

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE  
IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY  
DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 2009-HICIL-46  
Proof of Claim Number: CLMN380502-01  
Claimant Name: Mariana Lanc  
Claimant Number: 145-0100-105  
Policy or Contract  
Number: \_\_\_\_\_  
Date of Loss: \_\_\_\_\_

LIQUIDATOR'S SECTION 15 SUBMISSION

Roger A. Sevigny, Insurance Commissioner for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), submits this brief pursuant to Section 15 of the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation entered January 19, 2005 ("Claims Procedures Order") and in accordance with the Structuring Conference Order issued August 4, 2010.

In this matter, Mariana Lanc ("Claimant") seeks to recover damages for alleged malpractice and fraud by the law firm that handled her divorce. The firm was insured by Home. The Claimant brought actions against the firm and one of its attorneys in 1988 and 1991. The New York courts ultimately consolidated and dismissed Claimant's actions against Home's insureds with prejudice. The judgment of dismissal with prejudice, which was affirmed on appeal, precludes Claimant from proceeding against Home's insureds. The Liquidator accordingly determined that the Claimant has no third-party claim against Home and denied her claim. The Referee should sustain the determination that the judgment of dismissal precludes Claimant's claim.

**A. Issue to be decided**

Whether the judgment of dismissal with prejudice in Claimant's cases against Home's insureds precludes Claimant's third party claim in the Home liquidation proceeding.

**B. Exhibits**

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- A. Proof Claim No. CLMN380502, including attached description of claim
- B. Complaint in Mariana Lanc v. Michael Donnelly and Cline, MacVean, Lewis and Sherwin, P.C., Index No. 0478/88 (Supreme Court of the State of New York, County of Rockland) (submitted as an attachment to the Proof of Claim)
- C. Verified Complaint in Mariana Lanc v. Cline, MacVean, Lewis and Sherwin, P.C., MacVean, Lewis, Sherwin & McDermott, P.C., and Michael Donnelly, Index No. 6971/91 (Supreme Court of the State of New York, County of Rockland) (submitted as an attachment to the Proof of Claim)
- D. Scheduling order, including consolidation order, dated March 13, 1991 Index No. 0478/88 (submitted as an attachment to the Proof of Claim)
- E. Liquidator's Notice of Determination dated August 25, 2009
- F. Decision dated June 20, 2002, Index No. 0478/88 (Rockland County Superior Court)
- G. Order of Dismissal dated June 20, 2002, Index No. 0478/88 (Rockland County Superior Court)
- H. Final Judgment dated October 24, 2002, Index No. 0478/88 (Rockland County Superior Court)
- I. Opinion, Mariana Lanc v. Michael Donnelly et al., No. 2002-09495 (Supreme Court of New York, Appellate Division, Second Department, December 27, 2004), reported at 13 A.D.3d 593 (2004)
- J. Decision, Mariana Lanc v. Michael Donnelly, et al., Mo. No. 165 (Court of Appeals of New York, March 29, 2005), reported at 4 N.Y.3d 707 (2005)

K. Lawyers Professional Liability Insurance Policy issued by The Home Insurance Company to MacVean Lewis Sherwin et al.

### **Background**

This disputed claim proceeding arises from the Liquidator's denial of the Claimant's third-party claim in the Home liquidation. The Claimant seeks to recover for alleged malpractice and fraud by the attorney and law firm that represented her in her divorce action (collectively, the "MacVean firm"). The Claimant has asserted her claims against the attorneys in two lawsuits in the New York courts. She first brought a malpractice action entitled Mariana Lanc v. Michael Donnelly and Cline, MacVean, Lewis and Sherwin, P.C., Index No. 0478/88 (Supreme Court of the State of New York, County of Rockland). See Exhibit B (Complaint). She later brought a fraud action entitled Mariana Lanc v. Cline, MacVean, Lewis and Sherwin, P.C., MacVean, Lewis, Sherwin & McDermott, P.C., and Michael Donnelly, Index No. 6971/91 (Supreme Court of the State of New York, County of Rockland). See Exhibit C (Verified Complaint).

Claimant now seeks to assert a "third party" claim pursuant to RSA 402-C:40, I, against Home as insurer of the MacVean firm. See Exhibit K (insurance policy). The Claimant's proof of claim ("POC"), states that her claim is a third party claim against a person insured by Home. Exhibit A at 2 (item 5). The alleged injuries at issue in the POC are those underlying the malpractice and fraud actions, as shown by the Claimant's description of her claim (Exhibit A at 4), submission of the complaints in those matters as exhibits to the POC (Exhibits B and C), and by her statements at the Structuring Conference held on August 4, 2010. Claimant seeks to hold Home, as insurer, liable for her claims against the insureds.

However, Claimant's malpractice and fraud actions have been dismissed with prejudice. The Supreme Court for Rockland County, New York, issued a decision on June 20, 2002. Exhibit F. That decision noted that the two actions had been consolidated. Exhibit F at 2; see also Exhibit D. The Court ruled that the plaintiff (Claimant here):

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chooses to ignore Court orders and refuses to provide the Court ordered disclosure. Plaintiff's conduct has been willful, deliberate and contumacious. Her refusal has been continual since 1991, without any reasonable legal justification. Accordingly, the Court is constrained to execute defendants' order of dismissal herewith.

Exhibit F at 4 (citation omitted). That same day, the Court issued an Order of Dismissal directing that the action be dismissed with prejudice. Exhibit G.

The Supreme Court entered Final Judgment on October 24, 2002. Exhibit H. The Final Judgment noted that the two actions (Index Nos. 0478/88 and 6971/91) had been consolidated, and that the consolidated actions were dismissed by a Decision and Order and Order of Dismissal dated June 20, 2002. Exhibit H at 1. The Final Judgment states that "[t]he plaintiff's complaints are dismissed with prejudice." Exhibit H at 2 (emphasis added).

The Claimant appealed the judgment to the Appellate Division of the New York Supreme Court. On December 27, 2004, the four judge panel of the Appellate Division issued a decision which noted that the matter was "a consolidated action" and ordered that "the judgment is affirmed, with costs." Exhibit I at 1. The Court ruled that:

Under the circumstances of this case, the plaintiff's repeated failure to comply with orders directing disclosure supports an inference of willful and contumacious conduct. Thus, the Supreme Court providently exercised its discretion in dismissing the consolidated action. The plaintiff's remaining contentions are without merit.

Exhibit I at 2 (citations omitted). The Claimant filed a motion for leave to appeal in the Court of Appeals of New York. The Court of Appeals denied the motion on March 29, 2005. Exhibit J.

The Liquidator issued a Notice of Determination (“NOD”) denying Claimant’s POC on August 25, 2009. Exhibit E.

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## ARGUMENT

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Claimant’s claim was properly denied because Home’s insured has no liability to Claimant where Claimants’ actions for malpractice and fraud have been dismissed with prejudice. Any Home obligation to Claimant depends upon the insureds’ liability to Claimant.<sup>1</sup> The Final Judgment of dismissal with prejudice, which was affirmed on appeal, bars any claim against Home’s insureds and accordingly eliminates the third party claim the Claimant now asserts against Home. Because Claimant has previously brought lawsuits concerning the alleged malpractice and fraud in the divorce action and suffered an adverse judgment on the merits, *res judicata* bars her from bringing claims relating to the matter in the Home liquidation. Claimant seeks to avoid this result by arguing that the actions were wrongfully dismissed. However, Claimant is barred from this collateral attack on the validity of the prior judgment by principles of both *res judicata* and collateral estoppel.

### I. THE THIRD PARTY CLAIM IS PRECLUDED BY THE RES JUDICATA EFFECT OF THE FINAL JUDGMENT.

The disputed issue in this proceeding is whether the *res judicata* effect of the Final Judgment precludes Claimant from asserting a third-party claim against Home. “*Res*

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<sup>1</sup> The Claimant has asserted a “third party claim” in the Home liquidation as permitted by RSA 402-C:40, I, which allows persons with claims against an insured to file a claim directly in the liquidation. Such third party claims depend upon the existence of valid claims against insureds of the insolvent insurer.

*judicata* is designed to provide finality in the resolution of disputes, recognizing that considerations of judicial economy as well as fairness to the parties mandate, at some point, an end to litigation.” In re Estate of Hunter, 827 N.E.2d 269, 274-75 (N.Y. 2005) (quotation omitted).<sup>2</sup> “In New York, res judicata, or claim preclusion, bars successive litigation based upon the same transaction or series of connected transactions if: (i) there is a judgment on the merits rendered by a court of competent jurisdiction, and (ii) the party against whom the doctrine is invoked was a party to the previous action, or in privity with a party who was.” Spitzer v. Applied Card Sys., Inc., 894 N.E.2d 1, 12 (N.Y. 2008) (quotation and citation omitted). See Estate of Hunter, 827 N.E.2d at 274. “The rule applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation. The rationale underlying this principle is that a party who has been given a full and fair opportunity to litigate a claim should not be allowed to do so again.” Estate of Hunter, 827 N.E.2d at 274. Therefore, “under New York’s transactional analysis approach... once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.” Id. (quotation omitted) (citing cases).

Under these principles, the Final Judgment of dismissal with prejudice precludes Claimant from asserting any claims against Home’s insureds with respect to their actions in connection with her divorce proceeding. See Exhibit H. First, there is no question but that Claimant – “the party against whom the doctrine [of res judicata] is invoked” – “was

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<sup>2</sup> Under New Hampshire law, the res judicata effect of the New York judgment is determined by reference to New York law. See In re Estate of Rubert, 139 N.H. 273, 275 (1994) (“The final judgment of a court of competent jurisdiction is entitled to the same faith and credit as to the parties before it as it has in the state of issuance.”).

a party to the previous action.” Applied Card Sys., 894 N.E.2d at 12. Claimant was the plaintiff in the malpractice and fraud actions. See Exhibits B and C.

Second, “there is a judgment on the merits rendered by a court of competent jurisdiction.” Id. The Final Judgment of dismissal “with prejudice” is a judgment on the merits. “A dismissal ‘with prejudice’ generally signifies that the court intended to dismiss the action ‘on the merits,’ that is, to bring the action to a final conclusion against the plaintiff.” Yonkers Contracting Co. v. Port Auth. Trans-Hudsons Corp., 712 N.E.2d 678, 681 (N.Y. 1999). The New York courts have looked to this language in determining whether to give a dismissal preclusive effect. See id.; Aard-Vark Agency, Ltd. v. Prager, 779 N.Y.S.2d 213, 214 (App. Div. 2004). Indeed, the New York courts have distinguished between a dismissal with prejudice (or with an order of preclusion) and a dismissal without prejudice in determining the res judicata effect of a dismissal for failure to comply with discovery. See Maitland v. Trojan Elec. & Mach. Co., 480 N.E.2d 736, 737 (N.Y. 1985) (“Where a plaintiff’s noncompliance with a disclosure order does not result in a dismissal with prejudice, or an order of preclusion or summary judgment... dismissal resulting from the noncompliance is not a merits determination so as to bar commencement of a second action.”) (emphasis added). Where the trial court decides to dismiss a case for willful failure to comply with discovery, it can make clear that the judgment has preclusive effect by making it “with prejudice” or by granting an order of preclusion. See id.; Kalinka v. St. Francis Hosp., 34 A.D.3d 742, 744 (N.Y. App. Div. 2006). In this case, the judgment of dismissal was expressly “with prejudice.” Exhibit H at 2. It therefore is a decision on the merits for preclusion purposes.

Finally, the claims involved in that judgment arose out of the same transaction as the claims brought in the Home liquidation. Applied Card Sys., 894 N.E.2d at 12; Estate of Hunter, 827 N.E.2d at 274 (“[O]nce a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred.”). Claimant’s claim against Home arises out of the representation provided to her by Home’s insured in a divorce action. See Exhibit A at 4 and Exhibits B and C (which were attached to the POC). Claimant’s previous New York actions against Home’s insured arose out of the same representation. Id. Thus, the “transaction” at issue in those actions – the conduct of counsel in Claimant’s divorce proceeding – is the same transaction as at issue in Claimant’s POC. Indeed, Claimant acknowledged that she seeks to pursue the same claims in this proceeding at the Structuring Conference by stating that her position was that the two cases had been “wrongfully dismissed” so that she should be able to proceed here. The alleged actions or failures of counsel in a divorce proceeding constitute a “transaction or series of transactions” such that all claims relating to the representation by counsel in that matter are barred by res judicata. See Estate of Hunter, 827 N.E.2d at 274. The Referee should, therefore, uphold the Liquidators’ denial of Claimant’s claim because the claim is barred by res judicata.

**II. CLAIMANT’S CHALLENGE TO THE JUDGMENT IS PRECLUDED BY RES JUDICATA AND COLLATERAL ESTOPPEL.**

The validity of the prior Final Judgment is not subject to collateral attack in the Home liquidation proceeding. The Claimant contends that the New York cases were wrongfully dismissed, but she has already litigated that issue. Not only did she oppose the dismissal before the Supreme Court, see Exhibit F, but she appealed from the



dismissal to the Appellate Division, which affirmed it. Exhibit I. Further litigation of challenges to the dismissal is therefore barred by the doctrine of collateral estoppel as well as the broader preclusion principles of res judicata.

In New York, “[t]he doctrine of collateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue that was clearly raised in a prior action or proceeding and decided against that party.” Yellow Cab of Newburgh, Inc. v.

Westchester County, 72 A.D.3d 835, 836 (N.Y. App. Div. 2010). “The doctrine applies if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and where the party against whom the estoppel is sought had a full and fair opportunity to litigate the issue in the earlier action.” In re Frontier Ins. Co., 73 A.D.3d 36, 41 (N.Y. App. Div. 2010) (quotation omitted).

However, “only issues that are actually litigated in a prior action will be given collateral estoppel effect.” Id. (quotation omitted). Further, the issue “must be the point actually to be determined in the second action or proceeding such that a different judgment in the second would destroy or impair rights or interests established by the first.” Ryan v. New York Tel. Co., 467 N.E.2d 487, 490 (N.Y. 1984) (quotation omitted).

The Claimant may not attack before the Referee the propriety of the New York Supreme Court’s decision to dismiss the actions. The sufficiency of the legal and factual basis for the Supreme Court’s decision was appealed by Claimant in the prior New York proceedings and the Appellate Division ruled against her on that precise issue: “Under the circumstances of this case... the Supreme Court providently exercised its discretion in dismissing the consolidated action.” Exhibit I at 2. The appellate decision reveals that the matter “was clearly raised” in the prior litigation, “actually litigated,” and decided

against the Claimant. Frontier Ins., 73 A.D.3d at 41; Yellow Cab of Newburgh, 72 A.D.2d at 836. Because it was expressly addressed by the Appellate Division, the issue was “necessarily decided and material in the first action.” Frontier Ins., 73 A.D.3d at 41. Any decision in this proceeding that Claimant’s actions should not have been dismissed with prejudice would “destroy or impair” the prior determination in favor of Home’s insured. Ryan, 467 N.E.2d at 490. Relitigation of that issue is therefore barred in this proceeding.

### **CONCLUSION**

For the foregoing reasons, the Referee should sustain the Liquidator’s determination.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER, SOLELY AS  
LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

By his attorneys,

MICHAEL A. DELANEY  
ATTORNEY GENERAL

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J. Christopher Marshall  
NH Bar ID No. 1619  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650



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J. David Leslie  
NH Bar ID No. 16859  
Eric A. Smith  
NH Bar ID No. 16952  
Rackemann Sawyer & Brewster P.C.  
160 Federal Street  
Boston, MA 02110  
(617) 542-2300  
esmith@rackemann.com

September 9, 2010

**Certificate of Service**

I hereby certify that a copy of the foregoing was sent to the claimant by email and by first class mail, postage prepaid, this 9th day of September, 2010.



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Eric A. Smith  
NH Bar ID No. 16952

CERTIFIED MAIL  
7003-2260-0006-8766-8654

Mariana Lanc,  
45245 Lynx Dr.  
Fremont, CA 94539  
June 4, 2004

HOME Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, New Hampshire 03105-1720

Attn.: PAULA T. ROGERS

POC #: **Clnm380502**  
Home claim #085-0520-963  
New claim #145-0100-105

Claimant: Mariana Lanc  
Insured: Cline, MacVean, Lewis and Sherwin, P.C.

Dear Ms. Rogeres,

Enclosed please find my timely filed "PROOF OF CLAIM".

Please notice that:

- 1) The item #5 - my Soc. Sec. Number is not filled in. At this time and point it is a very sensitive information to release. However I have no problem to release it at the time of receiving actual adequate compensation.
- 2) The item #14 - I will have no problem to sign the release at the time of receiving actual adequate compensation.

Twenty (20) years fight for my rights, and the abuse I endured during that time, resulted in my permanent mental disability and made me poor person living 13 years under poverty level. Clearly I will be suffering for a rest of my life for deliberate legal misrepresentation by my former attorney (whom refused to quit to represent me), left me with disastrous settlement for exchange for a personal gain, promised by my former husband, wealthy, powerful, and very influential businessman.

I am not fluent in English and I am using help with writing. I lost my legal representation (insured by HOME Insurance) when i ran out of money. Since I couldn't find legal counsellor who wouldn't be insured by HOME Insurance. I am filing this claim myself.

I hope you understand my reasoning for hesitation to sign my rights away prematurely.

The abuse by all insured attorneys involved is so grouse that I decided to turn to Attorney General with request for an investigation.

My claim is EXTREMELY TIME SENSITIVE, due to my financial situation.

If you have any questions, please contact me on above address. I will be in therapy till July 7, 2004.

Thank you for your understandings and cooperation.

Sincerely  
*Mariana Lanc*  
Mariana Lanc

homelet.wps 1

WAS SUBMITTED  
ONCE BEFORE

EXTRA COPY  
TO MAKE SURE DELIVERY  
FOR LIQUIDATOR'S USE ONLY

RECEIVED

PROOF OF CLAIM

The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106

Read Carefully Before Completing This Form

Please print or type

DATE PROOF OF  
CLAIM RECEIVED

JUN 14 2004

HICIL

Lanc, Mariana  
45245 Lynx Drive  
Fremont CA 94539-6027

POC #: CLM380502  
Home Claim#: 085 0520 963  
New Claim#: 145 0100 105



The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries\* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the DENIAL OF YOUR CLAIM. You are advised to retain a copy of this completed form for your records.

1. Claimant's Name: Lanc, Mariana
2. Claimant's Address: 45245 Lynx Drive  
Fremont, CA 94539
3. Claimant's Telephone Number: (510) 770 0160  
Fax Number: ( ) none  
Email address: none
4. Claimant's Social Security Number, Tax ID Number, or Employer ID Number: \*  
\* Claimant reserves the right to release it
5. Claim is submitted by (check one): in person at the time of receiving compensation
  - a)  Policyholder or former policyholder
  - b)  Third Party Claimant making a claim against a person insured by The Home
  - c)  Employee or former employee
  - d)  Broker or Agent
  - e)  General Creditor, Reinsurer, or Reinsured
  - f)  State or Local Government Entity
  - g)  Other; describe:

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation. Premeditated refusal to defend against false criminal charges for personal gain. Denied interpreter rights under the law, custody of minor. Unauthorized legal representation, resulting in financial disaster. Refused to release file, preventing reopening the action. Abused mentally, resulting in disability. WITH ADDITIONAL PAPERS

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.  
\$ 7,889,900.00 (If amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.  
as described in an attached "TOTAL DAMAGES and INJURY" and exhibits.

8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid:  
none

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?  
none

10. Do you claim a priority for your claim? If so, why: YES.. Claimant is poor, permanently mentally disabled person since 1993, as result of 10 years of malicious abuse by insured and their attorneys, representing HOME Insur. CO..

11. Print the name, address and telephone number of the person who has completed this form.

Name: Lanc, Mariana  
Address: 45245 Lynx Drive  
Fremont, CA 94539  
Phone Number: (510) 770-0160  
Email address: none

will not be available at this address or phone # from June 7, till July 7, 2004 due to her therapy.

\* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney:
  - b. Name of law firm:
  - c. Address of law firm: NA
  - d. Attorney's telephone:
  - e. Attorney's fax number: NA
  - f. Attorney's email address:

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment
  - b. Date of judgment
  - c. Name of case
  - d. Name and location of court
  - e. Court docket or index number (if any)

\*14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 1:

I, \_\_\_\_\_ (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge \_\_\_\_\_ (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(es) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

Claimant's signature

Date

15. All claimants must complete the following:

I, Mariana Lanc (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of seven million eight hundred thousand (\$ 7,899,900.00 ) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

*Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.*

Mariana Lanc

June 4, 2004

Claimant's signature

Date

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, New Hampshire 03105-1720

**You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.**

\*14

Claimant reserves the right to sign "conditional release of her claim against insured" in person at the time of receiving actual compensation. The severe damages- losses and mental injury were caused by insured and HOME Insurance attorneys.

The Defendants and claimant's own attorneys were all insured by HOME Insurance Company.

To escape certain conviction, all attorneys deliberately covered the frauds, sabotaged the progress, manipulated the court, and obstructed the justice. They all intentionally destroyed claimant financially and mentally, harassing her to quit the law suits to protect the HOME Insurance from paying : " to keep their professional liability premium low".

As a result of all attorneys misconducts, deliberate cover ups and the continuous ongoing abuse, the claimant is poor, permanently disabled person, living under poverty level since 1993.

The claimant is requesting the investigations by Attorney General

EXTREMELY TIME SENSITIVE

The Nature of Claim:

POC #: Clmn380502

Claimant Mariana Lanc.  
Insured: Cline, MacVean, Lewis and Sherwin, P.C.

Home claim #085-0520-963  
New claim #145-0100-105

Request to  
Attorney General,  
for a full investigation.

**PROOF OF CLAIM #5**

\*\*\* There are **two legal actions filed under this claim number #085-0520-963**. Legal malpractice and Fraud legal actions

1 The Legal malpractice action dated Dec. 17, 1987, Rockland Co. Index No. 0478/88 in amount \$950,000.00 (EXHIBIT "A"),

2 after newly discovered evidence, the FRAUD action dated **12/24/1990**, Rockland Co. Index No. 6971/91 in amount \$950,000.00 was additionally filed against same defendants (EXHIBIT "B").

3 These two actions were consolidated under one Index No. 0478/88 by Rockland County Supreme Court order dated March 13, 1991 (EXHIBIT "C"), under one claim totalling \$1,900,000.00.

These claims are a result of "the severe insured misconducts" during their legal representation in 1984:

- a) fraudulent legal misrepresentation, missinforming,
- b) the theft by false pretenses,
- c) intentional mental abuse, resulting in claimant hospitalization in 1984 (EXHIBIT "D"),
- d) committed frauds,
- e) years of cover ups and obstruction of justice, and court manipulation,
- f) continuously intentionally victimizing claimant, causing the mental injury to claimant.

**The HOME Insurance Company paid the defense attorneys seventeen (17) years to cover up, delay, obstruct the justice and to destroy these actions to escape the prosecution and trial by the jury.**

**During those years insured and their attorneys destroyed claimant mentally and financially, to the point that claimant is poor, permanently mentally disabled person since 1993.**

\*\*\* The claimant is lay poor, fully mentally disabled person, using help of lay person with English writing

The claimant is representing herself not by choice but necessity. She lost her legal representation due to the conflict of interest of her attorneys, and since did not find one who would not be insured by Home Insurance Co.) to represent her.

**HOME Insurance seems to monopolize legal profession liability industry.**

**Insured lawyers are fearlessly engaging in legal representation only for their own financial gain. By their disastrous work is causing their clients life long injury and damages. Their clients have no chance to recover. The lawyers are not held accountable for their bad work because behind them is the powerful HOME Insurance Co., successfully destroying legal actions against them, and victimizing second time around the already victimized plaintiffs.**

- A. Since April 1985 the insured party deliberately refused to release claimant's matrimonial file , preventing the fraudulently concluded underlined action to be reopen.  
The Claimant lost her chance for a new trial and new settlement.
- B. Prior to filing the legal malpractice action, the claimant seeked the opinion of a several legal professionals, who find the insured FRAUDS severe, with a strong merits for a claimable legal action against insured
- C. Under a tremendous mental and financial stress, by insured, the claimant became poor, fully mentally disabled person in April 1993 (EXHIBIT "D") In 1993 the claimant requested from Court to appoint to her a legal representation.  
The HOME/REM Insurance attorneys manipulated the court to disclaim claimant's request for an appointed legal counsel , and again in 1996.  
At the same time they pressured the court to continue with the legal proceedings, during claimant's full mental disability without her legal representation, to gain an advantage.  
Against several claimant's and forensic doctors warnings that the claimant is in no position to represent herself in a prosecution of the legal action nor to withstand any mental stress, regardless of the ordered stays, insured attorneys continued with proceedings. Under the threats of dismissal if proceedings will not continue, forcing claimant to represent herself pro-se .

Since 1993 the claimant was not represented by a legal counsel, nor she was mentally or otherwise fit to represent herself, nor she had a command of English language to do so.  
The attorneys representing HOME Insurance Company, used false statements, and an extreme pressure to manipulate the court to extremes. They used terrorizing tactics to make the claimant quit these law suits.

**As a result the claimant, became "permanently mentally disabled" in 2000 .**

- D. The claimant's mental illness originated in 1984 when the insured party traumatized her by refusing to defend her against a false criminal charges filed against her, and coerced her to agree and to cooperate with opposition's unreasonable demand, in exchange for a personal gain and favors from claimant's husband-wealthy, powerful influential businessman (licensed in five (5) USA states).

Due to a mental and physical abuse by husband and the threats by insured, Donnelly, Esq. the claimant had to be hospitalized from July 11, to August 8, 1984. (3 1/2 weeks). (EXHIBIT "E")  
**The insured Donnelly, Esq. concluded divorce action under a coercion and against claimant's will, which resulted in the catastrophic settlement and the huge future problems for claimant.**

Leaving after 20 years of marriage the poorly speaking English, unemployed, mentally ill claimant without the place to live (lived in car), no maintenance, no medical insurance, no money, no provision of any kind, without the child custody, without any financial means.

Leaving claimant with unpaid husband's debts. Fraudulently altered the divorce judgment, graciously allowing to husband (wealthy powerful businessman) to use the part of claimants' investments in husband's "business venture" for a business venture to be paid back to claimant in form of maintenance \$350/mo. with interest 9%, ending in Sep. 1, 1992. (EXHIBIT "O")  
Claimant's \$47,000 principal investment shrank to \$15,000.



The claimant suffered losses on business investments and did not receive the maintenance at all.

E. Further contribution to claimant's disability was a unnecessary financial and mental stress by insured party by refusal to release claimant's matrimonial file, since April 1985 till May 1992 (7 years), to cover up footprints of husbands' finances and the insured attorney disastrous legal work and frauds, preventing the fraudulent divorce action from reopening.

**Victimizing the claimant over, depriving her of new trial and new settlement.**

F. The further contribution to claimant's permanent mental disability were years of an unnecessary mental and financial abuse by claimant's own attorneys (also insured by HOME Insurance Company) who conspired with opposition, deliberately prolonging the proceedings with no progress. — to protect their own interest - to protect the HOME Insurance Company, (As one of insured said "They do not want the people to sue the lawyers because their insurance premium would increase.")

G. Since 1993 the claimant's **only income is a Social Sec. Disability check.**  
Due to **shortened years** of employment and to previous **low income** due a family care and business, **the claimant's disability income is under a poverty level.**

#### The facts:

1. The insured refused to defend the claimant against the false criminal charges made against her by her powerful, influential businessman husband to achieve:
  - a) the quick divorce,
  - b) to obtain the custody of parties' 11 years old son, to avoid paying child support,
  - c) the hostile take over of all finances, real estate, two professional businesses and to cheat out the claimant from agreed 50% partnership in third business.

(Husband and wife were educated professionals (master and bachelors degrees) who came to USA in 1969 to start their own professional business. Nineteen (20) years claimant fully supported her husband in studies in Europe and in USA. In late sixties and in seventies the Claimant couldn't succeed in USA in her male oriented profession. In eighties claimant worked part time and raised the child. Claimant worked professionally along side her husband for lesser money to help him to succeed to obtain his professional licenses in 5 different states in USA and to start business for an exchange to be a 50% partner in their future professional business. Husband became the partner and the vice-president of two (2) professional companies they worked for, and became powerful influential businessman. Husband was away from home 18 hrs daily for the business, making a business connections, and for personal activities. Claimant worked for lower wages under husbands' supervision, for which husband received the compensation in form of huge company benefits. Claimant lower wages negatively effected her social security benefits.

During the course of 18 years of marriage and 2 years prior to living as husband and wife (total 20 years) the claimant held full time job, part time job and 6 years stayed home with child. Claimant took solely care of their son since he was born, had full responsibility for house and all family affairs. Husband was in full charge of money.

Husband secretly planned divorce 5 years, hide the most assets, and planned the business losses. When we were ready to start third professional company husband field for a "surprise" divorce in April 1984, next day fired claimant from work due to a divorce. He prevented her to stay in house, closed all their account and disallowed her to have a any contact with their son.)

2. The insured are guilty of fraud, and obstructing the justice. **To cover up their illegal activities insured and their attorneys victimized claimant 20 years now.**

3. The full amount of claim \$ 7, 899,906 is fully justified.

P

Lanc, Mariana  
45245 Lynx Drive  
Fremont CA 94539-6027

POC #: Clmn380502  
Home #: Clmn085-0520-963  
New Home #: Clmn145-0100-105

**DAMAGES IN 1984 caused by INSURED REFUSAL TO DEFEND CLAIMANT,**  
against a false criminal charges and protect her from health and financial harm.

\$

1	Insured deliberately mentally abused claimant to brake her to agree to divorce "D" and unreasonable divorce settlement, causing her mental brake down, and hospitalization for 3 1/2 weeks.		\$1,500,000.00
2	Insured left unemployed claimant, ill, no money, no place to live (sleeping in in 8 year old car), no medical insurance, no financial compensation for 20 years contribution to marriage and raising child, with unpaid husband's loans, fraudulently altered "maintenance" which was actually partial payment of one husband's loan. Insured deprived claimant of child custody, and equitable distrib.. Cheated claimant of compens. for a lucrative fam. business and employment in it. To cover up severity of insured misconducts, the insured refused to release the matrimonial file to prevent the new trial and new settlement. Since 1985 till present the insured and their attorneys are deliberately terrorizing claimant to make her quit law suits. The severe abuse resulted in claimant's permanent mental disability, sustaining injury for rest of claimant's life	"E"	\$2,000,000.00
3	Losses of wages 1973-1984	"L"	\$217,538.00
4	Losses on earnings, caused by illness 1984-2009	"L "	\$1,254,395.00
5	Lost full medical insurance 1984-2023 \$1000/mo (min. coverage- 39 years)		\$468,000.00
6	Losses on Soc Sec. Benefits 2010-2023 due to low future wages	"M"	\$178,988.00
7	Maintenance \$1,000/mo 1984-2023 (39 years)		\$468,000.00
8	Loan to husband for "business venture" in 1984 \$47,039 +inter. 12%-2004 paid back only \$15,000 with interest 9% in form of maintenance=\$28,000.00 1992	"O"	\$422,584.00
9	IRA losses 1972-1984= 12 years x \$2,000=\$35,000 incl. interest-\$15,500=\$17,500 \$17,500 in 1984 + Inter. 12%-2004		\$168,810.00
10	Loan on Claimant's Life insurance in 1981, \$1366. + inter. 12% -2004	"N"	\$18,512.00
11	1/2 claimed by husband savings + checking in 1984 \$1,242 +intr.. 12% -2004		\$11,980.00
12	Time share condominium 1/2 of down pt. in 1984 \$1,260+ intr. 12%-2004	"K"	\$12,154.00
13	Husband's unpaid loan since 1966 \$1,000 +intr. 12%-2004	"H"	\$74,179.00
14	Claimant's loss on inheritance in 1970 with interest (due to unpaid loan 1966)" 1970 \$16,000 + intr. 12% - 2004		\$754,280.00
15	Unnecessary legal fees, helpers, mail and travel expen. over 19 years 1985-2004 = \$116,000 + inter. 5%		\$293,126.00
16	Medical 1985-2004 \$22,700 + inter. 5% 19 years		\$57,360.00
	<b>TOTAL DAMAGES and INJURY</b>		<b>\$7,899,906.00</b>

#5

ALTERNATIVE DAMAGES

Lanc, Mariana  
45245 Lynx Drive  
Fremont CA 94539-6027

POC #: Clmn380502  
Home #: Clmn085-0520-963  
New Home #: Clmn145-0100-105

1	Legal Malpractice filed in Dec. 1987 - claimed damages \$950,000.00	
	\$950,000.00 + inter. 10% - 17 years (2004)	\$4,801,747.00
2	FRAUD action filed on Dec. 24, 1990 for additional damages to claim \$950,000.00	
	\$950,000.00 + inter. 10%- 14 years (2004)	\$3,607,623.00

**TOTAL DAMAGES and INJURY** **\$8,409,370.00**

§ 104— Summons without Notice. Court 9-73  
Personal Service.

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

Index No. 0478/83

Plaintiff designates  
Rockland

County as the place of trial

The basis of the venue is

residence of the plaintiff

Plaintiff

against

**Summons**

MICHAEL DONNELLY and CLINE, MacVEAN,  
LEWIS and SHERWIN, P.C.,

Plaintiff resides at Jeanne Marie  
Gardens, Apt. 13K, Nanuet, N.Y.

10954

Defendants, County of Rockland

To the above named Defendant

**You are hereby summoned**

to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pearl River, N.Y.  
Dated, December 17, 1987  
Defendant's address:  
34 Grove Street, Box 310,  
Middletown, N.Y. 10940

PETER W. SLUYS, ESQ.

Attorney(s) for Plaintiff  
Office and Post Office Address  
Box 3  
117 North Middletown Road  
Pearl River, N.Y. 10965  
(914) 735-9439

PO# : C/mn 300502

Nine Hundred Fifty Thousand (\$950,000.00) Dollars on the first cause of action, and Nine Hundred Fifty Thousand (\$950,000.00) Dollars on the second cause of action, together with such other and further relief as to this Court may seem just and proper.

Yours, etc.,

PETER W. SLUYS, ESQ.  
Attorney for Plaintiff  
117 North Middletown Road  
P.O. Box 3  
Pearl River, N.Y. 10965  
(914) 735-9439

Dated: Pearl River, N.Y.  
December 17, 1987

Dec 17-1987

SB

FILED  
CLERK OF COURT  
PEARL RIVER, N.Y.

POC # Clmn 380502



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
MARIANA LANC,

Plaintiff,

0478/88

-against-

COMPLAINT

MICHAEL DONNELLY and CLINE, MacVEAN,  
LEWIS and SHERWIN, P.C.,

Defendants.  
-----X

Plaintiff, by her attorney, PETER W. SLUYS, complaining  
of the defendants herein, states as follows:

1. Mariana Lanc resides in the County of Rockland,  
State of New York.

2. Upon information and belief at all times herein-  
after mentioned, Michael Donnelly was and is an attorney duly  
admitted to practice law in the State of New York.

3. Upon information and belief at all times herein-  
after mentioned, Cline, MacVean, Lewis and Sherwin, P.C. were  
and are a professional corporation in the practice of law, with  
offices for the practice of law in the City of Middletown,  
County of Orange and State of New York.

4. That upon information and belief at all times  
hereinafter mentioned, Michael H. Donnelly was employed as an  
associate with Cline, MacVean, Lewis and Sherwin, P.C. (herein-  
after Cline).

ORIGINAL 7c

5. Plaintiff retained defendant Cline in April of 1984 to defend her against a matrimonial action brought by her husband, John Lanc, then pending in the Supreme Court, County of Orange.

6. That plaintiff paid to defendant Cline good and ample consideration for her representation. That defendant Cline was thereafter under a duty to represent the plaintiff, competently and zealously, and was under a duty to protect plaintiff's interest, and to represent plaintiff's interest with fidelity and competence.

7. That defendant Cline assigned the plaintiff's file to Michael H. Donnelly, an associate with less than five years' experience in the practice of law at the time the case was assigned to him.

8. From the commencement of the lawsuit until its conclusion in December of 1984, plaintiff was so poorly represented by defendants that the settlement arrived at amounted to a coerced settlement where plaintiff was deprived of her free will.

9. The settlement arrived at in December of 1984 was insufficient under the law, and did not represent a fair remuneration to the defendant for all her years of working with her former husband, and for all the opportunities plaintiff had foregone.

10. The settlement arrived at between the plaintiff



and defendant in the underlying divorce suit was not such a settlement as a reasonably competent attorney would have accepted, approved, or negotiated on behalf of a client similarly situated as was the plaintiff in this case.

11. The plaintiff herein was compelled and coerced by the defendant, and especially the defendant Donnelly, into accepting a settlement herein, and was not offered that disinterested legal advice on the adequacy of the settlement, which it was the defendant's duty to offer.

12. That the defendant Cline is responsible for the defendant Donnelly's actions under the doctrine of respondeat superior.

13. During the course of the marriage herein, plaintiff's former husband earned his professional engineer's license and land surveyor's license together with his professional planner's license which left plaintiff with the total responsibility of maintaining a household and lost to plaintiff the 15 years in which she could have become licensed in her own field of architecture. Despite this defendant Donnelly informed plaintiff that "none of these facts are important" and stated that plaintiff would be lucky to receive a settlement in the underlying divorce action.

14. Defendant Donnelly had a carefree attitude about the hearings plaintiff attended, spending a great deal of time on negotiations concerning his fee payments, with very little

time keeping plaintiff informed of the progress of the case, or in discussing strategies and tactics with the plaintiff.

15. In November of 1984, plaintiff's underlying divorce action came on for settlement, and plaintiff told Donnelly that she could not consent to any settlement because she needed more time to review the options that faced her and the disabilities that she would face without adequate financial support from her then husband. Notwithstanding plaintiff's orders not to proceed with the hearing, Mr. Donnelly proceeded, prejudicing the plaintiff and her defense of the underlying action.

16. At the hearing so scheduled plaintiff asked the justice presiding for permission to find another attorney to replace defendants, but defendant Donnelly told plaintiff that she would have to find another attorney in three days. Due to the lack of funds and the lack of support from defendants, plaintiff was compelled to proceed with the underlying suit herein with defendants representing her.

17. At the settlement hearing before the justice presiding, defendant Donnelly was told by plaintiff that plaintiff did not understand or accept the agreement, and that plaintiff wanted to change provisions of the agreement. Defendant Donnelly told plaintiff, "be glad you got what you got". Plaintiff refused to accept the agreement, and told defendant Donnelly that plaintiff wanted to tell the justice

presiding that she refused to accept the agreement. Defendant Donnelly told plaintiff that if plaintiff said that to the justice presiding, the settlement would be thrown out of court and plaintiff "stood a chance of losing everything".

18. Defendants did not provide plaintiff a final copy of the order herein until the time to appeal that order had expired.

19. Thereafter and when plaintiff requested her file from defendant, defendant Donnelly told plaintiff that her file would only be released to her upon her signing a general release

20. The demand for a general release in addition to a fee contravenes Ethical Consideration 6.6 which states in part that "a lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so."

21. The demand for general release in addition to a fee violates Disciplinary Rule 6-102 which states in pertinent part that "a lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice."

22. The demand for a general release in addition to a fee is improper.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

MARIANA LANC,

Index No.

Plaintiff designates  
ROCKLAND

6971/91

County as the place of trial

The basis of the venue is  
Plaintiff's Residence

FILED  
SEP 30 1991  
ROCKLAND COUNTY  
CLERK'S OFFICE

against

CLINE, MacVEAN, LEWIS AND SHERWIN, P.C.,  
MacVEAN, LEWIS, SHERWIN & McDERMOTT, P.C.  
and MICHAEL DONNELLY,

Summons with Notice

Plaintiff resides at

Jean Marie Gardens, Apt. 13K  
Nanuet, New York 10954  
County of ROCKLAND

Defendant

To the above named Defendant

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within            days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated, December 24, 1990  
Defendant's address: 34 Grove Street  
Middletown, New York 10940

DRANOFF & JOHNSON  
Attorney(s) for Plaintiff  
Office and Post Office Address  
One Blue Hill Plaza  
P.O. Box 1629, Suite 900  
Pearl River, NY 10965

Notice: The nature of this action is breach of fiduciary duty, fraud, and misrepresentation of material facts  
The relief sought is \$950,000.00 plus costs and disbursements of this action.

Upon your failure to appear, judgment will be taken against you by default for the sum of \$            and the costs of this action.



Sept 30 1991  
SB

Edward Gorman  
Edward Gorman County Clerk & Clerk  
of the Supreme County Courts  
Rockland County

POC #: C1mn 380502

ORIGINAL

A 16a

County Clerk, ROCKLAND County

Index Number

Application for INDEX NUMBER  
pursuant to Sec. 8018 (a) CPLR

6971

FEE \$100.00

Spaces below to be TYPED OR PRINTED by applicant.

Do not write in this space.

TITLE OF ACTION OR PROCEEDING

MARIANA LANC,

Plaintiff

against

CLINE, MacVEAN, LEWIS AND SHERWIN, P.C.,  
MacVEAN, LEWIS, SHERWIN & McDERMOTT, P.C.  
and MICHAEL DONNELLY,

Name and address of  
Attorney for Plaintiff  
or Petitioner.

Name and address of  
Attorney for Defendant  
or Respondent.

FILED  
SEP 30 1991  
ROCKLAND COUNTY  
CLERK'S OFFICE

Indexed and Entered

Do not write on line above.

- |                                      |                                      |                                   |  |   |  |
|--------------------------------------|--------------------------------------|-----------------------------------|--|---|--|
| <input type="checkbox"/> Yellow Skin | <input type="checkbox"/> Blonde Hair | <input type="checkbox"/> Mustache | <input checked="" type="checkbox"/> 36-50 Yrs. | <input type="checkbox"/> 54"-57"            | <input type="checkbox"/> 131-160 Lbs.            |
| <input type="checkbox"/> Brown Skin  | <input type="checkbox"/> Gray Hair   | <input type="checkbox"/> Beard    | <input type="checkbox"/> 51-65 Yrs.            | <input checked="" type="checkbox"/> 59"-60" | <input checked="" type="checkbox"/> 161-200 Lbs. |
| <input type="checkbox"/> Red Skin    | <input type="checkbox"/> Red Hair    | <input type="checkbox"/> Glasses  | <input type="checkbox"/> Over 65 Yrs.          | <input type="checkbox"/> Over 6'            | <input type="checkbox"/> Over 200 Lbs.           |

Other identifying features:

WITHOUT  
FEE

I authorize the following person to incur the authorized traveling expenses and one days' witness fee:

- |  |
|--|
| <input type="checkbox"/> was paid (tendered) to the recipient          |
| <input type="checkbox"/> was mailed to the witness with subpoena copy. |

MILITARY  
SERVICE

I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any capacity what-  
and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of  
Upon information and belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in the  
the State or in the Federal statutes.

Notary Public

Dec 27 1990

MARY E. CASEY  
Notary Public, State of New York  
No. 4740892

William Novotny

License No.

7—Absence of service with subpoena return 2-89

Qualified in Rockland County  
Commission Expires February 20 1991

ORIG

EXHIBIT "A"

MARIANA LANC,

ROCKLAND  
County as the place of trial

The basis of the venue is  
Plaintiff's Residence

FILED  
SEP 30 1991  
ROCKLAND COUNTY  
CLERK'S OFFICE

against

CLINE, MacVEAN, LEWIS AND SHERWIN, P.C.,  
MacVEAN, LEWIS, SHERWIN & McDEPMOTT, P.C.  
and MICHAEL DONNELLY,

Summons with Notice

Plaintiff resides at

Jean Marie Gardens, Apt. 13K  
Nanuet, New York 10954  
County of ROCKLAND

Defendant

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated, December 24, 1990  
Defendant's address: 34 Grove Street  
Middletown, New York 10940

DRANOFF & JOHNSON  
Attorney(s) for Plaintiff  
Office and Post Office Address  
One Blue Hill Plaza  
P.O. Box 1629, Suite 900  
Pearl River, NY 10965

Notice: The nature of this action is breach of fiduciary duty, fraud, and misrepresentation of material facts  
The relief sought is \$950,000.00 plus costs and disbursements of this action.

Upon your failure to appear, judgment will be taken against you by default for the sum of \$ with interest from 19 and the costs of this action.

and you do indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the recipient.

DESCRIPTION  Male  Female  
 White Skin  Black Skin  Yellow Skin  Brown Skin  Red Skin  
 Black Hair  Brown Hair  Blonde Hair  Gray Hair  Red Hair  
 White Hair  Balding  Mustache  Beard  Glasses  
 14-20 Yrs.  21-35 Yrs.  36-50 Yrs.  51-65 Yrs.  Over 65 Yrs.  
 Under 5'  5'0"-5'7"  5'8"-5'11"  5'9"-6'0"  Over 6'  
 Under 100 Lbs.  100-130 Lbs.  131-160 Lbs.  161-200 Lbs.  Over 200 Lbs.

Other identifying features:

WITNESS FEE

\$ the authorizing traveling expenses and one days' witness fee

was paid (tendered) to the recipient

was mailed to the witness with subpoena copy.

MILITARY SERVICE

I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Sworn to before me on Dec. 27, 1990

MARY E. CASEY  
Notary Public, State of New York  
No. 4740692

Qualified in Rockland County  
Commission Expires February 28, 1992

William Novotny

License No.

ORIGINAL

A 131

MARIANA LANG

CLINE, MACVEAN, LEWIS & SHERWIN, P.C. & MICHAEL DONNELLY  
ROCKLAND COUNTY, NEW YORK STATE

Defendant(s) Respondent(s)

AFFIDAVIT OF SERVICE

Deponent is not a party herein, is over 18 years of age and resides at 10 Acorn Terr. New City, New York  
Dec. 26, 1990 at 8:42 P.M. at 10 Wisner Terrace, Goshen, New York

being 190

- deponent served the within  summons  with notice
- summons and complaint
- notice of petition and petition
- subpoena  subpoena duces tecum
- summons, Spanish summons and complaint, the language required by NYCPL 2900.2(e), (f) & (h) was set forth on the face of the summons(es)
- citation
- 

on MICHAEL DONNELLY

- defendant (hereinafter
- respondent called therein named
- witness the recipient)

- INDIVIDUAL  by delivering a true copy of each to said recipient personally; deponent knew the person so served to be the person described as sa recipient therein.
- 1.
- CORPORATION  corporation, by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation, described in same as said recipient and knew said individual to thereof
- 2.
- SUITABLE AGE PERSON  by delivering thereat a true copy of each to a person of suitable age and discretion. Said premises is recipient's  actual place of business  dwelling place  usual place of abode within the state.
- 3.
- AFFIXING TO DOOR, ETC.  by affixing a true copy of each to the door of said premises, which is recipient's  actual place of business  dwelling place  usual place of abode within the state. Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, thereat, having called the:
- 4.

MAILING TO RESIDENCE USE WITH 3 OR 4

5A.

Deponent talked to at said premises who stated that recipient  lived  worked there. Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to recipient at recipient's la known residence, at and deposited said envelope in an official depository under exclusive care and custody of the U.S. Postal Service within New York State.

MAILING TO BUSINESS USE WITH 3 OR 4

5B.

Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to recipient t recipient's actual place of business, at in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney c concerned an action against the recipient.

DESCRIPTION

- Male  White Skin  Black Hair  White Hair  14-20 Yrs.  Under 5'  Under 100 lbs.
- Female  Black Skin  Brown Hair  Balding  21-35 Yrs.  5'0"-5'3"  100-130
- Yellow Skin  Blonde Hair  Mustache  36-50 Yrs.  5'4"-5'8"  131-166
- Brown Skin  Gray Hair  Beard  51-65 Yrs.  5'9"-6'0"  161-200
- Red Skin  Red Hair  Glasses  Over 65 Yrs.  Over 6'  Over 200

Other identifying features:

WITNESS FEES

MILITARY SERVICE

I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any capacity who and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. The source of my information and the grounds a belief are the conversations and observations above narrated. Upon information and belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in it the State or in the Federal statutes.

to before me on Dec. 27, 1990

Mary E. Casey  
Notary Public, State of New York  
No. 4740692  
Qualified in Rockland County  
Commission Expires February 28, 1992

William Novotny  
License No.

ORIGINAL

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MARIANA LANC,

Plaintiff

-against-

CLINE, MacVEAN, LEWIS AND SHERWIN, P.C.,  
MacVEAN, LEWIS, SHERWIN & McDERMOTT, P.C.  
AND MICHAEL DONNELLY,

Defendant

VERIFIED COMPLAINT

Index No. 6971/91  
(FRAUD)

The Plaintiff as and for her complaint by DRANOFF & JOHNSON  
her attorneys, respectfully alleges the following:

1. That plaintiff, Mariana Lanc, resides in the State of New York, County of Rockland.
2. That upon information and belief at all times hereinafter mentioned, Michael Donnelly was and is an attorney duly admitted to practice law in the State of New York.
3. That upon information and belief at all times hereinafter mentioned. Cline, MacVean, Lewis and Sherwin, P.C. were and are a professional corporation in the practice of law, with offices for the practice of law in the City of Middletown, County of Orange and State of New York.
4. That upon information and belief at all times hereinafter mentioned, Michael H. Donnelly was employed as an associate with Cline, MacVean, Lewis and Sherwin, P.C. (hereinafter Cline).
5. That plaintiff retained defendant Cline for her representation. That defendant Cline was thereafter under a fiduciary

(3)  
Feb. 21, 1991  
Dec. 24, 1990  
ORIGINAL

DRANOFF & JOHNSON • ATTORNEYS AT LAW  
ONE BLUE HILL PLAZA • SUITE 900 • P. O. BOX 1629 • PEARL RIVER, N.Y. 10985-8629

A 19



to plaintiff.

6. That defendant Cline assigned the plaintiff's file Michael H. Donnelly, an associate with less than five years experier in the practice of law at the time the case was assigned to him.

7. Defendant, Donnelly told plaintiff he would assert counterclaim on her behalf and he had plaintiff sign blank paper Plaintiff did not see what she had signed until she went to Court December 3, 1984. She did not agree to the contents and an argument wi Donnelly ensued.

8. That from the commencement of the lawsuit until i conclusion plaintiff was so poorly represented by defendant that t settlement arrived at amounted to a coerced settlement that plaintiff v forced to agree to, and plaintiff was deprived of her free wil Donnelly told plaintiff that he would obtain her custody and chi. support of her child, exclusive possession and full ownership of t former marital residence and \$250,000.00. Defendant, Donnelly to plaintiff that she must sign the divorce decree prior to the end of t year (1984). Defendant, Donnelly said "it must be done" or words to th effect. Defendant, Donnelly, told plaintiff "you have to sign it no You can always come back to Court later if you don't like it. Let's g it over with now. There's no point in prolonging it." Plainti objected to the terms and to the fact that she wanted to consult with expert, Donnelly told plaintiff "there's no time for it - we need

ORIGINAL

DRANOFF & JOHNSON • ATTORNEYS AT LAW  
ONE BLUE HILL PLAZA • SUITE 900 • P. O. BOX 1629 • PEARL RIVER, N.Y. 10965-8829

A 20

...the end of the year...  
"If you don't sign now, you may lose everything." Defendant Donne. misrepresented facts to plaintiff which she relied on and was ther injured.

9. Defendant, Donnelly told plaintiff "in New York these d it is common practice that if one party asks for a divorce that pa will eventually get it even if the second party does not agree to There is no point in prolonging this case. What counts is only settlement." Plaintiff did not want a divorce. Plaintiff request Defendant, Donnelly's help to obtain a separation. Donnelly refused even consider it. Donnelly did not address the false allegatio asserted by plaintiff's then husband including an assault charge that filed against her. Defendant, Donnelly told plaintiff to go back work because since plaintiff was "employable" her "husband would not ha to give [her] anything." Defendant, Donnelly told plaintiff "I am yo attorney, you have to trust me - you are not an attorney. Defendar Donnelly, told plaintiff that she did not have to get anything from t husband's assets." That defendant's misrepresentation of material fac include but are not limited to the misrepresentation of the value plaintiff's former husband's assets, failure to obtain evaluations & appraisals, value of plaintiff's assets and other contributions to t parties' marriage and the length of time she was to receive maintenar and the amount.

ORIGINAL

A 21

...that defendant Michael Donnelly told plaintiff that if she disagreed with the stipulation he would assert that she was mentally unstable, forcing plaintiff to agree to the stipulation. Plaintiff was told that the reason they were at the Courthouse was for a pretrial conference. Plaintiff was not prepared to settle the case and neither was Donnelly. Defendant, Donnelly told plaintiff that if she mentioned the fact regarding the incident whereby the parties' son shot his grandfather, she might end up in a mental hospital and the child might be placed in foster care. Plaintiff stated that she did not understand the English language well and did not understand or agree to the contents of the stipulation. Defendant, Donnelly failed and refused to provide plaintiff with an interpreter. Plaintiff told Donnelly that she had no paperwork or financial documents to review. Upon information and belief Donnelly did not have financial documentation. Defendant Donnelly told her to "be glad you got what you got" or words to that effect. Defendant's actions caused plaintiff to suffer extreme mental pain and suffering and to be greatly ashamed and humiliated. Plaintiff also suffered monetary loss.

11. That defendant Michael Donnelly told plaintiff that her efforts and contributions to the parties marriage was not important to the case and would not be considered by the Court. Defendant, Donnelly told plaintiff she was not entitled to any portion of the parties savings obtained during the marriage.

ORIGINAL

A 22

12. That defendant's breach of fiduciary duty, fraud, misrepresentations of material fact, and failure to act, and failures to act, by virtue of their misrepresentation to plaintiff and their failure to fulfill their responsibilities to plaintiff. Plaintiff relied upon defendant's misrepresentations and was injured as a result thereof.

13. That after plaintiff signed the stipulation awarding her maintenance until her death defendants acting with plaintiff's former husband and/or his attorneys did insert, a date terminating a maintenance in the year 1992. Plaintiff did not know or agree to the termination date.

14. Defendants failed to send plaintiff a copy of the Judgment of Divorce until after the statutory period to appeal same had run out. That the defendant Cline is responsible for the defendant Donnelly's actions under the doctrine of respondeat superior.

14. That by the acts, failure to act, and failures to act, breach of fiduciary duty, fraud, misrepresentations of material fact upon which plaintiff relied to her detriment, defendants herein, and each of them, have caused plaintiff to sustain injury and damages in the sum of NINE HUNDRED FIFTY THOUSAND AND 00/100 (\$950,000.00) DOLLARS.

WHEREFORE, judgment should issue for the plaintiff and against the defendant's, and each of them, in the sum of NINE HUNDRED FIFTY

ORIGINAL

THOUSAND and 00/100 (\$950,000.00) ...  
further and different relief as to this Court may seem just and proper.

Dated: Pearl River, New York  
December 24, 1990

Yours, etc.

DRANOFF & JOHNSON  
Attorneys for Plaintiff  
Office & P. O. Address  
One Blue Hill Plaza - Suite 900  
P. O. Box 1629  
Pearl River, New York 10965-8629  
914-735-6200

DEC 24 1990



*Dec 24-90*  
*SB*

*Edward Gorman*

Edward Gorman County Clerk & Clerk  
of the Supreme County Courts  
Rockland County

**ORIGINAL**

DRANOFF & JOHNSON • ATTORNEYS AT LAW  
ONE BLUE HILL PLAZA • SUITE 900 • P. O. BOX 1629 • PEARL RIVER, N.Y. 10965-8629

**A 24**

POC#: C/mn 380502

Mariana Larc,

Plaintiff

INDEX NO. 478/85

v.  
Cline, MacVean, Lewis & Sherman, P.C.  
MacVean, Lewis, Sherman & McDermott, P.C.  
and Michael Dinnelly

x

Pursuant to the stipulation of the parties at a preliminary conference held on March 13, 1991, the following is the schedule for disclosure and for filing a certificate of readiness and trial note of issue/further conference in the above entitled matter:

1. Respond to demand for bill of particulars:
  2. Respond to discovery demands: <sup>on or before</sup> 2/15/91  
Served by 6/1/91
  3. Conduct examinations before trial: <sup>on or before</sup> 12/15/91
  4. Physical examination of plaintiff (report of examining physician to be provided to plaintiff upon receipt by defendant):
  5. File certificate of readiness and trial note of issue: 3/14/92  
~~ced~~ by
  6. Further conference:
  7. Miscellaneous: Neither party waives any right to move against any discovery demands. Action commenced by summons dated 12/24/90 is consolidated with this action.
- SO ORDERED: FRAUD 6971/91.

E N T E R

Dated: MARCH 13, 1991  
New City, New York

*Robert R. Meehan*  
ROBERT R. MEEHAN  
ACTING SUPREME COURT JUSTICE

**THE HOME INSURANCE COMPANY IN LIQUIDATION**

P.O. Box 1720  
Manchester, New Hampshire 03105-1720  
Tel: (800) 347-0014

Date: 8/25/2009

Class: II

Mariana Lanc  
45245 Lynx Drive  
Fremont, CA 94539

RE: NOTICE OF DETERMINATION  
Proof of Claim No.: CLMN380502-01

Determination Summary

Gross Amount of Claim	: \$ 7,889,900.00
Amount Allowed by Liquidation	: \$ 0

Explanation: The Home Insurance Company (Home) issued a professional liability policy to MacVean, Lewis & Sherwin P.C. You filed suits against the insured firm and one of its attorneys, Michael Donnelly, alleging malpractice in their representation of you. Home provided a defense to the insureds. The suits were consolidated. The court granted the insureds' Motion to Dismiss the suits. You appealed the Dismissal. The New York Supreme Court, Appellate Division, Second Department, affirmed the Dismissal on 12/27/04. You filed a Motion for Leave to Appeal to the New York Court of Appeals. The Court of Appeals denied the Motion on 3/29/05. No suit against the insureds is pending. Because there is no suit against the insured pending, this Proof of Claim has been disallowed.

Dear Claimant :

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court") for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures")\* approved by the Court. If the claim

\*A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation may be obtained from the website of the Office of

has been allowed, in whole or in part, it has been assigned a Class II priority as a "policy related claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first \$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

---

the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, [www.hicilclerk.org](http://www.hicilclerk.org)



Claim Allowed

1. If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.

Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

REQUEST FOR REVIEW FILING REQUIREMENTS:

- (a) Sign and return the attached Acknowledgment of Receipt form.
- (b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.
- (c) Mail the Request for Review to:  
The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, NH 03105-1720

You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.

- (d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.
- (e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.

B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court  
163 N. Main Street, P.O. Box 2880  
Concord, New Hampshire 03301-2880  
Attention: The Home Docket No. 03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

**IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.**

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator  
For Roger A. Sevigny, Liquidator  
of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Ron Barta  
Senior Manager  
Home Insurance Company in Liquidation  
Phone : 212-530-4054

**THE HOME INSURANCE COMPANY IN LIQUIDATION**

P.O. Box 1720  
Manchester, New Hampshire 03105-1720  
Tel: (800) 347-0014

POC #: CLMN380502-01

Amount Allowed: \$ 0

Mariana Lanc  
45245 Lynx Drive  
Fremont, CA 94539

**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)

I agree to the determination.

I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

I have not assigned any part of this claim.

I have not made any other recoveries with respect to this claim.

I have not sought and do not intend to seek any other recoveries with respect to this claim.

I have made recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgment).

I request that The Home mail further correspondence to:

\_\_\_\_\_ Same name as above.  
New name \_\_\_\_\_

\_\_\_\_\_ Same address as above  
New address \_\_\_\_\_  
\_\_\_\_\_

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

FILED SL

JUN 25 2002

ROCKLAND COUNTY  
CLERK'S OFFICE

-----X  
MARIANA LANC,

Plaintiff,

-against-

MICHAEL DONNELLY AND CLINE, MacVEAN,  
LEWIS & SHERWIN, P.C.,

Index No. 0478/88  
Motion Date: 4/26/02  
Motion Cal. Nos.  
19, 20, 21

-----X  
Defendants.

BERGERMAN, J.,

This is a motion (dated March 14, 2002) by the plaintiff for leave to proceed as a poor person and for appointment of counsel. There is also a motion (dated March 29, 2001) by the plaintiff for an order imposing a penalty upon defendants for failure to answer interrogatories, for unlimited discovery and depositions in fraud action, Index No. 6971/91, precluding and treating fraud action, Index No. 6971/91 under Index No. 0478/88, precluding defendants from asserting defenses in fraud action Index No. 6971/91, staying both 6971/91 and 0478/88 until counsel is assigned and granting a protective order with respect to further disclosure of income tax information.

There is also a motion by the plaintiff (dated April 11, 2002) which seeks an order striking defendants' proposed order of dismissal, striking defendants' order of dismissal for failing to answer interrogatories as directed by the Court's February 22, 2002 decision and order, allowing plaintiff to serve on defendant unlimited interrogatories.

Insofar as plaintiff seeks relief against defendants for failure to serve interrogatories as required by the Court's decision and order dated February 22, 2002, plaintiff's motion is denied.

In responding to this motion the defendants have presented the Court with uncontroverted

proof that defendant in her affidavit of June 24, 1993 waived the service of the answers to the July 17, 1992 interrogatories. Furthermore, plaintiff fails to controvert defendant's contention that defendant's appeal of Justice Meehan's decision directing defendants to answer these interrogatories was withdrawn. Accordingly, the plaintiff previously waived her right to secure answers to interrogatories and defendants are therefore not required to supply answers at this juncture.

Plaintiff's motion for appointment of pro bono counsel is denied. The Court previously appointed Eric Ole Thorsen, Esq. to represent plaintiff in this action. However, plaintiff refused to accept his legal services and discharged him. Plaintiff now presents the Court with a list of demands for the qualifications her attorney must satisfy. The Court previously selected Mr. Thorsen based on his prior experience in handling matrimonial cases. This action sounds in malpractice and fraud arising out of defendant's representation of the plaintiff in a matrimonial action. (The Court notes that the fraud action Index No. 6971/91 was consolidated with this action Index No. 0478/88 by Justice Meehan's order dated March 13, 1991. Plaintiff was previously informed of the consolidation in the February 22, 2002 decision and order). Mr. Thorsen was preeminently qualified and ready to represent plaintiff on the malpractice and fraud claims which arose out of the representation defendants provided to plaintiff in the underlying matrimonial action.

The Court notes that plaintiff has no right to assigned counsel in a civil case *Matter of Smiley* 36 NY2d 433. Under CPLR 1102 the Court may, under appropriate circumstances, exercise its discretion to appoint pro bono counsel. The appointment of Mr. Thorsen was made pursuant to 1102. Based upon plaintiff's refusal to work with Mr. Thorsen, her distrust of attorneys and her history of failing to cooperate with counsel, it would be a futile effort to appoint another pro bono

counsel. Invariably, plaintiff would not cooperate with such assigned counsel, would find his/her qualifications wanting, and the Court would never be able to satisfy plaintiff that any pro bono counsel would be acceptable.

Defendants noticed an order for dismissal for settlement on April 26, 2002. The Court has held that order in abeyance pending the determination of these pending motions.

Plaintiff has failed to comply with the provisions of the February 22, 2002 decision and order which provided for dismissal if plaintiff failed to provide either tax returns or authorizations for the period "1984 to present". The 1984-1993 tax returns provided by plaintiff are only photo copies of one page thereof with plaintiff's social security number redacted. For the 94-2000 tax returns, plaintiff provided neither the tax return nor the authorizations required by the February 22, 2002 decision and order. Letters/forms from the Internal Revenue Service do not comply with the provisions of the February 22, 2002 decision and order. Regardless, plaintiff has redacted her social security number and taxpayer identification number from these letters/forms.

Furthermore, defendants' counsel rejected plaintiff's attempted compliance providing her with proposed authorizations for the required tax returns and instructions on how to fill out the authorization forms in accordance with IRS requirements (See defendants' attorney's letter to plaintiff dated March 20, 2002). Plaintiff refused to execute the required authorizations and continues, without any basis in law, to refuse to reveal her social security number.

The Court notes that the February 22, 2002 decision and order recounts in detail the long history of non compliance with the Court's prior directives to provide the requested authorizations/returns. Plaintiff's noncompliance commenced in 1991 and continues to date. The

Court has given plaintiff numerous opportunities to provide this basic information which is relevant and material to defendants' preparation of the defense of this action, but plaintiff chooses to ignore Court orders and refuses to provide the Court ordered disclosure. Plaintiff's conduct has been willful, deliberate and contumacious. Her refusal to comply has been continual since 1991, without any reasonable legal justification. *Beard v. Peconic Foam Insulation Corp.* 149 AD2d 555, 556.

Accordingly, the Court is constrained to execute defendants' order of dismissal herewith.

The remainder of plaintiff's motions and requests for relief are denied in their entirety.

The Court notes plaintiff's letter dated June 18, 2002 which requests that the Court refrain from corresponding with plaintiff or providing decisions to plaintiff who will be in therapy through September 14, 2002. The Court finds no basis for withholding decisions on the pending motions which had been fully submitted on April 26, 2002 and require no further submissions by either plaintiff or defendants. However, to avoid any prejudice to plaintiff's appellate rights, the Court will order that defendant not serve the dismissal order with notice of entry until September 14, 2002. (Pursuant to CPLR §5513 subd.(a), an appeal as of right must be taken within thirty days after service of a copy of the dismissal order with notice of entry thereof upon all parties).

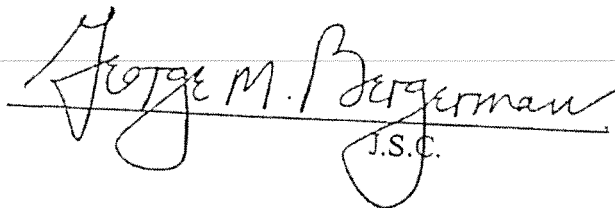
THIS DECISION CONSTITUTES THE ORDER OF THE COURT.

In rendering this decision and order, the Court considered the following papers: (1) plaintiff's two March 11, 2002 letters to the defendants' attorney, (2) plaintiff's motion dated March 14, 2002, (3) defendants' attorneys' letter dated March 18, 2002 to the Court, copied to plaintiff, regarding interrogatories, (4) defendants' attorneys' letter to plaintiff dated March 20, 2002, (5) plaintiff's motion dated March 29, 2002, (6) defendants' attorney's affirmation dated April 5, 2002, (7)



plaintiff's motion dated April 11, 2002, (8) defendants' attorney's affirmation dated April 19, 2002, (9) plaintiff's affidavit dated April 24, 2002, (10) defendants' attorney's affirmation dated April 24, 2002.

Dated: New City, New York  
June 20, 2002

  
J.S.C.

TO: Mariana Lanc  
Plaintiff Pro Se  
45245 Lynx Drive  
Fremont, CA 94539

Bernard J. Sommers, Esq.  
Drake, Sommers, Loeb,  
Tarshis & Catania, PLLC  
One Corwin Court  
Newburgh, NY 12550

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
MARIANA LANC,

Plaintiff,

-against-

MICHAEL DONNELLY and CLINE, MacVEAN,  
LEWIS & SHERWIN, P.C.,

ORDER OF DISMISSAL

Index No. 0478/88

FILED SL

Defendants.

-----X  
PRESENT: HON. GEORGE M. BERGERMAN, J.S.C.

JUN 25 2002 9-

ROCKLAND COUNTY  
CLERK'S OFFICE

WHEREAS, plaintiff, MARIANA LANC, commenced this action on or  
about December 17, 1987; and

WHEREAS, on July 10, 1991, defendants served demands for  
disclosure upon plaintiff, including a demand for income tax returns;  
and

WHEREAS, plaintiff failed or refused to provide a response to  
defendants' discovery demands, particularly the demand for income tax  
returns; and

WHEREAS, by court order dated August 4, 1995, and on several  
occasions thereafter, the Court directed the plaintiff to provide a  
response to defendants' demands;

WHEREAS, the plaintiff failed or refused to comply with the  
Court's order and directives; and

WHEREAS, by order dated February 22, 2002, a copy of which is  
annexed hereto, the Court granted a motion of defendants to dismiss  
the action herein pursuant to CPLR §3126 for willfully failing to  
provide court-ordered disclosure, unless the plaintiff forthwith  
provided duly executed authorizations for disclosure of her income tax  
returns; and

BOOK 92 PAGE 1704

11/07/02  
RECEIVED 11/07/02

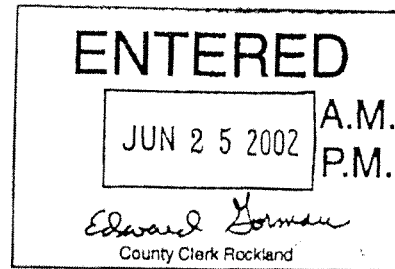
WHEREAS, as satisfactorily proved to the Court by an affidavit of default submitted by defendants' counsel, the plaintiff has failed or refused to provide duly executed authorizations for disclosure of her income tax returns;

NOW, THEREFORE, it is hereby ORDERED, that the plaintiff's complaint is dismissed in its entirety with prejudice.

Dated: ~~April 26, 2002~~  
June 20, 2002  
New City, New York

E N T E R :

*George M. Bergerman*  
HON. GEORGE M. BERGERMAN, J.S.C.



BOOK 92 PAGE 1795



NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that:

(1) The plaintiff's complaints are dismissed with prejudice; and

(2) The defendants, MICHAEL DONNELLY, 28 Bruen Place, Box 610, Goshen, New York 10924 and CLINE, MacVEAN, LEWIS & SHERWIN, P.C., 34 Grove Street, Box 310, Middletown, New York, 10940,

shall recover from the plaintiff, MARIANA LANC, costs and disbursements in the amount of \$935.00 as taxed in the annexed bill of costs.

Dated: October 24, 2002  
New City, New York

E N T E R:

*George M. Bergerman*

GEORGE M. BERGERMAN  
SUPREME COURT JUSTICE

EDWARD GORMAN  
ROCKLAND COUNTY CLERK

*Edward Gorman*

OCT 28 2002



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13 A.D.3d 593, \*; 786 N.Y.S.2d 340, \*\*;  
2004 N.Y. App. Div. LEXIS 15737, \*\*\*

Marina **Lanc**, Appellant, v. Michael **Donnelly** et al., Respondents.

2002-09495, (Index No. 478/88)

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

13 A.D.3d 593; 786 N.Y.S.2d 340; 2004 N.Y. App. Div. LEXIS 15737

October 19, 2004, Submitted  
December 27, 2004, Decided

**SUBSEQUENT HISTORY: [\*\*\*1]**

Appeal denied by, Motion dismissed by *Lanc v. Donnelly*, 4 N.Y.3d 707, 2005 N.Y. LEXIS 710, 796 N.Y.S.2d 580 (N.Y., Mar. 29, 2005)

**CORE TERMS:** consolidated action, failure to comply, contumacious, disclosure, willful

**COUNSEL:** Mariana Lanc, Fremont, Cal., appellant pro se.

Drake, Sommers, Loeb, Tarshis, Catania & Liberth, PLLC, Newburgh, N.Y. (Stephen J. Gaba of counsel), for respondents.

**JUDGES:** Prudenti, P.J., Santucci, S. Miller and Spolzino, JJ., concur.

**OPINION**

[\*593] [\*\*340] In a consolidated action, inter alia, to recover damages for legal malpractice and fraud, the plaintiff appeals from a judgment of the Supreme Court, Rockland County (Bergerman, J.), dated October 24, 2002, which, upon an order of the same court dated June 20, 2002, granting the defendants' cross motion pursuant to CPLR 3126 to dismiss the consolidated action for failure to comply with discovery, dismissed the consolidated action.

Ordered that the judgment is affirmed, with costs.

It is well established that the striking of pleadings and dismissal of an action pursuant to CPLR 3126 for failure to comply with court-ordered disclosure should be granted only where

the conduct of the resisting party is shown to be willful and contumacious (see *Rowell v Joyce*, 10 A.D.3d 601, 781 N.Y.S.2d 682 [2004]). [\*\*\*2] Under the circumstances of this case, the plaintiff's repeated failure to comply with orders directing disclosure supports an inference of willful and contumacious conduct. Thus, the Supreme Court providently exercised its discretion in dismissing the consolidated action (see *Brandes v Pirnie-Baker*, 288 A.D.2d 413, 733 N.Y.S.2d 905 [2001]; *Ranfort v Peak Tours*, 250 A.D.2d 747, 672 N.Y.S.2d 918 [1998]).

The plaintiff's remaining contentions are without merit. Prudenti, P.J., Santucci, S. Miller and Spolzino, JJ., concur.







Source: Legal > / ... / > NY State Cases, Combined

Terms: name(lanc and donnelly) (Edit Search | Suggest Terms for My Search)

View: Full

Date/Time: Tuesday, June 16, 2009 - 10:01 AM EDT

\* Signal Legend:

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  -  - Caution: Possible negative treatment
  -  - Positive treatment is indicated
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4 N.Y.3d 707; 829 N.E.2d 673;  
796 N.Y.S.2d 580; 2005 N.Y. LEXIS 710, \*

Marina **Lanc**, Appellant, v. Michael **Donnelly**, et al., Respondents.

Mo. No. 165

COURT OF APPEALS OF NEW YORK

4 N.Y.3d 707; 829 N.E.2d 673; 796 N.Y.S.2d 580; 2005 N.Y. LEXIS 710

March 29, 2005, Decided

**NOTICE:** [\*1] DECISION WITHOUT PUBLISHED OPINION

**PRIOR HISTORY:** *Lanc v. Donnelly*, 13 A.D.3d 593, 786 N.Y.S.2d 340, 2004 N.Y. App. Div. LEXIS 15737 (2d Dept 2004)

**OPINION**

Motion for leave to appeal denied. Motion for poor person relief dismissed as academic.

Source: Legal > / ... / > NY State Cases, Combined

Terms: name(lanc and donnelly) (Edit Search | Suggest Terms for My Search)

View: Full

Date/Time: Tuesday, June 16, 2009 - 10:00 AM EDT

- \* Signal Legend:
- Warning: Negative treatment is indicated
  - Questioned: Validity questioned by citing refs
  - Caution: Possible negative treatment
  - Positive treatment is indicated
  - Citing Refs. With Analysis Available
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Statistical Information.

Insured Short Name <b>BLU MACVEAN LEWIS S</b>	Subject to Audit <input type="checkbox"/> Yes <input type="checkbox"/> No
Annualization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Cycle Billing/Installment <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Code Agency	Code Agency
Code Agency	Code Agency

35062-ADD

Policy Number LPL-9277884

**Declarations**

Professional Liability Insurance Policy  
Lawyers



**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 checked below and hereinafter called the company

<input checked="" type="checkbox"/> <b>A</b> The Home Insurance Company Manchester, New Hampshire	<input type="checkbox"/> <b>F</b> City Insurance Company Short Hills, New Jersey	<input type="checkbox"/>
<input type="checkbox"/> <b>B</b> The Home Indemnity Company Manchester, New Hampshire	<input type="checkbox"/> <b>G</b> The Home Insurance Company of Indiana, Indianapolis, Indiana	

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

MACVEAN LEWIS SHERWIN ETAL  
34 GROVE STREET  
MIDDLETOWN  
NY 10940

Producer Name

BERTHOLON-ROWLAND CORP.

Item 2. Policy Period

From (Month-Day-Year) To (Month-Day-Year) 12:01 A.M. Standard Time at the address of the Named Insured as stated herein.  
03/01/87 03/01/88

Item 3. Form of Named Insured's Business

Insured is  Individual  Partnership  Corporation  
 Other

And those individuals listed in question 5a of the Application

Item 4. Limit of Liability

\$ 2,000,000 Each claim  
\$ 2,000,000 Aggregate

**IMPORTANT NOTICE**  
THIS IS A CLAIMS MADE POLICY. PLEASE READ CAREFULLY. SEE THE INSURING AGREEMENT FOR INFORMATION CONCERNING OPTIONAL PURCHASE OF EXTENDED REPORTING PERIOD FOR CLAIMS MADE AFTER THE TERMINATION DATE OF THE POLICY. PLEASE MAKE ANY INQUIRIES, REGARDING THIS COVERAGE, TO YOUR AGENT IN ADVANCE OF THE EXPIRATION DATE OF THIS POLICY.

Item 5. Deductible

\$ 25,000 Per Claim Applicable to Loss and Defense

Item 6. Premium

\$ 343.00 Amount Class 10002 No. of Lawyers 12

Item 7. Forms Attached at Issue

H35175F 9/83  
H35600F 10/83  
H35383F 6/83

By acceptance of this policy the Insured agrees that the statements in the Declarations and the Application and any attachments hereto are the Insured's agreements and representations and that this policy embodies all agreements existing between the Insured and the Company or any of its representatives relating to this insurance.

P.D.E. Folder No.	Remarks	Countersigned at NEW YORK, N.Y.	Issue Date 04/21/87
Date		Authorized Representative	Countersign Date 4/27/87

H35160F Ed. 3-83  
H35974D Ed. 7-84

HEAD OFFICE PROCESSING CENTER DAILY REPORT COPY

# Professional Liability Insurance Policy

Lawyers



<b>THE HOME INSURANCE COMPANIES</b>		
BUSINESS AUTO POLICY	GOLD KEY® HOMEOWNERS POLICY	
WORKERS' COMPENSATION POLICY	CRAFT MASTER POLICY	COM
COMMERCIAL UMBRELLA	EXCESS CASUALTY	BUILDERS' RISK
PERSONAL PROPERTY FLOATER	GOLD KEY® AUTOMOBILE POLICY	FIRE POLICY
YACHT MASTER POLICY	OIL LEASE PROPERTY	EXTRA STRENGTH™
TRUCKERS POLICY	CASUALTY SPECIALTY LINES	WC
BUSINESS OWNER'S POLICY	PROFESSIONAL LIABILITY	OCEAN MARINE P
GARAGE POLICY	GOLD KEY® BUSINESS OWNER'S POLICY	
OWNERS', LANDLORDS' AND TENANTS'	INSTALLATION FLOATER	ELEC
ELECTRONIC DATA PROCESSING POLICY	EXCESS CASUALTY	
ENVIRONMENTAL IMPAIRMENT LIABILITY	BOILER AND MACHINERY POLICY	
CONDOMINIUM PACKAGE POLICY	INLAND MARINE POLICY	
BLANKET CRIME POLICY	MARINA PACKAGE	DIFFERENCE IN CONDITIONS P
INDUSTRIAL POLICY	MANUFACTURER'S AND CONTRACTOR'S LIAB	
CUSTOM COVER® POLICY	BOAT DEALERS POLICY	MONEY & SECURITIES P
HOSPITALITY POLICY	GROUP ACCIDENT PLANS	COMPREHENSIVE
COMPREHENSIVE GLASS POLICY	BAILEES CUSTOMERS POLICY	APART
APARTMENT OWNER'S POLICY	PROTECTION AND INDEMNITY	MONEY & SECURITIE
VALUABLE PAPERS AND RECORDS	INSTITUTIONAL POLICY	
ENVIRONMENTAL IMPAIRMENT LIABILITY	GOLD KEY® BUSINESS OWNER'S PC	

The services shown above are a partial list of The Home's extensive product line. Some services shown may not be available in all states. Contact your agent or broker for further information.

H35175F Rev. 9/83

## Provisions

(A stock insurance company, hereinafter called the Company)

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

### **This is a Claims Made Policy – Please Read Carefully**

#### **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 changes among the partners or stockholders of the Named Insured during the policy period, even though it results in changes in the name or business style of the Firm, shall not affect this insurance but such change shall be reported to the Company promptly, but in no event later than the next anniversary date of the policy.

#### **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

- (a) by reason of any act, error or omission in professional services rendered or that should have been rendered by the Insured or by any person for whose acts, errors or omissions the Insured is legally responsible, and arising out of the conduct of the Insured's profession as a lawyer or notary public;
- (b) because of personal injury and arising out of the professional services of the Insured as a lawyer or notary public;
- (c) by reason of any act, error, omission or personal injury committed by any non-lawyer employee, but arising solely out of legal services rendered within the scope of such person's employment for the Named Insured;

PROVIDED ALWAYS THAT such act, error or omission or such personal injury happens:

- (aa) during the policy period, or
- (bb) prior to the policy period, provided that prior to the effective date of this policy:
  - 1) the Insured did not give notice to any prior insurer of any such act, error, omission or personal injury; and
  - 2) the Insured had no basis to believe that the Insured had breached a professional duty or committed a personal injury; 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.

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 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 and does not include fines or statutory penalties whether imposed by law or otherwise, nor the return of or restitution of legal fees, costs and expenses arising therefrom.

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.

Personal Injury, whenever used in this policy, means:

- (a) false arrest, humiliation, dentention or imprisonment, wrongful entry or eviction or other invasion of private occupancy or malicious prosecution;
- (b) the publication or utterance of a libel or a slander or other defamatory or disparaging material or a publication or an utterance in violation of an individual's right of privacy.

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:** The Company shall not settle any claim without the consent of the Insured unless otherwise agreed between the Insured and the Company. 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. 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 judgment or to defend or to continue to defend any claim after the limits of the Company's liability have been exhausted.

**III. Discovery Clause:** If, during the policy or any Optional Extension Period purchased hereunder, the

Insured first becomes aware that an Insured has committed a specific act, error, omission or personal injury in professional services for which coverage is otherwise provided hereunder, and if the Insured shall during the policy period or the Optional Extension Period purchased hereunder give written notice to the Company of:

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

then any claim that may subsequently be made against the Insured arising out of such act, error, omission or personal injury shall be deemed for the purposes of this insurance to have been made during the policy period or the Optional Extension Period purchased hereunder. The Insured shall cooperate fully with the Company as provided in 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. Option 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 this policy, then the Named Insured upon payment of an additional premium as set forth herein shall have the option to extend the insurance afforded by this policy subject otherwise to its terms, limit of liability, exclusions and conditions, to apply to CLAIMS FIRST MADE AGAINST THE INSURED DURING (a) 12 MONTHS, (b) 24 MONTHS, (c) 36 MONTHS, or (d) AT ANY TIME 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 EXTENSION PERIOD.

The premium for the Optional Extension Period elected by the Named 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.

At the commencement of any Optional Extension Period, the entire premium therefor shall be deemed earned, and in the event the Insured terminates the

Optional Extension 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 Extension 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 Extension Period shall not in any way increase the limits of liability of this policy.

**V. Option To Purchase Non-Practicing Extension Coverage:** 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 DURING (a) 12 MONTHS, (b) 24 MONTHS, (c) 36 MONTHS or (d) AT ANY TIME immediately following the expiration date of this policy as stated in the Declarations, but only by reason of any 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 loss 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 NON-PRACTICING EXTENSION COVERAGE.

The premium for the Non-Practicing Extension Coverage period initially 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 Extension Coverage period purchased by the Insured.

The limits of liability stated in the Declarations and described in LIMITS OF LIABILITY I. and II. shall not apply to the optional coverage available herein. The limits of liability stated in the following schedule shall apply to claims first made against the Insured during the Non-Practicing Extension Coverage 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 determine the limits of liability provided by the Non-Practicing Extension Coverage option if exercised.

In the event of the death or permanent total disability preventing further practice of an Insured as provided by the Insured (a), such Insured shall be entitled, at no additional premium, to an Unlimited Extended 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.

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. \$500,000 each claim/\$1,000,000 aggregate, then Column III of the following schedule applies.
4. Other than those indicated in I, II, or III, then such limits as shown in the Declarations shall also apply during the total Non-Practicing Extension Coverage period purchased and the "aggregate" limit shall be deemed the "policy aggregate" as referred to in subparagraph (b) below.

	I	II	III	Effective as of and applicable to CLAIMS FIRST MADE AGAINST THE INSURED DURING
A. Each Claim:	\$100,000	\$ 200,000	\$ 500,000	First 12 month period immediately following expiration, if a 12 month extension is purchased;
Policy Aggregate:	300,000	600,000	1,000,000	
B. Each Claim:	125,000	300,000	600,000	Second 12 month period immediately following expiration, if a 24 month extension is purchased (Also subject to A);
Policy Aggregate:	350,000	800,000	1,500,000	
C. Each Claim:	150,000	350,000	700,000	Third 12 month period immediately following expiration, if a 36 month extension is purchased (Also subject to A and B);
Policy Aggregate:	400,000	850,000	1,500,000	
D. Each Claim:	175,000	400,000	800,000	Fourth 12 month period immediately following expiration;
Policy Aggregate:	500,000	900,000	1,500,000	
Each Claim:	200,000	500,000	1,000,000	and thereafter, if the unlimited extension is purchased (Also subject to A, B and C).
Policy Aggregate:	600,000	1,000,000	1,500,000	

If the Insured exercises the Non-Practicing Extension Coverage option:

(a) The liability of the Company for each claim FIRST MADE AGAINST THE INSURED DURING THE NON-PRACTICING EXTENSION COVERAGE PERIOD purchased by the Insured shall not exceed the amount(s) stated in the applicable schedule above 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 EXTENSION COVERAGE PERIOD shall not exceed the amount(s) stated in the schedule above as "policy aggregate."

If any "aggregate" or "policy aggregate" limit of liability becomes exhausted by payment of judgments or settlements, this policy, including the Non-Practicing Extension Coverage, 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 judgments or settlements.

**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 Extension Period nor the Non-Practicing Extension Coverage 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.

## 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. However, notwithstanding the foregoing, the Company will provide a defense for any such claims without any liability on the part of the Company to pay such sums as the Insured shall become legally obligated to pay as damages;

(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, an employee of a governmental body, subdivision, 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, except that this exclusion does not apply to mental illness or emotional distress or humiliation caused by personal injury;

(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;

(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.

**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 CLAIMS I. 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, omissions or personal injuries 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.

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.

### **Territory**

The insurance afforded applies worldwide.

### **Limits of Liability**

**I. Limit of Liability—Each Claim:** The liability of the Company for each claim FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD including the Optional Extension Period, if purchased, shall not exceed the amount stated in the Declarations for each claim.

**II. Limit of Liability/Aggregate:** Subject to I. Limit 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 DURING THE POLICY PERIOD including the Optional Extension Period, if purchased.

**III. Deductible:** The deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all loss payments and claim expenses, whether or not loss payment is made for claims first made during the policy period. If the Optional Extension period is purchased, the deductible will be reinstated to the full amount shown in the Declarations and shall be applicable to all loss payments and claim expenses, whether or not loss payment is made, for all claims first made during the Optional Extension 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 total payments requested from the Named Insured in respect of such covered claims shall not exceed the deductible amount stated in the Declarations. Solely for the purpose of determining the Company's limit of liability the deductible amount shall be deemed to be applied first to the loss payment.

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. Two or more claims arising out of a single act, error, omission or personal injury or a series of related acts, errors, omissions or personal injuries shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the policy period or Optional Extension period in which the earliest claim arising out of such act, error, omission or personal injury, was first made, and all such claims shall be subject to the same limits of liability.

**V. Payment and Apportionment of Claim Expenses:** Subject to the Named Insured's obligation to pay the deductible as set forth in LIMITS OF LIABILITY III, which includes an obligation to pay loss payments and claim expenses, the Company shall pay, except as provided in the following, all claim expenses in addition to the applicable limits of liability.

However, in the event of any payment other than claim expenses in excess of the amount of the limit available under this policy, the Company's liability for claim expenses incurred with its consent shall be such proportion thereof as the amount of the payment hereunder (exclusive of claim expenses) bears to the amount paid to dispose of the claim (exclusive of claim expenses). In no event shall the Company be obligated to pay any claim or judgment or to defend or continue the defense of any claim after the aggregate limit of the Company's liability has been exhausted by payment of judgments or settlements.

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;
- (c) fees charged by any lawyer designated by the Insured with the written consent of 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.



## Claims

**I. 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.

**II. 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 after the claim 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 in respect of 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 any loss and expense payment by the Insured in excess of any deductible(s); third, to any loss and expense payments by an excess carrier on behalf of the Insured; fourth, 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.

## 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 COVERAGE I.(bb) for prior insurance, and 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 this policy.

**III. Changes:** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not effect 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 this policy be waived or changed, except by 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 hereon.

**V. Cancellations:** This policy may be cancelled by the Named Insured by surrender thereof to the Company or by mailing to the aforementioned 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 insured named 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 notice 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, personal injury, policy period-see Coverage
- (b) Claim expenses-see Payment and Apportionment of Claim Expense.

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.

*T. Bowring Woodbury II*

**T. Bowring Woodbury, II**  
Secretary

*Peter C.R. Huang*

**Peter C.R. Huang**  
President  
of THE HOME INSURANCE  
COMPANY

*Waverly G. Smith*

**Waverly G. Smith**  
President  
of the Company identified in  
the Declarations other than THE  
HOME INSURANCE COMPANY

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

This endorsement modifies the provisions of this policy.

It is agreed that:

**I. 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.

**(B)** 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 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.



## Amendment of Deductible Endorsement

H 35383 F  
Ed 6-63

The following information is required only when this endorsement is issued subsequent to preparation of policy

Named Insured	Policy Number	Endorsement Number	Effective Date

In consideration of the payment of the premium, it is understood and agreed that Item 5. of the Declarations "Deductible" is amended to "Deductible Per Policy Period."

All other terms and conditions remain unchanged

Authorized Representative



## Amendatory Endorsement—New York

Lawyers Professional Liability Insurance

H 35600 F  
Ed. 10-83

This endorsement modifies the provisions of this policy. It is agreed that:

1. The insolvency or bankruptcy of the person insured, or the insolvency of his estate, shall not release the insurer from the payment of damages due from claims covered under this policy.
2. In case a judgment against the Insured or his personal representative, resulting from a claim covered under the policy, shall remain unsatisfied at the expiration of thirty (30) days from the service of Notice of Entry of Judgment upon the attorney for the Insured, and upon the insurer, then an action may, except during a stay or limited stay of execution against the Insured on such judgment, be maintained against the insurer under the terms of this policy for the amount of such judgment in excess of the Insured's deductible but not exceeding the amount of the applicable limit of coverage under this policy.

3. Notice given by or on behalf of the Insured, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of the insurer in the state of New York, with particulars sufficient to identify the Insured, shall be deemed notice to the insurer.

4. Failure to give any notice required to be given by this policy within the time prescribed herein shall not invalidate any claim made by the Insured or by any other claimant hereunder if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible. It is understood, however, that coverage would only apply to those claims **first made during the policy period.**

5. **Other Conditions, Cancellations**, is hereby amended to delete, in the second paragraph thereof, reference to "30 days", and to insert the words "45 days", in order to provide a cancellation by the Insurer of not less than 45 days notice.