

SUIT APPROACHING TRIAL REPORT

Company Claim File Number: 640-L-600813

Insured: James F. Scherr

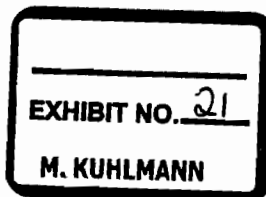
Plaintiff(s): Ben Beard, David Bailey, Dan Petrosky

Scheduled Date of Trial: 09/27/95

Are we ready for trial? Yes

Additional Investigation Needed? No

Your appraisal of:	1. The Trial Judge;	Excellent
	2. The Litigants;	Fair
	3. The Plaintiff's attorney;	Competent
	4. Prospective Jury Panel;	Not available
	5. Other factors.	



Contrast the Plaintiff's allegations with the facts and fully discuss, in detail all of the Plaintiff's damages (Medical, Wage Loss, Impairment, etc.). See narrative below.

Your Opinion of Liability. See narrative below.

This suit arises out of a class action lawsuit filed in 1988 by two chiropractors, Dr. LaRock and Dr. Superville. The insured, Mr. Scherr, has previously represented these two chiropractors on a number of suits against several insurance companies in attempts to collect chiropractic expenses incurred in worker's compensation cases which were denied or reduced by the insurance companies. The class action suit was filed in an effort to prevent the insurance companies from discriminating against chiropractors and included claims for unpaid bills of the chiropractor plaintiffs after Mr. Scherr had perceived there to be a continuing pattern of discrimination against chiropractors.

After the filing of the case, four other chiropractors hired Mr. Scherr and joined in the lawsuit. All of the chiropractors who participated signed contingency fee contracts, which contents would make them liable for any expenses incurred in connection with the prosecution of the case. Mr. Scherr also, with the clients' permission, brought in Attorney Noel Gage, who had experience in class actions suits.

During the pendency of the case, there were two settlements which were approved by all of the plaintiffs. The first was with Travelers Insurance Company for the sum of \$86,500. This settlement was based on a formula of 100% of the bills of four of the chiropractors and 50% of the bills of LaRock and Superville. Out of this settlement, attorney fees and expenses were taken and, at the time, there apparently was no one in disagreement with the settlement.

Additionally, there was a second settlement for \$50,000 made with TEIA just before they went into receivership. While Dr. Bailey initially was not in agreement with the settlement, he apparently reluctantly agreed to same. This \$50,000 was paid toward attorney fees and expenses.

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Mr. Scherr hired a claims adjuster (with the clients' approval) to help manage the voluminous medical expenses documents and he incurred numerous other expenses in this class action case.

In May of 1992, Dr. Beard apparently became concerned that Dr. LaRock and Dr. Superville (the original plaintiffs) had been sued by the State Attorney General's Office for fraud and deceptive practices and sent a letter advising Mr. Scherr that he had secured the services of another attorney. A meeting at Mr. Scherr's offices was held on May 30, 1992, with all of the plaintiffs in attendance, in an attempt to resolve the differences. At that time, it became clear that LaRock and Superville were considered to be a problem, but according to Mr. Scherr, Dr. Beard left the meeting satisfied that LaRock's and Superville's roles would be reduced and back in the fold. This did not last long as Dr. Beard advised Mr. Scherr a month later that he wanted out of the suit. Also complicating matters was the fact that a counter-claim had been filed. Dr. Beard hired Martie Georges, the plaintiffs' attorney in this case.

The class action case had been set for certification in September, 1990, but the defendants filed a motion to recuse the judge and the motion for certification did not go forward. In the meantime, Dr. Bailey sent a letter to Jim Scherr wanting an accounting of expenses. Scherr claims never to have received the demand for an accounting. Martie Georges also requested an accounting from Scherr. Eventually, Scherr sent an itemized expense statement to Ms. Georges, which has since been followed by three other itemized statements.

Mr. Scherr and Mr. Gage reached a \$170,000 settlement agreement with additional defendants and forwarded a suggested settlement proposal to Ms. Georges, which was supposed to be confidential as per a signed confidentiality agreement.

Dr. Beard showed the proposed settlement distribution to Drs. Bailey and Petrosky, who immediately terminated Mr. Scherr. They then hired Ms. Georges, who quickly reached a \$200,000 final settlement with the remaining defendants on behalf of her three clients. She attempted to get the defendants to leave Mr. Scherr's name off of the draft, but they refused. When Mr. Scherr refused to execute the draft, Ms. Georges filed suit on behalf of her three clients alleging malpractice, breach of fiduciary duty and fraud and voidance of the contracts. Mr. Scherr and Mr. Gage filed a counter suit against the plaintiffs and a third party claim against Ms. Georges and her law firm, Jones & Georges, alleging various causes of action. The third party claim has been severed and we are going to trial on the plaintiffs' claims for breach of fiduciary duty, fraud and voidance of the contracts and the counter claim.

Both the \$200,000 and \$170,000 fees are in the Registry of the Court. Mr. Scherr's counter claim is also for attorney's fees and expenses. There apparently have been some discrepancies in the accounting records of Mr. Scherr's backup for the expenses and there is some concern about proof of those expenses. There is a claim that Mr. Scherr gave favored treatment to Drs. LaRock and Superville.

This has been a very contentious case and the plaintiffs feel they were duped into a case that they felt had merit but they claim turned out to be a collection suit for Mr. Scherr's long time clients, LaRock and Superville.

The plaintiffs have retained experts who claim that Mr. Scherr and Mr. Gage were negligent, committed fraud and breached their fiduciary duties. I would refer to the plaintiffs pleadings for a detailed list of the complaints. Numerous lengthy depositions of the parties, witnesses and expert witnesses have been taken. I have retained experts who feel that this is a classic fee dispute. The only down side I see in the case is that with the numbers being bounced around, a jury could decide that the expenses were too high and penalize the insured.

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I feel that we have an 85% plus chance of the insured prevailing. He has personal counsel who will be representing him at trial on the counter claim. I do not feel that this is a case of punitive exposure unless the jury becomes angry at the insured.

Verdict Range: \$ 0 to \$ 150,000

Chances for successful defense: 85% plus

History of Negotiations: Case has been to mediation twice.

Recommendations (Procedural, Negotiations, etc.): Trial.

Expenses charged to date: \$ 79,372

Future anticipated expenses: \$ 30,000  
(Through trial)

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**REM**

Risk Enterprise  
Management  
Limited



October 20, 1995

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

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

Dear Mr. Scherr:

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

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

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

Please refer to the following provisions in your policy:

Section B - Coverage

Professional Liability and Claims Made Clause:

To pay on behalf of the insured all sums in excess of the deductible amount stated in the declarations, which the insured shall become legally obligated to pay as damages as a result of claims first made against the insured during the policy period and reported to the company during the policy period caused by any act, error or omission for which the insured is legally responsible, and arising out of the rendering or failure to render professional services for others in the insured's capacity as a lawyer or notary public;

Damages:

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

Section C - Exclusions:

I. This policy does not apply:

- (a) To any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the insured;

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

Section E - Limits of Liability

I. Limits of Liability - Each Claim:

The liability of the company for each claim first made against the insured and reported to the company during the policy period, and including the optional reporting period, if such is purchased, shall not exceed the amount stated in the declaration for each claim and shall include all claim expenses. If the limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the company shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the insured, and the insured agrees, as a condition to the issuance of this policy, to accept such tender.

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

Section E - Limits of Liability:

II. Limits of liability/aggregate:

Subject to Section E, I, Limits of Liability - each claim, the liability of the company shall not exceed the amount stated in the declarations as aggregate as a result of all claims first made against the insured and reported to the company during the policy period and including the optional reporting period, if such is purchased.

III. Deductible:

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

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

Section E - Limits of Liability

IV. Multiple Insureds, Claims and Claimants:

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

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

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

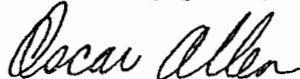
Therefore, for the reasons set forth above, and for such other good and sufficient reasons as may hereafter appear, this company is continuing to provide you with a defense under a full reservation of all of its rights with respect to coverage.

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

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October 20, 1995

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

Very truly yours,



Oscar Allen  
Claim Analyst  
(713) 787-5940

OA:pbcc-2

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October 20, 1995

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

00051



BEN BEARD, DAVID BAILEY and DAN PETROSKY,

Plaintiffs,

v.

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

Defendants,

AND

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

Counter-Plaintiffs

v.

BEN BEARD, DAVID BAILEY and DAN PETROSKY

Counter-Defendants,



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

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice, or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide and issue by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached adding together each juror's figures and dividing by the number of jurors to get an average. Do not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by the verdict, those jurors who

agree to all findings shall each sign the verdict.

7. These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct, and it may require another trial by another jury; then all of our time will have been wasted.

8. The presiding juror or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

9. When words are used in this charge in a sense which varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning. All other words not defined herein have their common ordinary meaning.

10. Questions to be answered "Yes" or "No" should be answered "Yes", if you so find from a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No". Your answers to all other questions must be based on a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case.

11. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who

saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may fairly and reasonable be inferred from other facts proved.

#### DEFINITIONS

When words are used in this Charge in a sense which varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

1. The term "Gage, Beach & Ager" means the law firm by that name. It includes all persons employed by the law firm, and the law firm is responsible for the acts and omissions of such persons when they are or were acting in the course and scope of their employment.

2. The term "Plaintiffs" means David Bailey, Dan Petrosky and Ben Beard.

3. The term "Defendants" means James F. Scherr, Noel Gage and Gage, Beach & Ager.

4. "Contract" means the contracts for legal representation entered into between each of the Plaintiffs herein and James F. Scherr.

5. The term "proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that an attorney or law firm using ordinary care would have foreseen that the event or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an

event.

#### INSTRUCTIONS

1. You are instructed that the relationship between an attorney and his client is a fiduciary relationship. The lawyer's dealings with his or her client requires the utmost good faith, the most open candor, the complete absence of deceit or concealment and absolute honesty so that the lawyer's business with the client can be scrutinized just as between a trustee and his or her beneficiary. Further, a lawyer engaging in the practice of law and contracting to represent a client as a lawyer, impliedly represents that he or she possesses the requisite degree of skill, learning, and ability necessary to practice the [profession which others similarly situated ordinarily possess; will exercise reasonable and ordinary care and diligence in applying the skill and knowledge at hand. You are instructed that every act of every employee, on behalf of or in the name of the professional corporation if done within the scope of his authority, is in law the act of that professional corporation. Now, bearing in mind the foregoing, and any other instructions that may be given by the Court, or under its direction on, in connection with the questions hereinafter submitted, please answer the following questions.

QUESTION NUMBER ONE:

Did the defendants breach the fiduciary duty between an attorney and a client in their representation of Plaintiffs, and was such breach, if any, a proximate cause of damages to the Plaintiffs?

Definition/instruction: You are instructed that an attorney client relationship existed between Defendants and Plaintiffs and that the Defendants owed a fiduciary duty to Plaintiffs. The term "FIDUCIARY DUTY" means a duty of utmost good faith, loyalty, trust, and confidence, requiring absolute and perfect candor, openness, fairness, integrity, honesty, and the absence of any concealment or deception in matters which are material to the client's representation. As a fiduciary, an attorney is obligated to place the interest of his client above the attorney's own interest. The burden is on the attorney to show that his actions in relation to his client are fair, were for adequate consideration and were reasonable in light of all of the attending circumstances, and that the attorney has made reasonable use of the confidence placed in him.

The fiduciary relationship begins when the attorney client relationship is established. In this case, that relationship between Plaintiffs and Defendants Scherr and Gage began upon the date that each of the Plaintiffs signed a contingency fee contract with Mr. Scherr, and not before.

Answer "Yes" or "No" for each of the following in the corresponding blanks:

A. For events occurring at any time between the formation of the attorney client relationship and January 21, 199<sup>1/2</sup>:

	Defendant J. Scherr	Defendant GB&A	Defendant Noel Gage
A. D. Bailey	<u>YES</u>	<u>YES</u>	<u>YES</u>
B. B. Beard	<u>YES</u>	<u>YES</u>	<u>YES</u>
C. D. Petrosky	<u>YES</u>	<u>YES</u>	<u>YES</u>

B. For events occurring between January 21, 1992 and January 21, 1994:

	Defendant J. Scherr	Defendant GB&A	Defendant Noel Gage
A. D. Bailey	<u>YES</u>	<u>YES</u>	<u>YES</u>
B. B. Beard	<u>YES</u>	<u>YES</u>	<u>YES</u>
C. D. Petrosky	<u>YES</u>	<u>YES</u>	<u>YES</u>

If you have answered "Yes" as to any defendant then answer question number two as to that defendant for whom you answer "Yes"

QUESTION NUMBER TWO

Did James Scherr, Gage, Beach & Ager or Noel Gage act intentionally in breaching the fiduciary duty between attorney and client in their representation of Plaintiffs?

"INTENTIONALLY" means ill will or bad or evil motive or such gross indifference to the rights of another as amounts to a willful or wanton act done intentionally and without just cause or excuse.

	Defendant J. Scherr	Defendant GB&A	Defendant Noel Gage
A. D. Bailey	<u>YES</u>	<u>YES</u>	<u>YES</u>
B. B. Beard	<u>YES</u>	<u>YES</u>	<u>YES</u>
C. D. Petrosky	<u>YES</u>	<u>YES</u>	<u>YES</u>



QUESTION NUMBER THREE

Did any of the Defendants commit fraud against any of the Plaintiffs?

Fraud occurs when --

- a. A party make a misrepresentation of material fact; and
- b. the misrepresentation is made with the knowledge of its falsity or made recklessly Without any knowledge of the truth, and as a positive assertion; and
- c. the misrepresentation is made with the intention that it should be acted on by the other party; and,
- d. the other party acts in reliance on the misrepresentation and thereby suffers injury.

"Misrepresentation" means a false statement of fact.

"A material fact" is any fact which a reasonable person, under the same or similar circumstances, would attach importance to in determining his/her course of conduct or action."

Answer: "Yes" or "No" for each of the following in the corresponding blanks.

A. For events occurring at any time between January 21, 1990 and January 21, 1994:

	Defendant J. Scherr	Defendant GB&A	Defendant Noël Gage
A. D. Bailey	<u>YES</u>	<u>YES</u>	<u>YES</u>
B. B. Beard	<u>YES</u>	<u>YES</u>	<u>YES</u>
C. D. Petrosky	<u>YES</u>	<u>YES</u>	<u>YES</u>

B. For events occurring at any time before January 21, 1990:

	Defendant J. Scherr	Defendant GB&A	Defendant Noel Gage
A. D. Bailey	<u>NO</u>	<u>NO</u>	<u>NO</u>
B. B. Beard	<u>NO</u>	<u>NO</u>	<u>NO</u>
C. D. Petrosky	<u>NO</u>	<u>NO</u>	<u>NO</u>

If you have answered "yes" as to any defendant in this question, then answer question number 4 as to that defendant for whom you answered "yes" in this question.

QUESTION NUMBER FOUR

Did Noel Gage, Gage, Beach & Ager or James Scherr act intentionally in committing fraud as against those plaintiffs for whom you answered yes in question number 3?

"INTENTIONALLY" means ill will or bad or evil motive or such gross indifference to the rights of another as amounts to a willful or wanton act done intentionally and without just cause or excuse.

	Defendant J. Scherr	Defendant GB&A	Defendant Noel Gage
A. D. Bailey	_____	_____	_____
B. B. Beard	_____	_____	_____
C. D. Petrosky	_____	_____	_____

QUESTION NUMBER FIVE

What sum of money, if any, are the persons listed below, if any, entitled to receive from the \$306,500.00 recovered in settlements with Travelers Insurance, T.E.I.A. Insurance, Home Insurance and Commercial Union Insurance.

Answer:	Ben Beard	<u>34,000</u>
	David Bailey	<u>34,000</u>
	Dan Petrosky	<u>34,000</u>

QUESTION NUMBER SIX

Did Ben Beard commit fraud against any of the following persons?

Fraud occurs when --

- a. A party make a misrepresentation of material fact; and
- b. the misrepresentation is made with the knowledge of its falsity or made recklessly Without any knowledge of the truth, and as a positive assertion; and
- c. the misrepresentation is made with the intention that it should be acted on by The other party; and,
- d. the other party acts in reliance on the misrepresentation and thereby suffers injury.

"Misrepresentation" means a false statement of fact.

"A material fact" is any fact which a reasonable person, under the same or similar circumstances, would attach importance to in determining his/her course of conduct or action."

Answer: "Yes" or "No" for each of the following in the corresponding blanks.

- A. James F. Scherr NO
- B. Gage, Beach & Ager NO
- C. Noel A. Gage NO

If you have answered question Number Six "Yes", and only in that event, then answer question number seven.

QUESTION NUMBER SEVEN

What sum of money, if any, would fairly and reasonably compensate Defendants James F. Scherr, Gage, Beach & Ager, and Noel

A. Gage for the fraud committed against them by Ben Beard?

Answer in dollars and cents for damages, if any.

A. James F. Scherr \$ \_\_\_\_\_

B. Noel A. Gage \$ \_\_\_\_\_

C. Gage, Beach, & Ager \$ \_\_\_\_\_

QUESTION NO. 8

Do you find that any of those persons named below waived any further recovery in connection with the TEIA/Travelers settlements in the underlying case?

"Waiver" is the intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

Answer "Yes" or "No" with respect to each of the following:

Ben Beard	<u>YES</u>
David Bailey	<u>YES</u>
Dan Petrosky	<u>YES</u>

QUESTION 9

Did BEN BEARD, DAVID BAILEY and/or DAN PETROSKY fail to comply with the contingency fee agreement?

Answer "Yes" or "No":

No



QUESTION 10

Did JAMES F. SCHERR and/or Noel Gage perform compensable work for BEN BEARD, DAVID  
BAILEY and/or DAN PETROSKY?

One party performs compensable work if valuable services are rendered or materials furnished for another party who knowingly accepts and uses them and if the party accepting them should know that the performing party expects to be paid for the work.

Answer "Yes" or "No":

YES

QUESTION 11

What sum of money, if paid now in cash, would fairly and reasonably compensate James F. Scherr for his damages, if any?

Consider the following elements of damages, if any, and none other.

Attorneys' fees.

Answer in dollars and cents for damages, if any.

ANSWER: 0

QUESTION 12

What sum of money, if paid now in cash, would fairly and reasonably compensate James F. Scherr for his damages, if any?

Consider the following elements of damages, if any, and none other.

Expenses.

Answer in dollars and cents for damages, if any.

ANSWER: 0

QUESTION 13

What sum of money, if paid now in cash, would fairly and reasonably compensate Noel Gage for his damages, if any?

Consider the following elements of damages, if any, and none other.

Attorneys' fees.

Answer in dollars and cents for damages, if any.

ANSWER: 0

After retiring to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. To preside during your deliberations;
2. To see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge.
3. To write out and hand to the bailiff any communication concerning the case which you desire to have delivered to the judge;
4. To vote on the questions;
5. To write your answers to the questions in the spaces provided; and
6. To certify to your verdict and to obtain the signatures of all the jurors who agree with the verdict, no one has any authority to communicate with you except the bailiff of this Court or Judge of this Court. If you want to communicate with the Court, explain what you want in writing and deliver your message, signed by your presiding juror, to the bailiff. He will deliver it to the Court. Do not orally explain to the bailiff. You should not discuss the case with anyone, not even with the other members of the jury, unless all of you are present and assembled in the jury, room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse or at your home, or elsewhere, please inform the Court at once.

When you have answered all of the questions which you are required to answer under the instructions of the Court, and your presiding juror placed your answers in spaces provided, and obtained the signatures, you will advise the bailiff at the door of the jury room that you have reached a verdict, and then you will return into Court with your verdict.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
JUDGE GREG ABBOTT

CERTIFICATE

We, the Jury have answered the above and foregoing Questions as herein indicated, and herewith return same into Court as our verdict.

\_\_\_\_\_  
PRESIDING JUROR  
(IF UNANIMOUS)

(To be signed by those rendering the verdict if not unanimous)

Trawick - NO

Elkins - NO

EXHIBIT NO. 24

M. KUHLMANN

FULL AND FINAL RELEASE

In consideration of the payment of the total sum of 75,000, the payment of which is specified below, and other consideration as defined and set out below, Plaintiffs Ben Beard, David Bailey and Dan Petrosky (hereinafter "Payees") do hereby release and forever discharge James F. Scherr, Noel A. Gage, Gage, Beach & Ager, Home Insurance Company, Coregis Insurance Company (hereinafter "Payors") and their attorneys of record from any consequence arising out of James F. Scherr and Noel A. Gage's representation of Payees in the underlying lawsuit styled Rhodes v. American General Insurance Co., et al, Cause No. 88-7707 in El Paso County, Texas.

IT IS UNDERSTOOD AND AGREED that the parties and their counsel specifically contract and agree as follows:

That the sum of \$675,000 will be paid by the Defendants to the Plaintiffs in full and final settlement of the claims contained in the lawsuit styled Beard v. Scherr, et al, Cause No. 94-03110, filed in Houston, Harris County, Texas; These monies will be paid by the Defendants as follows:

The monies currently on deposit with the Court's registry will be released in their entirety to Plaintiffs (this amount consists of three hundred seventy thousand dollars and NO/100 (\$370,000) from various settlements reached in Cause No. 88-7707, styled Rhodes v. American General Insurance Co., et al. The interest accrued on these monies will constitute a shared credit toward the monies to be paid by the Defendants, which credit shall be shared equally by James F. Scherr and the Gage Defendants (specifically, Noel A. Gage and Gage, Beach & Ager). The Registry funds will be released in two separate drafts, one for \$370,000 to the Plaintiffs and the law firm of Jones & Georges, P.C., and one for the total amount of interest earned on these monies which will be paid to James F. Scherr and Noel A. Gage.;

Home Insurance Company, the professional liability

carrier for James F. Scherr, will pay \$50,000 to the Plaintiffs and the law firm of Jones & Georges, P.C. on or before November 30, 1995;

James F. Scherr will pay to the Plaintiffs and the law firm of Jones & Georges, P.C. the amount of \$117,500, payable on or before November 1, 1995. This amount has been paid and payment confirmed as of the date of signing this Release;

Noel A. Gage will pay to the Plaintiffs and the law firm of Jones & Georges, P.C. the amount of \$137,500 on or before November 1, 1995.

2. The parties herein agree that Plaintiffs will amend their Seventh Amended Original Petition to include claims of negligence and mental anguish and will withdraw any and all claims of breach of fiduciary duty and fraud as against all Defendants.
3. The contents of this Release shall remain confidential to the extent that they have not previously been released. Specifically, there shall be no release to any person, entity or organization of the amount of said settlement. Additionally, all counsel of record and parties to this lawsuit agree to decline interviews with any media organization or member of the press.
4. James F. Scherr agrees to indemnify and hold harmless Plaintiffs, their attorneys herein, and/or any of their agents or representatives for any claims made previously or brought in the future by Dr. Wilford LaRock, Dr. Joseph Superville, and/or Dr. Walter Rhodes regarding any entitlement that any of those persons may have to any of the monies referenced above on deposit with the Registry of the Court.
5. Noel A. Gage and Gage, Beach & Ager agree to dismiss with prejudice all claims against Jones & Georges, P.C. and Marjorie Georges and Luther Jones, individually currently on file with this Court, and separated from the main cause of action by Court Order. Furthermore, Noel A. Gage and Gage, Beach & Ager agree to dismiss with prejudice all counter-claims against Plaintiffs herein and/or their counsel currently on file with this Court and separated from this cause of action by Court Order.
6. James F. Scherr agrees to dismiss with prejudice all third-party claims against Jones & Georges, P.C. and Marjorie Georges and Luther Jones, individually currently on file with this Court, and separated from the main cause of action by Court Order. Furthermore, James F. Scherr agrees to dismiss with prejudice all counter-claims against Plaintiffs



and/or their counsel herein currently on file with this Court and separated from this cause of action by Court Order.

7. Noel A. Gage, Gage, Beach & Ager, and Gage, Herzfeld & Rubin agree to not pursue the cause of action known to all parties herein as "the New York lawsuit." Said lawsuit has been dismissed from the New York forum in which it was filed on the grounds of forum non conveniens. Noel A. Gage, Gage, Beach & Ager, and Gage, Herzfeld & Rubin agree not to refile this cause of action in Texas or any other forum for any reason.
8. Each party agrees to be responsible for his own costs of court incurred in this matter.
9. All copies of the deposition of Renee Wolfe will be returned to counsel for James F. Scherr, all copies of the deposition of David Escobar will be returned to counsel for Plaintiffs, and all copies of the deposition of Robert Schuwert will also be returned to counsel for Plaintiffs. Additionally, all other depositions taken in connection with this cause of action will remain confidential pursuant to Judge Greg Abbott's order of confidentiality entered in connection with these depositions. Said confidentiality order is incorporated fully herein by reference and recognized as binding by all parties hereto.
10. Plaintiffs and their counsel of record agree to notify the State Bar of Texas of their desire to withdraw claims and grievances previously filed by them and currently pending against James F. Scherr. It is understood by all parties herein that such notification may not result in a dismissal of said claims and grievances, as the final decision regarding such action rests with the State Bar Grievance Committee. Plaintiffs and their counsel agree to provide James F. Scherr with a copy of their written notification to be submitted to the State Bar on or before November 3, 1995.

IT IS FURTHER UNDERSTOOD AND AGREED that the payment of consideration as outlined above by said Payors is not to be construed as an admission of liability on the part of said Payors, but that said payment is in compromise and settlement of Payees' claims, which are not admitted, but are denied and disputed by said Payors, and that this Release is being given by

Payees voluntarily and is not based upon any representations of any kind made by Payors or their representatives as to the merits, legal liability or value of Payees' claims or any other matter relating thereto, and in making this settlement said Payees rely wholly upon their own judgment, belief and knowledge of their rights, after being advised about them by their attorneys.

IT IS FURTHER UNDERSTOOD AND AGREED that the settlement proceeds paid by Scherr, Gage, and Gage, Beach & Ager herein are in response to Plaintiffs' claims for mental anguish.

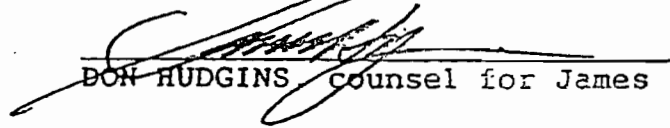
IT IS FURTHER UNDERSTOOD AND AGREED that in consideration for the execution of this Full and Final Release all claims and counter-claims encompassed in Cause No. 94-03110 are hereby dismissed with prejudice and a formal Motion and Order to that effect shall be executed by all parties herein and entered by the Court on or before November 1, 1995.

Signed and agreed to by all counsel of record on this the 25th day of October.

  
MARIE GEORGES, counsel for Plaintiffs

  
LUTHER JONES, counsel for Plaintiffs

  
PEARSON GRIMES, counsel for Plaintiffs

  
DON HUDGINS, counsel for James F. Scherr

*Don Wilhelm*

DON WILHELM, counsel for James F. Scherr

*Phil Werner*

PHIL WERNER, counsel for Gage, Beach & Ager

*Teresa Ford*

TERESA FORD, counsel for Noel A. Gage

OCT 26 '95 12:07PM KCHANN.WERNER@TRIBE

P.23

*Ben Beard*  
BEN BEARD

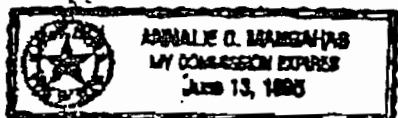
STATE OF TEXAS

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§

COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared Ben Beard and in all other capacities, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, specifically, that he fully read and understood the document in its entirety.

*He* SWORN TO AND SUBSCRIBED TO BEFORE ME by Ben Beard on this the 26 day of October, 1995.



*Annalie C. Mangahas*  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

\_\_\_\_\_  
DAVID BAILEY

STATE OF TEXAS

§  
§  
§

COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared David Bailey and in all other capacities, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, specifically, that he fully read and understood the document in its entirety.

SWORN TO AND SUBSCRIBED TO BEFORE ME by David Bailey on this the \_\_\_\_\_ day of October, 1995.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

Dan M. Petrosky, D.E.  
DAN PETROSKY

STATE OF TEXAS  
COUNTY OF EL PASO

§  
§  
§

BEFORE ME, the undersigned authority, on this day personally appeared Dan Petrosky and in all other capacities, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, specifically, that he fully read and understood the document in its entirety.

SWORN TO AND SUBSCRIBED TO BEFORE ME by Dan Petrosky on this the 31 day of October, 1995.

William M. Petrosky  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

66  
5-4-99

BEN BEARD

STATE OF TEXAS

§  
§  
§

COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared Ben Beard and in all other capacities, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, specifically, that he fully read and understood the document in its entirety.

SWORN TO AND SUBSCRIBED TO BEFORE ME by Ben Beard on this the \_\_\_\_\_ day of October, 1995.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

David Bailey  
DAVID BAILEY

STATE OF TEXAS

§  
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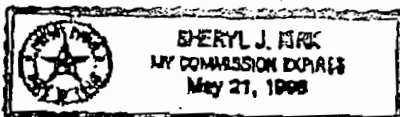
COUNTY OF EL PASO 56A205

BEFORE ME, the undersigned authority, on this day personally appeared David Bailey and in all other capacities, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, specifically, that he fully read and understood the document in its entirety.

SWORN TO AND SUBSCRIBED TO BEFORE ME by David Bailey on this the 21 day of October, 1995.

NOVEMBER

Jessie H. Kirk  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



Cause No. 94-03110  
Beard, et al v. Scherr, et al  
Houston, Harris County, Texas

AGREED MOTION FOR DISMISSAL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs Ben Beard, David Bailey and Dan Petrosky, and Defendants James F. Scherr, Noel A. Gage and Gage, Beach & Ager and submit this their Agreed Motion for Dismissal in the above entitled and numbered cause and in support thereof would show unto the Court the following:

I.

All claims and causes of action in this matter have been fully and finally compromised. Therefore, all parties to this cause agree to dismiss all claims and counter-claims with prejudice, as no party wishes to pursue any claim encompassed in the instant case.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs and Defendants herein respectfully request that the Court dismiss with prejudice all claims and counter-claims encompassed by this cause of action, and further, that each party be responsible for their own costs of court incurred herein.

Respectfully Submitted,

JONES & GEORGES, P.C.

By: 

Marjorie Georges  
State Bar No: 21453075  
Luther Jones  
State Bar No: 10928000  
303 Texas Avenue, Suite 800  
El Paso, Texas 79901  
915/534-0040  
915/534-0055 (fax)

COUNSEL FOR PLAINTIFFS BEN BEARD,  
DAN PETROSKY AND DAVID BAILEY

HUDGINS, HUDGINS & WARRICK

By: 

Donald M. Hudgins  
State Bar No: 10149000  
24 Greenway Plaza, Suite 1007  
Houston, Texas 77046  
713/623-2550  
713/623-2793 (fax)

COUNSEL FOR DEFENDANT  
JAMES F. SCHERR

ONSTAD, KAISER & FONTAINE

By: 

Donald Wilhelm  
State Bar No: 21475250  
1350 Post Oak Blvd., Suite 700  
Houston, Texas 77056



COUNSEL FOR DEFENDANT  
JAMES F. SCHERR

HOHMANN, WERNER & TAUBE, L.L.P.

By: 

Philip Werner  
State Bar No: 21190200  
1300 Post Oak Blvd., Suite 700  
Houston, Texas 77056  
713/961-3541  
713/961-3542 (fax)

COUNSEL FOR DEFENDANT  
GAGE, BEACH & AGER

HOHMANN, WERNER & TAUBE, L.L.P.

By: 

Teresa I. Ford  
State Bar No: 00784069  
1300 Post Oak Blvd., Suite 700  
Houston, Texas 77056  
713/961-3541  
713/961-3542 (fax)

COUNSEL FOR DEFENDANT  
NOEL A. GAGE

Cause No. 94-03110  
Beard, et al v. Scherr, et al  
Houston, Harris County, Texas

AGREED ORDER OF DISMISSAL

Came on to be heard on this the 25th day of October  
Plaintiffs' and Defendants' Agreed Motion for Dismissal in the  
above styled and numbered cause. The Court, after considering  
said Motion, is of the opinion that it is meritorious and should  
be in all things GRANTED. It is, therefore,

ORDERED that all claims and counter-claims encompassed in  
the above-styled and numbered lawsuit are hereby dismissed with  
prejudice and the parties' Agreed Motion for Dismissal is in all  
things GRANTED. All relief not specifically granted herein is  
denied.

Signed on this the 25th day of October, 1995.

  
JUDGE GREG ABBOTT

\* This dismissal applies to the claims  
of Beard, Bailey & Petrosky, the  
counterclaims of Scherr, Gage & Gage  
Beach & Ager, the 3rd party claims of  
Scherr, Gage & Gage Beach & Ager.

This ~~does~~ does not dismiss the  
claims asserted in the Intervention.

APPROVED AS TO FORM AND CONTENT:

JONES & GEORGES, P.C.

By: 

Marjorie Georges  
State Bar No: 21453075  
Luther Jones  
State Bar No: 10928000  
303 Texas Avenue, Suite 800  
El Paso, Texas 79901  
915/534-0040  
915/534-0055 (fax)

COUNSEL FOR PLAINTIFFS BEN BEARD,  
DAN PETROSKY AND DAVID BAILEY

HUDGINS, HUDGINS & WARRICK

By: 

Donald M. HUDGINS  
State Bar No: 10149000  
24 Greenway Plaza, Suite 1007  
Houston, Texas 77046  
713/623-2550  
713/623-2793 (fax)

COUNSEL FOR DEFENDANT  
JAMES F. SCHERR

ONSTAD, KAISER & FONTAINE

By: 

Donald Wilhelm  
State Bar No: 21475250  
1350 Post Oak Blvd., Suite 700  
Houston, Texas 77056

COUNSEL FOR DEFENDANT  
JAMES F. SCHERR

HOHMANN, WERNER & TAUBE, L.L.P.

By: 

Phillip WERNER  
State Bar No: 21190200  
1300 Post Oak Blvd., Suite 700  
Houston, Texas 77056  
713/961-3541  
713/961-3542 (fax)

COUNSEL FOR DEFENDANT  
GAGE, BEACH & AGER

HOHMANN, WERNER & TAUBE, L.L.P.

By: 

TERESA I. Ford  
State Bar No: 00784069  
1300 Post Oak Blvd., Suite 700  
Houston, Texas 77056  
713/961-3541  
713/961-3542 (fax)

COUNSEL FOR DEFENDANT  
NOEL A. GAGE