

65946-4

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NO. 659464-1

King County Superior Court Cause No. 08-2-27814-0 SEA

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

WEST COAST PIZZA COMPANY, INC.
Plaintiff/Appellant

v.

NATIONAL CONTINENTAL INSURANCE COMPANY
Defendant/Respondent

2011 MAR 13 PM 2:44

FILED
JTB

COMBINED REPLY OF APPELLANT TO RESPONSE
OF UNITED NATIONAL INSURANCE COMPANY
AND NATIONAL CONTINENTAL INSURANCE COMPANY

Attorney for Plaintiff/Appellant West Coast Pizza Company Inc.
James H. Clark, WSBA #18862
Oseran Hahn Spring Straight & Watts, P.S.
10900 NE Fourth Street #1430
Bellevue WA 98004
425-455-3900

ORIGINAL

TABLE OF CONTENTS

I.	The Trial Court Correctly Analyzed the Facts as to Coverage, but Came to the Wrong Conclusion	1
II.	West Coast Pizza Has Standing to Seek Reformation of Its Contract	9
III.	West Coast Pizza Applied for Coverage for 21 Locations at Specific Addresses and Was Sold that Coverage by Respondent Insurers.....	11
VI.	Respondent United National Highlights The Issue.....	13
V.	If the List of Locations is Insignificant to Coverage, Why Include It?	14
VI.	The Argument by the Insurers that because the Negligent Driver was Employed by Mad Pizza There is no Coverage Simply Begg the Question.....	16
VII.	The Uniform Declaratory Judgments Act (RCW Ch. 7.24) Is Applicable	17
VIII.	West Coast has a Real Interest in Being Joined with Mad Pizza As Insureds on Both Policies	18
IX.	Reformation is the Appropriate Remedy	19

TABLE OF AUTHORITIES

Cases

<i>E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co.</i> , 106 Wn.2d 901, 907, 726 P.2d 439 (1986)	9
<i>Findlay v. United Pac. Ins. Co.</i> , 129 Wn.2d 368, 374, 379, 917 P.2d 116 (1996)	9
<i>Metropolitan Mortgage v. Reliable Insurance Company</i> , 64 Wn.2d 98, 100-1, 390 P.2d 694 (1964)	10
<i>Stebbins vs. Westchester Fire Insurance Co.</i> , 115 Wash. 623, 629, 197 Pac. 913 (1921)	9
<i>United States vs. Eagle Star Insurance Co.</i> , 201 F.2d 764 (9th Cir. 1953)	9
<i>Weyerhaeuser Co. v. Commercial Union Ins. Co.</i> , 142 Wn.2d 654, 665-66, 15 P.3d 115 (2000)	9

I.
**THE TRIAL COURT CORRECTLY ANALYZED
THE FACTS AS TO COVERAGE, BUT
CAME TO THE WRONG CONCLUSION**

In the *de novo* review of a summary judgment grant, the Court of Appeals stands in the shoes of the Superior Court Judge and makes an independent determination of the outcome. Attached to the appellant's opening brief as Appendix H is the transcript of proceedings in the hearing before the Honorable Superior Court Judge which includes the oral decision of the court. (Appendix H, pp. 19-20).

In rendering the oral decision, the Superior Court determined as fact without dispute that all of the locations of West Coast Pizza and Mad Pizza and other entities¹ were identified as the 21 locations covered by the

¹ In the National Continental motion for summary judgment at the Superior Court level, it states at p. 2 an accurate summary of the ownership situation with respect to the 21 pizza locations identified in the two policies.

West Coast is a Washington corporation doing business as Domino's Pizza, and in 2006-7 it operated two pizza stores in Everett. West Coast's three shareholders are Bryan Dobb, Kevin Dobb, and Dean Brandt. Bryan Dobb is the sole shareholder of three separate Washington corporations, Mad Pizza Company (hereinafter "Mad Pizza"), Tiam Pies, and Mac Pies. Mad Pizza has 12 locations, including one located in Lynnwood, Washington. (Citing Kevin Dobb's Deposition testimony.)

Therefore, all of the 21 locations identified in the insurance policies and/or insurance certificates/applications by address are owned by brother/sister corporations to West Coast Pizza which only owns 2 stores in its name. Plainly, Kevin Dobb intended to insure all his 21 operations in whatever ownership they might be and was assured that he had done so by the listing of the locations in the policy itself or in the insurance certificate or in applications for coverage.

United National and the National Continental policies. Since all of the 21 locations listed were the basis for the liability insurance coverage for the drivers at those locations, the name of the insured made no difference, it was only the location that gave rise to the coverage of the drivers working out of that location. Obviously, all of the drivers were pizza delivery drivers, therefore, the line of work could not have been a factor in making the insurance decision.²

The court said at page 20 (Appendix H) that:

And so even though all these locations were listed and a very substantial premium was paid that would be far beyond what would have been paid if it were just three locations, I can't find there is an ambiguity as to who is the named insured.³

There is no question that under case law cited by appellant reformation of an insurance policy is an available remedy where the true insured is not accurately identified. The court declined in this case to find an ambiguity as to the named insured in spite of the fact that both the policies insured 21 locations, 100 drivers, and showed revenues of over

² Bryan Dobb is the sole franchisee of all 21 locations as Domino's Pizza retail operations. Bryan Dobb is a co-shareholder in West Coast Pizza with his brother and a third party, the sole shareholder in all 11 Mad Pizza locations and co-shareholder in the other 8 locations. As noted, he personally is also the only franchisee from Domino's for all 21 locations.

³ All of the 21 locations operate out of the same office and all share the same mailing address. All 21 stores are managed out of the same office with the same managers responsible for all of them. This includes the Lynnwood store where the pizza delivery driver involved in the accident giving rise to this dispute operated from.

\$5.5 million. How can this not be an ambiguity when West Coast Pizza alone with its 2 locations had far fewer drivers, far less revenue, and, of course, far fewer locations than the 21 identified in both policies.

How can it not be an ambiguity when in the United National excess liability policy the policy itself by endorsement contains the address of each insured location, totaling 21 locations. Schedule L of the United National policy identifies each location by address, but says absolutely nothing in regard to the owner of the location. See Appendix G to appellant's opening brief, pp. (UN-00071-2.)

The determination by the Superior Court in this matter that all 21 locations of West Coast Pizza and Mad Pizza were intended to be insured is buttressed by the Declaration of Joe Constantine considered by the court, a true copy of which is attached as Appendix E to the appellant's opening brief. This declaration shows that the list of 21 locations was an integral part of the "Food Delivery Application" for insurance coverage to United National. (See document UN-00099 attached to Constantine Declaration.) United National through its authorized agent certified in writing that all 21 locations were insured by its policy by listing each of

the locations in the insurance certificate by address. (Constantine Declaration, Appendix E to opening brief, p. UN-00048.)⁴

It is evident from even a cursory review of the insurance policies and the application documentation and the certificate of insurance that the important factor in the contracting process for this Domino's Pizza coverage was the LOCATION of each retail store, the approximate NUMBER OF DRIVERS at those stores, and the VOLUME OF BUSINESS done in total by all 21 of the stores.

All of the 21 stores listed were in the retail pizza delivery business. There is not an iota of difference between the way one Domino's retail store does business and another, the only distinguishing feature is the LOCATION of the stores. Turning back to the transcript of the oral argument (Appendix H to the opening brief), at p. 13 the court posits the following very pertinent question:

THE COURT: Suppose I have homeowner's insurance coverage and it's got the right address on it but it is [in] somebody else's name, and so does the insurer have to pay

⁴ Attached to this reply are true copies of documents included as appendices to the appellant's opening brief all of which show the listing of the 21 locations by address. They are: (a) "Food Delivery Application" showing 21 locations on page 1, the 21 locations listed on page 2; (b) Commercial Application – Washington automobile insurance refers to attached schedule of locations and 100 employees/drivers at insured's locations; (c) September 14, 2006 fax scheduling locations as shown by attached 21 locations with addresses (including the Lynnwood location); (d) Certificate of Insurance dated August 16, 2006 showing 21 "covered locations" by street address (including the Lynnwood location); (e) "Food Delivery Rate Sheet" United National showing 21 locations including Lynnwood; (f) United National insurance "Schedule L" listing all 21 locations, including Lynnwood – this schedule attached to policy itself.

when my house burns down if its – if the policy is in the name of somebody else?

Plainly, that question has to be answered, “yes.” Why, because it is the location that is crucial, not the name of the owner which could easily be misspelled or otherwise confused. The insurance contract focuses on the location in that example, just as it does in the two policies at issue here which go to great pains in the insuring contract and in the application process and in the certification process to identify by address each of the 21 Domino’s locations insured. Nowhere is there the same level of specificity or importance given to the name of the owner of those locations.

The court then continues at page 14 of the transcript of the oral decision to confirm that:

They [West Coast and Mad Pizza] paid for this policy.
They [West Coast and Mad Pizza] paid for all of these cars to be covered. They paid for all of these locations. And there seems to be something really wrong with letting the insurance company out because the wrong entity was listed. But naming an insured is pretty important. . . .⁵

That last line quoted is where the court went wrong in dismissing the complaint against both insurers. On the face of each policy and the applications and the certifications the location of the retail store is crucial

⁵ While there are other brother/sister legal owners of 8 of the 21 Domino’s outlets, the court and counsel conflate them into West Coast and Mad Pizza in briefing and argument.

to the decision of the insurer to cover the loss, the determination of the amount of premiums, and the determination of the covered drivers. The saying in real estate is just as true here with regard to the basis of the bargain of these two insurance contracts – LOCATION, LOCATION, LOCATION.

The trial court was led astray by argument for counsel for respondent insurers found at page 15 of the transcript (Appendix H) to the effect that:

This is a liability policy. We [the insurers] insured liability. We [insurers] did not insure property. We did not insure locations. We did not insure automobiles. We insured liability.

The court was led to believe that the insurers did not insure “locations” notwithstanding the fact that the 21 locations were specifically listed in each of the policies or in applications for the policies, or in certifications for the policies. Contrary to the argument of counsel for the respondent insurers, they did insure locations and all the locations were accurately and fully identified in both policies.

At pages 19 and 20 of the transcript, the Superior Court shows how far off the mark it went in analyzing the issues and reaching the erroneous outcome it did. The court posited the situation before it with a situation where an older gentleman owned and operated a motorcycle personally.

The court then compared the situation before it here with the famous risk-taking daredevil, Evil Knievel, claiming to be the actual insured under the older gentleman's policy.⁶

Nowhere in the facts before the Superior Court here was it shown that there was the slightest difference in the nature of the business or the nature of the risk between any of the 21 locations shown to be covered on

⁶ Oral argument transcript August 20, 2010 (Appendix H to appellant's opening brief):

THE COURT: Let me make sure I've got this right. This is a hypothetical I was thinking about last night. Let's say we have a liability policy to insure a bunch of motorcycles. The person whose name is on the policy is sort of a calm, retired biker dude, but actually it's Evil Knievel who was driving the motorcycle.

It seems to me that the insurer would have a different view point as to how much to charge and whether or not to issue a policy at all, depending on whether the named insured is Evil Knievel versus the calm, retired biker dude. Am I getting it?

MR. KAMINS [Counsel for insurer]: That is absolutely right. It's a different risk to insure one entity versus two entities. . . .

Paragraph H, page 20 of transcript:

THE COURT: . . . So just please understand when I get right down to it, I can't see an ambiguity as to who is the named insured, and I think that that is really important when we are talking about a liability policy, as illustrated by my Evil Knievel example.

It just appears to me that a horrible mistake was made, apparently, by the broker, and Mad Pizza was not on this policy. And so even though all those locations were listed and a very substantial premium was paid that would be far beyond what would have been paid if it were just 3 [2] locations, I can't find there is an ambiguity as to who is the named insured. (Emphasis supplied.)

So with a heavy heart, I am going to go ahead and grant the motion for summary judgment.

both insurers' policies. All of the locations dealt in the same business, the retail sale and delivery of pizza. By adopting the misplaced analogy of the gentleman motorcyclist being substituted by Evil Knievel, the extreme risk-taker, the court mis-analyzed the issues presented here where there was no such disparate risk involved. To repeat, nowhere in any of the submittals does either insurer claim that the risk from the 21 locations which both insurers knew they were insuring would change at all simply because of the different name of the owner (this is especially true when the ownerships substantially overlapped as to the owning corporations).⁷

The criteria for interpreting an insurance contract in Washington is well settled. This criteria has been summarized as follows:

In Washington, insurance policies are construed as contracts. An insurance policy is construed as a whole, with the policy being given a "fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance." If the language is clear and unambiguous, the court must enforce it as written and may not modify it or create ambiguity where none exists. If the clause is ambiguous, however, extrinsic evidence of the intent of the parties may be relied upon to resolve the ambiguity. Any ambiguities remaining after examining applicable extrinsic evidence are resolved against the drafter-insurer and in favor of the insured. A clause is ambiguous when, on its face, it is fairly susceptible to two different interpretations, both of which are reasonable.

⁷ This unity is highlighted by the fact that Bryan Dobbs was the sole franchisee for all 21 stores insured.

Weyerhaeuser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654, 665-66, 15 P.3d 115 (2000) (citations omitted.).

While insurance contract interpretation is a matter of law, it should be consistent with how the average purchaser of insurance would understand the policy and liberally in favor of coverage. *See e.g., E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co.*, 106 Wn.2d 901, 907, 726 P.2d 439 (1986); *Stebbins vs. Westchester Fire Insurance Co.*, 115 Wash. 623, 629, 197 Pac. 913 (1921); *United States vs. Eagle Star Insurance Co.*, 201 F.2d 764 (9th Cir. 1953). An insurance policy should not be construed to reach a strained or forced result. *Findlay v. United Pac. Ins. Co.*, 129 Wn.2d 368, 374, 379, 917 P.2d 116 (1996).

II. WEST COAST PIZZA HAS STANDING TO SEEK REFORMATION OF ITS CONTRACT

The argument is made that West Coast Pizza is not the real party in interest in this case and that Mad Pizza should be suing. While that may be a good idea in terms of pleading, it is not a dispositive or fatal defect to the pursuit of this matter by West Coast Pizza who is admittedly a party to both insurance contracts. The ownership interests in West Coast Pizza and Mad Pizza significantly overlap, and were it to become a dispositive issue, there is absolutely no bar to joining Mad Pizza as a party to the litigation.

While it is true that Mad Pizza is the named defendant in the underlying injury case giving rise to the coverage questions here, West Coast Pizza is perfectly capable of seeking reformation of the insurance contract that it is admittedly a party so as to correctly name all intended insureds who owned the 21 locations specifically identified in both policies at issue here.

The issue of reformation was before the Superior Court in the summary judgment motions filed by respondent insurers. In its response to the United National motion for summary judgment, West Coast Pizza argued (between pages 16 and 19) that reformation was the appropriate remedy to correct the named insured. Respondents argue against this proposition citing the reliance of appellant West Coast Pizza on the decision in *Metropolitan Mortgage v. Reliable Insurance Company*, 64 Wn.2d 98, 100-1, 390 P.2d 694 (1964). Respondents attempt to distinguish *Metropolitan Mortgage* by asserting that because it is a property casualty coverage, not liability coverage, there should be a difference in the ability to reform the named insured(s) to conform to the shared intentions of the parties. Respondents do not argue why this should be the case. Reformation should be available to correct any mutual mistake. This is particularly true where equality of any particular insured is meaningless when it is considered that the 100 or so drivers insured are

not named anywhere in the policy, are driving their own personal vehicles, and essentially would be however is employed by the named insured at the insured location to deliver pizzas. The argument that the insurance company took into account a specific named driver in evaluating the policy is completely unsupported by the evidence which shows exactly the contrary to be the case.

**III.
WEST COAST PIZZA APPLIED FOR COVERAGE FOR
21 LOCATIONS AT SPECIFIC ADDRESSES AND WAS
SOLD THAT COVERAGE BY RESPONDENT INSURERS**

It is argued that the opening brief suggests that West Coast Pizza applied for insurance only on the 2 locations it was owner of record for. The implication is that the other 19 locations were not intended to be insured because technically they were owned by another organization or entity in which the owner of West Coast Pizza was also an owner. The policies themselves give the lie to this argument. As observed above, and as the Superior Court observed in making its decision, all 21 locations were listed by address on the National Continental policy itself, and on the application for and certificate of the United National policy.

There is absolutely no question that what West Coast Pizza applied for was insurance on all 21 locations for liability resulting from driver-employee negligence. The insurance was issued, the premium was paid,

and the policies remained in effect until a loss resulted from the alleged negligence of one of the drivers working out of location 14 (“Lynnwood”) on the schedule of locations on both policies. This is an undisputed fact.

When it was discovered that the location was technically owned by Mad Pizza, West Coast sought to reform the policy to include Mad Pizza because it was plain to everyone at the beginning that all 21 locations were intended to be insured and only the name of the ownership entity was mistakenly stated to be West Coast Pizza when it, in fact, was Mad Pizza. Nevertheless, it cannot be overemphasized that it was the 100 or so unnamed driver-employees at the specifically designated 21 locations that were insured by the two policies at issue here, and for which premiums were paid and received. There is absolutely no room for argument that all 21 locations were not insured for driver negligence.

Only after the loss was it discovered that the named insured incorrectly designated only the owner of 2 of the locations. That owner named on the policy then commenced this lawsuit to include the true owner of the other 18 locations (all in the pizza delivery business) as an insured as was intended by all parties from the beginning. The name of the owner clearly was secondary and technical to the address of the location and the number of insured drivers under both policies.

West Coast Pizza never sought to change the ownership of the locations, it only seeks to obtain the coverage that was originally intended and was issued and paid for as to all 21 locations.

**IV.
RESPONDENT UNITED NATIONAL
HIGHLIGHTS THE ISSUE**

In its brief at pages 14-15, United National admits the following:

The premium charged by United National was calculated based upon information supplied by West Coast in the application for insurance including West Coast's representation of the stores it claimed to own, the number of drivers it claimed to employ, and its annual revenue. (CP 460). The United National policy incorporates a list supplied by West Coast of 21 store addresses corresponding to the stores that West Coast purportedly owned. (CP 378-379). . . .

United National then proceeds to take the position that while it insured 21 locations and all of the 100 or so employee-drivers at those locations, its only legal insured was West Coast who owned only 2 of the locations listed on the policy. How can this be? If the locations and the unnamed employee-drivers at those 21 locations are the insured businesses, what possible difference does it make whether or not West Coast or one of the family of corporations owned by the principals of West Coast is the owner of the business at the other 19 locations. The business conducted in all 21 locations is identical, the retail sale and delivery of Domino's pizza. The insurance company did not rate the

coverage or adjust the premium based on the name of the insured, it rated the coverage and based the premium on the number of locations and the anticipated total number of unnamed drivers driving their own (“non-owned”) vehicles. Reformation of the policy to add as an insured the intended insured of 19 of the 21 locations listed would do violence to the insurance contract and the fundamental premise upon which it was based.

The decision of the Superior Court reads out of the policy coverage 90% of the locations specifically named in both policies. It is inconceivable that the intentions of the parties to the contract could be frustrated by the inadvertent omission of the legal owners of 19 of the 21 locations where the business conducted is identical and the brother/sister ownerships are overlapping. Wouldn't an insured under these circumstances reasonably have assumed that all 21 locations were covered given the specific location listing, the premium paid, certificate of insurance issued, and the identity of the business conducted at all locations?

**V.
IF THE LIST OF LOCATIONS IS INSIGNIFICANT TO
COVERAGE, WHY INCLUDE IT?**

At pages 21-2 of its brief, United National argues that the list of locations is unimportant in the coverage afforded to the 21 locations here. Presumably, United National would argue exactly the opposite if West

Coast Pizza sought to add a location to the coverage following a claim against that location where the location was not expressly listed in the policy initially. Plainly, the location is the crucial element of coverage, far more important than the name of the insured, otherwise, why list the location in the policy, in the certificate of insurance, and in the insurance application?

In asserting its position on pages 21-2 of the brief, United National cites to no authority for the bold contention unsupported by its own policy and surrounding circumstances that the list of locations was insignificant in relation to the designation of the named insured. The policies themselves demonstrate that nothing could be further from the truth. It is only employee-drivers operating out of the expressly named locations that are the insured. The drivers are the insured, and the employer of the driver is insured only by reason of the principles of *respondeat superior*.⁸ Since the insured (whether West Coast and/or Mad Pizza) are corporate entities, they can only act through employees or agents and it is only the employees or agents of each that can be the basis for assertion of a claim under the policy based on negligence. Therefore, the locations and the employee-drivers at those named locations are the crucial basis for coverage, not the name of the employer. By citing no authority in support

⁸ The drivers are operating their own “non-owned autos” in making the deliveries as contemplated by the coverage.

of its position, United National acknowledges the absence of any legal support for this proposition.

At page 22, United National argues that “if the policy language is clear and unambiguous, the court must enforce the policy as written.” What could be less clear and what could be more ambiguous than a policy which lists 21 locations and lists as a named insured the owner of 2 of the 21 locations and omits to list the owner of 19 of the locations? How could there be a greater ambiguity internal to the language of a policy than the dissonance of the specifically identified locations and the ownership of the employer operating out of those locations where the employer is composed of a family of interconnected legal entities?

**VI.
THE ARGUMENT BY THE INSURERS THAT BECAUSE
THE NEGLIGENT DRIVER WAS EMPLOYED BY
MAD PIZZA THERE IS NO COVERAGE
SIMPLY BEGS THE QUESTION**

Both respondent insurers argue that because only West Coast Pizza is a “named insured” under their policies, the liability of Mad Pizza for the actions of its drivers at one of the 21 listed locations cannot be a basis for coverage. This argument simply begs the question as the question before the court is whether or not the policies were intended to cover all 21 locations and both West Coast and Mad Pizza who owned all 21 locations, or whether there was some sort of clerical mistake in listing 19 locations

specifically by address in each of the policies or certificates or applications for the policies that were issued. To simply argue that because Mad Pizza is not a named insured is avoiding the question of whether Mad Pizza should have been an insured.

The Superior Court reached the wrong conclusion on this question by mistakenly giving precedence to the named insured over the detailed and exhaustive listing of locations in both policies. A clearer expression of the intention of the parties to insure all 21 locations could not be found in either policy than the listing of each location in the application, the policy itself, and the certificate of insurance.

**VII.
THE UNIFORM DECLARATORY JUDGMENTS ACT
(RCW Ch. 7.24) IS APPLICABLE**

The Declaratory Judgments Act does apply here because there is a controversy over whether or not an ambiguity in the policies issued by the two respondents exists, and whether or not that ambiguity should be resolved in favor of coverage as an insured of Mad Pizza and other entities owning the 21 locations. The present dispute arises out of the duty to defend and pay the underlying negligence action against an employee-driver of the Mad Pizza Lynnwood location shown on both policies as an insured location.

**VII.
WEST COAST HAS A REAL INTEREST IN
BEING JOINED WITH MAD PIZZA
AS INSUREDS ON BOTH POLICIES**

Respondents argue that West Coast Pizza has no “justiciable controversy” with either insurer as it was not its employee or its store location that gave rise to the underlying liability. United National in its brief on the point concedes that Bryan Dobb owns Mad Pizza and has an ownership interest in West Coast Pizza. (United National Brief, p. 28.) From the inception, West Coast has had sufficient interest in seeing that its sister company, Mad Pizza, is insured to go to the length of listing all the Mad Pizza locations as insured locations under both policies at issue here. The two owners/employers of the 21 locations are related entities, with common ownerships, and common management and common office addresses. While there may not be a pure total identity of ownership interest in both corporations, it is plain from the two policies that it was the intention of West Coast Pizza to see that its sister corporation, Mad Pizza, was insured at the 18 locations listed. West Coast indeed had an interest in the obtaining insurance coverage for Mad Pizza as shown by the efforts it made to do so.

While West Coast Pizza is not a party to the underlying liability suit, its sister corporation, Mad Pizza, is. West Coast Pizza intended to

insure its sister corporation and that intension is evidence from both policies at issue here. The issue is not whether West Coast Pizza is liable for the Mad Pizza driver's alleged negligence, the issue is whether it was intended by the parties that Mad Pizza and its locations be insured under the policies at issue here. That is the "justiciable controversy" before the court.

It should be observed that the Superior Court did not base its ruling on procedural or technical grounds, rather, it decided that because Mad Pizza was not named in the policy, there could be no coverage for the 18 Mad Pizza locations specifically identified as covered locations in the policy. It is this mistake in analysis and application of law that is on review here.

**VIII.
REFORMATION IS THE APPROPRIATE REMEDY**

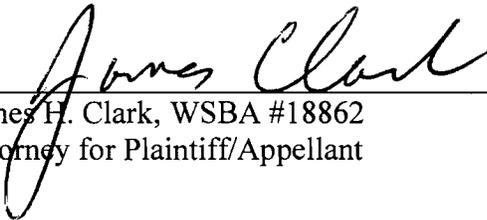
Reformation is an appropriate remedy to correct errors resulting from mutual mistake in the contract of insurance setting. See appellant's opening brief, pp. 19-21.

Respondents argue without citation to authority that the listing of 21 specific locations by address as being covered locations, does not show the need for reformation where 19 of the locations are owned by sister corporation to the "named insured." This argument ignores reality. West

Coast made this argument in response to National Continental's motion for summary judgment.⁹ Reality of the situation is that 21 locations were insured, only 2 of which were owned by the named insured on the policy, the remainder of which were intended to be insured by the both parties to the contract, as shown by the explicit listing of each location separately by address as an insured location whose employee-drivers were insureds under the non-owned automobile coverage provided by both policies.

DATED this 19 day of March, 2011.

OSERAN, HAHN, SPRING, STRAIGHT & WATTS, P.S.

By 
James H. Clark, WSBA #18862
Attorney for Plaintiff/Appellant

JHC\clients\mad pizza\national continental/appeal/reply

⁹ Attachment G, pages 4-7 of West Coast Response to National Continental Motion for Summary Judgment.

CERTIFICATE OF MAILING/SERVICE

The undersigned, Leona Bernard, certifies that on the 12th day of March, 2011, she caused to be served a copy of the attached REPLY OF APPELLANT TO RESPONSE OF UNITED NATIONAL INSURANCE COMPANY to the following:

Andrew Kamins
Duncan K. Fobes
Patterson Buchanan
Fobes Leitch & Kalzer
2112 3rd Ave Ste 500
Seattle, WA 98121-2391
ask@pattersonbuchanan.com

- Hand Delivery via Legal Messenger
 First Class U.S. Mail
 Federal Express Overnight
 Electronic Mail
 Other _____

Jeffery Emerson Adams
Murray Dunham & Murry
200 West Thomas
Suite 350
Seattle, WA 98119
jeff@murraydunham.com

- Hand Delivery via Legal Messenger
 First Class U.S. Mail
 Federal Express Overnight
 Electronic Mail
 Other _____

(VIA US MAIL)
The Court of Appeals/State of Washington, Division I
One Union Square
600 University Street
Seattle, WA 98101-4170

I certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Dated this 18th day of March, 2011 in Bellevue, Washington.



Leona Bernard

A



International Property & Casualty Insurance Brokers of Nevada, Inc.

1936 Catharine Court, Gardnerville, NV 89410
Phone: (775) 782-6655 Fax: (775) 782-6654
www.internationalpropertyandcasualty.com

FOOD DELIVERY APPLICATION

1. NAMED INSURED: First Name: <u>West Coast Pizza Co. Inc.</u> dba: <u>Domino's Pizza</u> <input type="checkbox"/> See Accord Application <input checked="" type="checkbox"/> INDIVIDUAL <input checked="" type="checkbox"/> CORP. <input type="checkbox"/> PART. <input type="checkbox"/> OTHER:		2. MAILING ADDRESS <u>P.O. Box 187</u> <u>Point Roberts, WA 98281</u> <input type="checkbox"/> See Accord Application PHONE NO.: <u>(604) 952-4502</u>	
TYPE OF COVERAGE SOUGHT: <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-Owned <input type="checkbox"/> Owned (excess of underlying only)		REQUESTED EFFECTIVE DATE: <u>ASAP</u>	
LIMIT OF LIABILITY <input type="checkbox"/> \$ 100,000. CSL <input type="checkbox"/> \$ 500,000. CSL <input type="checkbox"/> \$1,500,000. CSL <input type="checkbox"/> \$ 300,000. CSL <input checked="" type="checkbox"/> \$1,000,000. CSL <input type="checkbox"/> _____		Need a Quote: <input type="checkbox"/> Excess of driver's insurance policy. <input checked="" type="checkbox"/> Excess of a primary policy held by this Applicant. Primary Limit: <u>25/50</u> Primary Carrier: _____	

OPERATION DELIVERS: Pizza Chinese Food Other _____

Applicant is an: Independent Franchisee of: Domino's

Number of years in business: 20

Annual Delivery Receipts Last Year: \$ 5,500,000

Annual Delivery Receipts Coming Year: \$ 5,500,000

Total Annual Receipts: \$ 11,000,000

Total Number of Owned Vehicles: # _____

Number of Locations needing coverage: 21 are all locations to be scheduled owned by this applicant? _____

List complete addresses for all locations to be scheduled on this policy or attach a separate list to the application.
See Attached

Attach 5 years of currently valued loss runs from prior carrier

Prior Carrier: Scottsdale Expiring Premium: _____

If new in business or no prior coverage give details of experience & include No Known Loss or Claim Letter on Insured's Letterhead.

DRIVER QUALIFICATIONS

What auto liability limits are the drivers required to maintain? State Minimums
Do you have driver requirements: (ATTACH COPY) Do you have driver safety incentives: _____ (ATTACH COPY)

APPLICANT AGREES TO THE FOLLOWING DRIVER CRITERIA: (attach HGT28 form signed by insured)

- Driver's MVR's are checked at least every six months and at initial hire to confirm eligibility under insurance policy.
- Driver's auto liability insurance is checked at least every six months and at initial hire to confirm at least minimum financial responsibility limits are held and current
- All vehicles driven on behalf of the Insured meet the state's safety requirements.
- Driver must be over 18 & have 2 years driving experience and hold a valid drivers license for the residing state.
- Driver must have no more than two moving violations in 36 months and one at fault accident.
- No major traffic citations or incidents.

I UNDERSTAND THAT I MAY ONLY EMPLOY A DRIVER THAT MEETS THE ABOVE DRIVER CRITERIA

DATE: _____ SIGNATURE: [Signature] : APPLICANT

PRINT NAME: Kevin Dobbs TITLE: Pres

LOGAN COUNTY PUBLIC WORKS COAST PIZZA

ADDRESS	Building Limit	Contents Limit	FT Empl.	PT Empl.	Bldg Construction
1 118 Ferry St., Sedro Woolley, WA 98284	\$0.00	\$90,000	3	11	Frame
2 360 36th St., Bellingham, WA 98225	\$0.00	\$90,000	2	13	Masonry
3 1600 E. College Way, Mt. Vernon, WA 98273	\$0.00	\$90,000	3	11	Frame
4 9815 State Ave., Marysville, WA 98270	\$0.00	\$90,000	4	8	Masonry
5 1301 E. Sunset, Bellingham, WA 98226	\$0.00	\$90,000	2	12	Masonry Non-C
6 2511 Colby St., Everett, WA 98201	\$0.00	\$90,000	3	8	Masonry
7 7601 Evergreen Way, Everett, WA 98203	\$0.00	\$90,000	3	18	Masonry
8 270 SE Cabot Drive, Oak Harbor, WA 98227	\$0.00	\$90,000	4	22	Masonry
9 3131 Smokey Point Dr., Arlington, WA 98223	\$0.00	\$90,000	4	10	Frame
10 1811 Main St., Ferndale, WA 98245	\$0.00	\$90,000	2	8	Masonry
11 211 W 5th St., Wenatchee, WA 98801	\$0.00	\$90,000	5	11	Frame
12 108 Front St. N., Issaquah, WA 98027	\$0.00	\$90,000	5	8	Masonry
13 16321 Main St. NE 201, Duvall, WA 98019	\$0.00	\$90,000	3	11	Masonry
14 20815 67th Ave. W, Lynnwood, WA 98036	\$0.00	\$90,000	3	10	Masonry
15 7839 SE 27th St. Sta. 4, Mercer Island, WA 98040	\$0.00	\$90,000	1	8	Masonry
16 15100 SE 38th St. Space C, Bellevue, WA 98006	\$0.00	\$90,000	3	7	Masonry
17 462 228th Ave. NE, Redmond, WA 98053	\$0.00	\$90,000	5	15	Masonry
18 10575 NE 12th St., Bellevue, WA 98004	\$0.00	\$90,000	4	5	Masonry
19 7320 35th Ave. NE, Seattle, WA 98115	\$0.00	\$90,000	2	10	Masonry
20 3425 Birch Bay Lynden Rd., Custer, WA 98240	\$0.00	\$90,000	3	5	Masonry
21 600 NW Market, Seattle, WA 98107	\$0.00	\$90,000	2	10	Masonry

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* 3115-3. \$

12/07

2500⁰⁰

COMMERCIAL APPLICATION
WASHINGTON AUTOMOBILE INSURANCE

APPLICANTS REQUIRING A LIMIT OF LIABILITY IN EXCESS OF \$500,000 COMBINED SINGLE LIMITS WILL BE SUBJECT TO A 15 DAY DELAY IN THE EFFECTIVE DATE AS SPECIFIED IN SECTION 23 OF THE WASHINGTON AUTOMOBILE INSURANCE PLAN.

Producer (Last Name, First, Middle Initial)		Producer First Name		MI
Arthur J. Gallagher & MS, Inc.				
Mailing Address	City	State	Zip Code	
P.O. Box 2925	Tacoma	WA	98401	
Tax ID or Federal Security #	Producer License #	Telephone # (inc. area code)	Fax # (inc. area code)	
862-100-4872	24-7654	253-627-7183	253-572-1430	
(Complete if the producer completing and signing this application differs from Section 1.)				
Last Name	First Name	MI	Signing Producer License #	
Brink	David		5854	
Last Name		First Name		MI
West Coast Pizza Co. Inc.				
DBA				Self Employed
Domino's Pizza				<input type="checkbox"/> Yes <input type="checkbox"/> No
Home Telephone # (no area code)	Business Telephone # (inc. area code)	Fax #		
	604-952-4502	91-1959977		
Signal Address	City	State	Zip Code	
P.O. Box 187	Pt. Roberts	WA	98281	
Headquarters Signal Address (if different from above)		City	Zip Code	
Business of Applicant (Name of Operation)				
Pizza take out & Delivery				
Organized Under:	State of Incorporation	Date of Incorporation	Date actual operations commenced	
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor	WA	2001		
<input type="checkbox"/> Other				
Management, Directors and Officers (List names of principals and their spouses with more than a 10% ownership interest.)				
President	Name in Position	Percent Ownership		
Bryan Adams	12/10/01	51%		
Vice President	Name in Position	Percent Ownership		
Kenneth Adams	10/10/01	33%		
Secretary	Name in Position	Percent Ownership		
Debra Adams	10/10/01	16%		
Treasurer				
General Manager				
Officer				
List of employee companies				

Staple check here:



Send original, signed application with check/money order and required attachments to:

Western Association of Automobile Insurance Plans
PO Box 7917
San Francisco, CA 94120-7917

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SECTION 1 OPERATOR INFORMATION		(List all full-time, part-time, and all other operators that usually drive a vehicle.)			TOTAL OPERATORS	
Last Name	First Name	MI	Birth Date Mo./Day/Yr.	Driver's License #	State	

For applicants with more than four operators, all additional operators must be listed on an AIP-3502 Supplemental Operator Schedule and mailed with the original application to the Plan.

SECTION 2 ACCIDENTS
Has applicant, or anyone who usually drives the applicant's vehicle(s), been involved, either as owner or operator, in ANY motor vehicle accident during the past THIRTY-SIX months? Yes No. If "Yes", complete the following.

Name of Operator	Accident Date Mo./Day/Yr.	Code*	Place of Accident		Bodily Injury or Death	Prop. Damage (incl. your own) Amount	Penalty Points
			City	State			
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	

- *Accident Codes
1. Applicant's motor vehicle lawfully parked.
 2. Damaged by "Hit and Run" driver and accident reported to police within 24 hours from time of accident.
 3. Applicant reimbursed by or on behalf of person responsible for the accident or has judgment against such person.
 4. Other person involved in accident was convicted. Applicant or operator was not convicted.
 5. Police or Fire Department or First Aid Squad responding to an emergency call.
 6. Other type of accident - non-chargeable under provisions of the Plan. Describe accident in space provided below.

SECTION 3 CONVICTIONS
Has the applicant or anyone who usually drives the applicant's vehicle(s) been CONVICTED or FORFEITED BAIL at any time during the immediately preceding THIRTY-SIX months? Convicted Yes No Forfeited Bail Yes No If "Yes", for either item, complete the following.
NOTE: A paid ticket or fine is an admission of guilt and therefore constitutes a conviction.

Name of Operator	Date of Conviction or bail forfeiture Mo./Day/Yr.	Did Conviction Arise as a Result of an Accident?	Nature of Conviction	Place of Conviction		Penalty Points	Was License Suspended or Revoked?
				City	State		
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No

SECTION 4 HAZARDOUS MATERIALS
Identify any hazardous materials, wastes or substances being hauled. *N/A*

Identify radius of operations. (Number of straight line, air miles from starting to furthest destination to which vehicle travels in one direction on a regular basis. "Regular" is defined as 12 or more trips per month per vehicle.) *5 Mile Radius*

Trips From Place of Origin To Place of Destination	% of Revenue	# per Month	Principal Cities Served	Commodities Carried
<i>Vis See attached Sched. of Locations</i>	<i>80%</i>	<i>Vis</i>	<i>See Loc Schedule</i>	<i>Pizza</i>

SECTION 5 GROSS REVENUES (Detailed Financial Statement of Property or Passenger whether or not this policy is to be written on Direct Receipts basis)

Gross Revenues	Current Year	1st Prior Year	2nd Prior Year	3rd Prior Year	4th Prior Year
Other than Trucking	\$	\$	\$	\$	\$
Truckers excluding receipts from trip leased equipment	\$	\$	\$	\$	\$

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SECTION 11 - SELECTION OF UNINSURED AND UNDERINSURED MOTORIST COVERAGE DO NOT SIGN UNTIL YOU READ.

Uninsured/Underinsured Motorist Coverage - BI	<input type="checkbox"/> ACCEPT	<input type="checkbox"/> REJECT
Uninsured Motorist Coverage - PD	<input type="checkbox"/> ACCEPT	<input type="checkbox"/> REJECT
Basic Personal Injury Protection	<input type="checkbox"/> ACCEPT	<input type="checkbox"/> REJECT
Added PIP	<input type="checkbox"/> ACCEPT	<input type="checkbox"/> REJECT
Work Loss Option	<input type="checkbox"/> WITH	<input type="checkbox"/> WITHOUT
Optional Basic PIP	<input type="checkbox"/> ACCEPT	<input type="checkbox"/> REJECT
Work Loss Option	<input type="checkbox"/> WITH	<input type="checkbox"/> WITHOUT

NOTE: Your designated insurer will send you a disclosure form that fully explains all of the above listed options for your signature prior to policy issuance.

I understand and agree that selection of any of the above options applies to my liability insurance policy and future renewals or replacements of such policy, which are issued at the same Bodily Injury Liability Limits. If I decide to select another option at some future time, I must let the Company or my producer know in writing.

Date: _____ Hour: _____ AM PM

Applicant's Signature _____

Are any other vehicles owned by the Applicant? Yes No

Are any vehicles hauling exclusively for one firm/carter? Yes No

Name of Insurance Company: _____ Policy #: _____
 Name of Firm/Carrier: For Insd
 Address of Insurance Company: _____ Type of Business: Delivering Pizza

Description of any owned, leased, hired, and non-owned vehicles, which are not to be insured.

Year	Trade Make	Body Type	Vehicle Identification #

Total # Employees <u>285</u>	What % of the applicant's employees operate their vehicles in the business? <u>35%</u>	FAST FOOD DELIVERY ONLY	Total # Drivers <u>100</u>
---------------------------------	---	--------------------------------	-------------------------------

<input type="checkbox"/> Check here if desired.	Estimated Annual Cost of Hire	Rates Per \$100		Estimated Premium	
		B.I.	P.D.	B.I.	P.D.

(For policies rated under Trustee's Cost of Hire.) All rates for which a broad form rating or MCS-99 endorsement has been issued.

	Current Year	1st Prior Year	2nd Prior Year	3rd Prior Year	4th Prior Year
Indicate the total Cost of Hire, including cost and wages, for vehicles leased or hired on a long-term basis (over 6 months) and specifically insured by applicant as an owned automobile.	\$	\$	\$	\$	\$
Indicate the total Cost of Hire, including cost and wages, for automobiles, which are not specifically insured by the applicant as an owned vehicle but are to be insured as hired automobiles.	\$	\$	\$	\$	\$
Cost of Hire - Represents Total Long and Short Term Cost of Hire.	\$	\$	\$	\$	\$

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SECTION 23 - FINANCIAL RESPONSIBILITY

NOTE: All owned and operated vehicles must be described in this application. All risks for which a filing has been made (except SR-22) are subject to cost of hire rating and employer & non-ownership coverages. If a filing is requested here, the Cost of Hire and Employer's Non-Ownership Liability sections must be completed. Applicant's name must be identical to name as it appears on ICC or Dept. of Public Safety (DPS) permit to avoid rejection.

Is filing of specific limit(s) of liability needed? Yes No. If "Yes" to comply with:

Motor Carrier Act of 1980 Type: 1 2 3 4 Bus Regulatory Act of 1982 ICC Regulation - Cocket # _____

Local Ordinance (attach copy) State Regulation U. S. DOT # _____ Other _____

If block(s) are checked, list state(s) and city(ies) regulated limits or limits of liability required by law.

Is applicant required to file evidence of financial responsibility (SR-22)? Yes No. If "Yes", complete the following.

Last Name _____ First Name _____ MI _____ Tax Identification # _____

Type of Filing: Owner's (operation of owned vehicles) Operator's (operation of not-owned vehicles) Both

State where filing required _____ Case or file # _____ Reason for Filing _____

Name of any party requiring a Certificate of Insurance or additional insured endorsement _____

SECTION 24 - PREMIUM FINANCE

GROSS DEPOSIT PREMIUMS MUST BE SUBMITTED WITH APPLICATION.

Option 1 - Full Annual Premium
 Option 2 - Premium Deposit with Single Bill Balance
 Option 3 - Installment Premium Payments*
 * \$4.00 per installment charge
 Premium to be Financed - Name of Premium Finance Company**

Payment by: Cash Check Credit # _____
 Total Estimated Premium \$ 2,500
 Amount Submitted with Application \$ _____

* Not Available on Premium Financed Policies.
 ** Attach a copy of Premium Finance contract.

NOTICE TO PREMIUM FINANCE COMPANY -- Unearned Premium is based on actual premium, not estimated premium.

SECTION 25 - PRIOR COVERAGE INFORMATION

Information for the past three years. (If a loss, information for the past five years required.) Attach loss statements from previous carrier.

Name of latest carrier _____ Policy # _____ Termination date _____

Was coverage through Plan? Yes No. If "Yes", give reason terminated _____

Complete the following for Carriers of property and passengers.

	Policy #	Policy Period From To	Name of Insurance Company
1st Prior			
2nd Prior			
3rd Prior			
4th Prior			

SECTION 26 - AUTHORIZATION OF INFORMATION

The Applicant hereby authorizes any insurer that may previously have provided coverage to the Applicant or to additional named insureds to provide records, data or information concerning prior coverage to the Plan or any carrier designated by the Plan. The Applicant agrees that a reproduction of this authorization shall be considered as effective and valid as the original.

- The application must be fully completed and duly executed.
- Specific applicants requiring financial responsibility filings or a limit of liability in excess of \$500,000 CSL will be subject to a 15-day delay in the effective date. Coverage under this evidence of automobile insurance for these specific applicants is to be effective for a period not to exceed 30 days from the effective date of coverage.
- Otherwise, coverage under this evidence of automobile insurance is to be effective for a period not to exceed 30 days from the effective date and time stated herein. Within such 30 day period coverages under this evidence of automobile insurance will terminate immediately upon: (a) the issuance of the policy applied for, (b) the issuance of any policy affording similar insurance, or (c) the cancellation of the coverages of insurance afforded hereunder in accordance with the rules of the Washington Automobile Insurance Plan.
- A premium charge will be made for these coverages if the policy, when and as issued, is not accepted by the insured.
- The insurance afforded hereunder shall be subject to all the terms and conditions of the Plan and the Policy Form prescribed for use.
- The Producer of Record must forward this application to the Plan Office no later than the first working day after the application is written.

NOTE: In the event there is no U.S. postmark (a metered mail postmark, electronic stamp, or other postage service or stamp are not considered a U.S. postmark), coverage will become effective no earlier than 12:01 a.m. on the day following receipt in the Plan Office.

Applicants requiring filings or a limit of liability in excess of \$500,000 Combined Single Limits will be subject to a 15 day delay in the effective date as specified in Section 23 of the Washington Automobile Insurance Plan.

Requested Effective Date and Time: _____
 Example: 09/01/2002 11:30 AM

IN NO EVENT SHALL COVERAGE BE EFFECTIVE PRIOR TO THE DATE AND HOUR OF COMPLETION OF THIS APPLICATION.

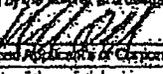
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I hereby certify that I am a licensed broker/agent of the State of Nevada. I have read the Washington Automobile Insurance Plan and have explained the provisions to the applicant. I acknowledge that I am acting on behalf of the applicant in submitting this application and have no authority to establish or revise the terms or conditions of coverage. This application includes all required information given to me by the applicant. In the event of cancellation or change in the policy resulting in a reduction of premium, I agree to return the unearned premium to the insured (not of any minimum premium due the carrier) and also to return to the carrier unearned compensation for this insurance received by me as required by the Plan.

My signature hereon represents the Agent of the Producer of Record Statement AND I certify this application is submitted pursuant to the effective date provisions contained in the Washington Automobile Insurance Plan.


 Date: 8/14/06 Hour: 2:00 AM PM

- I, the Applicant, declare and certify that:
1. I have tried and failed to obtain automobile insurance in this state within the preceding 90 days.
 2. To the best of my knowledge and belief all statements contained in this application are true and that these statements are offered as an inducement to the Company to issue the policy for which I am applying.
 3. I realize that any misstatement or failure to disclose required information will not be considered good faith on my part and may void the application or cause cancellation of my coverage.
 4. I hereby agree to pay all premiums when due.
 5. I hereby certify that I do not own any insurance company for automobile premiums due or contracted.
 6. I designate as Producer of Record for this insurance the producer or firm named in this application. I may designate a substitute producer at any time and, upon designation, shall be the Producer of Record. I understand that any designated Producer cannot act as an agent of the Washington Automobile Insurance Plan or any carrier for the purpose of this insurance and that the Producer has no authority to establish, alter or amend terms or conditions of coverage.
 7. I duly authorize the undersigned to execute this application on my behalf if the Applicant is not a natural person.
 8. I agree that no coverage will be in effect if the premium receipt, which accompanies this application, is justifiably dishonored by any financial institution.
 9. I understand that the premiums shown on this application are estimated premiums. The carrier reserves the right to adjust the premium either prior to or after the issuance of the policy, whenever applicable.
 10. I understand that if I owe money for a prior Washington Automobile Insurance Plan policy which I have not formally appealed to the Washington Automobile Insurance Plan Governing Committee, the money that I submit with this application for a new Washington Automobile Insurance Plan policy will be applied to that prior policy, and I am not entitled to a refund of the money I have submitted with this application, even if coverage for this new policy is terminated, until I pay the full amount owed for all current and prior Washington Automobile Insurance Plan policies.
 11. When the insurance is to be written on a basis requiring final adjustment of the premium after expiration of the policy I will maintain a complete record of its financial transactions in any reasonable form and manner as the insurer may require. I will also make this record available for inspection by the insurer at a designated place and at all reasonable times.


 Date: 8/14/06 Hour: 2:00 AM PM

In the event that independent of coverage is not received within 90 days, notify the Plan Office at PO Box 7217, San Francisco, CA 94122

It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of obtaining the Company's benefits, including impairment, fines, and denial of insurance benefits.

In addition to routine verification of information pertinent to the insurance applied for, if the application is by an individual for insurance primarily for personal or family purposes, the insurer to which it is applied may have an investigative consumer report made including information bearing on character, general reputation, personal characteristics or mode of living and, upon the individual's written request, will disclose in writing the nature and scope of the investigation requested, if such report is procured.

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Facsimile Transmittal



Arthur J. Gallagher
Risk Management Services, Inc.

Date:	September 14, 2006
Total Pages:	2 (including this cover sheet)
To:	Dean Dukwill
Fax #:	888-482-5144
From:	Christine Lopez, Account Manager Arthur J. Gallagher Risk Management Services, Inc. P.O. Box 2925, Tacoma, WA 98401-2925
Phone:	(253) 627-7183 Ext. #1134 <input type="checkbox"/> Email Chris_lopez@ajg.com
Fax:	(253) 572-1430
Re:	Westcoast Pizza - CPW7063115

Message: Dean:

Per our conversation, enclosed is the location schedule for West Coast Pizza.

Let me know if you have any questions.

Thank you.

Chris

Chris

This fax contains confidential information for the named recipient only. Any other distribution, copying or disclosure is strictly prohibited. If you have received this fax in error, please notify us immediately by phone (253.627.7183) and return this fax to us by mail to: AJG, PO Box 2925, Tacoma, WA 98401-2925.

CAIP INMAIL

SEP 15 2006

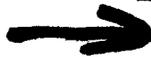
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0821010801ED0015 - WA - COARSE PIZZA

21

ADDRESS

- 118 Ferry St., Sedro Woolley, WA 98284
- 360 36th St., Bellingham, WA 98225
- 1600 E. College Way, Mt. Vernon, WA 98273
- 9815 State Ave., Marysville, WA 98270
- 1301 E. Sunset, Bellingham, WA 98226
- 2611 Colby St., Everett, WA 98201
- 7601 Evergreen Way, Everett, WA 98203
- 270 SE Cabot Drive, Oak Harbor, WA 98227
- 3131 Smokey Point Dr., Arlington, WA 98223
- 1811 Main St., Ferndale, WA 98248
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- 108 Front St. N., Issaquah, WA 98027
- 15321 Main St. NE 201, Duvall, WA 98019
- 20815 67th Ave. W, Lynwood, WA 98036
- 7639 SE 27th St. Ste. 4, Mercer Island, WA 98040
- 15100 SE 38th St. Space C, Bellevue, WA 98006
- 462 228th Ave. NE, Redmond, WA 98053
- 10575 NE 12th St., Bellevue, WA 98004
- 7320 35th Ave. NE, Seattle, WA 98115
- 3425 Birch Bay Lynden Rd., Custer, WA 98240
- 500 NW Market, Seattle, WA 98107



CAIP INMAIL

SEP 15 2006

IMS

D

CERTIFICATE OF INSURANCE
EVIDENCING PLACEMENT OF COVERAGE

INSURED: 30106/36685
West Coast Pizza Company, Inc.; DBA: Domino's Pizz
P.O. Box 187
Point Roberts, WA 98281

Page 1 of 4
CERTIFICATE NBR: GV060446
FROM: 12:01 a.m. 08-16-06
TO: 12:01 a.m. 09-15-06

PRODUCER: 10877
Joe Constacine
AmWins Brokerage of Washington
601 Union Street Ste 2425
Seattle, WA 98101

(206)922-1818 FAX: (206)922-1819

INSURANCE COMPANY:
United National Insurance Company

POLICY NBR: XTP79005
EFFECTIVE: 08-16-06
EXPIRES: 08-16-07

DESCRIPTION OF OPERATION:
Food Delivery

LIMITS:
PER BELOW

International Property & Casualty certifies that, per your request, the following insurance has been effected with the insurance company shown above. Please note all terms and conditions and notify us immediately if there are any discrepancies. Terms and conditions bound may not be as specified on the application. In the event of a claim, notify International Property & Casualty.

TERMS & CONDITIONS

PLEASE NOTE: IF THIS QUOTE BINDS, THAN THE EXCESS HIRED & NON-OWNED AUTO POLICY, FOR WHICH THE BINDER IS PREPARED, WILL TAKE EFFECT AT 12:01AM STANDARD TIME AS OF THE DATE OF THE PRIMARY POLICY LISTED HEREIN BECOMES EFFECTIVE, OR THE DATE SHOWN ON THE BINDER, WHICHEVER IS LATER.

PLEASE FORWARD

SUBJECT TO: Currently valued MVRs for the following drivers: Quinn Paul Michael, Jeremy John Allison, Jason Chambers, Jonathon William Reach & Kim Rick Kee.

ORIGINAL SIGNED APPLICATION AND RT29 DUE WITHIN TWO WEEKS.

25% of the annual minimum and deposit premium plus fees.

Copy of Underlying Dec Page.

RENEWAL OF: New

COVERAGE: Excess Hired and Non-Owned Auto (any employed driver)

LIMIT: Difference between 25/50/10 and \$1,000,000 CSL

ANNUAL MINIMUM & DEPOSIT: H/NOA: \$60,480.00
*Policy minimum Premium = \$5,040.00

CERTIFICATE OF INSURANCE
EVIDENCING PLACEMENT OF COVERAGE

INSURED: 30106/36685
West Coast Pizza Company, Inc.; DBA: Domino's Pizz
P.O. Box 187
Point Roberts, WA 98261

Page 2 of 4
CERTIFICATE NBR: GV060446
FROM: 12:01 a.m. 08-15-06
TO: 12:01 a.m. 09-15-06

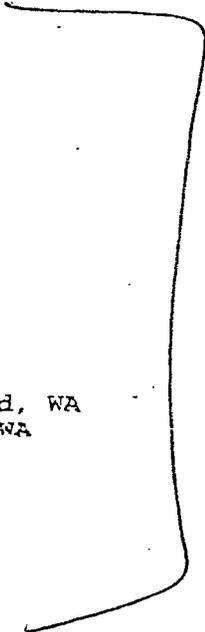
*Location Minimum Premium = \$2,880.00

FULLY EARNED PREMIUM: 25% of the annual minimum and deposit
PAYMENT TERMS: DUE IN 30 DAYS. PLEASE USE OUR BINDER AS YOUR INVOICE.
RATE: \$10.00 per \$1,000 of delivery receipts

ESTIMATED ANNUAL DELIVERY RECEIPTS: 55,500,000.00
*NOTE: Insured must keep accurate records of delivery receipts

OF COVERED LOCATIONS: 21

- COVERED LOCATION(S): 1) 118 Ferry Street, Sedro Woolley, WA
- 2) 360 36th Street, Bellingham, WA
- 3) 1600 East College Way, Mount Vernon, WA
- 4) 9815 State Avenue, Marysville, WA
- 5) 1301 East Sunset, Bellingham, WA
- 6) 2611 Colby Street, Everett, WA
- 7) 7601 Evergreen Way, Everett, WA
- 8) 270 SE Cabot Drive, Oak Harbor, WA
- 9) 3131 Smokey Point Drive, Arlington, WA
- 10) 1811 Main Street, Ferndale, WA
- 11) 211 West 5th Street, Wenatchee, WA
- 12) 108 Front Street North, Issaquah, WA
- 13) 15321 Main Street NE 201, Duvall, WA
- 14) 20815 67th Avenue West, Lynnwood, WA
- 15) 7639 SE 27th Street, Ste. 4, Mercer Island, WA
- 16) 15100 SE 35th Street, Space C, Bellevue, WA
- 17) 462 228th Avenue NE, Redmond, WA
- 18) 10575 NE 12th Street, Bellevue, WA
- 19) 7320 35th Avenue NE, Seattle, WA
- 20) 3425 Birch Bay Lynden Road, Custer, WA
- 21) 500 NW Market, Seattle, WA



ADDITIONAL INSURED: Domino's Pizza, LLC and its subsidiaries
P.O. Box 997
Ann Arbor, MI 48106-0997

SERVICE FEE: \$1,000.00
UNDERLYING: TBD
PAPER: United National Insurance Company

CERTIFICATE OF INSURANCE EVIDENCING PLACEMENT OF COVERAGE
--

INSURED: 30106/36665
 West Coast Pizza Company, Inc.; DBA: Domino's Pizz
 P.O. Box 187
 Point Roberts, WA 99281

Page 3 of 4

CERTIFICATE NBR: GV060446
 FROM: 12:01 a.m. 08-16-06
 TO: 12:01 a.m. 09-15-06

COMMISSION: 15.0%

EXCLUSIONS: ~~Cross suit liability, Medical Payments, Personal Injury Protection (P.I.P.), Uninsured Motorists, Underinsured Motorists laws or statutes, Owned Auto, Absolute Pollution exclusion, Per Underlying, War & Terrorism, Electronic Data and Cyber Risk Exclusion~~

TERMS & CONDITIONS:

- *Coverage applies only to: 1) the entities, 2) the locations and 3) the specified operations as scheduled on the policy.
- *No flat cancellation allowed
- *If coverage is bound please convey to all parties involved that no one may issue binders, endorsements, certificates of insurance or additional insured endorsements, unless this office has given written approval.

*Special restriction-Warranty of application and operators of Insured's Vehicle endorsement applies:

- ^Must be over 18 and have 2 years driving experience and hold a valid drivers license for the residing state.
- ^No more than 2 moving violations in 36 months and one at fault accident.
- ^No major citations:
 - Driving under the influence
 - Driving while impaired
 - Driving in possession of alcohol or drugs
 - Refusal to submit to a blood, urine or breath test
 - Driving with a suspended or revoked license
 - A felony in which a vehicle is used (i.e. Vehicular Manslaughter, Vehicular Homicide, Vehicular Assault, Hit & Run, eluding a peace officer)
 - Reckless Driving
 - Careless Driving
 - Driving over 100 MPH; Speed Contest; Racing
- ^Insured is responsible for checking motor vehicle records semi-annually.
- ^Insured must verify that the employed driver has insurance coverage
- ^Underlying effective/expiration dates must be concurrent. Effective date will be either the effective date of the primary policy or the effective date of the binder, whichever comes later. Policy will be adjusted as necessary.
- ^A copy of the underlying dec must be forwarded to the company before the policy can be issued.

*** YOUR OFFICE IS RESPONSIBLE FOR THE SURPLUS LINES FILINGS AND PAYMENT OF

Received Aug-16-2006 09:59

From-7757826654

To-AMWINS OF WA

Page 808

UN 00049

CERTIFICATE OF INSURANCE
EVIDENCING PLACEMENT OF COVERAGE

INSURED: 30106/36685
West Coast Pizza Company, Inc.; DBA: Domino's Pizz
P.O. Box 187
Point Roberts, WA 98281

Page 4 of 4
CERTIFICATE NBR: GV060446
FROM: 12:01 a.m. 08-16-06
TO: 12:01 a.m. 09-15-06

TAXES AND FEES ***

IN ORDER TO BIND COVERAGE I WILL NEED THE FOLLOWING LETTER COMPLETED:

This policy is being written on a Surplus Lines basis, in a state where the insurance carrier is approved but not admitted. As a Surplus Lines Broker, it is your responsibility to arrange for the payment of the state taxes and/or stamping fee on the policy; and, make whatever filing is necessary with the appropriate authority.

Please acknowledge that you are arranging for the payment of all taxes and fees due and have handled all appropriate filing by signing in the space provided below, and sending the original signed copy to us within 10 days.

We are responsible for the payment of state taxes and fees on this policy. Arrangements have been made for such payment and the necessary filing(s).

(Signed/Accepted)

Name of individual making the filings: JOSEPH CONSTANTINE
Surplus Lines Broker License or FEIN #: AMWINS IB941VA
Agency Name: AMWINS BROKERAGE
Agency Address: 601 UNION STREET SEATTLE WA 98101

PREMIUM: \$60,480.00
SERVICE FEE: 1,000.00
TOTAL: \$61,480.00

* PLEASE REVIEW THIS CERTIFICATE CAREFULLY AS IT MAY
* NOT PROVIDE THE COVERAGES OR TERMS YOU REQUESTED

08-16-0

P.O. Box 1150
Gardnerville, NV 89410

Tammy D. Sunderland
(775) 782-6655 Fax: (775) 782-6654

plt

Received Aug-16-2006 08:59

From-7757826654

To-AMWINS OF WA

Page 004

UN 00050

E

DETAIL/INSURED #: 36685/30106 New

Name: West Coast Pizza Co., Inc.; DBA: Domino's Pizza

FOOD DELIVERY RATE SHEET

City: (see attached)
 State: WA
 Territory: (see attached)
 Delivery Receipts: \$5,500,000
 Number of Locations: 21 * \$2,880 = \$60,480
 Number of Owned Units: 0
 U/L Limit: \$25/50/10
 S.I.R.: NA
 Desired Limit: \$1,000,000

DIFFERENCE TO \$1,000,000

Manual H/N Rate: \$4.521 (see attached)
 Manual Owned Rate: NA
 Manual Premium: \$24,866

\$500,000 EXCESS of \$1,000,000 RATE

H/N Manual Rate: NA
 Manual Owned Rate: NA
 Premium: NA

TOTAL COMBINED MANUAL RATE FOR \$1,500,000

Total Combined Manual Rate: H/N: NA O: NA
 Total Combined Manual Premium: NA

TOTAL CHARGED

Rate Charged: H/N = \$10.00 O = NA
 Premium Charged: H/N = \$55,000 O = NA
 Total Prem: \$55,000 (\$60,480 MP)

UNG's PRIOR LOSS HISTORY

<u>Year</u>	<u>Policy Number</u>	<u># of Claims</u>	<u>Amt. Paid/Rsvd</u>	<u>Open/Close</u>
<u>05-06</u>	<u>Scottsdale</u>	<u>0</u>		
<u>04-05</u>	<u>Scottsdale</u>	<u>4</u>	<u>\$3,217</u>	<u>Closed</u>
<u>03-04</u>	<u>Scottsdale</u>	<u>2</u>	<u>\$5,931</u>	<u>Closed</u>
<u>02-03</u>	<u>Scottsdale</u>	<u>0</u>		

Completed By: MRR Given to Tammy: 8/9/2006 Rcvd fr: Tammy: _____

Location	City	Territory	Rate @ 1 Million
1	Woolley	030	\$ 3.972
2	Bellingham	011	\$ 3.731
3	Mt. Vernon	030	\$ 3.972
4	Marysville	030	\$ 3.972
5	Bellingham	011	\$ 3.731
6	Everett	012	\$ 4.306
7	Everett	012	\$ 4.306
8	Oak Harbor	030	\$ 3.972
9	Arlington	030	\$ 3.972
10	Ferndale	030	\$ 3.972
11	Wenatchee	024	\$ 3.257
12	Issaquah	021	\$ 4.863
13	Duvall	001	\$ 5.874
14	Lynwood	022	\$ 4.863
15	Mercer Island	001	\$ 5.874
16	Bellevue	021	\$ 4.863
17	Redmond	021	\$ 4.863
18	Bellevue	021	\$ 4.863
19	Seattle	001	\$ 5.874
20	Custer	030	\$ 3.972
21	Seattle	001	\$ 5.874
Totals		NA	\$ 4.521

F

SCHEDULE L

This Endorsement forms a part of Policy #: XTP79005

By: United National Insurance Company

SCHEDULE OF LOCATIONS

LOCATION 1:	118 Ferry Street Sedro Woolley, Washington
LOCATION 2:	360 36 th Street Bellingham, Washington
LOCATION 3:	1600 East College Way Mount Vernon, Washington
LOCATION 4:	9815 State Avenue Marysville, Washington
LOCATION 5:	1301 East Sunset Bellingham, Washington
LOCATION 6:	2611 Colby Street Everett, Washington
LOCATION 7:	7601 Evergreen Way Everett, Washington
LOCATION 8:	270 Southeast Cabot Drive Oak Harbor, Washington
LOCATION 9:	3131 Smokey Point Drive Arlington, Washington
LOCATION 10:	1811 Main Street Farndale, Washington
LOCATION 11:	211 West 5 th Street Wenatchee, Washington

All other Terms and Conditions remain unchanged.

Page 1 of 1

UN 00071

SCHEDULE L

This Endorsement forms a part of Policy #: XTP79005

By: United National Insurance Company

SCHEDULE OF LOCATIONS

LOCATION 12: 108 Front Street North
Issaquah, Washington

LOCATION 13: 15321 Main Street Northeast
Suite 201
Duvall, Washington

LOCATION 14: 20815 67th Avenue West
Lynnwood, Washington

LOCATION 15: 7639 Southeast 27th Street
Suite 4
Mercer Island, Washington

LOCATION 16: 15100 Southeast 38th Street
Space C
Bellevue, Washington

LOCATION 17: 462 228th Avenue Northeast
Redmond, Washington

LOCATION 18: 10575 Northeast 12th Street
Bellevue, Washington

LOCATION 19: 7320 35th Avenue Northeast
Seattle, Washington

LOCATION 20: 3425 Birch Bay Lynden Road
Custer, Washington

LOCATION 21: 500 Northwest Market Street
Seattle, Washington

**

All other Terms and Conditions remain unchanged.

Page 1 of 1

UN 00072

G

1 location at the time of the accident. Mr. Quito was employed by Mad Pizza, Inc. at the time of
2 the accident at the Lynnwood location. (Kevin Dobb Declaration, ¶ 20.)

3 On May 22, 2009, National filed a motion for summary judgment arguing that among
4 other claims, that there is no coverage because West Coast dba Domino's is identified as the
5 insured on the policy. On pages 15-16 of National's initial Motion for Summary Judgment,
6 National makes the same argument concerning the identity of the insured that it is now making in
7 its Motion for Reconsideration. The issue was not, however, addressed at the oral argument on
8 the summary judgment hearing or in the court's written order dated September 9, 2009. Rather,
9 in denying National's motion, the court found only that an issue of fact existed as to whether the
10 franchisor, Domino's Pizza, was an additional insured on the policy.

11 The court entered a Judgment and Order on February 12, 2010. National and United
12 claim to not have received the Judgment. To ensure that the court has had an opportunity to rule
13 on the "insured" issue, Plaintiff agreed to set aside the Judgment and strike its Motion for
14 Attorney's Fees. Plaintiff stipulated that the court should resolve this remaining legal issue once
15 and for all on May 7, 2010.

16 III. AUTHORITY

17 A. **If The Court Finds That Mad Pizza Is Not The Insured Under The National Policy,**
18 **The Policy Should Be Reformed Because It Does Not State The Contract Intended**
By The Parties.

19 It is undisputed that National underwrote the policy to cover all 21 locations and 100
20 drivers, calculated the premiums accordingly, and issued the policy to cover the same. The
21 application references 100 drivers. The schedule of locations includes the Lynnwood location.
22 The policy itself states that it covers 100 employees which obviously corresponds to the number
of drivers. As a result, National insured the Mad Pizza driver involved in the underlying

1 accident. Thus, to the extent the National Policy as issued does not cover Mad Pizza's stores and
2 drivers, the policy should be reformed to include Mad Pizza Company, Inc. as an insured.

3 **1. Under Berg v. Hudesman, The Court Should Consider The Surrounding**
4 **Circumstances Pertaining To The Insurance Policy.**

5 This court must interpret the insurance contract to address National's technical ownership
6 argument. In doing so, the court should consider the surrounding circumstances pertaining to the
7 contract. Berg holds that extrinsic evidence is admissible as an aid in determining the parties'
8 intent to a contract. 115 Wn.2d 657, 661 (1990).

9 Here, the evidence overwhelmingly shows that the parties intended for the policy to cover
10 the Lynnwood location. The court should consider the application, the premium paid, the
11 schedule of locations provided by West Coast and the number of pizza drivers covered by the
12 policy in interpreting the intent of the parties. All of this evidence leads to the conclusion that all
13 parties intended to cover the Lynnwood location and all drivers employed at the Lynnwood
14 location.

15 **2. Reformation Is An Appropriate Form Of Relief When The Contract As**
16 **Written Does Not State The Contract Intended By The Parties Due To**
17 **Mutual Mistake.**

18 When recovery on a claim is unavailable under the contract as written but the insured
19 shows the policy does not state the true contract, reformation is an appropriate relief. *See Carew,*
20 *Shaw & Bernasconi, Inc., v. Gen. Cas. Co. of Am.*, 189 Wash. 329, 335, 338, 65 P.2d 689 (1937).
21 A contract may be reformed if there has been a mutual mistake of the parties. *See Kaufmann v.*
22 *Woodward*, 24 Wn.2d 264, 270, 163 P.2d 606 (1945); *Id.*; *Associated Petroleum Products, Inc.*
V. Northwest Cascade, Inc., 149 Wn. App. 429, 437-38, 203 P.3d 1077 (Div. 2 2009). A mutual
mistake occurs when the parties share the same intent as to essence of the entire agreement, but

1 fail to express this intent in the document. *Lehrer v. State, Dept. of Social and Health Services*,
2 101 Wn. App. 509, 514, 5 P.3d 722 (Div. 3 2000). The issue of reformation is a question of fact.
3 *See Endicott v. Saul* 142 Wn. App. 899, 909-10, 176 P.3d 560 (Div. 1 2008). Although the party
4 seeking reformation must prove the issue by clear, cogent, and convincing evidence, the amount
5 of evidence necessary to submit the question to the trier of fact is met by substantial evidence.
6 *See e.g., Id.; Gammel v. Diethelm*, 59 Wn.2d 504, 506, 368 P.2d 718 (1962).

7 Here, Plaintiff has provided clear, cogent and convincing evidence that the policy was
8 intended to cover all 21 locations owned by the four (4) corporations. West Coast owned only
9 two locations in 2007; however, it paid a premium based on all 21 locations. There is no dispute
10 that the driver who caused the accident worked at the Lynnwood location which is identified on
11 the schedule of locations provided to National to be incorporated into the policy. As such,
12 reformation should be allowed to list all four corporations as the insured on the policy.

13 **B. Public Policy Mandates The Policy Be Construed In Favor Of Coverage.**

14 In Washington, contracts of insurance prepared by an insurer are construed liberally in
15 favor of the insured and strictly against the insurer. *Stebbins vs. Westchester Fire Insurance Co.*,
16 115 Wash. 623, 629, 197 Pac. 913 (1921); *United States vs. Eagle Star Insurance Co.*, 201 F.2d
17 764 (9th Cir. 1953). In construing an insurance policy, the policy should be given a fair,
18 reasonable, and sensible construction, in a manner consistent with the way that the average
19 person purchasing insurance would understand the policy language. *E-Z Loader Boat Trailers,*
20 *Inc. v. Travelers Indem. Co.*, 106 Wn.2d 901, 907, 726 P.2d 439 (1986). Washington law is clear
21 that an insurance contract is one of adhesion, and ambiguities are read liberally in favor of the
22 policyholder and resolved against the insurance company. *Washington Pub. Util. Dist. Utilities*

1 *Sys. v. Public Util. Dist. No. 1 of Clallam County*, 112 Wn.2d 1, 10, 771 P.2d 701 (1989)
2 (citations omitted).

3 To the extent the policy as issued is ambiguous as to whether Mad Pizza and its
4 Lynnwood store were covered under the policy, such ambiguity should be resolved in favor of
5 coverage for the reasons set forth herein.

6 **IV. CONCLUSION**

7 For the reasons set forth above, Plaintiff West Coast Pizza requests this court deny
8 National Continental Insurance Company's Motion for Summary Judgment.

9 DATED this ___ day of April, 2010.

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11
12 JAMES H. CLARK, WSBA #18862
13 Attorney for Plaintiff West Coast Pizza Company, Inc.
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