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IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
205TH JUDICIAL DISTRICT

JAMES F. SCHERR,)
)
Plaintiff,)
)
v.) Cause No. 98-377
)
THE HOME INSURANCE COMPANY,)
)
Defendant.)

COPY

EXHIBITS 1 - 33 TO THE
ORAL AND VIDEOTAPED DEPOSITION OF
DONALD M. HUDGINS
OCTOBER 22, 2002

HOUSTON, TEXAS

MICHELE W. KUHLMANN, CSR

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
205TH JUDICIAL DISTRICT

JAMES F. SCHERR,)

Plaintiff,)

v.)

Cause No. 98-377

THE HOME INSURANCE COMPANY,)

Defendant.)

**AMENDED NOTICE OF INTENTION TO TAKE ORAL
AND VIDEOTAPED DEPOSITION OF A NON-PARTY**

TO: DONALD M. HUDGINS, Hudgins, Hudgins & Warrick, 24 Greenway Plaza, Suite 1707,
Houston, Texas 77046.

Pursuant to Rule 205 of the Texas Rules of Civil Procedure, Defendant **HOME
INSURANCE COMPANY** herein gives notice that it will take the oral and videotaped deposition
of **DONALD M. HUDGINS**.

DEPONENT: Donald M. Hudgins

**TIME, DATE
AND PLACE OF
DEPOSITION:**

Tuesday, October 22, 2002 at 10:00 a.m. at the offices of Hudgins, Hudgins
& Warrick, 24 Greenway Plaza, Suite 1707, Houston, Texas 77046. (713)
623-2550. The deposition will continue day to day until finished or until the
time allowed by the Texas Rules of Civil Procedure expires.

OFFICIAL COURT

REPORTER: Independent Reporting & Record Service, 13105 Northwest Freeway,
Houston, Texas (281) 469-5580.

SUBPOENA: Yes

INTERPRETER: None

VIDEOTAPED: Yes

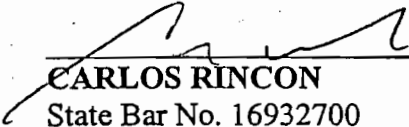
EXHIBIT NO. 1

M. KUHLMANN

Respectfully submitted,

DELGADO, ACOSTA, BRADEN & JONES, P.C.
221 North Kansas, Suite 2000
El Paso, Texas 79901
(915) 544-9997 (Telephone)
(915) 544-8544 (Telecopier)


By:



CARLOS RINCON
State Bar No. 16932700
RENE ORDOÑEZ
State Bar No. 15300220
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was sent to Jim Darnell, Jim Darnell, P.C., 310 N. Mesa, Suite 212, El Paso, Texas 79901 on this the 13th day of August, 2002.



CARLOS RINCON

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
205TH JUDICIAL DISTRICT

FILED
EDIE RUEALCABA
DISTRICT CLERK

2002 JUL 17 PM 4:15

EL PASO COUNTY, TEXAS

BY _____
DEPUTY CLERK

JAMES F. SCHERR,)
)
Plaintiff,)
)
v.)
)
THE HOME INSURANCE COMPANY,)
)
Defendant.)

Cause No. 98-377

AGREED PROTECTIVE ORDER

On this day came on to be considered Defendant's Motion for Agreed Protective Order. The subject of the Motion and this Order is a Notice of Deposition issued to DONALD M. HUDGINS, former counsel for the Plaintiff in the case entitled "Ben Beard, David Bailey and Dan Petrosky v. James F. Scherr, Noel Gage, and Gage, Beach & Ager and James F. Scherr v. Ben Beard, David Bailey and Dan Petrosky and James F. Scherr v. Marjorie Georges and Jones & Georges, P.C. Noel A. Gage Dr. Richard Gillespie, et al."; Cause No. 94-03110, in the District Court of Harris County, Texas 129th Judicial District ("Underlying Litigation").

At the conclusion of the Underlying Litigation, a settlement agreement was entered into by the litigants which contained a non-disclosure and confidentiality clause. Said clause prohibited the parties from discussing or disseminating any information related to the Underlying Litigation. The responsibility to cooperate with the discovery process and be deposed in conformance with the above-mentioned Notice of Deposition may be in direct conflict with the confidentiality agreement in the Underlying Litigation, and may be inconsistent with any possible assertion of attorney-client privileged by the Plaintiff.

Accordingly, this Court orders a temporary and limited stay of the confidentiality agreement and authorizes the disclosure of communications which may fall in the realm of attorney-client

EXHIBIT NO. 2
M. KUHLMANN

privilege in connection with the Underlying Litigation for the limited purpose of taking of the deposition of **DONALD M. HUDGINS**. The Court therefore finds and orders as follows:

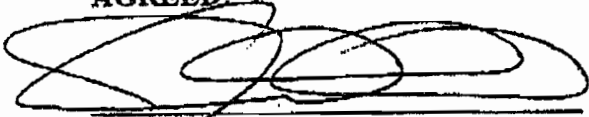
1. This Court finds that **DONALD M. HUDGINS**'s compliance with this Order does not constitute a violation of the confidentiality agreement entered into in the Underlying Litigation;
2. This Court finds that **DONALD M. HUDGINS**'s compliance with this Order does not constitute a violation of the attorney-client relationship in connection with his representation of the Plaintiff in the Underlying Litigation;
3. It is ordered that **DONALD M. HUDGINS** will appear at the appointed place and time for the purpose of providing testimony in response to the Notice of Deposition issued by the Defendant in this cause.
4. It is further ordered that the transcript produced in connection with the deposition of **DONALD M. HUDGINS** will be held and maintained by counsel for Defendant and made available only to other individuals in the law firm of Delgado, Acosta, Braden & Jones, P.C. and/or such other persons, including experts and witnesses who are necessary for a proper defense of the Underlying Litigation, who are further ordered to maintain a log of all persons to whom documents have been produced and provide those persons with a copy of this Order. Each of said persons is subject to the terms of this Order as if they had been named specifically herein. Copies of the aforementioned logs will be provided to Plaintiff's counsel and **DONALD M. HUDGINS**, along with copies of the documents which have been provided to experts, witnesses, and/or other counsel; and
5. It is further ordered that at the conclusion of this litigation, all copies produced by defense counsel for use by other persons, will be retrieved by **DONALD M.**

HUDGINS, with confirmation of said retrieval provided to Plaintiff's counsel within five working days.

SIGNED on this 15th day of July, 2002.

Kathleen S. Olivas
PRESIDING JUDGE

AGREED:



JIM DARNELL
Attorney for Plaintiff



CARLOS RINCON
RENE ORDOÑEZ
Attorney for Defendant

EXHIBIT NUMBER 3 WAS RETAINED IN THE CUSTODY OF MR. BURGAIN HAYES

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

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

#62

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

SMH
BY _____ DEPUTY

Plaintiffs,)

vs.)

NO. 88-07707

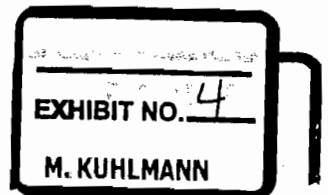
AMERICAN GENERAL FIRE & CASUALTY)
COMPANY, THE HOME INSURANCE COMPANY,)
ALLSTATE INSURANCE CO., KEMPER GROUP)
INSURANCE COMPANIES, LUMBERMEN'S)
MUTUAL CASUALTY COMPANY, CRAWFORD &)
COMPANY, CRUM & FOSTER, U.S.)
INSURANCE GROUP, U.S. FIRE INSURANCE)
CO., TEXAS EMPLOYERS INSURANCE)
ASSOCIATION, TEXAS EMPLOYERS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

Defendants.)

PLAINTIFF'S ORIGINAL CLASS ACTION PETITION

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

04569



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

I.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.

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

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

III.

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

IV.

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

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

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

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

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

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

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

V.

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

VI.

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

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

VII.

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

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

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

VIII.

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

IX.

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

X.

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

XI.

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

XII.

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

XIII.

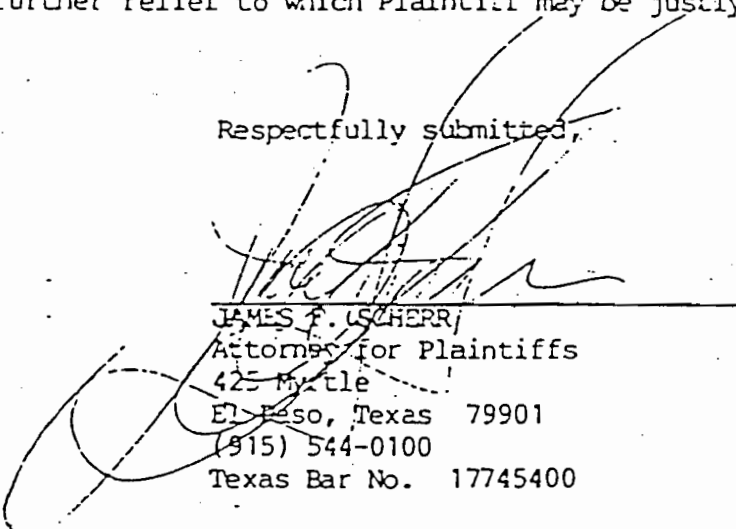
It was necessary to secure the services of JAMES F. SCHERR, a licensed Texas attorney, to prepare and prosecute this suit to protect the rights of Plaintiff

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

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

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

Respectfully submitted,



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

EXHIBIT NO. 5
M. KUHLMANN

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

243RD JUDICIAL DISTRICT

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

DR. WALTER RHODES, ET AL..)

Plaintiffs.)

v.)

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

Defendants.)

Cause No. 88-7707

Mdo

JUDGMENT

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

EXHIBIT

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

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

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

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

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

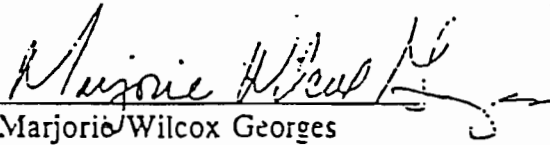
SIGNED on this 21 day of January, 1994.



PRESIDING JUDGE

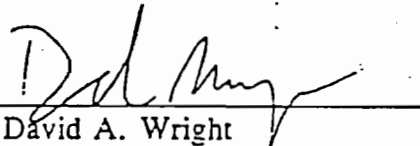
APPROVED AND AGREED TO:

JONES & GEORGES

By: 
Marjorie Wilcox Georges
State Bar No. 21453075

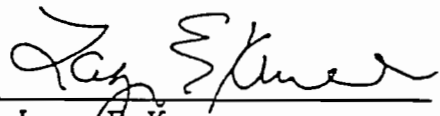
7500 Viscount, Suite 210
El Paso, Texas 79925-4851
Telephone: 915/779-0200
Telecopy: 915/770-0313
Attorneys for Plaintiffs
Dr. David Bailey, Dr. Ben
Beard and Dr. Dan Petrosky

DAVIS & WILKERSON

By: 
David A. Wright
State Bar No. 22026300

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

FULBRIGHT & JAWORSKI L.L.P.

By: 
Layne E. Kruse
State Bar No. 11742550

Anne M. Rodgers
State Bar No. 17133025
1031 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: 713/651-5151
Telecopier: 713/651-5246
Counsel for Defendant Aetna
Casualty and Surety Co.

MOUNCE & GALATZAN

By: 

Carl H. Green
State Bar No. 08347330
P.O. Drawer 1977
El Paso, Texas 79950-1977
Telephone: 915/532-3911
Telecopier: 915/541-1597
Counsel for Defendants American
General Fire & Casualty Co. and
National Standard Insurance Co.

STUDEARD & MELBY, INC.

By: 

Christopher R. Johnston
State Bar No. 19834200
415 North Mesa
Third Floor, Franklin Plaza
El Paso, Texas 79901
Telephone: 915/533-5938
Telecopier: 915/533-6225
Counsel for Defendant International
Rehabilitation Associates, Inc. and
CIGNA Insurance Comapny of Texas

VINSON & ELKINS L.L.P.

By: 

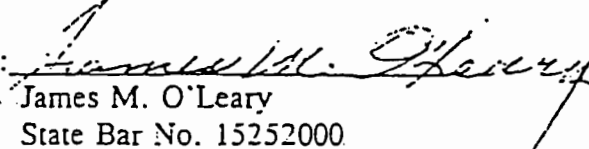
John L. Murchison
State Bar No. 14682000
Page I. Austin
State Bar No. 14345000
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Counsel for Defendant International
Rehabilitation Associates, Inc.

RICHARD. LEE. ROWLEY, COBB
& HALL

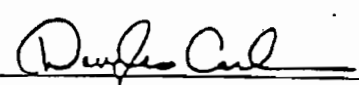
By: 

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

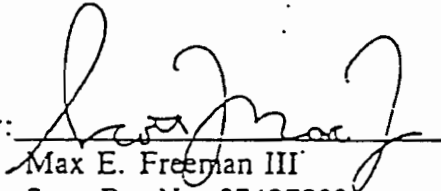
SHAFER. DAVIS. McCOLLUM. ASHLEY.
O'LEARY & STOKER

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Counsel for Defendants Lumbermens Mutual
Casualty Company, American Motorists
Insurance Company, and Kemper Group
Insurance Companies

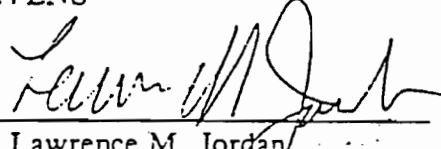
WILDMAN. HARROLD. ALLEN &
DIXON

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Mutual Casualty Company and
American Motorists Insurance
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GWIN & ROBY

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Telecopier: 214/528-0896
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Insurance Company

JACKSON & WALKER

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Telecopier: 214/978-4370
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SONNENSCHN, NATH AND
ROSENTHAL

By: Jeffrey Leonard

Jeffrey Leonard

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Insurance Company

STEWART. COLANERI & RENWICK. P.C.

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State Bar No. 08649200

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Company of America
Liberty Mutual Fire Insurance

SKELTON & ASSOCIATES

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Telecopier: 512/469-5525
Counsel for Defendants Liberty
Mutual Insurance Company and
Cofly

BAKER & BOTTS. L.L.P.

By: Allister M. Waldrop

Allister M. Waldrop
State Bar No. 20685500

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Telecopier: 713/229-1522
Counsel for Defendant CIGNA Insurance
Company of Texas

CAUSE NO. 94-603110

BEN BEARD, DAVID BAILEY and DAN PETROSKY,

Plaintiffs,

v.

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

Defendants.

§
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§
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§

IN THE ^{129TH} JUDICIAL DISTRICT COURT OF

HARRIS COUNTY, TEXAS.

FILED
20 JUL 21 PM 4:25
DEPUTY

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

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

PARTIES

1. Ben Beard is an individual residing in Houston, Texas and David Bailey is an individual residing in Bryan, Texas. Dan Petrosky is an individual residing in El Paso, Texas. Defendant James Scherr is an attorney who may be served at 109 N. Oregon, El Paso, Texas 79901. Noel Gage is an attorney who may be served at 6044 Gateway East, El Paso, Texas 79905 and Gage, Beach & Ager is a partnership which may be served by serving its named partner, Noel Gage, at 6044 Gateway East, El Paso, Texas, 79905.

VENUE

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

EXHIBIT NO. 6
M. KUHLMANN

the following reasons:

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

FACTS

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

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

BREACH OF FIDUCIARY DUTY

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

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

CONVERSION

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

ACTION TO VOID CONTRACT

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

EXEMPLARY DAMAGES

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

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

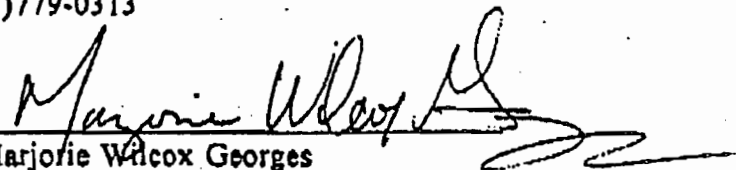
1. Damages within the jurisdictional limits of this court for the breach of fiduciary duty by defendants as described above.
2. Damages for conversion as described above.
3. A Court order that the contingent fee contracts signed by Plaintiffs are void.
4. Exemplary damages in a sum in excess of the minimum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

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

Respectfully submitted,

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

By:


Marjorie Wilcox Georges
State Bar No. 21453075
Attorney for Plaintiffs

CAUSE NO. 9402

RECEIPT No. 384480 .00 FCH
91-21-94

NTA

TR # 60296047

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

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

* Additional parties are named in the attached petition.

CITATION

*Served
Feb 9, 1994*

THE STATE OF TEXAS
County Of Harris

TO ANY SHERIFF OR CONSTABLE OF TEXAS
Or Other Authorized Person

TO: SCHERR, JAMES
109 N OREGON

EL PASO TX 79901

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

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

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

TO OFFICER SERVING:

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

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

(Seal)

KATHERINE TYRA, District Clerk
Harris County, Texas
301 Fannin Houston, Texas 77002
(P.O. Box 4661, Houston, Texas 77210)

Bar No. 1-21452075

By *Tracey Mitchell*
Deputy MITCHELL, TRACEY HY/HR/1965647

OFFICER/AUTHORIZED PERSON RETURN

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

Executed at (address) _____ in _____

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

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

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

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

FEES: \$ _____

_____ of _____ County, Texas

Affiant

By _____ Deputy

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

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

Notary Public

00467

CONFIDENTIAL
 CAUSE NO. 94-03110

BEN BEARD, DAVID BAILEY and
 DAN PETROSKY,

Plaintiffs,

v.

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

Defendants,

AND

JAMES F. SCHERR

Counter-Plaintiff,

v.

BEN BEARD, DAVID BAILEY and
 DAN PETROSKY

Counter-Defendants,

AND

JAMES F. SCHERR

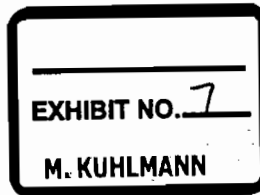
Third-Party Plaintiff,

v.

MARJORIE GEORGES and
 JONES & GEORGES

Third Party Defendants.

CONFIDENTIAL



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

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

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

PARTIES

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

VENUE

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

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

FACTS

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

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

*SP
admission
which
monies
how
from
to
clients
at
expense
of
plaintiffs
funds
not accounted*

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

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

*SP etc.
No named
action
not
released to
whom?
confidential
info?*

BREACH OF FIDUCIARY DUTY

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

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

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

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

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

CONVERSION

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

How converted? what right for attorney fees

NEGLIGENT RELEASE OF CONFIDENTIAL INFORMATION

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

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

What info?
How confidential?
What protect privilege?
Reliance to who?
What legal basis?

ACTION TO VOID CONTRACT

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

EXEMPLARY DAMAGES

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

the following amounts:

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


How to handle

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

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

Respectfully submitted,

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

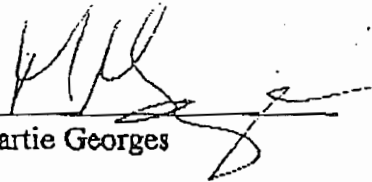
By: 
Marjorie Wilcox Georges
State Bar No. 21453075

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

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

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


Martie Georges

B18-2.161

PLAINTIFFS' THIRD AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

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

PARTIES

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

VENUE

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

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

FACTS

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

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

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

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

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

BREACH OF FIDUCIARY DUTY

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

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

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

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

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

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

CONVERSION

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

NEGLIGENT RELEASE OF CONFIDENTIAL INFORMATION

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

The confidential information was revealed to Defendants during their legal

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

ACTION TO VOID CONTRACT

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

EXEMPLARY DAMAGES

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

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

(2) Plaintiff David Bailey \$245,200.00

(3) Plaintiff Dan Petrosky \$245,200.00

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

1. \$183,900.00 in actual damages for the breach of fiduciary duty by defendants as described above.
2. Damages for conversion as described above.
3. Judgment declaring the authority for contract signed by Defendants in Cause No. 98-7707 be declared null and void.
4. \$300,000.00 in actual damages for Defendants' negligent release of confidential information concerning Plaintiff Ben Beard.
5. \$1,935,600.00 in exemplary damages.
5. Pre-judgment and post-judgment interest as allowed by law.
6. Such further relief to which Plaintiffs may be entitled.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

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

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


Mark George

B18-2.161

00466

OFF: BEARD, BEN *
T: SCHERR, JAMES *

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

All parties are named in the attached petition.

CITATION

*Served
Feb 9, 1994*

STATE OF TEXAS
County of Harris

SHERIFF OR CONSTABLE OF TEXAS
or Authorized Person

SCHERR, JAMES
of CLATSOP COUNTY, OREGON

EL PASO TX 79901

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

Instrument was filed on the 27th day of January, 1994, in the above cited court against
you. The instrument attached describes the claim against you.

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

PERSON SERVING:

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

At request of:
MARJORIE
SCOUT #210
TX 79925
21453075

(Seal)

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

BY Tracey Mitchell
Deputy MITCHELL, TRACEY HY/HR/1965647

OFFICER/AUTHORIZED PERSON RETURN

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

in...