

LAW OFFICES
OF
THOMAS C. SCHULTZ

THE MCLAIN BLDG., SUITE 333
40 - 12th Street
WHEELING, WEST VIRGINIA 26003
internet: t.c.schultz@dlf.net

(304) 233-9641

FAX (304) 232-5894

May 29, 2003

By Fax only: (304) 233-4077

Larry W. Blalock, Esquire
JACKSON & KELLY
1144 Market Street
Wheeling, WV 26003

Re: Stapel v. Risk Enterprise Management, LTD., et al
Civil Action No. 5:03-CV-33

Dear Larry:

As a follow up to our recent telephone conversation, this will confirm that we have agreed that the defendants should respond to the amended complaint on July 10, 2003. You indicated you would prepare an order to that effect and circulate it for endorsement of counsel.

It is my understanding that you are still hoping the proposed settlement will go through. As I mentioned, I have serious doubts at this point of whether there was ever an intention to pay the proposed settlement. At the same time, I have no reasons to distrust you, Larry, so I have told you that we will still accept \$450,000 to resolve both suits, if a valid check is tendered before we have to begin any further litigation. If any further litigation has to be conducted, including preliminary motions of any kind, we may not be inclined to accept \$450,000.

Thank you.

Very truly yours,



THOMAS C. SCHULTZ

TCS/emd

cc: Misty Stapel
William A. Peterson, Esq. (by fax)



payment of \$450,000, Misty Stapel's counterclaim against The Home Insurance Company was to be dismissed, as well as The Home Insurance Company's complaint for declaratory relief. In addition, upon payment of said amount, Misty Stapel would have voluntarily dismissed her separate action against other persons and entities in *Stapel v. Risk Enterprise Management, Limited, et al.*, Civil Action No 5:03-CV-33. I was assured by HOME's West Virginia counsel, Daniel Cooper, Esq, that the settlement offer had been approved by the Rehabilitator for payment. After the settlement agreement was reached, the Rehabilitator petitioned for liquidation of The Home Insurance Company and I came to learn that payment would not be made as promised. I wrote to Risk Enterprise Management's West Virginia counsel and informed him that we would have to proceed with litigating the separate action if payment of the settlement was not made as promised. (See Exhibit 1 attached hereto, May 12, 2003 letter to Larry Blalock, Esq., Risk Enterprise Management's West Virginia Counsel in *Stapel v. Risk Enterprise Management, Limited, et al.*, Civil Action No 5:03-CV-33.)

6. Because the settlement money was not paid as promised, I then conferred with West Virginia defense counsel, Larry Blalock, and he has agreed that his clients, Risk Enterprise Management, Jon Reamer and Mark Lauderbaugh, will file their responses to the Amended Complaint in *Stapel v. Risk Enterprise Management, Limited, et al.*, Civil Action No 5:03-CV-33. on July 10, 2003. (See Exhibit

EXHIBIT "A"

LAW OFFICES
OF
THOMAS C. SCHULTZ

THE MCLAIN BLDG., SUITE 333
40 - 12th Street
WHEELING, WEST VIRGINIA 26003
internet: t.c.schultz@att.net

(304) 233-9641

FAX (304) 232-5894

March 10, 2003

Peter Roth, Esq.
Senior Assistant Attorney General
N.H. Department of Justice
33 Capitol Street
Concord, NH 03301

Re: The Home Insurance Company v. Misty Dawn Stapel, et al.
Civil Action No. 5:00CV99

Misty Dawn Stapel v. REM, et al.
Civil Action No. 5:03CV33 (Stamp)

Dear Mr. Roth:

Thank you for taking the time to return my call on March 7, 2003. In response to your request, I am enclosing several documents including two court orders from *Home v. Stapel, et al.*, and an amended complaint from *Stapel v. REM, et al.*, a related suit recently initiated against REM, Zurich, and others in West Virginia. These will give you a brief summary or overview of the West Virginia litigation.

I was interested by the timing of the petition and order putting HOME into liquidation, particularly when I saw that the petition was prompted by discussions with persons at REM.

There is pending in the United States District Court for the Northern District of West Virginia, since late January, 2003, a motion to compel certain files of REM and its attorneys under the crime/fraud exception to the attorney-client and work-product privileges. I filed the motion on January 28, 2003 on the grounds that a fraud is being perpetrated on my client and on the United States District Court by HOME, through REM. The conduct alleged in the motion includes acts that arguably rise to the level of criminal conduct. The Court has not yet ruled on the motion. The New Hampshire Court's order staying all cases involving HOME, coming at this particular time, raises a question in my mind as to potential conflicts of interest insofar as REM is apparently advising the Insurance Commissioner in New Hampshire.

Peter Roth, Esq
March 10, 2003
Page 2

I am wondering whether REM has candidly disclosed the apparent conflict of interests to the New Hampshire Insurance Commissioner.

There are numerous instances in which REM has not been forthright in these federal proceedings in West Virginia. As you can see from the order entered on January 24, 2003, HOME was ordered to produce a "*Barker* file." *Barker v. Nationwide* was a case in which all casualty insurers operating in West Virginia were joined in an effort to pursue an industry-wide class action for the unlawful practice of cheating infants in West Virginia by making "final" settlements without court approval. All defendant insurers other than Nationwide were dismissed by the West Virginia Supreme Court of Appeals for lack of standing on the part of Megan Barker. HOME was a defendant in *Barker* and HOME's *Barker* file is obviously relevant to this case. Based on a "privilege log" that I received from HOME's attorney on March 6, 2003, it is now revealed that the same West Virginia attorneys involved in the present litigation were advising REM back in 1997 and 1998 with respect to the fraudulent infant settlements. HOME withheld the alleged "privileged" documents from the *Barker* file squarely in disobedience of the United States Magistrate's order entered on January 24, 2003. The Court has already determined that there are no privileged documents in HOME's *Barker* file and that if there are any privileged documents, the privileges were waived.

HOME has also recently suggested to the District Court that because HOME's surplus was only \$28 Million as of June 30, 2002 and was dropping at the rate of millions per quarter that HOME would soon be out of money to pay claims. This was suggested in the context of trying to dissuade the District Court from requiring production of other claim files involving fraudulent infant settlements in West Virginia. HOME's attorneys complained to the District Court that "the Magistrate failed to consider Home's financial condition" but the argument was deceptive in view of the fact that HOME's attorneys withheld information from the Court about the \$1.6 Billion available to HOME for payment of claims under the 1995 acquisition of control by Zurich, which fund has not yet been depleted, and never disclosed to the Court that there is additional end-of-cash coverage in the amount of \$240 Million for payment of claims that has not even been tapped. I managed to obtain the Aggregate Excess of Loss Reinsurance Agreement last week, only under threat of another motion to compel. Mr. Feldvebel was kind enough to disclose to me the existence of the additional \$240 Million end-of-cash policy in my conversation with him on Friday, March 7th.

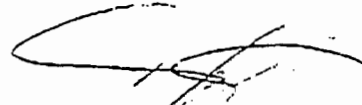
Peter Roth, Esq
March 10, 2003
Page 3

Certain agents and employees of REM appear to have committed serious improprieties in West Virginia. REM and its employees have known of these allegations against them of serious improprieties for some time (certainly since the end of January, 2003 when pleadings were filed in the District Court explicitly outlining causes of action against REM and its senior employees, Ross, Van Riper and Stevenson) and in my opinion these matters raise questions of conflict of interest with respect to REM's role in HOME's run off and, now, liquidation. I would hope REM candidly and forthrightly made full and timely disclosure of all these matters to the New Hampshire Insurance Commissioner while advising the Commissioner of any need for an order of liquidation. I have no reason to doubt at this time whether liquidation is in the public interest, but I am also aware that certain agents and employees of REM may have a separate interest of their own in having matters stayed in West Virginia.

Would you please give me the names of the individuals at REM who were involved in the discussions referred to in the Commissioner's verified petition and let me know whether REM disclosed the apparent conflict of interests to the Commissioner, and if so, whether the disclosure was made prior to the entry of the liquidation order? I hope to speak with you again once you have an opportunity to review this material.

Thank you for your attention to this matter and for your cooperation. If you need any additional information from me, please do not hesitate to contact me.

Very truly yours,



THOMAS C. SCHULTZ

TCS/emd
Enclosures

cc: Alex Feldvebel, Deputy Commissioner (w/o encl)
William E. Watson, Esq. (w/o encl)
Steven T. Taylor, Esq. (w/o encl)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
at Wheeling

MISTY DAWN STAPEL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 5:03-CV-33
)	
RISK ENTERPRISE MANAGEMENT,)	
LIMITED, a foreign business association,)	
ZURICH INSURANCE COMPANY, a foreign)	
corporation, JON REAMER and MARK)	
LAUDERBAUGH,)	
)	
Defendants.)	

AMENDED COMPLAINT

Now comes the Plaintiff, Misty Dawn Stapel, and for her causes of action against Defendants, amends prior to any responsive pleadings and states as follows:

COUNT I

INTRODUCTION

This is an action against defendants who have conspired and have implemented a scheme of gross fraud and deceit, cover-up, civil conspiracy, abuse of process, intentional infliction of emotional distress and the tort of outrage. All the torts alleged in this complaint are continuing as of the date of filing of this complaint.

PARTIES INVOLVED AND JURISDICTIONAL ALLEGATIONS

1. Risk Enterprise Management, Limited, ("REM") is a member of The Zurich Group and is an actual and/or ostensible agent of Defendant Zurich Insurance Company assigned to carry out Zurich Insurance Company's control over certain business operations of The Home Insurance

Company ("HOME"), including business operations in West Virginia. REM is liable for the acts and omissions alleged in this complaint, including but not limited to those carried out in HOME's name by REM's agents, servants and employees and by attorneys hired by REM to represent HOME. REM is located at 59 Maiden Lane, New York, New York 10028.

2. Zurich Insurance Company, ("ZURICH") is a corporation conducting business in West Virginia which now controls the business operations of HOME, an insurer that issued policies in West Virginia. The business operations controlled by ZURICH include operations in West Virginia. ZURICH is liable for all acts and omissions of its subordinate controlling entities, including REM, its agents, servants, employees and attorneys, as alleged in this complaint. Upon information and belief, ZURICH has offices or headquarters at One Chase Manhattan Plaza, New York, New York, 10005.

3. Jon Reamer ("REAMER") is a former senior claim representative of HOME and is a designated corporate representative of HOME in a civil action pending in the United States District Court for the Northern District of West Virginia entitled *The Home Insurance Company v. Misty Dawn Stapel, Harry Stapel and Marsha Stapel*, CIVIL ACTION NO. 5:00CV99, ("THE UNDERLYING LITIGATION") and is a resident of the State of Arizona.

4. Mark Lauderbaugh, ("LAUDERBAUGH") is a former casualty liability supervisor of HOME and is a resident of the State of Pennsylvania.

5. Plaintiff invokes the jurisdiction of this Court on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1332.

6. Complete diversity exists in this action and the amount in controversy exceeds the jurisdictional minimum required under the United States Code.

7. At all times material hereto REM was (and continues to be) HOME's actual and/or ostensible agent with respect to THE UNDERLYING LITIGATION.

8. At all times material hereto, REM managed (and continues to manage) the prosecution of HOME's complaint as well as HOME's counter-defense in THE UNDERLYING LITIGATION.

9. Other persons referred to in this complaint include:

(a) Kelly Stevenson ("STEVENSON"), a claims handler who was handling a claim made by Misty Dawn Stapel in the year 2000 that is the subject of Ms. Stapel's counterclaim in THE UNDERLYING LITIGATION;

(b) Myron Van Riper ("VAN RIPER"), a management employee of HOME from approximately 1981 until HOME's business affairs were taken over by REM in or about 1995 and presently a senior management employee of REM and designated corporate representative of HOME in THE UNDERLYING LITIGATION; and

(c) Joel Ross ("ROSS"), Associate General Counsel of REM and the person at REM currently managing THE UNDERLYING LITIGATION.

(d) Amy Smith, ("SMITH") an attorney employed by Steptoe & Johnson, PLLC with offices in West Virginia;

(e) Daniel Cooper, ("COOPER") an attorney employed by Steptoe & Johnson, PLLC with offices in West Virginia;

(f) Gregory Goodykoontz, ("GOODYKOONTZ") an attorney employed by Steptoe & Johnson, PLLC with offices in West Virginia;

COUNT II

HISTORICAL ALLEGATIONS

10. On or about May 1, 1986, Misty Dawn Stapel, then 10 years of age, sustained severe and permanent bodily injuries as a result of an accident that occurred while she was playing on an old merry-go-round which was owned and maintained by HOME's insured, City of New Martinsville, West Virginia. These injuries included a severely painful dislocated hip with permanent consequences, which initially required a week of hospitalization and a long period of home confinement with traction. This injury has caused counterclaimant to suffer since age ten and will continue to cause her to suffer for the remainder of her life.

11. At the time of the accident, the City of New Martinsville was insured by HOME, for the accident referred to herein, under a liability insurance policy issued by HOME in Wetzel County, West Virginia which provided liability coverage for Misty Stapel's injuries and losses in the amount of \$250,000; plus medical payments coverage in the amount of \$1,000; and, a deductible of \$5,000.

12. Shortly after May 1, 1986, HOME became aware of the accident referred to in this Complaint.

13. Shortly after May 1, 1986, it was reasonably clear to HOME, its agents, servants and employees involved in the handling of Misty Stapel's claim, that HOME's insured was liable for any and all injuries and damages sustained by Misty Dawn Stapel.

14. While handling Misty Stapel's bodily injury claim in 1986, REAMER documented in the claim file a conversation he had with his supervisor, LAUDERBAUGH. The claim file entry reads: *"in light of the nature of the injuries, I discussed with M.L and he agreed we should have this one court approved."* "M.L." in this claim file entry means "Mark Lauderbaugh."

15. At the time of settlement of Misty Stapel's insurance claim, HOME knew that the child's injuries were severe and were likely to be permanent.

16. REAMER and LAUDERBAUGH implemented HOME's policy of advancing medical bills for the purpose of "controlling" the Stapel family, to keep them from seeking out the advice of an attorney. This is a policy that, according to HOME's written procedures, is not used except in claims where liability is "clear or most probable." Additionally, HOME's policies and procedures mandate a high degree of supervision on claims where this "control" strategy is used. In furtherance of their control strategy, REAMER and LAUDERBAUGH also concealed from the child's parents that the insurance policy had medical payments coverage available to their daughter.

17. Just prior to Christmas, 1986, REAMER influenced Misty Stapel's mother to execute a release in exchange for payment of the medical bills plus a check for \$725. The check was written "*in settlement of any and all claims for Misty Stapel.*"

18. The release by its terms purported to be a final release and settlement and purported to be forever binding on the minor child.

19. The release by its terms purported to discharge, forever, HOME's insured from any liability for the minor child's injuries.

20. The release and settlement was misrepresented by REAMER to be forever binding on the child.

21. The release also included an indemnification provision so that if the child ever did learn of her rights and take action, HOME would hold it over the innocent parents' heads and threaten them with an indemnification claim.

22. REAMER and LAUDERBAUGH deliberately avoided judicial approval for the child's settlement.

23. At the time of the settlement, REAMER made material fraudulent misrepresentations to Misty Stapel's mother, including a misrepresentation that the settlement was final, and a misrepresentation that the amount offered was all the insurer would ever pay, thereby inducing Misty Stapel's mother to execute said release. REAMER's and LAUDERBAUGH's control strategy having succeeded, the child's mother, not knowing any better, trusted REAMER not to lie to her and settled in reasonable reliance on REAMER's misrepresentations, to the detriment of her daughter, Misry Stapel.

24. REAMER, at all times material hereto, knew that in 1986 and 1987 he was handling an insurance claim for bodily injuries and damages sustained by Misty Stapel, who was a minor child at the time.

25. LAUDERBAUGH, in 1986 and 1987, supervised REAMER in the handling of an insurance claim for bodily injuries and damages sustained by Misty Stapel, knowing that the claimant was a minor child at the time.

26. LAUDERBAUGH, at all times material hereto knew that in 1986 and 1987, he was supervising REAMER in the handling of an insurance claim for bodily injuries and damages sustained by Misty Stapel, who was a minor child at the time.

27. In or about 1995, ZURICH assumed control of the entire business operations of HOME and arranged for REM to exercise management over certain business operations. HOME's business operations include but are not limited to all matters pertaining to any liability of HOME in West Virginia, any liability of HOME as a result of any and all infant settlements HOME had

engineered in West Virginia and HOME's liability to Misty Stapel arising out of conduct committed in the continuing scheme to defraud her as alleged in this Complaint.

28. In furtherance of HOME's scheme to dispose of Misty Stapel's injury claim forever, neither REAMER nor LAUDERBAUGH nor REM nor ZURICH ever notified Misty Stapel that her settlement was voidable nor did they ever inform her of any impending statute of limitations.

29. In or about September, 1999, Misty Stapel's father saw an advertisement in the newspaper notifying West Virginians of an unlawful scheme implemented by insurers intended to deprive infants of compensation for their injuries using fraudulent tactics similar to the manner in which Misty Stapel's claim was handled.

30. Misty Stapel, upon learning of this, retained counsel and her counsel contacted REM, the entity that was representing itself to be HOME's claim-handling agent, and initiated an inquiry and made a claim for damages flowing from HOME's conduct in procuring the fraudulent settlement in 1986.

31. REM hired the law firm of Steptoe & Johnson, PLLC with offices in West Virginia ("STEPTOE") to provide representation and to render legal advice. REM's employees collaborated with SMITH and other at STEPTOE prior to filing suit, plotting strategy and defenses against Misty Stapel's fraud claim.

32. On May 3, 2000, STEVENSON admitted in correspondence to Misty Stapel's attorney as follows: "...there was indeed a payment made to compensate your client above and beyond payment of the medical bills. This payment was made directly to the parents, Harry and Marsha Stapel, on 12/17/86, in the amount of \$725.00." (Emphasis in original.) The letter also represented that REM's "principal" was "The Home Insurance Company."

33. On or about June 26, 2000, REM, in HOME's name, sued Misty Dawn Stapel, initiating THE UNDERLYING LITIGATION, alleging that the release HOME had procured in or about December, 1986, was "valid but voidable at the option of Misty Stapel while she was an infant" and contending that the release was fully binding on Misty Stapel because she had never voided it.

34. The plaintiff in THE UNDERLYING ACTION was designated as "The Home Insurance Company." The suit was filed by HOME's agent REM, on behalf of REM's principal, HOME.

35. REM, as HOME's agent, managed, and continues to manage, the prosecution of HOME's claims against Misty Stapel and her parents in THE UNDERLYING ACTION and managed, and continues to manage, the defense of Misty Dawn Stapel's counterclaims against HOME. REM also managed HOME's defense to counterclaims of Misty Stapel's parents. REM's agents, employees and attorneys involved in THE UNDERLYING LITIGATION, including but not limited to VAN RIPER, ROSS, STEVENSON and the attorneys of STEPTOE handling the case, including COOPER, SMITH and GOODYKOONTZ, at all times knew that HOME, REAMER AND LAUDERBAUGH had handled a bodily injury claim of Misty Stapel in 1986.

36. The litigation was and continues to be managed by REM. All decisions made in HOME's name in THE UNDERLYING ACTION were made by REM and/or its attorneys and/or by ZURICH.

37. In a letter dated June 27, 2000, STEVENSON stated that HOME was discussing "re-opening and re-evaluating" Misty Stapel's injury claim and asked for additional information so that it could "re-evaluate" Misty Stapel's injury claim.

38. After REM filed suit in the Federal District Court on behalf of HOME against Misty Stapel and her parents, Misty Stapel filed a counterclaim to which REM responded on HOME's behalf by filing, in HOME's name, a motion to dismiss Misty Stapel's counterclaim.

39. On July 31, 2000, a memorandum was filed in the United States District Court on behalf of HOME in an effort to support HOME's motion to dismiss, asserting that Misty Dawn Stapel's claims had already been settled and contending that all of her claims were therefore barred by the doctrine of accord and satisfaction.

40. On August 23, 2000, a Reply Memorandum was filed on behalf of HOME in a further effort to influence the United States District Court to dismiss Misty Stapel's counterclaim. The Reply Memorandum again asserted the position that HOME had settled Misty Stapel's injury claims in 1986, as follows:

(a) At page 1 HOME argued: "...the doctrine of accord and satisfaction also bars her counterclaim."

(b) At page 8 HOME stated: "Because Ms. Stapel did not avail herself of the right to renegotiate her settlement or pursue an action against the tortfeasor, her counterclaim is also barred by the doctrine of accord and satisfaction." (Emphasis added.)

(c) At page 9 HOME stated: "Because Ms. Stapel's parents accepted the settlement amount on her behalf, she is bound by the doctrine of accord and satisfaction and can bring no further claim against HOME." (Emphasis added.)

41. On October 6, 2000, the attorneys hired by REM filed HOME's initial disclosures in The United States District Court on behalf of HOME again stating that the release it procured was valid and binding on all defendants, which would include Misty Stapel.

42. On October 10, 2000, a Reply in Support of Motion to Bifurcate and Stay Counterclaims was filed on HOME's behalf. In footnote 1, at page 5, REM/HOME's attorneys told the United States District Court that HOME *"...had discovered that there was indeed a payment made to compensate his [Mr. Schultz's] client [Misty Dawn Stapel] above and beyond the medical bills"* and further told the Court that just prior to litigation HOME had stated a willingness to *"reopen and reevaluate Ms. Stapel's personal injury claim."*

43. After the Court denied HOME's motion to dismiss, the Court conducted an initial scheduling conference and authorized preliminary discovery on the issue of whether HOME was guilty of fraudulent concealment.

44. On April 10, 2001, Misty Stapel's counsel served a discovery request which included a request that HOME produce its claim file *"...in connection with the injury claim of Misty Dawn Stapel..."*

45. In response to Misty Stapel's request for production referred to in the immediately preceding paragraph, REM, on behalf of HOME, produced Misty Stapel's claim file.

46. REAMER and ROSS were the persons who contributed information and assisted the attorneys in preparing the discovery answers and responses. The discovery answers and responses prepared by REAMER and ROSS in collaboration with the attorneys of STEPTOE speak of a *"settlement with Misty Dawn Stapel"* and speak repeatedly of *"handling the claim of Misty Dawn Stapel."*

47. Ms. Stapel's claim file contained numerous entries where HOME's claim handlers, in 1986 and 1987, had consistently and repeatedly identified Misty Stapel as the claimant, including the following entries:

(a) Misty Stapel is identified as the claimant ("clt" and "clmt") 13 times in REAMER's four pages of handwritten File Documentation Notes including four times in his initial entry dated May 19, 1986 [*"clmt's mother," "Clmt is her daughter," "Clmt fell into the center of the m. g. round..."*]; once in his entry dated May 28, 1986: [*"indexed clmt."*]; once in his entry dated July 2, 1986: [*"Clmt is still having some treatment."*] In this entry, he also documents his conversation with his supervisor in which the supervisor agreed with respect to Misty Stapel's injury claim that *"in light of the nature of the injuries, I discussed with M.L and he agreed we should have this one court approved."* He identified Misty Stapel as the claimant at least once in his entry dated July 10, 1986: [*"Dictated letter to clmt's mother;"*] twice in his entry dated August 20, 1986: [*"Attempted to contact clmt's mother to determine status of clmt..."*] once in his entry dated September 29, 1986: [*"Sent call letter to clmt's mother."*] once in his entry dated October 21, 1986: [*"Sent call letter to clmt's mother."*] once in his entry dated December 10, 1986: [*"Clmt's mother..."*] He identified Misty Stapel as the claimant once in his entry dated March 25, 1987, when he was trying to contact her mother again after his actions in failing to obtain court approval were called into question by the insured: [*"Sent call letter to clmt's mother."*]

(b) HOME's Claim Notice dated 5/19/86 identifies Misty Stapel three times as the claimant. The "Description of Occurrence" contained in the notice is *"Clmt fell on merry go round."* The notice sets initial reserves for *Claimant Staple* [sic] *Mistry* in the amount of \$6,500 under the bodily injury suffix. The notice sets an initial reserve of \$1,000 under the medical payments suffix for *"Claimant Staple* [sic] *Mistry."*

(c) The supervisor, LAUDERBAUGH, asked REAMER in a "General Requests" form dated May 19, 1986 to "*Obtain...M/A* [medical authorization] *on clt.*" On this particular form, the "Claimant" box (item 2(c)) is changed by a handwritten correction by LAUDERBAUGH, making it "*Claimant's parent or guardian.*" (Emphasis added.)

(d) REAMER specified "*Claimant's (last name, first, middle) Staple* [sic] *Misty*" when he sent information to the Index Bureau.

(e) In HOME's Index Bureau Summary Sheet, REAMER specified "*Claimant's Last Name: Staple* [sic], *First: Misty*" The "Claimant's" age is listed as "10."

(f) HOME's Claim Notice states "*Clmt fell on merry go round*" under the heading "Description of Occurrence."

(g) Twice in the Field Claim Representative's First Report, HOME indicates "*Clmt (child)*" and "*CLAIMANTS: Staple* [sic] *Misty.*"

(h) In his letter to the mother dated 5/28/86 asking her to call to discuss the claim REAMER identified the claimant as: "*Clmt: Misty Staple.*" [sic]

(i) In another letter dated 5/28/86 enclosing a medical consent form and a claimant's statement form, REAMER indicated: "*Claimant: Misty Staple.*" [sic]

(j) The Statement of Claimant indicates at the bottom that the consent form is utilized for "*Injury Claims Only.*"

(k) In REAMER's letter to Ohio Valley Medical Center dated July 8, 1986, he represents to Misty Stapel's health care providers: "*Claimant: Misty Staple* [sic]. He further states in the body of the letter, "We understand that *the above claimant* was treated at your hospital for injuries received in an accident on 5-1-86."

(l) In his letter to Misty Stapel's mother implementing HOME's Advancing Payments program for control purposes, REAMER identifies the "*Clmt*" as "*Misty Stapel*."

(m) In a Paid Loss Experience form dated 7/31/86, "*Staple [sic] Misty*" is the person identified as the "*CLAIMANT*" and the handwritten note states "*Clmt hit by merry-go-round*." The handwritten entry also has the claimant's age, "*10*" circled in the sentence.

(n) In the Casualty Liability Supervisor's Review dated 12/22/86, authored by LAUDERBAUGH after the settlement was concluded, "*CLAIMANT NAME*" is listed as "*Staple, [sic] Misty*." The claimant's injury is listed as "*dislocated hip (10 yr. old minor child*" and it reports "*Clt fell into center of park's merry-go-round...old style wooden merry-go-round - possible design defect*." The report states "*claim settled for \$5,038.61...follow reimbursement of 3rd party deductible*." On page 2 of the same report, "*CLAIMANT NAME*" is again listed as "*Staple [sic] Misty*" and again the supervisor writes "*dislocated hip (10 yr. old minor child)*" and the report indicates "*closed w/ final pay 12/17/86*."

(o) HOME's Claim Payment Requisition for the \$725.00 settlement check specifies "*In Payment Of Any & All Claims for Misty Stapel*."

(p) HOME's check for \$725.00 paid to the parents specifies "*In Payment Of Any & All Claims for Misty Stapel*"

(q) REAMER's letter to the City of New Martinsville dated January 7, 1987, seeking reimbursement of the deductible states in the caption "*Clmt: Misty Stapel*" and says "we have now been able to *finalize the above captioned claim*." The letter continues: "As you may recall, this claim was promulgated when *the claimant, Misty Stapel*, fell from a merry-go-round..."

(r) The release purports to dispose of Misty Stapel's injury claim "forever." It specifically releases "any and all actions, claims and demands...of whatever nature which... said minor may now have, or may hereafter have on account of injuries to the person or property of said minor..." and the signatories [the parents] are directed to sign on their own behalf and also on behalf of the minor.

(s) After the settlement was concluded, in a letter to the City Attorney, Michael Francis, in which REAMER was answering the City's question as to why he did not get court approval, the heading now indicates, *"Claimant: Misty Stapel, An Infant."*

(t) Also after the settlement, in a handwritten "Speed Letter" dated 11/3/87, REAMER asked Bruce Shane of Crawford & Company to "please contact the *clmt's parents...*" The "Subject" of the Speed Letter is stated as *"Misty Stapel v. City of New Martinsville."*

(u) In the first and final report from Crawford & Company back to REAMER, dated November 16, 1987, Crawford's adjuster-in-charge, Bruce Shane designates the *"Claimant"* as *"Misty Stapel."*

(v) The documentation reflecting payment to Crawford & Company for its services notes specifies *"City of New Martinsville vs Misty Stapel."*

(w) On December 18, 1987, after failing to get a second identical release executed complete with dates and witnesses, REAMER wrote to Mike Francis, the City's attorney, and explained his actions in failing to seek judicial approval of Misty Stapel's injury claim, stating:

"We have found that in cases where some delicacy is required, the obtaining of court approval is often impossible or doubtful."

In the same letter dated December 18, 1987 REAMER specifically identified the claimant as "Claimant: Misty Stapel, An Infant."

(x) In a "PROFESSIONAL CLAIMS INQUIRY" detailing all payments made under the bodily injury provisions of the insurance policy on the Misty Stapel's claim, the "CLAIMANT" is identified as "*Staple [sic] Misty.*"

(y) In a "PROFESSIONAL CLAIMS INQUIRY" detailing all payments made under the medical payments provisions of the insurance policy on the Misty Stapel's claim, the "CLAIMANT" is identified as "*Staple [sic] Misty.*"

(z) On three (3) "Paid Loss Experience" forms, the first dated 07/31/86, the second dated 12/31/86 and the third also dated 12/31/86, the "CLAIMANT" is identified in each instance as "*Staple [sic] Misty.*"

48. In addition to the numerous claim file entries identifying Misty Stapel as the claimant, REAMER had obtained a written "CONSENT" from Misty Stapel's mother in 1986 for the purpose of obtaining the child's medical records during HOME's handling of the child's injury claim and REAMER utilized the written consent to obtain the child's medical records and to obtain a report from the child's treating physician detailing the child's injuries, the child's prognosis, the extent of the child's disability, and so on. The "CONSENT" form was used by HOME for "INJURY CLAIMS ONLY," as noted on the Statement of Claimant communicated to Misty Stapel's mother before the CONSENT was signed.

49. On April 12, 2001, Home's attorneys filed an answer to Misty Dawn Stapel's counterclaim. At page 9, HOME raised the affirmative defense of "ACCORD AND SATISFACTION" and stated: "*The counterclaim is barred by the doctrine of accord and satisfaction.*"

50. On page 10 of HOME's answer to Misty Stapel's counterclaim, a request was made that the Court declare the Release to be valid and binding on all defendants, which would include Misty Stapel.

51. On June 19, 2001, counsel for Misty Dawn Stapel served a notice to depose REAMER in THE UNDERLYING LITIGATION and to depose designated corporate representatives of HOME pursuant to the Federal Rules of Civil Procedure.

52. On June 28, 2001, REM acted through its hired attorneys of record in THE UNDERLYING LITIGATION and formally designated REAMER as HOME's corporate representative to provide sworn testimony at the depositions requested by Misty Stapel's counsel. REAMER was designated "...as the corporate representative for purposes of testifying about the handling of Misty Dawn Stapel's claim as well as HOME's procedures for handling of minor's claims in West Virginia through the end of any contact between the Stapels and Jon Reamer or Crawford and Company."

53. REAMER was no longer an employee of HOME at the time of his corporate designation.

54. REAMER's deposition was scheduled for Friday, July 13, 2001.

55. Prior to his deposition REM's Associate General Counsel, ROSS, contacted REAMER and conferred with him. REAMER was also furnished in advance of his deposition with certain materials including a copy of the claim file he had created in 1986 and 1987 as well as various written policies and procedures governing settlement of infant claims that were in effect at HOME at the time of his handling of Misty Dawn Stapel's claim.

56. On July 12, 2001, the day before his deposition, attorneys COOPER and GOODYKOONTZ met with REAMER, in Scottsdale, Arizona, to further prepare him for his deposition.

57. On Friday, July 13, 2001, Misty Dawn Stapel's attorney examined REAMER under oath in Phoenix, Arizona.

58. At the deposition, REAMER, speaking as the corporate voice of HOME, falsely swore under oath that Misty Dawn Stapel was never a "claimant" in 1986 and 1987, that only her parents were "claimants" and that a bodily injury claim was never made on behalf of Misty Dawn Stapel. REAMER also testified that HOME never evaluated any injury claim of Misty Stapel and he testified falsely that the many times he referred to Misty Stapel in the claim file as the "claimant" was merely a "confusion of nomenclature."

59. REAMER's testimony on July 13, 2001 and in planning and preparation thereof, was engineered by REM, and/or its attorneys and REAMER as part and parcel of a continuing scheme calculated to defraud Misty Dawn Stapel and to defeat her legitimate counterclaim by lies and deceit.

60. REAMER's testimony on July 13, 2001 and in planning and preparation thereof, was part and parcel of a continuing scheme by REM and/or its attorneys and REAMER to defraud the United States District Court

61. REAMER, COOPER and GOODYKOONTZ knew full well that REAMER was not being truthful at his deposition on July 13, 2000.

62. On July 17, 2001, Misty Stapel, by counsel, filed a notice to take the deposition of LAUDERBAUGH, HOME's former casualty liability supervisor, the person who had supervised REAMER in his handling of Misty Stapel's injury claim. LAUDERBAUGH's deposition was scheduled for August 16, 2001.

63. In August, 2001, before the date scheduled for LAUDERBAUGH's deposition, attorney COOPER met with LAUDERBAUGH to prepare him for his deposition. LAUDERBAUGH was also supplied with various materials in advance of his deposition, including a transcript of REAMER's deposition testimony taken on July 13, 2001.

64. On August 16, 2001, Misty Stapel's counsel deposed LAUDERBAUGH, in Pittsburgh, Pennsylvania.

65. In his deposition, LAUDERBAUGH testified to the same lies that REAMER told in his deposition on July 13, 2001. LAUDERBAUGH asserted the attorney-client privilege at his deposition and testified that COOPER was his attorney.

66. LAUDERBAUGH's testimony on August 16, 2001 and in planning and preparation thereof, was engineered by REM, REAMER, LAUDERBAUGH and/or REM's attorneys as part and parcel of a continuing scheme to defraud Misty Stapel and to defeat her legitimate counterclaim by lies and deceit.

67. REM has perpetuated the false sworn testimony of REAMER and LAUDERBAUGH in a deliberate effort to cover up HOME's wrongdoing in 1986 and 1987 when HOME, REAMER and LAUDERBAUGH, defrauded a child and her parents.

68. REM, REAMER, LAUDERBAUGH and/or REM's attorneys combined to perpetuate the false sworn testimony of REAMER and LAUDERBAUGH in a deliberate effort to cover up HOME's wrongdoing in 1986 and 1987 when REAMER and LAUDERBAUGH skillfully, deliberately and maliciously defrauded a child and her parents.

69. By perpetuating the false testimony of HOME's designated corporate representative and former employees, REM, by and through its various agents and co-conspirators, has conceived,

perpetuated and ratified falsehoods intended to cover up HOME's wrongdoing in 1986 and 1987 when HOME defrauded a child and her parents.

70. Knowingly and maliciously relying on false testimony of HOME's former employees, REM has continued throughout THE UNDERLYING LITIGATION to perpetuate lies in the record of THE UNDERLYING LITIGATION in an effort to thwart Misty Dawn Stapel's legitimate counterclaim and to defraud the United States District Court by filing additional mendacious pleadings and memoranda including but not limited to the following:

- (a) HOME's motion for summary judgment and its memoranda in support thereof;
- (b) HOME's memoranda in opposition to Misty Dawn Stapel's motion for summary judgment;
- (c) HOME's motion to alter or amend the Court's judgment and its memoranda in support thereof;
- (d) HOME's motion to stay proceedings pending its motion to alter or amend the judgment and all memoranda and affidavits filed in support thereof; and
- (e) HOME's responses and arguments in opposition to Misty Dawn Stapel's motion to preserve evidence;
- (f) HOME's memoranda in opposition to Misty Dawn Stapel's First Motion to Compel.
- (g) HOME's memoranda in opposition to Misty Dawn Stapel's Second Motion to Compel.

71. After the United States District Court Denied HOME's motion for summary judgment, finding that Misty Stapel had made a strong showing of fraudulent concealment, the parties entered the next phase of litigation and REM's employees, VAN RIPER and STEVENSON were deposed on December 19, 2002 by Misty Stapel's counsel. VAN RIPER was the person REM chose to designate as HOME's corporate representative to testify on various areas requested by Misty Stapel's counsel.

72. Prior to their depositions, VAN RIPER and STEVENSON were given copies of REAMER's and LAUDERBAUGH's deposition transcripts to review.

73. Prior to the depositions of VAN RIPER and Stevenson, ROSS met with VAN RIPER and STEVENSON in preparation of their testimony.

74. On December 18, 2002, the day before VAN RIPER's and STEVENSON's depositions, COOPER met with VAN RIPER and STEVENSON to further prepare them for their depositions.

75. On December 19, 2002 Misty Stapel's attorney examined VAN RIPER and STEVENSON under oath.

76. On December 19, 2002, STEVENSON, who had previously admitted in correspondence that a payment "was indeed" made to compensate Misty Stapel, swore falsely in compliance with what had become a fully scripted counter-defense to Ms. Stapel's federal counterclaim. When asked questions about what she had discussed with the attorneys, COOPER objected on grounds of the attorney-client privilege and STEVENSON testified that COOPER is her attorney.

77. On December 19, 2002 VAN RIPER swore falsely in compliance with what had become a fully scripted counter-defense to Ms. Stapel's federal counterclaim. While admitting he had never even read the claim file, VAN RIPER swore, in an effort to corroborate REAMER's and LAUDERBAUGH's story, that the release settlement was only for the parents' claims.

78. The testimony of REM's employees VAN RIPER and STEVENSON on December 19, 2002 was engineered by REM and/or its attorneys and the testimony as well as the planning and preparation thereof were part and parcel of a continuing scheme by REM, REAMER, LAUDERBAUGH and/or REM's attorneys to defraud Misty Dawn Stapel and to defeat Misty Stapel's legitimate federal counterclaim by lies and deceit.

79. The actions of STEVENSON, VAN RIPER AND REM on December 19, 2002 and in the planning and preparation thereof were part and parcel of a continuing scheme by REM and other co-conspirators to defraud the United States District Court.

80. On January 14, 2003, Misty Stapel's counsel traveled to New York to the corporate offices of REM to depose ROSS and Ronald Barta.

81. Prior to ROSS's deposition, ROSS read REAMER's and LAUDERBAUGH's deposition transcripts. ROSS also met with COOPER prior to his deposition.

82. ROSS testified falsely in accordance with what had become a fully scripted defense, in furtherance of the conspiracy to cover up the fraudulent conduct of HOME, REAMER and LAUDERBAUGH in 1986 and 1987.

83. REM's agents and employees involved in THE UNDERLYING LITIGATION, including but not limited to VAN RIPER, ROSS and STEVENSON, and REM's attorneys, at all

times material hereto knew that REAMER and LAUDERBAUGH had handled a bodily injury claim of Mistry Stapel in 1986, yet the defendants and their attorneys have defiantly schemed to bury the truth, and continue to do so.

COUNT III

CIVIL CONSPIRACY

84. All allegations of the foregoing Counts of this Complaint are incorporated herein by reference.

85. The acts and omissions of the defendants complained of in this Complaint constitute a civil conspiracy, which tort is continuing in nature.

COUNT IV

FRAUD

86. All allegations of the foregoing Counts of this Complaint are incorporated herein by reference.

87. The acts and omissions of the defendants complained of in this Complaint constitute fraud, which tort is continuing in nature.

COUNT V

OUTRAGE AND/OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

88. All allegations of the foregoing Counts of this Complaint are incorporated herein by reference.

89. The acts and omissions of the defendants complained of in this Complaint constitute the tort of outrage and/or intentional infliction of emotional distress, which torts are continuing in nature.

COUNT VI

ABUSE OF PROCESS

90. All allegations of the foregoing Counts of this Complaint are incorporated herein by reference.

91. The acts and omissions of REM complained of in this Complaint constitute the tort of abuse of process, which tort is continuing in nature.

COUNT V II

DAMAGES

92. All allegations of the foregoing Counts of this Complaint are incorporated herein by reference.

93. As a direct and proximate result of the acts and omissions of the defendants, as alleged herein, plaintiff has suffered and continues to suffer emotional distress, annoyance, aggravation and inconvenience as well as delay of justice and was required to incur substantial legal expenses which would not have been required had defendants truthfully admitted HOME's prior misconduct instead of obstructing justice and Misty Dawn Stapel will have to incur substantial litigation expenses in the instant litigation which likewise would not have been required had defendants truthfully admitted HOME's prior misconduct instead of obstructing justice. The damages are continuing in nature because the defendants' wrongful conduct is still continuing as of the date of filing this complaint.

94. The acts and omissions of REM, its agents, servants, employees and attorneys, as alleged herein, were deliberate, intentional, willful, wanton, reckless and were accomplished with criminal indifference to civil obligations owed to Misty Stapel and others, and were accomplished

with actual malice and constitute punishable continuing conduct in that REM, its agents, employees and attorneys were and are fully aware that their prior and continuing actions were and are calculated to cause harm to Misty Dawn Stapel and are a continuing attempt to perpetrate a deceitful scheme to conceal and cover up HOME's, REAMER's and LAUDERBAUGH's past actions and the harm caused by them.

95. The acts and omissions of REAMER, as alleged herein, were deliberate, intentional, willful, wanton, reckless and were accomplished with criminal indifference to civil obligations owed to Misty Stapel and others, and were accomplished with actual malice and constitute punishable continuing conduct in that REAMER was and is fully aware that his prior and continuing actions were and are calculated to cause harm to Misty Stapel and are a continuing attempt to perpetrate a deceitful scheme to conceal and cover up HOME's, REAMER's and LAUDERBAUGH's past actions and the harm caused by them.

96. The acts and omissions of LAUDERBAUGH, as alleged herein, were deliberate, intentional, willful, wanton, reckless and were accomplished with criminal indifference to civil obligations owed to Misty Dawn Stapel and others, and were accomplished with actual malice and constitute punishable continuing conduct in that LAUDERBAUGH was and is fully aware that his prior and continuing actions were and are calculated to cause harm to Misty Dawn Stapel and are a continuing attempt to perpetrate a deceitful scheme to conceal and cover up HOME's, REAMER's and LAUDERBAUGH's past actions and the harm caused by them.

97. The acts and omissions of ZURICH were negligent and/or reckless and continue to be so. Additionally, ZURICH is vicariously liable for all the acts and omissions of REM, its agents, servants, employees and attorneys.

98. As the entity in control of HOME's business operations, ZURICH is liable for all acts alleged in this Complaint that were accomplished in HOME's name and is liable for negligent failure to correct the actions of its subordinate controlling entities in conducting the business operations of HOME.

99. To the extent ZURICH has ratified and/or knowingly assisted the conduct of REM, its agents, servants, employees and attorneys, to carry out the unlawful activities alleged in this Complaint, ZURICH is guilty of intentional, willful, wanton, reckless conduct committed with criminal indifference to civil obligations owed to Misty Dawn Stapel and others, constituting punishable continuing conduct.

AD DAMNUM

Wherefore, Misty Stapel, demands the following relief:

(1) All compensatory damages to which she is entitled for all causes of action alleged in this Complaint against the defendants including damages for emotional distress, annoyance aggravation and inconvenience as well as payment for legal expenses and attorney's fees;

(2) Punitive damages against REAMER in an amount adequate to satisfy all reasons of law and public policy for which punitive damages may be awarded in West Virginia;

(3) Punitive damages against LAUDERBAUGH in an amount adequate to satisfy all reasons of law and public policy for which punitive damages may be awarded in West Virginia;

(4) Punitive damages against REM in an amount adequate to satisfy all reasons of law and public policy for which punitive damages may be awarded in West Virginia;

(5) Punitive damages against ZURICH in an amount adequate to satisfy all reasons of law and public policy for which punitive damages may be awarded in West Virginia and,

(6) Attorney's fees, costs and expenses of litigation, pre-judgment and post-judgment interest, and for such other relief as the Court deems just.

A jury trial is demanded on all the issues.



COUNSEL FOR PLAINTIFF, Misty Dawn Stapel

Thomas C. Schultz
WV State Bar ID #3303
McLain Building, Ste.333
40 - 12th Street
Wheeling, WV 26003
(304) 233-9641