court.

Facts

III.

On January 21, 1994, Plaintiff was sued by former clients Messrs. Beard, Bailey, and Petrosky, in Harris County, Texas, alleging that, because of a pre-existing business relationship, Plaintiff favored another client over Messrs. Beard, Bailey, and Petrosky in a lawsuit filed in El Paso County, Texas. At the time of the filing of the case, Plaintiff had coverage under a professional liability insurance policy issued by Defendant. The policy provided for \$200,000 coverage for damages and costs of defense per "claim," and \$600,000.00 in the "aggregate." Defendant paid for Plaintiff's defense of that case until defense costs reached \$200,000.00. Plaintiff then settled the case with Messrs. Beard, Bailey, and Petrosky for \$117,500.00 and paid that amount with his own funds.

IV.

During the pendency of Beard, et al., case, Messrs. Gillespie, Stephenson, Ojo, Ivy, and Domino, sought to intervene in the action filed by Beard, et al. The court severed the intervention to a separate action (the intervention).

V.

Plaintiff contacted Defendant through counsel and demanded payment of \$117,500.00 plus the costs of the defense of the intervention. On or about February 2, 1996, Defendant notified Plaintiff in writing that Defendant was denying Plaintiff's

claims for settlement reimbursement and defense of said intervention.

VI.

Due to Defendant's refusal to provide coverage on the intervention, Plaintiff was forced to hire the law firm of Hudgins, Hudgins, & Warrick, Houston, Texas, to provide legal representation in said intervention. At the time of the filing of this Petition, Plaintiff has incurred legal costs in excess of the jurisdictional minimums of this Court.

VII.

Deceptive Trade Practices

Defendant's conduct in failing to reasonably and properly settle Plaintiff's claim constitutes violations of § 17.50 of the Texas Deceptive Trade Practice Act, as well as § 21.21 of the Texas Insurance Code in that:

1. Defendant failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear;
2. Defendant failed to promptly provide to Plaintiff a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or for the offer of a compromise settlement of a claim; and,
3. Defendant stated multiple claims for money from Plaintiff constituted one claim, said statement being an untrue statement of material fact and/or law.

BAD FAITH

21.2134(10)

21.2134(11)

The aforementioned acts and omissions by Defendants are a producing cause of the damages incurred by Plaintiff. As a result thereof, Plaintiff has suffered damages well in excess of the jurisdictional limits of this Court, including, but not limited to, \$117,500.00 Plaintiff paid to settle the lawsuit

filed by Beard, et al., the costs, including attorney's fees, incurred in defending the intervention filed by Gillespie, et al., and mental anguish. Furthermore, Plaintiff seeks attorney's fees necessary to prosecute this case. In the event of an appeal to the Court of Appeals or Texas Supreme Court, Plaintiff would be entitled to additional attorney's fees.

Furthermore, as Defendant's conduct was committed knowingly and intentionally, pursuant to §17.50(a) and (b), Plaintiff is entitled to recover damages for mental anguish plus three times its economic and mental anguish damages.

VIII.

Breach of Contract

A.

After being paid the bargained for premium from Plaintiff, Defendant violated the contract with Plaintiff by failing to pay the agreed settlement amount in Beard, et al. The limits of the policy called for a \$200,000.00 liability limit per claim. Contrary to Defendant's assertions, the Beard, et al., case cannot be considered a single claim. The case consists of several different claims joined in one action. Therefore, the claims brought by the individuals in Beard, et al., were, as defined by the policy, distinct and separate "demands received by the [Plaintiff] for money." Thus, the Defendant breached the insurance contract by refusing to pay the additional costs of the case, subject to the \$600,000.00 aggregate limit of liability.

B.

Defendants again breached the contract by refusing to pay for the defense of the separate lawsuit brought by Gillespie, et al. Like the Beard, et al., case, Gillespie, et al., consists of several distinct claims joined together in one lawsuit. Moreover, Gillespie, et al., attempted unsuccessfully to intervene in the Beard, et al., action. Thus, the case constitutes several claims which are separate from the Beard, et al., action. Therefore, the \$600,000.00 aggregate liability limit in the contract again applies and the Defendants are liable for the costs the Gillespie, et al., lawsuit.

C.

As a result of Defendant's breach of the insurance contract at issue, Plaintiff has suffered damages well in excess of the jurisdictional limits of this Court, including, but not limited to, \$117,500.00 Plaintiff paid to settle the lawsuit filed by Beard, et al., as well as the costs, including attorney's fees, incurred in defending the intervention filed by Gillespie, et al. Furthermore, Plaintiff seeks attorney's fees necessary to prosecute this case. In the event of an appeal to the Court of Appeals or Texas Supreme Court, Plaintiff would be entitled to additional attorney's fees:

IX.

Declaratory Judgment

A.

Pursuant to the Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code, § 37.001, et seq., Plaintiff requests the Court for a construction of the insurance contract

and a declaration that Defendant has a duty to defend Plaintiff in the Gillespie, et al., suit presently pending.

B.

The cost of defending Plaintiff in the Gillespie, et al., litigation pending in the 129th District Court, Harris County, Texas, as described above, would be a sum within the jurisdictional limits of this Court.

C.

Plaintiff has retained the firm of Jim Darnell, P.C., to represent plaintiff in this action and has agreed to pay the firm a reasonable and necessary attorney's fee. Pursuant to § 37.001, et seq., Texas Civil Practice and Remedies Code, Plaintiff seeks an award of attorney's fees necessary to prosecute this case.

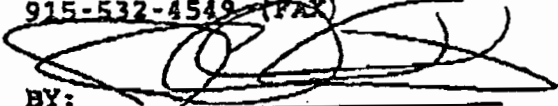
WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant, be cited to appear and answer, and that on final trial, Plaintiff have:

1. Judgment against Defendant for a sum in excess of the minimum jurisdictional limits of the Court;
2. Treble damages against Defendant for a sum in excess of the minimum jurisdictional limits of the Court;
3. Prejudgment interest as provided by law;
4. Attorney's fees;
5. Postjudgment interest as provided by law from the date of the judgment until paid;
6. Costs of suit;
7. A declaration that Defendant has a duty to defend Plaintiff in the Gillespie, et al., suit presently pending; and,

8. Such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

Jim Darnell, P.C.
310 N. Mesa, Suite 212
El Paso, Texas 79901
915-532-2442 (Phone)
915-532-4549 (FAX)


BY: Jim Darnell
State Bar No. 05391250

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS,

210TH JUDICIAL DISTRICT

JAMES F. SCHERR,

Plaintiff,

vs.

THE HOME INSURANCE COMPANY,

Defendant.

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Cause No. 98-377

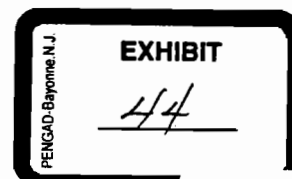
PLAINTIFF'S ANSWERS TO INTERROGATORIES

COMES NOW JAMES F. SCHERR, Plaintiff in the above entitled and numbered cause and files this her Answers to Interrogatories as propounded to him by THE HOME INSURANCE COMPANY, Defendant, in numerical order as follows:

1. With reference to any expert witness you may call in the trial of this case, state the following regarding each witness;
 - A. The subject matter on which the witness is expected to testify; and
 - B. The mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert.

ANSWER: James F. Scherr and Sam J. Legate will testify that Home Insurance Company had a policy of insurance that required them to defend and pay the claims brought by each of the named Plaintiffs individually in the suit, up to the aggregate limit of the policy. Each named Plaintiff had a separate claim. Each was an independent claimant who could recover individually. The lawsuit was not a class action, but individual Plaintiffs. See *Delgadillo v. Levi Strauss and Co.* and the Court of Appeals decision in the case of *Gillespie, et al v. Scherr*. The claims made against James F. Scherr were different for each person because they had different damages, different bases of recovery and different facts. Some had no contracts. Some had claims of billing errors, some had claims of conflicts of interest and other matters. Defendant wrongfully determined it had only one claim. Defendant breached its contract, its duty of good faith and fair dealing and insurance code violations and attorney's fees.

Jim Darnell will testify on attorney's fees.



2. With reference to any consulting expert who will not be called as a witness, but whose opinion or impressions have been reviewed by a testifying expert, please state precisely the following regarding each witness:

- A. The name of the consulting expert and the subject matter in which the consulting expert was involved; and
- B. each opinion or impression of the consulting expert reviewed or relied upon by a testifying expert.

ANSWER: Hudgins, Hudgins and Warrick
24 Greenway Plaza, Suite 1707
Houston, Texas 77046

Baker & Botts
98 San Jacinto Blvd.
1600 San Jacinto Center
Austin, Texas 78701-4039

WJW

3. Identify all persons who you think or believe have knowledge of facts relevant to this case.

ANSWER:

James F. Scherr
109 N. Oregon, 12th Floor
El Paso, Texas 79901
(915) 544-0100

Sam J. Legate
109 N. Oregon, 12th Floor
El Paso, Texas 79901
(915) 544-0100

Oscar Allen
P.O. Box 4357
Houston, Texas 77210
(713) 787-7800

Frank N. Ban
P.O. Box 4357
Houston, Texas 77210
(713) 787-7800

Don Hudgins
Michael D. Hudgins
Hudgins, Hudgins & Warrick
24 Greenway Plaza, Suite 1707
Houston, Texas 77046

4. Identify each document by date, title and party, evidencing any agreement between you and Defendant.

ANSWER: See copy of Insurance policy produced in response to Request for Production.

5. Please describe with specificity any "statements" by Defendant or its employees concerning the subject matter of this lawsuit. For purposes of this interrogatory, statement is defined in accordance with Rule 166b.2g. Of the Texas Rules of Civil Procedure.

ANSWER: See correspondence and insurance policy produced in response to request for production .

6. If you contend or believe you have suffered damages or injuries as a result of any action or inaction on the part of Defendant, please describe the damages or injuries you have suffered.

ANSWER: Attorney's fees, court costs, monies paid by James F. Scherr in settlement of the Beard, Bailey and Petrosky case and interest and mental anguish.

7. If you are seeking an award of any sum of money, whether by damages or otherwise, state the full amount of money you seek and describe the manner in which the amount was calculated.

ANSWER:

- (1) Attorney's fees are not fully determined at this time but are based on \$150.00 to \$250.00 per hour.
- (2) The sum of \$150,000.00 paid on October 24, 1995.
- (3) The amount paid to Hudgins and Hudgins was \$46,341.21.
- (4) The amount paid to Baker and Botts \$17,500.00.

8. If you contend or believe that Defendant failed to attempt in good faith to effectuate a prompt, fair and equitable settlement of a claim, please state the facts which support your contention or belief.

ANSWER: By not paying the \$150,000.00 at the time of settlement of the Beard, Baily and Petrosky claim, Plaintiff was required to pay that himself. By refusing to defend and pay the claim of Gillespie et v. James F. Scherr, settlement because impossible and significant attorney's fees were incurred. Defendants liability to this party was clear. Defendant had a contract to defend

and pay the claims brought against its insured which it failed to do. For further details see the pleadings of the underlying lawsuit, the opinions of the court of Appeals and Supreme Court, the depositions and trial transcript in the Beard case and the discovery produced in the Gillespie suit.

9. If you contend or believe that Defendant failed to attempt in good faith to effectuate settlement of a claim with respect to which Defendant's liability had become reasonable clear, please state the facts which support your contention or belief that Defendant's liability had become reasonably clear.

ANSWER: Defendants liability to this party was clear. The policy of insurance provided maximum policy benefits. Defendant had a contract to defend and pay the claims brought against its insured which it failed to do.

10. If you contend or believe that Defendant failed to promptly provide to you a reasonable explanation of the basis in the policy, in relation to the facts or applicable law of the denial of a claim or for the offer of a compromise settlement of a claim, please state the facts that support your contention or belief.

ANSWER: Defendant did not disclose to Plaintiff that it was asserting a "one claim" defense until the "one claim" limits were nearly exhausted.

11. If you contend or believe Defendant misrepresented any material fact concerning the coverage provided to you under any policy of insurance, please state the following:

- a. the name of the person who made the representation;
- b. the date, time (if possible), and specific misrepresentation you allege was made;
- c. the identity of any third persons who were present when the specific statement or representation was made;
- d. and the specific policy provisions you contend or believe were misrepresented.

ANSWER:

- a. The person or persons who determined Home Insurance Company could limit its obligations by asserting there was only one claim made.
- b. At the time Home Insurance Company claimed its limits were exhausted and at the time Home Insurance Company claims it was liable only for one claim.
- c. James F. Scherr

d. The per claim aggregate provisions.

12. If you contend or believe Defendant was actually aware that its actions (which you complain of in Plaintiff's Original Petition) would probably result in extraordinary harm such as death, grievous physical injury or financial ruin, please state the facts which support your contention or believe.

ANSWER: Defendant had actual knowledge that James F. Scherr was left bare without any insurance to defend or pay the numerous claims asserted against him. By leaving James F. Scherr to fend for himself, Defendant was aware that it could result in financial ruin.

13. Since you have made a claim as a "consumer" under the Texas Deceptive Trade Practices Act, please state your net worth and describe in detail how that number was calculated.

ANSWER: Objection, not relevant or material. Net worth is not an issue at the time of accrual of this Deceptive Trade Practices Act claim or in the claim.

14. If you are seeking punitive, treble or additional damages from Defendant, please state the facts you contend or believe support an award of punitive, treble or additional damages.

ANSWER: Defendant had actual knowledge that Plaintiff could be subjected to financial ruin with pursuit of the pending claims. Defendant refused to defend the Gillespie case, or to pay legal fees or settlement amounts, subjecting Plaintiff to a great exposure and mental anguish and an extreme risk of harm when it could have defended, settled and paid the claims.

15. If you contend or believe Defendant had no reasonable basis for denying or delaying payment of your claim, please state the facts which support your contention or belief.

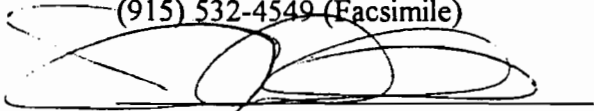
ANSWER: Defendant had actual knowledge there were more than ten individual claims pending against Plaintiff. Defendant was aware Plaintiff was sued in multi-party litigation on an individual basis, not as a class action and that each claim was independent and divisible. When Defendant unilaterally determined it would stop payment, it did so. For further details see the pleadings of the underlying lawsuit, the opinions of the court of Appeals and Supreme Court, the depositions and trial transcript in the Beard case and the discovery produced in the Gillespie suit.

16. Please identify each communication with Defendant referring or relating to the insurance policy which is the subject of this lawsuit.

ANSWER: See documents attached to response to request for production.

Respectfully submitted,

JIM DARNELL, P.C.
Attorneys for Plaintiff
310 N. Mesa, Suite 212
El Paso, Texas 79901
(915) 532-2442
(915) 532-4549 (Facsimile)



JIM DARNELL
State Bar No. 05391250

CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of June, 2000, a true and correct copy of the foregoing was DELIVERED to:

JOHN R. JONES
Attorney at Law
221 N. Kansas, Suite 1400
El Paso, Texas 79901



JIM DARNELL

VERIFICATION

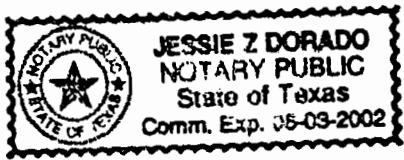
State of Texas)
)
County of El Paso)

JAMES F. SCHERR, being first duly sworn on oath, deposes and says that he has read the foregoing Answers to Interrogatories propounded to him by THE HOME INSURANCE COMPANY that said Responses, subject to inadvertent or undiscovered errors, are based on and, therefore, limited by records and information still in existence, presently recollected and thus far discovered in the course of the preparation of these Responses; that, consequently, JAMES F. SCHERR reserves the right to make changes in the Responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available; and, that subject to the limitation set forth herein, the said Responses are true to the best of his knowledge, information and belief.

[Handwritten Signature]

JAMES F. SCHERR

SUBSCRIBED AND SWORN TO BEFORE ME, on this 23rd day of May, 2000.



[Handwritten Signature]

Notary Public in and for the State of Texas

My commission expires:
05-03-2002