

91198-3

Court of Appeals Cause No.: 32586-5-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Received
Washington State Supreme Court

THE ESTATE OF SUSAN HUNTER,
individually,

Respondent,

JAN 12 2015
E CRF
Ronald R. Carpenter
Clerk

v.

ALLSTATE INSURANCE COMPANY,
a foreign corporation,

Petitioner.

PETITION FOR REVIEW

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ORIGINAL

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A. Identity of Petitioner

Allstate Insurance Company (hereinafter “Allstate”) asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Court of Appeals Decision

Allstate seeks review of Division Three’s decision in Hunter v. Allstate, No. 325865. The Court denied a motion to modify seeking a modification of the Court’s order rejecting discretionary review via Order dated December 12, 2014. Order is attached hereto.

C. Introduction and Issues Presented for Review

The Superior Court committed obvious error when it found, as a matter of law, that the Notice of Cancellation for the subject policy of insurance was defective even though the Estate presented no evidence to support the contention that the reason for the cancellation was not the true and actual reason.

The facts are not disputed that: 1) Allstate sent a Notice of Cancellation of the insurance policy to Ms. Hunter, 2) Ms. Hunter actually received the notice, and 3) the notice was timely under statutory requirements. It is undisputed that Allstate made the determination to cancel the policy based upon the belief that the rental property was a mobile home. It is undisputed that the stated reason for the cancellation was the belief that the rental property was a mobile home.

However, based upon the unsupported allegation that the reason for cancellation was not the “real” reason for cancellation, the Superior Court has ruled that the notice of cancellation was ineffective. The Estate did not present any evidence that the policy was cancelled for some other

reason. The Estate presented no declarations or other evidence in support of the assertion that the reason for cancelation was false.

Furthermore, the Superior Court has also ruled, because the cancellation was not effective, that Ms. Hunter's policy renewed indefinitely, despite the fact that it is undisputed that Ms. Hunter never actually paid a premium for renewal.

Allstate respectfully requests that this Court accept review of this matter to address the following issues, which are a matter of substantial public interest:

(1) whether the trial court has committed obvious or probable errors by finding that the insurance policy was still in place: 1) when a cancellation notice was appropriately issued; 2) the notice received by Ms. Hunter and, 3) the cancellation was never rescinded; and 4) the premium was returned; and

(2) whether the trial court has committed obvious or probable errors by holding that Ms. Hunter had a policy that automatically renews without payment of premium.

D. Statement of the Case

1. Overview

On March 6, 2006, Susan Hunter suffered a fire loss of her rental home located at 251 Briskey Lane in Naches, Washington. As a result, Ms. Hunter reported the loss on March 7, 2006, and filed a claim on March 13, 2006. A property adjuster contacted Ms. Hunter on the same day and arranged for an inspection, which was completed on March 15, 2006. The inspection revealed that there was extensive internal damage to all interior walls and to personal property, smoke and burn damage to the structure and personal property, and no emergency repairs were needed.

The claim was denied on April 7, 2006, because Mr. Hunter's Allstate Landlords Package Policy (hereafter "the Policy") was cancelled on August 7, 2004. The circumstances regarding the cancellation of the Policy are the subject of the lawsuit.

2. Background

In May of 2004, Allstate agent Greg Schlagel was contacted by Ms. Hunter to purchase an insurance policy on a house that she inherited from her father. *See Appendix G, Pltf. Amend. Cmplt.*, ¶3.1. Schlagel obtained the information necessary to write a policy on the subject property and forwarded the information to Allstate.¹ Allstate wrote the policy and subsequently inspected the risk.²

Allstate sent out an independent contractor, Bethlyn Rowe, to inspect the home on May 28, 2004.³ The incorrect home was inspected by Ms. Rowe. Unfortunately, Ms. Rowe inspected 253 Briskey Lane, Ms. Hunter's personal residence, rather than 251 Briskey Lane, the landlord property. Ms. Rowe returned an unacceptable inspection based upon the fact that it was a mobile home, and Allstate will not write landlord policies for mobile homes.⁴

Allstate received notice of the uninsurable risk and mailed a notice of cancellation dated June 12, 2004. The notice provided the following reason for cancellation: "Your mobile home does not qualify for an Allstate Landlord Package policy." Ms. Hunter was informed on the cancellation notice that the cancellation date on the Policy would be August 7, 2004, which was within the Washington guidelines on the time period for cancellation.⁵

On or about June 16, 2004, a refund check for \$255 and a second notice was sent to Ms. Hunter. The second notice contained the following:

¹ Appendix E, *David Hart Dec.*, ¶3.

² *Id.*, ¶4 and Exhibit A. Allstate initially agreed to write a policy for the risk pending an inspection because Ms. Hunter told Allstate she owned the home.

³ *Id.*, ¶5 and Ex. B.

⁴ *Id.*, ¶6.

⁵ *See Appendix E, Hart Dec.*, ¶7 and Ex. C.

Important Information

You are entitled to a refund of part of your premium. The amount reflects any payment(s) you may have made, less the charge for coverage provided prior to when your policy terminated on August 7, 2004.

Ms. Hunter received the cancellation notices and contacted her agent about them. She informed her agent that the wrong property was inspected. She rewrote him a check for \$255 and sent the second notice of cancellation (dated June 16, 2004) as a cover letter, which he received on July 2, 2004.⁶ Mr. Schlager kept the check in his possession. The check was never forwarded to Allstate, nor was it ever returned to the insured. Mr. Schlager did not deposit or cash the check. Mr. Schlager contacted Allstate to request that the home be reinspected.⁷

The correct home was inspected by Ms. Rowe on June 29, 2004. Ms. Rowe inspected the 251 Briskey Lane property and then determined that the roof was lifting and buckling, which resulted in the dwelling being deemed an unacceptable risk for Allstate insurance coverage. She issued that information to Allstate. Allstate forwarded this information to Greg Schlager.⁸

Mr. Schlager then contacted the insured and informed her that she needed to repair the roof before Allstate would issue the written policy. There was no further contact between the insured and the agent regarding the issue until the loss occurred, nearly two years later.⁹ As a result, the August 7, 2004, cancellation was not rescinded and the policy was not issued.¹⁰

Almost 20 months later, on March 6, 2006, the fire loss occurred at the rental home located at 251 Briskey Lane in Naches, Washington. On March 7, 2006, Ms. Hunter's sister, Meg Forgey calls Mr. Schlager's office to report the above mentioned fire had occurred. Mr. Schlager informed

⁶See Appendix H, Yamada Dec., ¶3, Ex. A (Plaintiff's Responses to Defendant Schlager's Request for Admissions, ¶¶14, 15 and Ex. 2); See also Ex. B (Schlager Dep. p. 33).

⁷ See Appendix E, Hart Dec., ¶8.

⁸ See Appendix E, Hart Dec., ¶9 and Exhibit D.

⁹ See Appendix H, Yamada Dec., Ex. B (Schlager Dep., p. 73-74).

¹⁰ See Appendix E, Hart Dec., ¶10.

Meg Forgey that the Policy had expired on August 7, 2004.¹² Subsequently, Ms. Hunter gets on a separate phone line to inform Mr. Schlagel that she was under the impression that the Policy had been reinstated despite the fact that her check had never been cashed and no policy renewal forms after August 7, 2004, were sent to her address.¹³

Accordingly, Allstate denied the fire loss claim because Ms. Hunter did not have an insurance policy with Allstate at the time of the loss.¹⁴

A lawsuit against Mr. Schlagel was subsequently filed on January 4, 2007. Ms. Susan Hunter passed away on January 31, 2008. Allstate was later joined as a defendant on June 5, 2008.

3. Cancellation

The following facts are undisputed:

- Allstate mailed notice of cancellation dated June 12, 2004, to Hunter. *See, Appendix E and N.*
- The notice provided the true and actual reason for cancellation at that time. *Id.*
- The language was clear and simple, and did not require the insured to conduct additional research to understand the reason for cancellation. *Id.*
- The notice indicated that cancellation would take place August 7, 2004. *Id.*
- Hunter received this notice that her policy would cancel. *Appendix N.*
- Hunter understood the reason for the cancellation. *Id.*
- Hunter's policy of insurance on the subject property cancelled on August 7, 2004, within the time provided by the Washington guidelines. *See, Appendix E.*

Based on these facts, the Trial Court ruled on April 23, 2012, that cancellation of the Hunter

¹² *See Appendix H, Yamada Dec., Ex. B (Schlagel Dep., p. 76).*

¹³ *Id.*, (Schlagel Dep., p. 76-80).

¹⁴ *See Appendix E, Hart Dec., ¶14.*

insurance policy was proper and effective. On June 2, 2014, more than two years later, the Trial Court reversed the order of April 23, 2012. The Court held that, despite the undisputed facts, that the cancellation did not state the true reason for cancellation of the Hunter policy. The Trial Court does not state what was “the” alternative reason for cancellation.

As described in detail in section B above, Allstate made its cancellation determination based on the first inspection, which determined that the property was a mobile home. Allstate consented to a second inspection at Ms. Hunter’s request, but decided not to rescind the cancellation and issue a second policy due to the inadequate roof.

E. Grounds for Relief and Argument

Under RAP 13(b), the A petition for review will be accepted by the Supreme Court IF:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This matter falls under the fourth prong, issues of substantial public interest.

RCW § 48.01.030 specifically states that “the business of insurance is one affected by the public interest”. The business of insurance, the rules which govern it, and the interaction of insurers and insured persons is a matter of the public interest. *See Peterson v. Big Bend Ins. Agency, Inc.*, 150 Wn. App. 504, 526, 202 P.3d 372, 382 (2009), citing *Shah v. Allstate Ins. Co.*, 130 Wn. App. 74, 121 P.3d 1204 (2005). The Washington Supreme Court has recognized on multiple occasions that matters affecting the business of insurance affect the public interest as contemplated by RAP

13(b).

In the matter of *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002), the Washington Supreme Court accepted review to address the issue of whether an insurance adjuster “was practicing law when she completed claims forms, advised the claimants regarding the settlement process, and recommended that the claimants sign a complete settlement and release without advising them that there were potential legal consequences or referring them to independent counsel.” *Id* at 294. “After determining that this case involved an issue of broad public import, the Court of Appeals certified the case to this court on December 11, 2000. The commissioner of this court agreed that the case warranted direct review and we accepted certification on January 16, 2001. *Id* at 1073.

In the matter of *Federated Am. Ins. Co. v. Strong*, 102 Wn.2d 665, 689 P.2d 68 (1984), a declaratory judgment action, the Washington Supreme Court accepted review “to determine whether an insurance policy purchased by Clyde Strong provides him with liability and collision coverage with respect to certain automobile collisions.” *Id* at 666, 70.

Accordingly, the issues presented in this appeal, which fundamentally affect the business of insurance, including rights and responsibilities of both insurers and insured persons, are a matter of public interest.

i. The Ruling that Hunter had a Policy with Allstate Is In Opposition to Washington Law

Under established Washington law, Ms. Susan Hunter did not have an effective insurance policy with Allstate at the time of the fire loss. Ms. Hunter's landlords policy with Allstate was cancelled almost two years prior to Ms. Hunter's fire loss claim. Thus, there is no coverage for the fire loss.

Determining coverage under an insurance policy is a two-step process. *See McDonald v.*

State Farm Fire & Casualty, 119 Wn.2d, 724, 731 (1992). First, the insured must establish that coverage exists under the policy. *Id.* Only if the insured sustains its burden by proving coverage does the burden shift to the insurer to prove that an exclusion in the policy applies. *Id.* It has always been Washington's law that the insured bears the initial burden of establishing a covered loss. *Nevers v. Aetna Ins. Co., Inc.*, 14 Wn. App. 906, 908 546 P.2d 1240 (1976); *Villella v. Pemco*, 106 Wn.2d 806, 725 P. 2d 957 (1986); *McDonald*, 119 Wn.2d 724, 731, 837 P.2d 1000; *Wright v. Safeco*, 124 Wn. App. 263, 271, 109 P.3d 1 (2004). Indeed, the burden of establishing that a loss is covered, includes establishing that it occurred within the policy period. The party asserting coverage bears the burden of proving the loss suffered is a covered "occurrence" ***within the policy period.*** *Wellbrock v. Assurance Company of America*, 90 Wn. App. 234, 240-241, 951 P.2d 367. (emphasis added).

The Hunter Estate cannot meet its burden of establishing that the fire loss was covered. In fact, all evidence actually proves that there is no coverage. Ms. Hunter applied for insurance with Allstate on or about May 11, 2004, and Allstate issued a notice of cancellation dated June 12, 2004, which was sent to Ms. Hunter.¹ Ms. Hunter was informed on the cancellation notice that the cancellation date on the Policy would be August 7, 2004, which was within the Washington guidelines on the time period for cancellation. On or after June 16, 2004, Ms. Hunter received a refund check and a second notice with "important information" that informed Ms. Hunter that the refund amount reflects the adjustment of the cancellation and that the Policy will be cancelled on August 7, 2004.²

On March 6, 2006, the fire loss occurred. The Policy was cancelled over 20 months before this date. Thus, the loss cannot be covered under the Policy.

¹ See Appendix E, Hart Dec., Ex. C.

² See Appendix H, Yamada Dec., Ex. A.

The Hunter Estate has argued that Allstate contractually owes coverage for the loss of the home because Ms. Hunter sent the \$255 refund check back to Mr. Schlagel after receiving the June 12, 2004, notice of cancellation that listed an unacceptable reason for the cancellation. However, the Policy contained the following provisions:

Cancellation

....

Our Right to Cancel:

Allstate may cancel this policy by mailing notice to you at the mailing address shown on the Policy Declarations.

If the cancellation is for non-payment of premium, we will mail notice to you at least 10 days before the effective date of cancellation. If the cancellation is for any other reason, we will mail notice to you at least 45 days before the effective date of cancellation.

Our mailing the notice of cancellation to you will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. Your return premium, if any, will be calculated on a pro rata basis and will be mailed at the time of cancellation or as soon as possible, but no later than:

- 1) 45 days after we mail the notice of cancellation to you; or

....

Conditional Reinstatement

If we mail a cancellation notice because you didn't pay the required premium when due and you then tender by check, draft, or other remittance which is not honored upon presentation, your policy will terminate on the date and time shown on the cancellation notice and any notice we issue which waives the cancellation or reinstates coverage is void. This means that Allstate will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.³

Under the above provisions, if Allstate wished to cancel the Policy, Allstate was only required to mail a notice of cancellation to the insured within 45 days before the effective date of cancellation

³ See Appendix E, Hart Dec., Ex. A (Allstate Landlords Package Policy, AP 723, p. 4-5) (underlines added).

when the cancellation is for *any reason* other than the non-payment of a premium. Further, there is no provision in the Policy that required Allstate to send an additional notice of cancellation when the Policy was already in a cancelled status. These provisions are clear and not ambiguous. *See McDonald*, 119 Wn.2d at 734; *see also Overton v Consol. Ins. Co.*, 145 Wn.2d 417, 428 (2002). Additionally, there is no Washington Administrative Code provision requiring a second notice of cancellation.

ii. The Ruling on the True and Correct Reason for Cancellation is Wholly Unsupported by the Record

The Trial Court's initial decision holding that cancellation was proper and effective was correct and should not have been reversed. Based on existing law and undisputed facts, Hunter received timely notice of cancellation, which stated the true and actual reason for cancellation. The relevant portion of Washington's cancellation statute states as follows:

Cancellation by insurer.

(1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) For all insurance policies other than medical malpractice insurance policies or fire insurance policies canceled under RCW 48.53.040:

(i) The insurer must deliver or mail written notice of cancellation to the named insured at least forty-five days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy.

RCW 48.18.290.

The pertinent WAC provision states:

Actual reason for canceling, denying or refusing to renew insurance to be disclosed.

Whenever an insurer is required by law to give the reason for its canceling, denying, or refusing to renew insurance, ... it shall give the true and actual reason for its action in clear and simple language, so that the insured or applicant will not need to resort to additional research to understand the real reason for the action. It is not sufficient, for example, to state that an insured "does not meet the company's underwriting standards." The reason why the individual does not meet such underwriting standards is what must be given....

WAC 284-30-570.

The following facts are not in dispute:

1. Allstate mailed notice of cancellation dated June 12, 2004, to Hunter.
2. The notice provided the true and actual reason for cancellation at that time.
3. The language was clear and simple, and did not require the insured to conduct additional research to understand the reason for cancellation.
4. The notice indicated that cancellation would take place August 7, 2004.
5. Hunter received notice that her policy would cancel.
6. Hunter understood the reason for the cancellation.
7. Hunter's policy of insurance on the subject property cancelled on August 7, 2004.
8. Notice of the cancellation occurred within the time provided by the Washington guidelines.

See, Appendix E and N.

Allstate's cancellation notice, received by Hunter, cited the true and actual reason why it was cancelling Hunter's insurance policy. The true and actual reason was that Allstate does not

write landlord insurance policies for mobile homes. There was nothing false or misleading about the cancellation. The cancellation was never withdrawn or waived by Allstate. As such, the policy cancelled on August 7, 2004. *See, Appendix E and N.*

Ms. Hunter presented no evidence to the Superior Court of another reason for cancellation, nor has even suggested a single, alternative reason, let alone an improper reason. Ms. Hunter has taken no depositions of Allstate employees or representatives, and presented no declarations or other evidence in support of her assertion that the reason for cancellation stated in the notice was false.

In addition to the plain and unambiguous language of the statutes, the trial court properly relied on the Supreme Court case of *Armstrong v. Safeco Insurance Co.*, 111 Wn.2d 784, 791, 765 P.2d 276 (1988), in its previous decision holding that cancellation was proper and effective. In *Armstrong*, the Court interpreted a related notice statute, RCW 48.18.292, governing nonrenewal of insurance. RCW 48.18.292 similarly requires notice to include the actual reason for nonrenewal. The *Armstrong* Court held that this requirement means that the insurer must state its genuine reason for nonrenewal, as opposed to a contrived pretense. *Id.* Allstate's notice stated the genuine reason for cancelling the policy and that it was not a contrived pretense. As such, the trial court initially, correctly concluded that cancellation was proper, and that Allstate satisfied all statutory and code conditions precedent to doing so. The Trial Court's initial decision should not have been reversed.

The case of *Tyler v. Michigan Millers Mut. Ins. Co.*, 5 Wn. App. 648, 653-54, 491 P.2d 655 (Div. 2 1971) further supports the trial court's decision regarding cancellation. *Tyler* stands for the rule that cancellation is effective even where there is a variation in the notice, as long as the variation did not mislead or deceive the insured. *See id.* In *Tyler*, Michigan Millers had issued a policy of fire insurance to the Tylers. *Id.* at 649. Subsequent to the issuance of the

insurance policy, the insurer, through its agent, mailed notice of cancellation. *Id.* According to the insured, she contacted her agent by telephone regarding the notice. *Id.* at 650. The agent allegedly advised her to disregard the cancellation notice and informed her that the policy would remain in force. *See id.* She subsequently returned the notice to the insurer, requesting an explanation of the policy. *Id.* The insurance company never provided her with an explanation, nor did they return a portion of the premium paid. *Id.* The policy cancelled. After the policy cancelled, the subject property was destroyed by fire. *Id.* The insurer denied coverage because the policy was not in force at the time of loss. *Id.* at 650-51. The insureds subsequently filed suit, arguing that the policy remained in force because the insurers' notice of cancellation was insufficient. *Id.* The trial court rejected the insured's argument. The Court of Appeals affirmed, holding, in relevant part, that a variation between the wording of the cancellation notice and the policy requirement of what the notice should state did not invalidate cancellation where there was no evidence that the variation misled or deceived the insured. *Id.* at 654. In other words, a variation in the notice requirement will not invalidate cancellation as long as the insured is not misled or deceived.

Here, like the insured in *Tyler*, Hunter was never misled or deceived by the notice of cancellation. It is undisputed that Hunter received the notice. In fact, unlike *Tyler*, cancellation was reaffirmed by the subsequent return of Hunter's premium. *Appendix H.* Thereafter, Ms. Hunter contacted her agent regarding the cancellation notice. Analogous to *Tyler*, a factual dispute arose as to what transpired thereafter. Hunter alleges that Defendant Schlagel told her not to worry about the cancellation notice. Defendant Schlagel, on the other hand, testified that he told Hunter that the home would need to pass an inspection to determine if Allstate would insure the risk. *Appendix H.* As the *Tyler* decision makes clear, however, what transpired between Mr. Schlagel and Ms. Hunter is immaterial to the validity of the cancellation as long as the

cancellation complies with the statutory requirements, and does not mislead the insured, it is effective.

Allstate's cancellation satisfied all of the statutory requirements: Allstate mailed notice to Ms. Hunter stating the actual reason the policy was to be cancelled. Allstate mailed notice more than forty-five days before the date stated in the cancellation. Moreover, Allstate subsequently returned the premium payment to Ms. Hunter.

Therefore, based on the undisputed facts and plain language of the applicable law, Hunter was given proper and timely notice that her insurance policy would cancel on August 7, 2004. As a matter of law, therefore, cancellation was proper and effective. The trial court's first decision regarding cancellation was correct and should not have been reversed.

iii. The Ruling on Renewal After Ineffective Cancellation is Against Washington Law and Leads to Untenable Results

a. The Effective Policy Period of the Cancelled Policy Would Have Ended on May 11, 2005.

The Trial Court determined that Hunter's policy, which expired May 11, 2005, was not cancelled. This policy expired prior to the loss complained of by the Hunter Estate. Accordingly, the Hunter Estate relied on "automatic renewal" of the subject policy in order to obtain coverage for the loss.

Renewal of a policy is at the option of the insurer. An insurer's option to renew is further made clear by RCW 48.18.280. The statute states:

Renewal of policy.

Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended *at the option of the insurer* and upon a currently authorized policy form and *at the premium rate then required therefor for a specific additional period or periods* by a certificate or by endorsement of the policy, and without requiring the

issuance of a new policy.

The Hunter Estate presented one argument in favor of renewal – the assertion that Allstate is estopped from claiming the Hunter policy was not renewed based on a violation of RCW 48.18.2901. Appendix K, Plaintiff's Motion for Summary Judgment, P. 3.

RCW 48.18.2901 is not applicable to the present case. Allstate did not refuse to renew the Hunter policy, as no renewal was ever requested. Allstate did not offer to renew it for an increased premium, as it had cancelled the policy. RCW 48.18.280 provides an optional method for renewal that was not used. Thus, the notice requirements and other obligations outlined in this statute are inapplicable.

The Hunter Estate is essentially asserting that, even if a policy has a stated end date, that the insurer must send a notice of cancellation, or be bound to provide coverage indefinitely, even if it receives no premium, has no opportunity to re-inspect the risk, and has no contact from its purported insured. This theory is at cross purposes with the very statute the Hunter Estate cited, RCW 48.18.2901, which makes a clear distinction between policies with a stated expiration date and those without. It is also at cross purposes with established Washington case law governing insurance contracts.

The general rule that estoppel may not be applied to extent the coverage of an insurance policy is based on the principle that "an insurer should not be required to pay for a loss for which it received no premium." *Rizzuti v. Basin Travel Serv.*, 125 Wn. App. 602, 614 (2005), citing *Shows v. Pemberton*, 73 Wn. App. 107, 111 (1994) and *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 336, 779 P.2d 249 (1989). Even where bad faith has occurred, estoppel does not arise if the injured party had an equal opportunity to determine the facts. *Dombrosky v. Farmers Ins. Co. of Wash.*, 84 Wn. App. 245, 256, 928 P.2d 1127 (1996).

Insurance policies are contracts and may not be unilaterally created. The Hunter Estate argues that Allstate was obligated to renew the Hunter policy, and coverage should accordingly be

afforded; however, Hunter never paid for a renewal policy. "It is essential to the creation of a contract of insurance that there be an offer or proposal by one party and an acceptance by the other. . . . A person has a right to accept or reject insurance on terms and conditions fixed by the company; he is under no obligation to accept it, but, where he does accept, a contract exists."

McGregor v. Inter-Ocean Ins. Co., 48 Wn.2d 268, 271 (1956).

Further, NEITHER party to an insurance contract is bound to renew the contract. Where there is no clause in the policy expressly granting a privilege or imposing a duty of renewal, neither party has any right to require a renewal. Thus, the rights of the parties under such a contract are mutual in the sense that neither is bound to renew the contract. And under such policy the insurer may decline to renew the policy at the end of a premium payment.

Armstrong at 789-90 (citing G.Couch, *Insurance* § 68.12(2d rev. ed. 1983)).

In the present case, Hunter never inquired as to a premium payment and never gave consideration for a renewal. In fact, Ms. Hunter and Allstate had no communication until the day after the fire loss on March 7, 2006, when her sister and she contacted Allstate agent Greg Schlager to report the claim. There was no acceptance of the renewal policy on the part of Hunter and no consideration given for the same. No contract of insurance was created, and to the extent that the court affords coverage pursuant to the original policy, this policy period expired on May 11, 2005. The provisions relied upon by the Hunter Estate supporting coverage do not apply, because no premium was ever paid related a renewal policy.⁴

It has been long held that the prompt payment of premium is a material term to an insurance contract. Hunter's failure to make payment meant no contract was ever formed. Even if it was,

⁴ In *Adams v. State Farm Mut. Auto. Ins. Co.*, 65 Cal. App. 3d 821, 826 (1977), the Appeals court rejected the Plaintiffs' argument that the policy was automatically extended for six months because State Farm had not sent them a notice of intention not to renew or notice of cancellation before the initial or stated policy period had expired. The Court pointed out that the cancellation statutes relied upon by the Plaintiffs existed to give adequate time to the insured to obtain other coverage if the insurer is not going to renew the policy or is cancelling for reasons other than nonpayment of the renewal premium.

failure to pay would be adequate grounds for cancellation of the policy. In 1881, the Supreme Court of the United States stated:

But a fatal objection to the entire case set up by the plaintiff is, that payment of the premium note in question has never been made or tendered at any time. There might possibly be more plausibility in the plea of former indulgence and days of grace allowed, if payment had been tendered within the limited period of such indulgence. But this has never been done. The plaintiff has, therefore, failed to make a case for obviating and superseding the forfeiture of the policy, even if the circumstances relied on had been sufficiently favorable to lay the ground for it. A valid excuse for not paying promptly on the particular day is a different thing from an excuse for not paying at all.

Thompson v. Ins. Co., 104 U.S. 252, 260-261 (U.S. 1881).

The party asserting coverage bears the burden of proving the loss suffered is a covered "occurrence" *within the policy period*. *Wellbrock v. Assurance Company of America*, 90 Wn. App. 234, 240-241, 951 P.2d 367. (emphasis added). Even if Ms. Hunter was under the belief that the home in question was covered under the cancelled policy, then the latest effective policy date would have been May 11, 2005.¹⁶ To receive coverage for any loss after May 11, 2005, Ms. Hunter would have either had to renew her policy to extend the effective policy period or apply for a new policy. Ms. Hunter did neither. Nor did Ms. Hunter attempt to pay a premium after May 11, 2005. Indeed, Ms. Hunter did not even attempt to inquire with a phone call or letter as to whether her policy would be extended past August 7, 2004, or May 11, 2005.

The loss occurred almost a year after policy period ended. In light of her failure to pay any premium, Ms. Hunter had no reason to believe the policy in question was renewed. Furthermore, even if the policy was renewed, it was subsequently forfeited by Ms. Hunter's failure to pay any premiums.

b. Insurance Policies Will Not Renew Indefinitely in the Absence of Payment

Policy renewals require premium payment to be in force.

If the insured has failed to pay the premium by the renewal date, the insurer may argue that there is no insurance contract between the parties because the insured has not properly accepted the insurer's offer to provide insurance. Where the insurer does not specify a date by which the insured has to pay the premium to renew the policy, some courts require the insured to pay the premium within a reasonable amount of time after receiving the offer to renew the policy.

5-41 Appleman on Insurance § 41.09.

The Washington State Supreme Court has acknowledged that an insured may not fail to make the requisite premium payments, and later make a claim for coverage because certain notices were not provided to him by the insurer.

In a case involving life insurance, *Lone v. Mutual Life Ins. Co.*, 33 Wash. 577, 74 P. 689 (1903), the insured paid only one semi-annual premium on a life insurance policy, which was a condition of the delivery of the policy. After that payment, he never made another. He lived for nearly 12 years. During that time he never paid, or offered to pay, any premium. The administrator of the decedent's estate filed suit to recover under the policy. The trial court entered judgment for the administrator based on a statute that provided that no policy could be forfeited for nonpayment of any premium, unless notice had been mailed to the assured, stating the amount of premium, when due, to whom, and where payable, and that if not paid when due that the policy would have become forfeited and void. On appeal the court held that the judgment had to be reversed. The court held that the insured had rescinded the contract, as premium payments were held to be the actual consideration for the performance of the contract on the part of the insurance company. *Id.* Courts have refused to grant relief where insurance companies collected premiums and sought to avoid payment by technicalities; however an insured may not exact payment from the insurer when premiums were deliberately left unpaid. *See Mutual Life Ins. Co. of New York v. Hill*, 193 U.S. 551, 559-61 (1904).

There is no case law that has upheld a right to continued insurance coverage through policy renewals in the absence of payment of the premium or further action from the insured. Courts have recognized that an insured may not fail to pay premiums she knows are due, based on an oversight by the insurer. The Hunter Estate in this case asks the court to accept that her policy would have renewed indefinitely without payment. Had Ms. Hunter contacted Allstate to inquire as to her renewal premium, the underlying misunderstandings would have been resolved well in advance of litigation.

In *Shepard v. Boone County Home Mut. Fire Ins. Co.*, 138 Mo. App. 20, 22-23 (Mo. Ct. App. 1909), the Missouri Court of Appeals considered a case where the Plaintiff forgot to contact the agent to negotiate and finalize the renewal of his policy. He never paid a premium. Nearly a year later, the Plaintiff in this case he suffered a fire loss to a barn. This claim was denied. The court upheld the denial and stated in its ruling:

We do not see any reason upon which the action can be sustained. We do not place our decision on the ground that no policy was issued for there may be valid oral contracts of insurance (*Lingenfelter v. Insurance Co.*, 19 Mo. App. 252, 263), but in this case an oral contract was not only not shown, but the evidence shows affirmatively that none was made. Plaintiff testified that "I told him that I expected to be out soon and that I would call in the office and attend to it." "That I was getting better and expected to sign it as soon as I got able to come down town." Further, he said that "it was understood that I should do it, that I would attend to it, by him calling at my office, or me calling there, and I forgot it and he did." Nothing was ever said or done afterwards; no application was made and no premium paid or promised; and, as already stated, nearly a year after the expiration of the policy the barn burned.

Id.

The Court held that the Plaintiff forgot to make the contract he intended to make, and now could not argue that somehow some other contract was made without proof of the same.

If we accept that Ms. Hunter understood that she had a valid insurance contract through May 11, 2005, but forgot that she still had an obligation to pay the renewal premium, then no contract was ever created. She could not have understood that she had an in-force policy when she never paid a premium, and a claim of forgetfulness or a willful ignorance of such a requirement does not give rise to the formation of a policy.

As previously noted, in Washington estoppel may not be applied to extent the coverage of an insurance policy is based on the principle that “an insurer should not be required to pay for a loss for which it received no premium.” *Rizzuti v. Basin Travel Serv.*, 125 Wn. App. 602, 614 (2005), citing *Shows v. Pemberton*, 73 Wn. App. 107, 111 (1994) and *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 336, 779 P.2d 249 (1989)). It would be grossly unfair to allow renewals without subsequent payment. “Insureds” could go years and years without making a single payment, and still obtain recovery under the theory that policies renew indefinitely, even in the absence of premium payment.

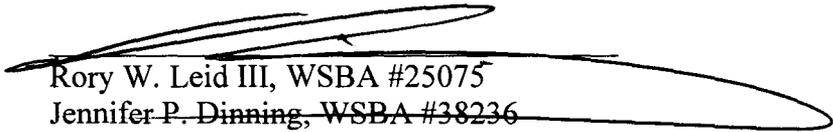
F. Conclusion

Allstate respectfully seeks an order from this Court overturning the decisions of the Superior Court of Grant County appealed in this matter.

DATED this 12th day of January, 2015.

Respectfully Submitted,

COLE | WATHEN | LEID | HALL P.C.



Rory W. Leid III, WSBA #25075
~~Jennifer P. Dinning, WSBA #38236~~
Attorneys for Petitioner Allstate

FILED
DEC. 12, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, STATE OF WASHINGTON, DIVISION III

| | | |
|--------------------------------------|---|------------------------------|
| ESTATE OF SUSAN HUNTER, |) | No. 32586-5-III |
| |) | |
| Respondent, |) | ORDER DENYING |
| v. |) | MOTION TO MODIFY |
| |) | COMMISSIONER'S RULING |
| GREGORY SCHLAGEL, et ux., |) | |
| |) | |
| Respondent, |) | |
| and |) | |
| |) | |
| ALLSTATE INSURANCE COMPANY, a |) | |
| foreign corporation, |) | |
| |) | |
| Petitioner. |) | |

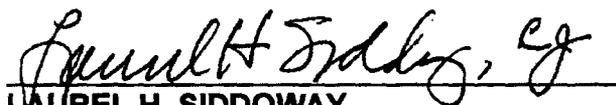
THE COURT has considered petitioner's motion to modify the Commissioner's Ruling of September 8, 2014, and having considered the records and files herein, is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion to modify the Commissioner's Ruling is hereby denied.

DATED: 12/12/14

Panel: Jj. Brown, Siddoway, Fearing

FOR THE COURT:



LAUREL H. SIDDOWAY
Chief Judge

APPENDIX

Appendix A - Order on Motions;

Appendix B - Order Granting in Part and Denying in Part Plaintiff's Motions for Summary Judgment;

Appendix C - Order RE: Plaintiff's Motion for Relief filed on 4.8.14;

Appendix D - Excerpts of Plaintiff's Supplemental Memorandum of Law in Support of Plaintiff's Motions for Reconsideration;

Appendix E- Declaration of David Hart in Support of Allstate's Motion for Summary Judgment on Breach of Contract Claims, with attached Exhibits;

Appendix F - Plaintiff's Complaint for Damages dated January 4, 2007;

Appendix G - Plaintiff's Amended Complaint for Damages dated June 5, 2008;

Appendix H - Declaration of Masaki Yamada in Support of Allstate's Motion for Summary Judgment on Breach of Contract Claims, with attached Exhibits;

Appendix I - Allstate's Opposition to Plaintiff's Motion for Relief filed on 4.8.14 (Document 460);

Appendix J - Declaration of Jennifer P. Dinning, with attached exhibits;

Appendix K – Plaintiff's Motion for Summary Judgment Re: Contractual Claims

Appendix A

475

FILED

JUN 02 2014

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

| | | |
|--------------------------------|---|------------------|
| THE ESTATE OF SUSAN HUNTER, |) | NO. 07-2-00020-4 |
| Plaintiff, |) | ORDER ON MOTIONS |
| vs. |) | |
| GREGORY SCHLAGEL and JANE DOE |) | |
| SCHLAGEL, husband and wife and |) | |
| the marital community |) | |
| comprised thereof; and |) | |
| ALLSTATE INSURANCE COMPANY, |) | |
| Defendants. |) | |

THIS MATTER having come on for hearing and arguments on:

1. Plaintiff's Motion for Reconsideration of the Court's prior determination at Docket #231, that the May 11th, 2004 policy had been properly terminated under RCW 48.18.290 based on a June 12th, 2004 notice sent on June 14th, 2004, expressing at that time, what Allstate had urged and convinced this Court to be a true and actual concern and sincere belief in mobile home status; and

2. Plaintiff's follow up Motion for a Summary Judgement ruling that the May 11th, 2004 policy, which was shown at Docket #300, Ex. B to have been actually amended effective June 5th, 2004 pursuant to Allstate's June 4th, 2004 true and actual corrected knowledge that the home was not a mobile home but was a brick or block structure, was not terminated as a matter of law under RCW 48.18.290, by Allstate's June 12th, 2004 notice or otherwise; and

COPY
EXHIBIT
A

LAW OFFICES OF DAVID B. TRUJILLO
4702A TIETON DRIVE
YAKIMA, WASHINGTON 98908
PHONE (509) 972-3838
FACSIMILE (509) 972-3841

1 3. Defendant Allstate's Motion for Reconsideration of the
2 Court's Memorandum decision issued at Docket #379.

3
4 The Court having considered all the pleadings submitted by the
5 parties in the Court file, hereby Orders as follows:

6
7 1. Plaintiff's motion for Reconsideration of the Court's order
8 of termination at Docket #231 is GRANTED, and that prior order of
9 termination issued in Allstate's favor based on what Allstate had
10 previously argued and convinced the Court was an allegedly true and
11 actual / sincere belief in mobile home status is VACATED as set
12 forth in this Court's Memorandum Decision at Docket #379, attached
13 hereto as **Exhibit A**.

14
15 2. Plaintiff's motion for summary judgment in Plaintiff's
16 favor is GRANTED, and the Court now finds that the May 11th, 2004
17 policy, (which was shown at Docket #300, Ex. B, to have been
18 actually amended effective June 5th, 2004 pursuant to Allstate's
19 June 4th, 2004 true and actual corrected knowledge that the home was
20 not a mobile home but was a brick or block structure), was not
21 terminated as a matter of law, under RCW 48.18.290 or otherwise, by
22 Allstate's June 12th, 2004 notice or otherwise, as set forth in this
23 Court's Memorandum Decision at Docket #405, attached hereto as
24 **Exhibit B**.

25
26 3. Defendant Allstate's motion for Reconsideration of this
27 court's ruling vacating the Court's prior order of termination is
28 DENIED.

29
30 DATED this 2nd day of June, 2014.

31
32 **JOHN D. KNODELL**

33
34 _____
The Honorable Judge John D. Knodell

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Presented by:
Attorney for Plaintiff Hunter:

BY: David Trujillo
DAVID B. TRUJILLO, WSBA# 25580

APPROVED FOR ENTRY AND
NOTICE OF PRESENTATION WAIVED:

Attorney for DEFENDANT ALLSTATE:

BY: _____
RORY W. LEID, WSBA# 25075

and by:
Attorney for Defendant Schlagel:

BY: _____
GORDON G. HAUSCHILD, WSBA# 21005

DOCKET
379

**The Superior Court of Washington
In and for Grant County**

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner

35 C Street NW
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Asst. Court Administrator
LYNETTE HENSON, Jury Administrator
TOM BARTUNEK, Official Reporter
MARY JANE CASTILLO, Court Interpreter

May 14, 2013

FILED

MAY 15 2013

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

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Gordon Hauschild
Attorney at Law
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Seattle, WA 98101

RE: Estate of Hunter v. Schlagel
Grant County Cause No.: 07-2-00020-4 / 12-2-00314-5

Dear Counsel:

The Plaintiff moves this court to reconsider its order on reconsideration of Plaintiff's motion for summary judgment of April 23, 2010.

EXHIBIT App 1 of 3

In that order, the court found as a matter of law that the cancellation notice the Defendant Allstate gave to the former Plaintiff, Ms. Susan Hunter, was proper and effective. This conclusion was in turn based on the court's finding that the affidavits before the court conclusively demonstrated that Allstate's stated reason for cancellation, its belief that the insured premise was a mobile home, was the true and actual reason for cancellation.

This is a crucial point. If Allstate's given reason for cancellation was not its true and actual reason, the cancellation is ineffective. RCW 48.18.290; WAC 284-30-570; see Olivine Corp. v. United Capitol Ins. Co., 147 Wash. 2d 148, 162, 52 P.3d 494 (2002).

Allstate told Ms. Hunter it was cancelling the policy at issue here because the insured structure was a mobile home. The Plaintiff has now submitted documentation Allstate produced internally before it issued the cancellation notice describing the premises as a brick structure. The Plaintiff argues that this is proof that someone at Allstate, presumably an agent knew the true nature of the structure. The Plaintiff further argues that it has demonstrated that at least one Allstate agent had notice of the structure's true nature and that notice to the agent must be imputed to principal, here Allstate. See Canadian Collieries (Dunsmuir) Ltd. V. Humphrey, 85 Wash. 457, 148 P. 573 (1915).

The Plaintiff is correct. The court grants the Plaintiff's motion to reconsider and rescinds any previous order finding as a matter of law that the cancellation notice at issue was proper and effective.

The court will not at this time, however, find the cancellation notice was ineffective as a matter of law. Notice to the agent here is notice to Allstate only if the subject of the notice was within the scope of the agent's apparent authority. See Schwabacher Bros. & Co., Inc. v. Murphine, 74 Wash. 388, 133 P.598 (1913). This may very well be the case, but the record before the court is insufficient at this point to reach a definitive conclusion. Plaintiff's counsel should present an appropriate order.

Also before the court is the Defendant Allstate's motion for a protective order in cause 12-2-00314-5. The Plaintiff bases both the first and second lawsuits it has filed with this court essentially upon the same facts. The second alleges facts which arose during litigation of the first cause but which are related inextricably with the original allegations and can be dealt with in that case. There are many reasons why Plaintiff may have filed the second case, but it appears to have indulged in "claim-splitting." See Landry v. Luscher, 95 Wash. App. 779, 976 P.2d 1274 (1999).

Courts discourage this practice because it leads to duplicitous suits, piecemeal litigation and forces defendants to incur the cost and effort of defending multiple suits. Sprague v. Adams, 139 Wash. 510, 515, 247 P. 960 (1926). In determining whether the filing of a second lawsuit is claim-splitting, the court asks whether the relief sought in the second action could have or should have been determined in a prior action. Landry v. Luscher, supra, 95 Wash. App. at 782-83. In order to answer this question, the court examines the identity of the two causes in four respects: 1) persons and parties; 2) cause of action; 3) subject matter; and 4) the quality of the persons for or against whom the claim is made. Id.

EXHIBIT Aug 20 of 3

Based on what is now before the court, the Defendant Allstate is likely to prevail on a motion to dismiss the second lawsuit on this theory. The court grants Allstate's motion and suspends *all* discovery in this cause until such time as the Defendants' motion to dismiss is heard. The court will reserve any ruling regarding sanctions until that time.

Counsel for Defendant Allstate should present an appropriate order.

Very truly yours,



John D. Knodell
Judge

JDK:cmb

EXHIBIT App 3 of 3

405

**The Superior Court of the State of Washington
In and for the County of Grant**

35 C Street NW
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Presiding Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Ass't Court Administrator

October 7, 2013

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Gordon G. Hauschild
Attorney at Law
520 Pike Street, Ste. 1205
Seattle, WA 98101-4042

RE: Hunter Estate v. Schlagel
Grant County Cause No. 07-2-00020-4

Counsel:

Both the Plaintiff, the Estate of Susan Hunter, hereinafter Plaintiff, and one of the Defendants, Allstate Insurance, hereinafter Allstate, have moved this court to reconsider its previous ruling denying summary judgment on the issue of whether the cancellation of the insurance policy at issue in this case was effective.

FILED

OCT 08 2013

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

EXHIBIT B pg 1 of 5

David B. Trujillo
Michael D. Kinkley
Rory W. Leid
Gordon G. Hauschild
October 7, 2013
Page 2

Plaintiff's position is simple. It recognizes that Allstate cancelled the policy in question in accordance with the contract between Plaintiff and Allstate; but it argues that the cancellation was ineffective because Allstate did not give the true and actual reason for the cancellation. See Olivine Corp. v. United Capitol Ins. Co., 147 Wash. 2d 148, 52 P.3d 494 (2002).

This argument is based on the following. Allstate, through its independent agent and co-Defendant Mr. Greg Schlagel, issued Ms. Susan Hunter, then the owner of the property, a policy to insure a fixed, brick structure on May 12, 2004. The policy allowed Allstate to cancel the policy in the event the insured property did not meet its underwriting standards.

Ms. Bethlyn Rowe, an Allstate employee, in an effort to determine whether the insured property did indeed meet Allstate's underwriting standards, inspected the wrong property, a mobile home. Allstate cancelled the policy, and notified Ms. Hunter of the cancellation on June 12, 2004, effective as of August 7, 2004, citing as the reason for cancellation that Allstate did not insure mobile homes.

In response to the cancellation notice, Ms. Hunter notified Mr. Schlagel that Allstate had inspected the wrong property. Mr. Schlagel in turn notified Allstate. Ms. Rowe returned on June 29, 2004, inspected the brick house, and found it unsuitable for insurance because of the condition of its roof.

Allstate notified Mr. Schlagel of this, apparently assuming he would notify Ms. Hunter. Mr. Schlagel has testified that he spoke with Ms. Hunter and told her she needed to repair the roof before Allstate would issue the written policy. Plaintiff, however, has offered some circumstantial evidence which calls this testimony into question. Further, Allstate has not produced any written notice given to Ms. Hunter after the second inspection. Ms. Hunter passed away before this action was filed.

The statute governing cancellation of a homeowner policy provides as follows:

Cancellation by insurer. (1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) For all insurance policies other than medical malpractice insurance policies or fire insurance policies canceled under RCW 48.53.040:

EXHIBIT B pg 2 of 5

David B. Trujillo
Michael D. Kinkley
Rory W. Leid
Gordon G. Hauschild
October 7, 2013
Page 3

(i) *The insurer must deliver or mail written notice of cancellation to the named insured at least forty-five days before the effective date of the cancellation; and*

(ii) *The cancellation notice must include the insurer's actual reason for canceling the policy.*

(b) For medical malpractice insurance policies:

(i) The insurer must deliver or mail written notice of the cancellation to the named insured at least ninety days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy and describe the significant risk factors that led to the insurer's underwriting action, as defined under RCW 48.18.547(1)(e). RCW 48.18.290.

...

(2) *The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee. RCW 48.18.290.(emphasis added).*

Plaintiff argues that because Allstate was mistaken about the nature of the property, the reason it gave for cancellation was not the true and actual one. In its view, the purpose of the "true and actual reason" requirement is to protect the insured and therefore does not matter whether the mistake was honest or inadvertent. Under this view, it also makes no difference whether the property fails to meet underwriting standards for some other valid reason. This court adheres to its conclusion that in this context, true and actual means genuine as opposed to contrived. In other words, if Allstate sincerely believed at the time of cancellation that the property was indeed a mobile home, then the reason it gave for cancellation was true and actual. While this result is dictated by case law, see Armstrong v. Safeco Insurance Co., 111 Wash. 2d 784, 791, 765 P.2d 276 (1988), the court recognizes that this "answer" raises a host of new questions.

EXHIBIT B pg 3 of 5

David B. Trujillo
Michael D. Kinkley
Rory W. Leid
Gordon G. Hauschild
October 7, 2013
Page 4

But upon reflection, these questions are irrelevant here. The purpose of the statute is to enable the insured to adjust by addressing the insurer's concerns, obtaining other insurance protection, or preparing to proceed without insurance protection. See Olivine Corp., supra 147 Wash. 2d at 162. Additionally, insurers have a duty to deal with their insureds in good faith. RCW 48.01.030. This duty is based upon a fiduciary relationship creating a heightened standard when contracting with its clients for insurance coverage. American Manufacturers Mut. Ins. Co. v. Osborn, 104 Wash. App. 686, 17 P.3d 1229 (2001).

This court must construe and interpret the provisions governing the cancellation of insurance policies in the way best calculated to further their purpose of protecting the insured and recognizing the unequal bargaining relationship inherent in the relationship between the parties. The statute the court has quoted above must be read to require Allstate to properly notify Ms. Hunter again once it learned of its mistake and revised its reason for cancellation. In other words, in order to comply with the statute, Allstate was required to give notice of cancellation based on what had become its true and actual reason, the roof deficiency. This is particularly true if, as here, Allstate learned of the mistake within the 45 day cure period. Only in this way can an insured receive the opportunity to remedy any defect as the legislature intended.

Allstate may very well point to Mr. Schlagel's testimony and argue that in fact Ms. Hunter had such an opportunity and that it substantially complied with the statute. The court recognizes the weakness of the evidence Plaintiff offers to contradict Mr. Schlagel's testimony. But there is no dispute Allstate did not provide the written notice required by statute in the manner required by statute. The statutory provisions which require written notice and retention of records is obviously designed to prevent disputes such as these. To forego them on a substantial compliance theory would frustrate the purposes of the statute.¹

Insurance companies must strictly comply with all statutory requirements relating to cancellation of their policies. See Yovish v. United Services Auto. Ass'n, 243 Mont. 284, 794 P.2d 682 (1990). Because Allstate did not comply with the statutory requirements for cancellation, it cannot meet its burden of demonstrating effective cancellation of the policy at issue here. See Blomquist v. Grays Harbor C'ty Medical Serv. Corp., 296 P.2d 319 (1956).

¹ The court recognizes that in some instances an insured by his silence may be estopped from contesting effective cancellation. See Codd v. New York Underwriters Ins. Co., 19 Wash.2d 671, 144 P.2d 234 (1943). But Allstate has neither pled nor argued estoppel.

David B. Trujillo
Michael D. Kinkley
Rory W. Leid
Gordon G. Hauschild
October 7, 2013
Page 5

Plaintiff's motion to reconsider is granted. The court finds as a matter of law that the cancellation of Plaintiff's insurance policy was not effective. Counsel should present an appropriate order reciting that the court has considered all materials submitted by both parties.

Very truly yours,

A handwritten signature in black ink, appearing to be 'John Knodell', written in a cursive style.

John Knodell
Judge

JK:mmf

EXHIBIT B pg 5 of 5

Appendix B

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FILED

JUN 02 2014

KIMBERLY A. ALLEN
GRANT COUNTY CLERK



07-771466

COPY

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

THE ESTATE OF SUSAN HUNTER

No. 07-2-00020-4

Plaintiff,

v.

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and the
marital community comprised thereof;
and ALLSTATE INSURANCE
COMPANY,

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTIONS FOR SUMMARY
JUDGMENT**

[Subdocuments #332/413, #409 & #414]

Defendants.

THIS MATTER having come before the Court pursuant to Defendant Allstate's Motion for Reconsideration, the Court considering the pleadings filed in this action and the following evidence:

1. Plaintiff's Motion for Summary Judgment on Plaintiff's CPA and IFCA Claims against Defendant Allstate filed December 11, 2013 (subdocument #409), and responsive pleadings;
2. Plaintiff's Motion for Summary Judgment filed on February 21, 2012 (subdocument #332) and renoted (subdocument #413), and responsive pleadings;
3. Plaintiff's Motion for Summary Judgment for Judgment against Allstate Insurance Company for Payment for March 6, 2005 Insured Fire Loss,

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT



WATSON | WATHEN | LEID | HALL, P.C.
303 BATTERY
SEATTLE, WASHINGTON 98121
(206) 622-0494/FAX (206) 587-2476

479

1 for Breach of Contract, for Insurance Bad Faith filed December 12, 2013
2 (subdocument #414), and responsive pleadings;

3 4. The pleadings and records previously filed herein;

4 The Court having considered the foregoing, and having heard the arguments of
5 *and rendering an oral ruling on April 1, 2014 and a written ruling on April 2, 2014*
6 counsel, it is now, therefore:

7 ORDERED, ADJUDGED, and DECREED as follows:

8 1. Plaintiff's Motion for Summary Judgment ruling that Allstate has violated the
9 Insurance Fair Conduct Act is DENIED pursuant to prior Orders of the Court
10 (see subdocument #285 and #384);

11 2. Plaintiff is permitted to bring a motion for relief under CR 60 regarding the
12 prior Order dismissing its IFCA claim (subdocument #285). Should Plaintiff
13 bring such a motion, it will be heard by Judge John M. Antosz;

14 3. The Plaintiff's Motion for Summary Judgment that the Insurance Policy
15 provides covers the loss and for breach of contract is GRANTED;

16 ~~4. This Court finds that, despite Allstate's apparent belief that no policy was in
17 force for the May 2004-May 2005 policy period, a specific non-renewal was
18 required to prevent renewal of the policy for a May 2005-May 2006 policy
19 period under RCW 49.18.290. This Court further finds that the policy of
20 insurance was in force on March 6, 2006;~~ *(Reasons set forth in attached decision)*

21 5. Plaintiff's Motion for Damages is RESERVED. Plaintiff failed to identify all
22 information to be considered by the Court, and the documents properly
23 identified are not adequate to establish damages;

24 6. Plaintiff's Motion for Summary Judgment regarding Bad Faith is DENIED.
25 ~~Material issue of fact regarding Plaintiff's claim for Bad Faith exist which
26 must be determined by the jury.~~ *(Reasons set forth in attached decision)*

27 7. Plaintiff's Motion for Summary Judgment regarding Violation of the
28 Consumer Protection Act is DENIED. ~~The allegations presented by Plaintiff~~

COLE | WATHEN | LEID | HALL, P.C.

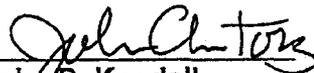
303 BATTERY

SEATTLE, WASHINGTON 98121

(206) 622-0494/FAX (206) 587-2476

1 do not rise to unfair or deceptive acts as a matter of law. Plaintiff's claim for
2 Violation of the Consumer Protection Act presents issues of material fact
3 which must be determined by the jury. *Reasons set forth*
in attached ~~order~~ decision

4 DATED this 2 day of JUNE, 2014.

5
6 
Honorable John D. Knodell
7 *JOHN ANTOSZ*

8 Presented by:

9 COLE | WATHEN | LEID | HALL, P.C.

10 /s/ Rory W. Leid

11 Rory W. Leid, WSBA #25075

12 Jennifer P. Dinning, WSBA #38236

Attorneys for Defendant

303 Battery

Seattle, WA 98121

Phone: 206 622 0494/Fax: 206 587 2476

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COLE | WATHEN | LEID | HALL, P.C.

303 BATTERY

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT 3
SEATTLE, WASHINGTON 98121
(206) 622-0494/FAX (206) 587-2476

Docket
455

The Superior Court of Washington
In and for Grant County

EVAN E. SPERLINE, Judge, Dept. 1
JOHN D. KNODELL, Judge, Dept. 2
JOHN M. ANTOSZ, Judge, Dept. 3
MELISSA K. CHLARSON, Court Commissioner

35 C Street NW
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011

MINDI FINKE, Court Administrator
CRYSTAL BURNS, Asst. Court Administrator
LYNETTE HENSON, Jury Administrator
TOM BARTUNEK, Official Reporter

April 2, 2014

FILED

APR 02 2014

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

David Trujillo
Attorney at Law
4702 Tieton Dr., Ste. A
Yakima, WA 98908

Rory Leid
Attorney at Law
303 Battery St.
Seattle, WA 98121

Gordon Hauschild
Attorney at Law
520 Pike St., Ste. 1205
Seattle, WA 98101

RE: Hunter v. Schlager
Grant County Cause No.: 07-2-00020-4

Dear Counsel:

On April 1, 2014, the court heard argument and orally ruled upon the following motions:

- 1) Plaintiff's Motion for Summary Judgment on Plaintiff's CPA and IFCA Claims against Defendant Allstate filed December 11, 2013 (subdocument #409).
- 2) Plaintiff's Motion for Summary Judgment filed on February 21, 2012 (subdocument #332) and renoted (subdocument #413). This motion requested the court to enter judgment declaring insurance policy coverage and awarding the Hunter Estate damages in a sum certain for structural damages, debris removal and temporary repair.

EXHIBIT App 1 of 5

- 3) Plaintiff's Motion for Summary Judgment for Judgment against Allstate Insurance Company for Payment for March 6, 2006 Insured Fire Loss, for Breach of Contract, for Insurance Bad Faith filed December 12, 2013 (subdocument #414).

The purpose of this memorandum letter is to memorialize the Court's oral rulings. The parties should present orders consistent with the rulings.

Summarizing, plaintiff moves for summary judgment on IFCA (Insurance Fair Conduct Act, RCW 48.30.015), Consumer Protection Act, bad faith and insurance policy coverage/breach of contract claims.

IFCA

This court denies plaintiff's motion for summary judgment on IFCA because Judge Sperline previously granted defendant Allstate's motion for summary judgment dismissing plaintiff's IFCA cause of action. See Judge Sperline's letter dated November 27, 2010 and filed on November 29, 2010 (subdocument #285). Apparently no formal order was entered pursuant to this letter.

On June 14, 2013, Plaintiff filed a Motion for Reconsideration (subdocument #384), which was denied in an Order Denying Motion for Reconsideration filed on June 18, 2013. (subdocument #387). This Order stated the motion for reconsideration was denied "without prejudice to a CR 60 motion. CR 59 motion is untimely". Plaintiff must first obtain relief under CR 60 before it can obtain summary judgment relief under CR 56 for its IFCA cause of action. The plaintiff's motion for summary judgment on IFCA is denied without prejudice to first address it in a CR 60 motion.

The CR 60 motion will be heard by me. The Superior Court judges have decided I will hear all pre-trial motions in the case because of the time I have devoted to the file.

Breach of Contract/Insurance Policy Coverage

Allstate issued a landlord package insurance policy to Susan Hunter in May 2004 and sent her a cancellation notice dated June 12, 2004. On October 7, 2013, Grant County Superior Court Judge Knodell ruled that the notice did not cancel the policy as a matter of law because it did not state the actual reason for cancellation as required by RCW 48.18.290. See letter filed October 8, 2013 (subdocument #405).

Defendant Allstate rightfully concedes the policy was in effect from May 2004 to May 2005 pursuant to Judge Knodell's October 7, 2013 ruling. The question before this court is whether the policy was still in effect on the date of loss, March 6, 2006. Defendant Allstate argues the policy did not automatically renew for another 12 months in May 2005 because plaintiff did not pay any premiums from the time the policy was issued until the date of the loss. Plaintiff characterized this in court as "the estoppel argument".

RCW 49.18.2901 requires each insurer to renew any insurance policy subject to RCW 49.18.290 unless the insurer mails written notice of nonrenewal at least forty-five days before the expiration

EXHIBIT A pg 2 of 5

date of the policy or at least twenty days prior to the expiration date, the insurer has communicated its willingness to renew the policy and includes a statement of the premium amount to be paid to renew the policy, and the insurer fails to pay the premium. Allstate did neither. It is uncontested that the policy is subject to RCW 49.18.290. The twelve month insurance policy automatically renewed in May, 2005 under the terms of RCW 49.18.2901.

The court reviewed other authorities to determine if an insurance policy automatically renew when the insurer does not comply with a statutory duty to send notice of nonrenewal, even if the insured has not made any premium payments. *Couch on Insurance Third Edition, Chapter 29*, references renewals of insurance policies and cites cases which stand for the basic principal that if a statute requires notice on nonrenewal, a policy automatically is deemed renewed even if the insured does not pay premiums. This is recognized in cases either directly or implicitly. See e.g. *Barbara Corporation v Bob Maneely Insurance Agency*, 484 A2d 1292 at 1295 (1984) and *Stedman v Cotton States Insurance Company*, 562 S.E. 2d 256 (2002).

Allstate cites *Eva Adams v State Farm Mutual Insurance Company*, 65 Cal. App.3d 821 (1977), but the insurer in that case did comply with notification provisions in the California code. Allstate cites *Rizzuti v Basin Travel Serv.*, 125 Wash App 602 (2005) and *Saunders v Lloyd's of London*, 113 Wn2d 330 (1989) for "an insurer should not be required to pay for a loss for which it received no premium." But in those cases the courts are discussing terms of coverage that are not written in the policy and are therefore unpaid, not whether a policy is deemed renewed when an insured does not receive legally required notice of non-renewal. Allstate cites *McGregor v Inter-ocean Ins. Co.* 48 Wn. 2d 268 (1956), but it appears by stipulated facts in that case that the insurance policy had lapsed, whereas in the case at bar, the court is determining whether the policy lapsed.

In *Lone v Mutual Life Ins. Co. of New York* 33 Wash. 577 (1903) cited by plaintiff, the insured paid one semi-annual life insurance premium in 1887 and no premiums for twelve years thereafter. His estate argued it was entitled to benefits because the insured did not receive notice of non-renewal of the policy as required by state law. The Supreme Court ruled that the plaintiff had clearly rescinded the contract.

According to this court's Westlaw search, Lone has been positively cited in the majority decision of two out of state cases and in the dissent of one out of state case. It has not been cited in any subsequent Washington cases. Further, as stated in *Haas v Mutual Life Ins. Co. of New York*, 121 N.W. 996 (1909), in distinguishing Lone, "Nor do we think that *Lone v Mutual Life Ins. Co.* 33 Wash. 577 cited by Mr. Justice Brewer, gives any just rule for measuring the case at bar. In that case, Lone had only made one semiannual payment. He never paid anything more for 12 years, a length of time which might justly be held as presenting an exception to the rule announced in the many cases above cited." In other words, Lone is the exception which proves the rule. Its uniqueness and exceptional facts proves the general rule that an insurance policy will be deemed renewed if an insurer fails to comply with a statutorily required notice of non-renewal, even if premium payments were not made.

The general rule recognized in Lone is that if an insurer does not comply with a statutorily required notice of non-renewal, the policy is renewed as a matter of law. In Lone, the court found

EXHIBIT A pg 3 of 5

an exception to this rule if there is clear evidence that the insured intended to rescind the insurance contract. *Lone at 580*. In *Lone*, the insured clearly indicated his intent to rescind the life insurance contract by failing to make premium payments for twelve years. In the present case, the exception does not apply. There is not clear evidence that Susan Hunter or the Hunter Estate intended to rescind the insurance contract.

The court recognizes the unique facts in this case. Allstate may have been under the impression that it had cancelled the policy by virtue of its June 12, 2004 "cancellation notice". Allstate may not have been aware it needed to send the plaintiff a non-renewal notice because it believed the policy had been cancelled. The policy was not known by Allstate to be legally ineffective until the October 7, 2013 ruling (subdocument #405). But the reason Allstate was under this mistaken impression is of its own making. Allstate sent a notice of cancellation which was legally insufficient. The purpose of the notice provisions is to enable insureds to take appropriate actions in the face of pending cancellation or non-renewal. *Olivine, supra at 501*. The insurer here should bear the loss for inadequate notice of non-renewal no different than if it had lost Ms. Hunters file and failed to notify her of non-renewal. The insured does have some protection in those cases in which the insured clearly evidenced a desire to rescind the contract.

The court grants plaintiff's motion for summary judgment that the insurance policy covers the loss and for breach of contract.

For reasons stated in court, the court will not rule upon damages at this time. The Declaration of Expert Witness John Marshall filed on February 21, 2102 (subdocument 330) was not identified by the plaintiff as a document to be considered in the re-note for hearing filed on December 12, 2013 (subdocument 413). The remaining declarations on damages (subdocuments 411 and 417) are inadequate on their own to determine damages.

Bad Faith

The breach of contract/insurance policy coverage claim is separate from the bad faith and consumer protection act causes of action. An insured has a duty of good faith to its policyholder and violation of that duty may give rise to a tort action for bad faith. *Truck Ins. Exch. v Vanport Homes, Inc., 147 Wash.2d 751 (2002)*. To succeed on a bad faith claim, the policyholder must show the insurer's breach of the insurance action was unreasonable, frivolous or unfounded. *Overton v Consol. Ins. Co., 145 Wash.2d 417 (2002)*. The court has reviewed the conduct that plaintiff argues Allstate committed in bad faith. It will be necessary for the finder of fact at trial to determine the reasonableness of Allstate's conduct. The court cannot conclude as a matter of law that the conduct was unreasonable. Plaintiff's motion for summary judgment for bad faith is denied.

Consumer Protection Act (RCW 48.30)

A violation of the Consumer Protection Act requires proof of an unfair or deceptive act. This court has reviewed the plaintiff's allegations regarding Allstate's conduct and cannot conclude it rises to the level of unfair or deceptive as a matter of law. This cause of action will need to be

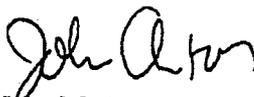
EXHIBIT A pg 4 of 5

determined by the finder of fact at trial. Plaintiff's motion for summary judgment on the Consumer Protection Act is denied.

Conclusion

As stated in court, the parties should present proposed orders to the court as soon as possible. For reasons stated on the record today, the court will be signing an administrative order which limits pending dispositive motions to one per party at given time.

Very truly yours,



John M. Antosz
Judge

Appendix C

FILED

JUN 02 2014

KIMBERLY A. ALLEN
GRANT COUNTY CLERK



07-771465

SUPERIOR COURT OF WASHINGTON
COUNTY OF GRANT

The Estate of Susan Hunter

Petitioner(s).

vs

Gregory Schlegel et al

Respondent(s).

NO. 07-2-00020-4

ORDER RE:

PLAINTIFF'S MOTION FOR RELIEF
FILED ON 4.8.14 (DOCUMENT 460)
(OPTIONAL USE)
(OR)

IT IS HEREBY ORDERED: having considered Plaintiff's Motion #460

The Plaintiff's MOTION to vacate Judge Sparline's
decision at sub # 285 is granted based upon Judge
Knodell's order entered today (Sub # 475). This
order does not preclude defendants from moving
to dismiss the I.F.C.A. claim based upon the effective
date of I.F.C.A., whether I.F.C.A. applies to conduct
during litigation, or any other basis, under CR 56 or otherwise rule.

The CR 56 MOTION brought by plaintiff
is denied.

Dated: 6.2.14.

[Signature]
Signature of Judge/Commissioner

Presented by:

Approved for entry:
Notice of presentation waived;

Signature of Party

Signature of Party

Print or type Name

Print or type Name



Appendix D

RECEIVED
DEC 14 2008

**COLE, LETHER,
WATHEN, LEID & HALL, P.C.**

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT**

THE ESTATE OF SUSAN HUNTER,

Plaintiff,

vs.

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and
the marital community
comprised thereof; and
ALLSTATE INSURANCE COMPANY,

Defendants.

NO. 07-2-00020-4

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF'S MOTIONS FOR
RECONSIDERATION**

COMES NOW the Plaintiff and submits this Supplemental Memorandum as an aid to the Court in response to the Court's request for guidance on what it is that Plaintiff claims Allstate did wrong in this case and for which Plaintiff has sued Allstate for (1) Breach of Contract and the contractual duty of good faith and fair dealing, (2) the tort of Bad Faith, and (3) for general and per se unfair and deceptive acts under the Consumer Protection Act (RCW 19.86).

LIABILITY ON PLAINTIFF'S CAUSES OF ACTION:

FIRST CAUSE OF ACTION:

A. Breach of Contract & Duty of Good Faith and Fair Dealing

DUTIES INCLUDED AND THEN HOW BREACHED:

In every contract there arises a duty of good faith, which requires each party to the contract to **FULLY COOPERATE WITH THE**



2 yet to obtain a full understanding of all the events and
3 circumstances".

4 However, despite all that total ignorance and lack of knowledge
5 and long undeveloped investigative needs and insufficient records
6 and files, Allstate somehow had no problem favoring its own
7 interests and its completely self-serving speculation over the same
8 by denying Plaintiff's loss claim on 4-7-06. Given the ignorance
9 and failure to secure the facts and any of the dispositive
10 documents, this denial and investigation was both unreasonable
11 unlawful and therefor a breach of the contractual duty of good faith
12 and the contractual duty to pay, all while committing numerous legal
13 violations (per se unfair and deceptive actions explained in the 3rd
14 cause of action below) along the way.

15 Furthermore, given how John Miller's investigation report
16 attributed the entire problem to Allstate's own failures (Ex. G to
17 DBT declaration of 2-17-09), the denial was the most egregious
18 breach of the duty of good faith and fair dealing that could be
19 imagined. Allstate's confirmation of the basis for their denial,
20 which told the Insurance commissioner that the policy had been
21 terminated because Susan Hunter had failed to cure the bad roof is
22 incredulous. Any reasonable investigation, that was not an actual
23 cover up, either really did or should have actually determined that
24 Allstate's allegation and basis for denying the claim were all
25 utterly without any merit whatsoever.
26

27
28 **SECOND CAUSE OF ACTION:**

29 **B. THE TORT OF BAD FAITH**

30 This claim is nearly identical to the First Cause of action.
31 It is simply the other side of the same coin. "The duty to act in
32 good faith or liability for acting in bad faith generally refers to
33 the same obligation." Tank v. State Farm, 105 Wn.2d 381, 385-6, 715
34 P.2d 1133 (1986) (citing to Tyler v. Grange Ins. Ass'n, 3 Wash. App.
167, 173, 473 P.2d 193 (1970)).

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If the mobile home status was ever really Allstate's reason for termination as Allstate's attorney now try to argue in spite of the uncontested facts showing otherwise (i.e. - that Allstate never terminated based on mobile home status), then it just establishes yet a new basis for invalid bad faith termination and claim denial and unfair dealing.

This is because Ms. Hunter invoked her right to cure and fully performed thereon exactly as requested, thereby putting the ball back into Allstate's court to comply with its contractually mandated duty to cooperate in good faith thereon but Allstate admits it never did. Rather Allstate then collected her payment (triggering RCW 48.30.190), never communicated any further and just terminated her behind her back without another word while hanging on to her check. On that note, Allstate's own employees agreed such actions were inappropriate. This is because such callous bad faith could not sustain a valid termination on the 6-12-04 notice or ever properly deny Ms. Hunter the benefit of her bargain. Any termination, in and of itself was a breach of both the contract and the contractual duty of good faith.

Accordingly, for the reasons set forth above, this Court should avoid a useless trial on liability, end this needlessly ongoing devastation to the integrity of insurance, and grant Plaintiff's motion for reconsideration by entering summary judgment in Plaintiff's favor on all three of her claims against Allstate, finding that damages in the amount of the benefits of the bargain exist under the policy, with the exact amounts of all alleged damages to be resolved at trial or hearing as Plaintiff deems best.

RESPECTFULLY SUBMITTED this 10th day of December, 2009.



DAVID B. TRUJILLO, WSBA #25580

Appendix E

The Honorable John Knodell
Hearing Date: March 19, 2009
Hearing Time: 4:00 p.m.

FILED

FEB 12 2009

KIMBERLY A. ALLEN
Grant County Clerk

IN THE SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

THE ESTATE OF SUSAN HUNTER

Plaintiff,

v.

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and the marital
community comprised thereof; and ALLSTATE
INSURANCE COMPANY,

Defendants.

No. 07-2-00020-4

**DECLARATION OF DAVID HART
IN SUPPORT OF ALLSTATE'S
MOTION FOR SUMMARY
JUDGMENT ON BREACH OF
CONTRACT CLAIMS**

I, David Hart, make the following declaration certified to be true under penalty of perjury pursuant to RCW 9A.72.085:

1. I am over the age of eighteen and competent to testify. I have personal knowledge of the facts and pleadings contained herein. I have also reviewed the Underwriting file and the claims file.

2. I am a Territorial Product Manager in the Field Product Management Department for Allstate Insurance Company. I have been employed with Allstate Insurance Company for over 15 years.

3. Allstate agent Greg Schlagel, an agent licensed to sell Allstate insurance policies, obtained the information necessary to write a policy on a rental home located at



251 Briskey Lane in Naches, Washington and forwarded the information to Allstate.

4. Allstate wrote a policy and subsequently inspected the risk. Attached hereto as Exhibit A is a true and correct copy of the initial Landlords Package Policy written for Susan Hunter. Allstate initially agreed to write a policy for the risk pending an inspection because Ms. Hunter told Allstate she owned the home.

5. Allstate sent out an independent contractor, Bethlyn Rowe, to inspect the home on May 28, 2004. Attached hereto as Exhibit B is a true and correct copy of a Northwest Region Inspection Request dated June 23, 2004.

6. The incorrect home was inspected by Ms. Rowe. Unfortunately, Ms. Rowe inspected 253 Briskey Lane, Ms. Hunter's personal residence, rather than 251 Briskey Lane, the landlord property. Ms. Rowe returned an unacceptable inspection based upon the fact that it was a mobile home, and Allstate will not write landlord policies for mobile homes.

7. Allstate received notice of the uninsurable risk and mailed a notice of cancellation dated June 12, 2004. The notice informed Ms. Hunter that the policy would terminate on August 7, 2004. Attached hereto as Exhibit C is a true and correct copy of a Notice of Cancellation dated June 12, 2004.

8. Mr. Schlagel kept the check in his possession. The check was never forwarded to Allstate, nor was it ever returned to the insured. Mr. Schlagel did not deposit or cash the check. Mr. Schlagel then contacted Allstate to request that the home be reinspected.

9. The correct home was inspected by Ms. Rowe on June 29, 2004. Ms. Rowe inspected the 251 Briskey Lane property and then determined that the roof was lifting and buckling, which resulted in the dwelling being deemed an unacceptable risk for Allstate insurance coverage. She issued that information to Allstate. Allstate forwarded this

information to Greg Schlagel. Attached hereto as Exhibit D is a true and correct copy of Allstate notes from the underwriting file with an entry dated June 30, 2004.

10. As a result of the correct inspection, the August 7, 2004 cancellation was not waived.

11. Allstate would have never have written the policy for Ms. Hunter on May 11, 2004, if she had told Allstate that she did not own the property.

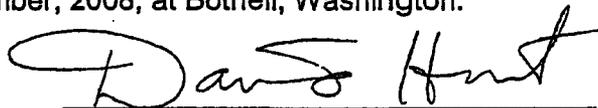
12. Allstate would not insure a rental property that has a roof in the condition described by Ms. Bethlyn Rowe.

13. Allstate never rescinded the cancellation. Allstate never reissued a policy for the rental property at 251 Briskey Lane.

14. Allstate denied the fire loss claim because Ms. Hunter did not have an insurance policy with Allstate at the time of the loss.

I declare under penalty of perjury under the laws of the State of Washington that the above statements are true and correct.

Dated this 30th day of December, 2008, at Bothell, Washington.



DAVID HART

Allstate Insurance Company

**Landlords Package
Policy Declarations**

Summary

| | | |
|---|--|---|
| NAMED INSURED(S) Susan Hunter 253 Briskey Lane Naches WA 98937-9723 | YOUR ALLSTATE AGENT IS: Greg Schlegel 205 S Ash Street Moses Lake WA 98837 | CONTACT YOUR AGENT AT: (509) 764-8110 |
|---|--|---|

| | | |
|---|--|--|
| POLICY NUMBER 9 17 132671 05/11 | POLICY PERIOD Begins on May 11, 2004 at 12:01 A.M. standard time, with no fixed date of expiration | PREMIUM PERIOD May 11, 2004 to May 11, 2005 at 12:01 A.M. standard time |
|---|--|--|

LOCATION OF PROPERTY INSURED
251 Briskey Lane, Naches, WA 98937-9723

Total Premium for the Premium Period (Your bill will be mailed separately)

| | |
|------------------------------|-----------------|
| Premium for Property Insured | \$352.00 |
| TOTAL | \$352.00 |

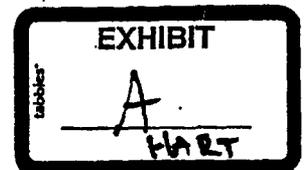
The portion of the total premium shown above that is attributable to coverage for losses caused by "acts of terrorism" to which the federal Program established by the "Terrorism Risk Insurance Act of 2002" applies is \$0.00. SEE THE ENCLOSED "POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE" - AP9357.

PROP *010004824261137000412302*



Information as of
May 11, 2004

Page 1
WA072HED



Allstate Insurance Company

Policy Number: 9 17 182671 08/11 Your Agent: Greg Schlegel (800) 784-8110
For Premium Period Beginning: May 11, 2004

POLICY COVERAGES AND LIMITS OF LIABILITY

| COVERAGE AND APPLICABLE DEDUCTIBLES (See Policy for Applicable Terms, Conditions and Exclusions) | LIMITS OF LIABILITY | |
|--|----------------------------|-----------------|
| Dwelling Protection • \$500 All Peril Deductible Applies | \$128,138 | |
| Other Structures Protection • \$500 All Peril Deductible Applies | \$12,814 | |
| Personal Property Protection - Reimbursement Provision • \$500 All Peril Deductible Applies | \$10,000 | |
| Fair Rental Income Protection | Refer to Policy | |
| Liability Protection | \$100,000 | each occurrence |
| Premises Medical Protection | \$1,000 | each person |
| Fire Department Charges | \$500 | |

RATING INFORMATION

The dwelling is of Frame construction and is occupied by 1 family

Allstate Insurance Company

Policy Number: 9 17 132871 08/11 Your Agent: Greg Schlegel (800) 754-8118
For Premium Period Beginning: May 11, 2004

Your Policy Documents

Your Landlords Package policy consists of this Policy Declarations and the documents listed below. Please keep these together.

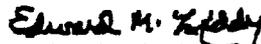
- Landlords Package Policy form AP723
- Notice of Terrorism Insurance Coverage form AP3337
- Landlords Package Policy Amend. End. form AP2006
- Washington LPP Amandatory End. form AP1015-1

Important Payment and Coverage Information

The property insurance adjustment condition applies using the Boeckh Publications Building Cost Index developed by The American Appraisal Associates, Inc.

Please note: This is not a request for payment. Any adjustments to your premium will be reflected on your next scheduled bill which will be mailed separately.

IN WITNESS WHEREOF, Allstate has caused this policy to be signed by two of its officers at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of Allstate.


Edward M. Liddy
President


Robert W. Pike
Secretary

PROP *01000460405115700412303*



Information as of
May 11, 2004

Page 3
WA07288

Allstate Landlords Package Policy

WASHINGTON

Policy:

Effective:

Issued to:

Allstate Insurance Company
The Company Named in the Policy Declarations
A Stock Company—Home Office: Northbrook, Illinois 60062

AP723

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General

Definitions Used In This Policy

1. "Allstate", "we", "us" or "our" — means the company named on the Policy Declarations.

2. "Bodily Injury" — means physical harm to the body, including sickness, disability or disease, and resulting death, except that bodily injury does not include:

- a) any venereal disease;
- b) Herpes;
- c) Acquired Immune Deficiency Syndrome (AIDS);
- d) AIDS-Related Complex (ARC);
- e) Human Immunodeficiency Virus (HIV);

or any resulting symptom, effect, condition, disease or illness related to (a) through (e) listed above.

Under Coverage Y — Premises Medical Protection, bodily injury means physical harm to the body, including sickness or disease, except that bodily injury does not include:

- a) any venereal disease;
- b) Herpes;
- c) Acquired Immune Deficiency Syndrome (AIDS);
- d) AIDS-Related Complex (ARC);
- e) Human Immunodeficiency Virus (HIV);

or any resulting symptom, effect, condition, disease or illness related to (a) through (e) listed above.

3. "Building structure" — means a structure with walls and a roof.

4. "Business" — means any full or part-time activity of any kind engaged in for monetary or other compensation or the use of any part of any premises for such purposes. However, the lawful rental or lease, or holding for rental

or lease, of the residence premises will not be considered a business.

5. "Dwelling" means a one, two, three or four family building structure which is used principally as a private residence and located at the address stated on the Policy Declarations.

6. "Insured person(s)" means:

- a) if you are shown on the Policy Declarations as an individual and you are a sole proprietor, you and your resident spouse.
- b) if you are shown on the Policy Declarations as a partnership or joint venture, the named partnership or joint venture, including any of its partners or members individually while acting within the course and scope of their duties in connection with the ownership, maintenance or use of the residence premises.
- c) if you are shown on the Policy Declarations as an organization other than a partnership or joint venture, the organization directors, trustees or governors of the organization while acting within the course and scope of their duties in connection with the ownership, maintenance or use of the residence premises.
- d) your employees, while acting within the course and scope of their employment in connection with the ownership, maintenance or use of the residence premises.
- e) any person or organization while acting as your real estate manager for the residence premises.

This policy does not apply to bodily injury, personal injury or property damage arising from the conduct of any partnership, joint venture or organization which is not named on the Policy Declarations as the Insured.

7. "Occurrence" means:

- a) under Coverage X—Liability Protection, an accident during the policy period, including continued and repeated exposure to substantially the same general harmful conditions during the policy period, resulting in bodily injury, personal injury or property damage and arising from the ownership, maintenance or use of the residence premises.
- b) under Coverage Y—Premises Medical Protection, an accident during the policy period, including continued and repeated exposure to substantially the same general harmful conditions during the policy period, resulting in bodily injury and arising from the ownership, maintenance or use of the residence premises.

8. "Personal Injury" means damages resulting from:

- a) false arrest, false imprisonment, wrongful detention;
- b) wrongful entry, invasion of rights of occupancy, wrongful eviction;
- c) libel, slander, humiliation, defamation of character, invasion of rights of privacy.

9. "Property damage" means physical harm to or destruction of tangible property, including loss of its use resulting from such physical harm or destruction. Property damage does not include theft or conversion of property by an insured person.

10. "Rental Unit" means that portion of your dwelling which forms separate living space intended for tenant occupancy.

11. "Residence premises" means your dwelling, other structures and land located at the address stated on the Policy Declarations.

12. "Tenant" means any person who rents, leases or lawfully occupies a rental unit.

13. "Vandalism" — means willful or malicious conduct resulting in damage or destruction of property. "Vandalism" does not include theft of property.

14. "You" or "your" — means the person(s), partnership, joint venture, or organization specifically named on the Policy Declarations as the insured.

Insuring Agreement

In reliance on the information you have given us, Allstate agrees to provide the coverages indicated on the Policy Declarations. In return, you must pay the premium when due, comply with the policy terms and conditions, and inform us of any change in title or use of the residence premises.

Subject to the terms of this policy, the Policy Declarations shows the location of the residence premises, applicable coverages, limits of liability and premiums. The policy applies only to losses or occurrences that take place during the policy period. The policy period is shown on the Policy Declarations. This policy is not complete without the Policy Declarations.

The terms of this policy impose joint obligations on persons defined as an insured person. This means that the responsibilities, acts and failures to act of a person defined as an insured person will be binding upon every other person defined as an insured person.

Conformity to State Statutes

When a policy provision conflicts with the statutes of the state in which the residence premises is located, the provision is amended to conform to such statutes.

Coverage Changes

When Allstate broadens coverage during the premium period without charge, you have the broadened coverage if you have purchased the coverage to which the changes apply. The broadened coverage applies on the date the

coverage change is effective in your state. Otherwise, the policy can be changed only by endorsement.

The coverage provided and the premium for the policy is based on information you have given us. You agree to cooperate with us in determining if this information is correct and complete. You agree that if this information changes or is incorrect or incomplete, we may adjust your coverage and premium accordingly during the policy period.

Any calculation of your premium or changes in your coverage will be made using the rules, rates and forms on file, if required, for our use in your state. The rates in effect at the beginning of your current premium period will be used to calculate any change in your premium.

Policy Transfer

You may not transfer this policy to another person or organization without our written consent.

Continued Coverage After Your Death

If you die, coverage will continue until the end of the premium period for:

1. Your legal representative while acting as such, but only with respect to the residence premises and property covered under this policy on the date of your death.
2. An insured person, and any person having proper temporary custody of your property until a legal representative is appointed and qualified.

Cancellation

Your Right to Cancel:

You may cancel this policy by notifying us in writing of the future date you wish to stop coverage.

Our Right to Cancel:

Allstate may cancel this policy by mailing notice to you at the mailing address shown on the Policy Declarations.

If the cancellation is for non-payment of premium, we will mail notice to you at least 10 days before the effective date of cancellation. If the cancellation is for any other reason, we will mail notice to you at least 45 days before the effective date of cancellation.

Our mailing the notice of cancellation to you will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. Your return premium, if any, will be calculated on a pro-rata basis and will be mailed at the time of cancellation or as soon as possible, but no later than:

- 1) 45 days after we mail a notice of cancellation to you; or
- 2) 30 days after we receive the notice of cancellation from you.

However, refund of unearned premium is not a condition of cancellation. Any unearned premium amounts under \$2.00 will be refunded only upon your request.

Our Right Not to Continue or Renew

Allstate has the right not to continue or renew this policy beyond the current premium period. If we do not intend to continue or renew the policy, we will mail you notice at least 45 days before the end of the premium period. Our mailing the notice of nonrenewal to you will be deemed proof of notice.

Concealment and Fraud

This policy is void if it was obtained by material misrepresentation, fraud or concealment of material facts made with the intent to deceive. If it is determined that this policy is void, all premiums paid will be returned to you since there has been no coverage under this policy.

We do not cover any loss or occurrence in which any insured person has concealed or

misrepresented any material fact or circumstance with the intent to deceive.

Conditional Reinstatement

If we mail a cancellation notice because you didn't pay the required premium when due and you then tender payment by check, draft, or other remittance which is not honored upon presentation, your policy will terminate on the date and time shown on the cancellation notice and any notice we issue which waives the cancellation or reinstates coverage is void. This means that Allstate will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

Endorsement Changes

Any calculation or adjustment of your premium will be made using the rules, rates and forms in effect, and on file if required, for our use in your state. If your policy is changed by endorsement and the net change in your premium is less than \$2.00 dollars, no charge will be made and no refund will be given.

Section II — Your Property

Coverage A

Dwelling Protection

Property We Cover Under Coverage A:

1. Your dwelling, including attached structures, at the residence premises. Fences and structures connected to your dwelling by only a fence, utility line, or similar connection, are not considered attached structures.
2. Construction materials and supplies at the residence premises for use in connection with your dwelling.
3. Wall-to-wall carpeting fastened to your dwelling.

Property We Do Not Cover Under Coverage A:

1. Any structure or other property covered under Coverage B — Other Structures Protection.
2. Land, no matter where located, or the replacement, rebuilding, restoration, stabilization or value of any such land.
3. Satellite dish antennas and their systems, whether or not attached to your dwelling.
4. Construction materials and supplies at the residence premises for use in connection with structures other than your dwelling.

**Coverage B
Other Structures Protection**

Property We Cover Under Coverage B:

1. Structures at the address shown on the Policy Declarations separated from your dwelling by clear space.
2. Structures connected to your dwelling by only a fence, utility line, or similar connection.
3. Construction materials and supplies at the residence premises for use in connection with structures, other than your dwelling, at the residence premises.
4. Wall-to-wall carpeting fastened to building structures other than your dwelling.
5. Fences at the residence premises, whether or not connected to your dwelling.

Property We Do Not Cover Under Coverage B:

1. Any structure or other property covered under Coverage A — Dwelling Protection.

2. Land, no matter where located, or the replacement, rebuilding, restoration, stabilization or value of any such land.
3. Satellite dish antennas and their systems, whether or not attached to a building structure.
4. Construction materials and supplies at the address of the residence premises for use in connection with your dwelling or any structure not located at the residence premises.

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in Coverage A — Dwelling Protection and Coverage B — Other Structures Protection except as limited or excluded in this policy.

Losses We Do Not Cover Under Coverages A and B:

We do not cover loss to the property described in Coverage A — Dwelling Protection or Coverage B — Other Structures Protection caused by or resulting in any manner from any of the following excluded events as described in 1 through 22 below. Loss will be considered to have been caused by an excluded event if that event:

- a) directly and solely results in loss; or
- b) initiates a sequence of events that results in loss, regardless of the nature of any intermediate or final event in that sequence.

1. Flood, including surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.
2. Water or any other substance that backs up through sewers or drains.
3. Water or any other substance that overflows from a sump pump, sump pump well or

other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

4. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through, any part of the residence premises.

We do cover sudden and accidental direct physical loss caused by fire or explosion resulting from items 1 through 4 listed above.

5. Earth movement including earthquake, landslide, subsidence, mudflow, pressure, sinkhole, erosion, or the sinking, rising, shifting, creeping, expanding, bulging, cracking, settling or contracting of the earth. This exclusion applies whether or not the earth movement is combined with water. This exclusion also applies to volcanic eruption, except as specifically provided in Section I — Additional Protection under item 9, "Volcanic Eruption".

We do cover sudden and accidental direct physical loss caused by fire, explosion, or breakage of glass or safety glazing materials resulting from earth movement.

6. Enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, placement or demolition of any building structure, other structure or land at the residence premises.

We do cover sudden and accidental direct physical loss caused by actions of civil authority to prevent the spread of fire.

7. The failure of any insured person to take all reasonable steps to save and preserve

property when the property is endangered by a cause of loss we cover.

8. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an insured person.

9. Intentional or criminal acts of, or at the direction of, an insured person, if the loss that occurs:

- a) may be reasonably expected to result from such acts; or
- b) is the intended result of such acts.

10. Nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered loss caused by fire, explosion or smoke.

We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.

11. War or warlike acts, including insurrection, rebellion or revolution.

12. Collapse of a building structure or any part of a building structure, except as specifically provided in Section I — Additional Protection under item 7, "Collapse".

13. Soil conditions, including corrosive action, chemicals, compounds, elements, suspensions, crystal formations or gels in the soil.

14. Any type of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials, irritants, contaminants, or pollutants, including, but not limited to:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or

- d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the residence premises.
15. a) Wear and tear, aging, marring, scratching, deterioration, inherent vice, or latent defect;
- b) Mechanical breakdown;
 - c) Growth of trees, shrubs, plants or lawns whether or not such growth is above or below the surface of the ground;
 - d) Rust or other corrosion, mold, wet or dry rot;
 - e) Contamination, including the presence of toxic, noxious, or hazardous gases, chemicals, liquids, solids or other substances at the residence premises or in the air, land or water serving the residence premises;
 - f) Smog, smoke from the manufacturing of any controlled substance by an insured person or with the knowledge of an insured person, agricultural smudging and industrial operations;
 - g) Settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
 - h) Insects, rodents, birds or domestic animals. We do cover the breakage of glass or safety glazing materials caused by birds; or
 - i) Seizure by government authority of property covered under Coverage A — Dwelling Protection or Coverage B — Other Structures Protection.

If any of (a) through (h) cause the sudden and accidental escape of water or steam from a plumbing, heating or air conditioning system, household appliance or fire protective sprinkler system within your dwelling, we cover the direct physical damage caused by the water or steam. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part

of your dwelling necessary to repair the system or appliance. This does not include damage to the defective system or appliance from which the water escaped.

16. Freezing of plumbing, fire protective sprinkler systems, heating or air conditioning systems or household appliances, or discharge, leakage or overflow from within the systems or appliances caused by freezing, while the building structure or any rental unit in that building structure is vacant, unoccupied, or being constructed, unless you have used reasonable care to:
- a) maintain heat in the building structure including all rental units; or
 - b) shut off the water supply and drain the system and appliances in the building structure.
17. Freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not. This exclusion applies only to fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, wharves and docks.
18. Seepage, meaning continuous or repeated seepage or leakage over a period of weeks, months, or years, of water, steam or fuel:
- a) from a plumbing, heating, air conditioning or automatic fire protection system or from within a domestic appliance; or
 - b) from within or around any plumbing fixtures, including, but not limited to, shower stalls, shower baths, tub installations, sinks or other fixtures designed for the use of water or steam.
19. Theft or burglary. However, we will cover damage to the exterior of covered building structures caused by the breaking in of a burglar or burglars if the dwelling is completed and has not been vacant or unoccupied for more than 90 consecutive

days immediately prior to the loss. When we cover damage to the exterior of covered building structures caused by a burglar or burglars, we will also cover damage to interior surfaces of exterior doors and windows damaged by the break-in.

20. Vandalism. However, we do cover sudden and accidental direct physical loss caused by fire resulting from vandalism unless your dwelling has been vacant or unoccupied for more than 90 consecutive days immediately prior to the vandalism.

21. Any act of a tenant, or guests of a tenant, unless the act results in sudden and accidental direct physical loss caused by:

- a) fire;
- b) explosion;
- c) vehicles;
- d) smoke. However, we do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations;
- e) increase or decrease of artificially generated electrical current to electrical appliances, fixtures and wiring;
- f) bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water;
- g) water or steam that escapes, due to accidental discharge or overflow, from a plumbing, heating or air conditioning system, an automatic fire protection system, or a household appliance; or
- h) freezing of a plumbing, heating or air conditioning system or a household appliance.

22. Weather conditions which result in:

- a) landslide or mudflow;
- b) earth sinking, rising or shifting;

- c) flood, surface water, waves, tidal water, or spray from any of these, whether or not driven by wind;
- d) water backing up from a sewer or drain or overflowing from a sump pump or sump pump well; or
- e) water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do cover direct loss caused by fire, explosion or theft resulting from a) through e) listed above.

Coverage C

Personal Property Protection

Property We Cover Under Coverage C:

Personal property owned or used by an insured person which is rented or held for rental with the residence premises, or used for the service of the residence premises. Coverage applies only while the personal property is on the residence premises, or while it is temporarily removed for repairs.

Property We Do Not Cover Under

Coverage C:

1. Personal property specifically described and insured by this or any other insurance.
2. Animals.
3. Motorized land vehicles, including any land vehicle powered or assisted by a motor or engine. We do not cover any motorized land vehicle parts, equipment or accessories. We do, however, cover motorized land vehicles and their parts, equipment and accessories used solely for the service of the residence premises if not licensed for use on public roads.
4. Aircraft and aircraft parts.

5. Watercraft, including their trailers, furnishings, equipment and motors.

6. Outdoor signs.

7. Property of roomers, boarders or tenants.

8. Any device, cellular communication systems, radar signal reception system, accessory or antenna designed for reproducing, detecting, receiving, transmitting, recording or playing back data, sound or picture which may be powered by electricity from a motorized land vehicle or watercraft.

9. Satellite dish antennas and their systems.

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in Coverage C—Personal Property Protection, except as limited or excluded in this policy, caused by:

1. Fire or lightning.

However, we do not cover loss caused by fire resulting from vandalism if your dwelling has been vacant or unoccupied for more than 90 consecutive days immediately prior to the vandalism.

2. Windstorm or hail.

We do not cover loss to covered property inside a building structure, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind forces rain, snow, sleet, sand or dust through the damaged roof or wall.

3. Explosion.

4. Riot or Civil Commotion, including pillage and looting during, and at the site of, the riot or civil commotion.

5. Aircraft, including self-propelled missiles and spacecraft.

6. Vehicles, meaning a device designed or used to transport persons or property.

7. Smoke.

We do not cover loss caused by smoke from the manufacturing of controlled substances by an insured person or with the knowledge of an insured person, agricultural smudging or industrial operations.

8. Falling objects.

We do not cover loss to personal property inside a building structure unless the falling object first damages an exterior wall or roof of the building structure. Damage to the falling object itself is not covered.

9. Weight of ice, snow or sleet which causes damage to personal property in a building structure, but only if the building structure is damaged due to the weight of ice, snow or sleet.

10. Increase or decrease of artificially generated electrical current to electrical appliances, fixtures and wiring.

11. Breakage of glass, meaning damage to covered personal property caused by breakage of glass constituting a part of any building structure on the residence premises. This does not include damage to the glass.

12. Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or appliance for heating water.

13. Water or steam that escapes from a plumbing, heating or air conditioning system,

an automatic fire protection system, or from a household appliance due to accidental discharge or overflow.

We do not cover loss to the system or appliance from which the water or steam escapes, or loss from water which backs up through sewers or drains or overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

14. Freezing of a plumbing, heating or air conditioning system or a household appliance.

We do not cover loss to any covered property in a building structure or any rental unit at the residence premises under perils (12), (13), and (14) caused by or resulting from freezing while the building structure or any rental unit in that building structure is vacant, unoccupied or under construction unless you have used reasonable care to:

- a) maintain heat in the building structure including all rental units; or
- b) shut off the water supply and drain the system and appliances in the building structure.

Losses We Do Not Cover Under Coverage C:

We do not cover loss to the property described in Coverage C—Personal Property Protection caused by or resulting in any manner from any of the following excluded events as described in 1-14 below. Loss will be considered to have been caused by an excluded event if that event:

- a) directly and solely results in loss; or
- b) initiates a sequence of events that results in loss, regardless of the nature of any intermediate or final event in that sequence.

1. Flood, including surface water, waves, tidal water or overflow of any body of water, or

spray from any of these, whether or not driven by wind.

2. Water or any other substance that backs up through sewers or drains.

3. Water or any other substance that overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

4. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the residence premises.

We do cover sudden and accidental direct physical loss caused by fire or explosion resulting from items 1 through 4 listed above.

5. Earth movement including earthquake, landslide, subsidence, mudflow, pressure, sinkhole, erosion, or the sinking, rising, shifting, creeping, expanding, bulging, cracking, settling or contracting of the earth.

This exclusion applies whether or not the earth movement is combined with water. This exclusion also applies to volcanic eruption, except as specifically provided in Section 1—Additional Protection under item 9 "Volcanic Eruption".

We do cover sudden and accidental direct physical loss caused by fire, explosion, or breakage of glass or safety glazing materials resulting from earth movement.

6. Enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, placement or demolition of any

building structure, other structure or land at the residence premises.

We do cover sudden and accidental direct physical loss to covered property caused by actions of civil authority to prevent the spread of fire.

7. The failure by any insured person to take all reasonable steps to save and preserve property when the property is endangered by a cause of loss we cover.

8. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an insured person.

9. Intentional or criminal acts of, or at the direction of, an insured person, if the loss that occurs:

- a) may be reasonably expected to result from such acts; or
- b) is the intended result of such acts.

10. Nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered loss caused by fire, explosion or smoke.

We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.

11. War or warlike acts, including insurrection, rebellion or revolution.

12. Any type of vapors, fumes, acids, toxic chemicals, toxic gases, toxic liquids, toxic solids, waste materials, irritants, contaminants, or pollutants, including, but not limited to:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or

d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the residence premises.

13. Acts or decisions, including the failure to act or decide, of any person, group, organization, or governmental body. However, any sudden and accidental physical loss that follows is covered unless specifically excluded.

14. Weather conditions which result in:

- a) landslide or mudflow;
- b) earth sinking, rising or shifting;
- c) flood, surface water, waves, tidal water, or spray from any of these, whether or not driven by wind;
- d) water backing up from a sewer or drain or overflowing from a sump pump or sump pump well; or
- e) water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do cover direct loss caused by fire, explosion or theft resulting from a) through e) listed above.

Coverage D

Fair Rental Income

We Will Cover Under Coverage D:

1. Your lost fair rental income resulting from a covered loss, less charges and expenses which do not continue, when a loss we cover under Coverage A - Dwelling Protection makes a rental unit uninhabitable. We will pay for lost fair rental income for the shortest time required to either repair or replace the rental unit, but not to exceed 12 months from the date of the loss which made the rental unit uninhabitable.
2. Your lost fair rental income, less charges and expenses which do not continue, for up to

two weeks should civil authorities prohibit use of the dwelling due to a loss at a neighboring premises caused by a peril we insure against under this policy.

These periods of time are not limited by the termination of this policy.

This protection begins only after you have given us notice of the covered loss and only if, at the time of the loss, the rental unit was habitable and:

- a) occupied by a tenant; or
- b) you had a signed, written rental agreement for the rental unit, in which case this protection begins on the occupancy date specified in the rental agreement; or
- c) the rental unit was occupied by a tenant within 60 days of the loss and was in the process of being renovated.

We do not cover loss or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

Section I — Additional Protection

1. Debris Removal

We will pay reasonable expenses you incur to remove debris of covered property damaged by a loss we cover. If the loss to the covered property and the cost of debris removal are more than the limit of liability shown on the Policy Declarations for the covered property, we will pay up to an additional 5% of that limit for debris removal.

2. Trees, Shrubs, Plants and Lawns

We will pay up to an additional 5% of the limit of liability shown on the Policy Declarations under Coverage A — Dwelling Protection for loss to trees, shrubs, plants and lawns at the address of the residence premises. We will not pay more than \$500 for any one tree, shrub, or plant, including

expenses incurred for removing debris. This coverage applies only to direct physical loss caused by fire or lightning, explosion, riot or civil commotion, aircraft, vehicles, theft or collapse of a building structure or any part of a building structure.

We will pay up to \$500 for reasonable expenses you incur for the removal of debris of trees at the address of the residence premises for direct physical loss caused by windstorm, hail, or weight of ice, snow or sleet. The fallen tree must have caused damage to property covered under Coverage A — Dwelling Protection or Coverage B — Other Structures Protection.

We do not cover trees, shrubs, plants, or lawns grown for business purposes.

3. Emergency Removal of Property

We will pay for sudden and accidental direct physical loss to covered property from any cause while removed from the residence premises because of danger from a loss we cover. Protection is limited to a 30 day period from the date of removal. This protection does not increase the limit of liability that applies to the covered property.

4. Fire Department Charges

We will pay up to \$500 for service charges made by fire departments called to protect your property from a loss we cover at the residence premises. No deductible applies to this protection.

5. Temporary Repairs After a Loss

We will reimburse you up to \$5,000 for the reasonable and necessary cost you incur for temporary repairs to protect covered property from further imminent covered loss following a loss we cover. This coverage does not increase the limit of liability applying to the property being repaired.

6. **Arson Reward**

We will pay up to \$5,000 for information leading to an arson conviction in connection with a fire loss to property covered under Section I of this policy. The \$5,000 limit applies regardless of the number of persons providing information.

7. **Collapse**

We will cover:

- a) the entire collapse of a covered building structure;
- b) the entire collapse of part of a covered building structure; and
- c) direct physical loss to covered property caused by (a) or (b) above.

For coverage to apply, the collapse of a building structure specified in (a) or (b) above must be a sudden and accidental direct physical loss caused by one or more of the following:

- a) a loss we cover under Section I, Coverage C—Personal Property Protection;
- b) hidden decay of the building structure;
- c) hidden damage to the building structure caused by insects or vermin;
- d) weight of persons, animals, equipment or contents;
- e) weight of rain or snow which collects on a roof;
- f) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

We will not cover the collapse of underground septic tanks, fuel oil tanks, cess pools, cisterns or similar structures.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This protection does not change the limit of liability that applies to the covered property.

8. **Land**

If a sudden and accidental direct physical loss results in both a covered loss to your dwelling, other than the breakage of glass or safety glazing material, and a loss of land stability, we will pay up to \$10,000 for repair costs associated with the land. This includes the costs required to replace, rebuild, stabilize or otherwise restore the land necessary to support that part of your dwelling sustaining the covered loss.

The Losses We Do Not Cover Under Coverages A and B reference to earth movement does not apply to the loss of land stability provided under this Additional Protection.

9. **Volcanic Eruption**

We will cover direct loss to covered property caused by volcanic eruption, including volcanic blast, shock wave, lava flow and volcanic fallout.

We do not cover loss:

- a) to trees, shrubs, lawns, plants and grounds; or
- b) caused by earthquake, landslide, mudflow, tidal wave, flooding or earth sinking, rising or shifting, resulting from volcanic eruption.

We do cover direct loss caused by fire, explosion, theft, or breakage of glass or safety glazing materials resulting from volcanic eruption.

This coverage does not increase the limit of liability that applies to the covered property.

Section I — Conditions

1. Deductible

We will pay when a covered loss exceeds the deductible shown on the Policy Declarations. We will then pay only the excess amount, unless we have indicated otherwise in this policy.

2. Insurable Interest and Our Eligibility

In the event of a covered loss, we will not pay for more than an insured person's insurable interest in the property covered, nor more than the amount of coverage afforded by this policy.

3. What You Must Do After a Loss

In the event of a loss to any property that may be covered by this policy, you must:

- a) promptly give us or our agent notice. Report any loss involving theft, vandalism or burglary to the police as soon as possible.
- b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.
- c) separate damaged from undamaged personal property. Give us a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
- d) give us all accounting records, bills, invoices and other vouchers, or certified copies, which we may reasonably request to examine, and permit us to make copies.
- e) produce records supporting any claim for loss of fair rental income as often as we reasonably require.
- f) as often as we reasonably require:
 - 1) show us the damaged property.
 - 2) at our request, submit to examinations under oath, separately and apart from any other person

defined as you or insured person, and sign a transcript of the same.

- 3) produce representatives, employees, members of the insured's household or others to the extent it is within the insured person's power to do so; and
- 4) cooperate with us in the investigation or settlement of the claim, including providing available information concerning tenants, and

g) within 60 days after the loss, give us a signed, sworn proof of the loss. This statement must include the following information:

- 1) the date, time, location and cause of the loss;
- 2) the interest insured persons and others have in the property, including any encumbrances;
- 3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
- 4) any other insurance that may cover the loss;
- 5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
- 6) at our request, the specifications of any damaged building structure or other structure.

4. Our Settlement Options

In the event of a covered loss, we have the option to:

- a) repair, rebuild or replace all or any part of the damaged, destroyed or stolen covered property with property of like kind and quality within a reasonable time; or
- b) pay for all or any part of the damaged, destroyed or stolen covered property as described in Condition 5 "How We Pay For a Loss".

Within 30 days after we receive your signed, sworn proof of loss, we will notify you of the option or options we intend to exercise.

5. How We Pay For a Loss

Under Coverage A—Dwelling Protection, Coverage B—Other Structures Protection and Coverage C—Personal Property Protection, payment for covered loss will be by one or more of the following methods:

a) **Special Payment.** At our option, we may make payment for a covered loss before you repair, rebuild or replace the damaged, destroyed or stolen property if:

1) the whole amount of loss for property covered under Coverage A—Dwelling Protection and Coverage B—Other Structures Protection, without deduction for depreciation, is less than \$2,500 and the property is not excluded from the Building Structure Reimbursement provision, or

2) the whole amount of loss for property covered under Coverage C—Personal Property Protection, without deduction for depreciation, is less than \$2,500, your Policy Declarations shows that the Personal Property Reimbursement provision applies, and the property is not excluded from the Personal Property Reimbursement provision.

b) **Actual Cash Value.** If you do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the limit of liability shown on the Policy Declarations for the coverage that applies to the damaged, destroyed or

stolen property, regardless of the number of items involved in the loss.

If applicable, you may make claim for additional payment as described in paragraph "c" and paragraph "d" below if you repair or replace the damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

c) **Building Structure Reimbursement.** Under Coverage A—Dwelling Protection and Coverage B—Other Structures Protection, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a building structure damaged by a covered loss.

Building Structure Reimbursement will not exceed the smallest of the following amounts:

1) the replacement cost of the part(s) of the building structure(s) for equivalent construction for the same use on the same premises. This means the cost, at time of loss, to repair or replace the damaged property with new materials of like kind and quality, without deduction for depreciation;

2) the amount actually and necessarily spent to repair or replace the damaged building structure(s) with equivalent construction for the same use on the same premises.

This means the cost, at time of loss, to repair or replace the damaged property with new materials of like kind and quality, without deduction for depreciation; or

- 3) the limit of liability applicable to the building structure(s) as shown on the Policy Declarations for Coverage A - Dwelling Protection or Coverage B - Other Structures Protection, regardless of the number of building structures and structures other than building structures involved in the loss.

If you replace the damaged building structure(s) at an address other than shown on the Policy Declarations through construction of a new structure or purchase of an existing structure, such replacement will not increase the amount payable under Building Structure Reimbursement described above. The amount payable under Building Structure Reimbursement described above does not include the value of any land associated with the replacement structure(s).

Building Structure Reimbursement payment will be limited to the difference between any actual cash value payment made for the covered loss to building structures and the smallest of 1), 2), or 3) above.

Building Structure Reimbursement will not apply to:

- 1) property covered under Coverage C - Personal Property Protection;
- 2) property covered under Coverage B - Other Structures Protection that is not a building structure;

- 3) wall-to-wall carpeting, ceramic or vinyl floor coverings, hardwood floors, built-in appliances, fences, awnings and outdoor antennas, whether or not fastened to a building structure; or

- 4) land.

Payment under "a", "b", or "c" above will not include any increased cost due to the enforcement of building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, relocation or demolition of building structures or other structures.

- d) Personal Property Reimbursement. When the Policy Declarations shows that the Personal Property Reimbursement provision applies under Coverage C - Personal Property Protection, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered personal property within 180 days of the actual cash value payment.

Personal Property Reimbursement payment will not exceed the smallest of the following amounts:

- 1) the amount actually and necessarily spent to repair or replace the property with similar property of like kind and quality. This means the cost, at time of loss, of a new article identical, or similar to the one damaged, destroyed or stolen and which is of comparable quality and usefulness, without deduction for depreciation;

- 2) the cost of repair or restoration, without deduction for depreciation; or
- 3) the limit of liability shown on the Policy Declarations for Coverage C — Personal Property Protection.

Personal Property Reimbursement will be limited to the difference between any actual cash value payment made for the covered loss to personal property and the smallest of 1), 2), or 3) above.

Personal Property Reimbursement will not apply to:

- 1) property insured under Coverage A — Dwelling Protection or Coverage B — Other Structures Protection;
- 2) antiques, fine arts, paintings, statuary and similar articles which, by their inherent nature, cannot be replaced;
- 3) articles whose age or history contribute substantially to their value. This includes, but is not limited to, memorabilia, souvenirs and collector's items;
- 4) property that was obsolete or unusable for the originally intended purpose because of age or condition prior to the loss; or
- 5) wall-to-wall carpeting.

6. Our Settlement of Loss

We will settle any covered loss with you unless another payee is named in the policy. We will settle within 30 days after the amount of loss is finally determined. This amount may be determined by an agreement between you and us, by an appraisal award, or by a court judgment.

7. Appraisal

If you and we fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire.

The appraisers shall then determine the amount of loss, stating separately the actual cash value and amount of loss to each item. If the appraisers submit a written report of an agreement to you and to us, the amount agreed upon shall be the amount of loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by the appraisers or an appraiser and the umpire will determine the amount of loss.

Each party will pay the appraiser it chooses and equally bear expenses for the umpire and all other appraisal expenses.

8. Abandoned Property

We are not obligated to accept any property or responsibility for any property abandoned by an insured person.

9. Mortgagees

A covered loss will be payable to the mortgagees named on the Policy Declarations to the extent of their interest and in the order of precedence. All provisions of Section 1 of this policy apply to these mortgagees.

We will:

- a) protect the mortgagee's interest in a covered building structure in the event

of an increase in hazard, intentional or criminal acts of, or directed by, an insured person, failure by any insured person to take all reasonable steps to save and preserve property after a loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions; and

- b) give the mortgagee at least 45 days notice if we cancel this policy;

The mortgagee will:

- a) furnish proof of loss within 60 days after notice of loss if an insured person fails to do so;
- b) pay upon demand any premium due if an insured person fails to do so;
- c) notify us in writing of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;
- d) give us the mortgagee's right of recovery against any party liable for loss; and
- e) after a loss, and at our option, permit us to satisfy the mortgage requirements and receive full transfer of the mortgage.

This mortgagee interest provision shall apply to any trustee, loss payee or other secured party.

10. Permission Granted to You

- a) The residence premises may be vacant or unoccupied for any length of time, except where a time limits indicated in this policy for specific perils. A building structure under construction is not considered vacant or unoccupied.
- b) You may make alterations, additions or repairs, and you may complete structures under construction.

11. Our Rights to Recover Payment

When we pay for any loss, an insured person's rights to recover from anyone else become ours up to the amount we have paid.

An insured person must protect these rights and help us enforce them.

You may waive your rights to recover against another person for loss involving the property covered by this policy. This waiver must be in writing prior to the date of loss.

12. Our Rights to Obtain Salvage

We have the option to take all or any part of the damaged or destroyed covered property upon replacement by us or payment of the agreed or appraised value.

We will notify you of our intent to exercise this option within 30 days after we receive your signed, sworn proof of loss.

When we settle any loss caused by theft or disappearance, we have the right to obtain all or part of any property which may be recovered. An insured person must protect this right and inform us of any property recovered. We will inform you of our intent to exercise this right within 10 days of your notice of recovery to us.

13. Suit Against Us

No suit or action may be brought against us unless there has been full compliance with all policy terms. Any suit or action must be brought within one year after the inception of loss or damage.

14. Loss to a Pair or Set

If there is a covered loss to a pair or set, we may:

- a) repair or replace any part of the pair or set to restore it to its actual cash value before the loss; or
- b) pay the difference between the actual cash value of the pair or set before and after the loss.

15. Glass Replacement

Payment for loss to covered glass includes the cost of using safety glazing materials when required by law.

16. No Benefit to Bailee

This insurance will not benefit any person or organization who may be caring for or handling your property for a fee.

17. Other Insurance

If both this insurance and other insurance apply to a loss, we will pay the proportionate amount that this insurance bears to the total amount of all applicable insurance. However, in the event of a covered loss by theft, this insurance shall be excess over any other insurance that covers loss by theft.

18. Property Insurance Adjustment

When the Policy Declarations indicate that the Property Insurance Adjustment condition applies:

The limit of liability shown on the Policy Declarations for Coverage A—Dwelling Protection will be revised at each policy anniversary to reflect the rate of change in the index identified on the Policy Declarations.

The limit of liability for Coverage A—Dwelling Protection for the succeeding premium period will be determined by changing the existing limit in proportion to the change in the index between the time the existing limit was established and the time the change is made. The resulting amount will be rounded to the nearest \$1,000.

Adjustment in the limit of liability for Coverage A—Dwelling Protection will result in an adjustment of the limit of liability for Coverage B—Other Structures Protection and Coverage C—Personal Property Protection.

We will not reduce the limit of liability shown on the Policy Declarations without your consent.

Any adjustment in premium resulting from the application of this condition will be made based on premium rates in use by Allstate at the time a change in limits is made.

Allstate has the right to change to another cost index or to withdraw this condition as of a policy anniversary date by giving you at least 30 days notice. This applies only if the change or withdrawal applies to all similar policies issued by Allstate in your state.

Section II — Liability Protection and Premises Medical Protection

Coverage X

Liability Protection

Losses We Cover Under Coverage X:

Subject to the terms, conditions and limitations of this policy, Allstate will pay compensatory damages which an insured person becomes legally obligated to pay because of bodily injury, personal injury, or property damage arising from a covered occurrence. We will not pay any punitive or exemplary damages, fines or penalties.

We may investigate or settle any claim or suit for covered damages against an insured person. If an insured person is sued for these damages, we will provide a defense with counsel of our choice. We are not obligated to pay any claim or judgment after we have exhausted our limit of liability.

Losses We Do Not Cover Under Coverage X:

1. We do not cover bodily injury, personal injury or property damage intended by, or

which may reasonably be expected to result from the intentional or criminal acts or omissions of an insured person. This exclusion applies even if:

- a) such bodily injury, personal injury or property damage is of a different kind or degree than intended or reasonably expected; or
- b) such bodily injury, personal injury or property damage is sustained by a different person than intended or reasonably expected.

2. We do not cover bodily injury or personal injury to an insured person.

3. We do not cover property damage to any:

- a) property owned by an insured person;
- b) property owned by others which an insured person agreed to insure or for which an insured person agreed to be responsible; or
- c) property rented to, occupied or used by, or in the care of an insured person.

4. We do not cover bodily injury or personal injury to any person eligible to receive

benefits required to be provided or voluntarily provided by an insured person under any workers compensation law, non-occupational disability law, occupational disease law, disability benefits law, or any other similar law.

5. We do not cover bodily injury, personal injury or property damage arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any:

- a) aircraft;
- b) watercraft; or
- c) motorized land vehicle or trailer other than lawn and garden implements under 20 motor horsepower.

6. We do not cover bodily injury, personal injury or property damage arising out of the

negligent supervision by an insured person of any person.

7. We do not cover any liability imposed on any insured person by any governmental authority arising from the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any:

- a) aircraft;
- b) watercraft; or
- c) motorized land vehicle or trailer other than lawn and garden implements under 20 motor horsepower.

8. We do not cover bodily injury or personal injury which results in any manner from any type of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials, irritants, contaminants, or pollutants, including, but not limited to:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or
- d) oil, fuel oil, kerosene, liquid propane, or gasoline intended for, or from, a storage tank located at the residence premises.

This exclusion does not apply to:

- a) bodily injury which results from the sudden and accidental discharge, dispersal, release or escape of carbon monoxide from a heating system, an appliance for heating water, or a household appliance located at the residence premises;
- b) bodily injury caused by heat, smoke or fumes from a hostile fire. A hostile fire is a fire which becomes uncontrollable or breaks out from where it was intended to be.

9. We do not cover property damage consisting of or caused by any type of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste

materials, irritants, contaminants, or pollutants, including, but not limited to:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or
- d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the residence premises.

This exclusion does not apply to property damage caused by heat, smoke or fumes from a hostile fire. A hostile fire is a fire which becomes uncontrollable or breaks out from where it was intended to be.

10. We do not cover any liability imposed upon any insured person by any governmental authority for bodily injury or personal injury which results in any manner from, or for, property damage consisting of or caused by any type of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials, irritants, contaminants, or pollutants, including, but not limited to:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or
- d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the residence premises.

11. We do not cover any loss, cost or expense arising out of any request, demand, or order that any insured person test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of any type of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials, irritants, contaminants, or pollutants, including, but not limited to:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or

d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the residence premises.

12. We do not cover bodily injury, personal injury or property damage arising out of the rendering of, or failure to render, professional services by an insured person.

13. We do not cover bodily injury, personal injury or property damage arising out of the past or present business activities of an insured person.

14. We do not cover bodily injury, personal injury or property damage arising out of any premises, other than the residence premises, owned, rented or controlled by an insured person.

15. We do not cover bodily injury, personal injury or property damage arising from any contract or agreement, whether written or oral.

16. We do not cover bodily injury, personal injury or property damage caused by war or warlike acts, including insurrection, rebellion or revolution.

17. We do not cover bodily injury, personal injury or property damage for which an insured person may be held legally liable arising out of the sale, distribution, manufacture, service, use or gift of any alcoholic beverage(s) or any controlled or illegal substances.

18. We do not cover personal injury caused by a violation of a law or ordinance committed:
a) by an insured person; or
b) with an insured person's knowledge or consent.

19. We do not cover personal injury to any person if the personal injury arises from that person's employment by an insured person.

20. We do not cover personal injury arising from the publication of libelous or defamatory remarks or from the utterance of slanderous or defamatory remarks:
- if the initial publication or utterance of the same or similar material by or on behalf of an insured person occurred prior to the effective date of this insurance;
 - made by or at the direction of an insured person with awareness of the falsity of such remarks.

21. We do not cover personal injury arising from illegal discrimination.

Coverage Y

Premises Medical Protection

Losses We Cover Under Coverage Y:

Allstate will pay the reasonable expenses incurred for necessary medical, surgical, x-ray and dental services; ambulance, hospital, licensed nursing and funeral services; and prosthetic devices, eye glasses, hearing aids, and pharmaceuticals. These expenses must be incurred and the services performed within three years from the date of an occurrence resulting in bodily injury covered by this part of the policy.

Payment will be made only if bodily injury:

- arises from a condition on the residence premises or immediately adjoining ways; or
- arises from an occurrence for which indemnification is provided under Coverage X—Liability Protection of this policy.

Losses We Do Not Cover Under Coverage Y:

- We do not cover any bodily injury intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, an insured person. This exclusion applies even if:

- such bodily injury is of a different kind or degree than intended or reasonably expected; or
- such bodily injury is sustained by a different person than intended or reasonably expected.

2. We do not cover bodily injury to any person eligible to receive benefits required to be provided or voluntarily provided by an insured person under any workers compensation law, non-occupational disability law, occupational disease law, disability benefits law, or any other similar law.

3. We do not cover bodily injury arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any:

- aircraft;
- watercraft; or
- motorized land vehicle or trailer, other than lawn and garden implements, under 20 motor horsepower.

4. We do not cover bodily injury arising out of the negligent supervision by an insured person of any person.

5. We do not cover any bodily injury to an insured person.

6. We do not cover bodily injury which results in any manner from any type of vapors, fumes, acids, toxic chemicals, toxic gases, toxic liquids, toxic solids, waste materials, irritants, contaminants, or pollutants, including, but not limited to:

- lead in any form;
- asbestos in any form;
- radon in any form; or
- oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the residence premises.

This exclusion does not apply to:

- a) **bodily injury** which results from the sudden and accidental discharge, dispersal, release or escape of carbon monoxide from a heating system, an appliance for heating water, or a household appliance located at the **residence premises**.
- b) **bodily injury** caused by heat, smoke or fumes from a hostile fire. A hostile fire is a fire which becomes uncontrollable or breaks out from where it was intended to be.

7. We do not cover **bodily injury** arising out of the rendering of, or failure to render, professional services by an **insured person**.

8. We do not cover **bodily injury** to any person arising out of a professional service being conducted on the **residence premises** by any person.

9. We do not cover **bodily injury** caused by war or warlike acts, including, insurrection, rebellion or revolution.

10. We do not cover **bodily injury** to any person if the **bodily injury** arises from that person's employment by an **insured person**.

11. We do not cover **bodily injury**:
 a) to a tenant if the **bodily injury** occurs on the part of the **residence premises** rented from an **insured person**; or
 b) to an employee of a tenant if the **bodily injury** arises out of employment by the tenant.

12. We do not cover **bodily injury** to any person engaged in:
 a) maintenance or repair of the **residence premises**;
 b) alteration, demolition or new construction at the **residence premises**.

13. We do not cover **bodily injury** arising out of the sale, distribution, manufacture, service,

use or gift of any alcoholic beverage(s) or any controlled or illegal substances.

Section II — Additional Protection

We will pay, in addition to the applicable limits of liability:

1. Claim Expense

We will pay:

- a) all costs we incur in the settlement of any claim or the defense of any suit against an **insured person**;
- b) interest accruing on damages awarded until such time as we have paid, formally offered, or deposited in court the amount for which we are liable under this policy. Interest will be paid only on damages which do not exceed our limits of liability;
- c) premiums on bonds required in any suit we defend; we will not pay bond premiums in an amount that is more than our **Coverage X — Liability Protection** limit of liability. We have no obligation to apply for or furnish bonds;
- d) Up to \$150 per day for loss of wages and salary when we ask you to attend trials and hearings;
- e) any other reasonable expenses incurred by an **insured person** at our request.

2. Emergency First Aid

We will pay reasonable expenses incurred by an **insured person** for first aid to other persons at the time of an occurrence involving **bodily injury** covered under this policy.

Section II — Conditions

1. What You Must Do After a Loss

In the event of **bodily injury**, **personal injury** or **property damage**, you must do the following:

- a) Promptly notify us or our agent stating:

- 1) your name and policy number;
 - 2) the date, the place and the circumstances of the loss;
 - 3) the name and address of anyone who might have a claim against an insured person;
 - 4) the names and addresses of any witnesses.
- b) Promptly send us any legal papers relating to the loss.
- c) At our request, an insured person will:
- 1) cooperate with us and assist us in any matter concerning a claim or suit;
 - 2) help us enforce any right of recovery against any person or organization who may be liable to an insured person;
 - 3) attend any hearing or trial;
 - 4) assist us by collecting and giving evidence and obtaining witnesses.

Any insured person will not voluntarily pay any money, assume any obligations, or incur any expense, other than for first aid to others at the time of the loss as provided for in this policy.

2. What an Injured Person Must Do — Coverage Y — Premises Medical Protection

If someone is injured, that person, or someone acting for that person, must do the following:

- a) Promptly give us written proof of the loss. If we request, this must be done under oath.
- b) Give us written authorization to obtain copies of all medical records and reports.
- c) Permit doctors we select to examine the injured person as often as we may reasonably require.

3. Our Payment of Loss — Coverage Y — Premises Medical Protection

We may pay the injured person or the provider of the medical services. Payment under this coverage is not an admission of liability by us or an insured person.

4. Our Limits of Liability

Regardless of the number of insured persons, injured persons, claims, claimants or policies involved, our total liability under Coverage X — Liability Protection for damages resulting from one occurrence will not exceed the limit shown on the Policy Declarations. All bodily injury, personal injury and property damage resulting from continuous or repeated exposure to the same general conditions is considered the result of one occurrence.

Our total liability under Coverage Y —

Premises Medical Protection for all medical expenses payable for bodily injury to any one person shall not exceed the "each person" limit shown on the Policy Declarations.

5. Bankruptcy

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an insured person.

6. Our Rights to Recover Payment —

Coverage X — Liability Protection
When we pay any loss, an insured person's right to recover from anyone else becomes ours up to the amount we have paid. An insured person must protect these rights and help us enforce them.

7. Suit Against Us

- a) No suit or action can be brought against us unless there has been full compliance with all the terms of this policy.
- b) No suit or action can be brought against us under Coverage X — Liability Protection until the obligation of an insured person to pay is finally determined either by judgment against

the insured person after actual trial, or by written agreement of the insured person, injured person, and us.

(c) No one shall have any right to make us a party to a suit to determine the liability of an insured person.

B. Other Insurance — Coverage X — Liability Protection

This insurance is excess over any other valid and collectible insurance except insurance that is written specifically as excess over the limits of liability that apply to this policy.

Section III — Optional Protection

Optional Coverages You May Buy

The following optional coverages may supplement coverages found in Sections I or Section II and apply only when they are indicated on the Policy Declarations. The provisions of this policy apply to each Optional Coverage in this section unless modified by the terms of the specific Optional Coverage.

1. Coverage BC — Building Codes

We will pay up to 10% of the amount of insurance on the Policy Declarations under Coverage A — Dwelling Protection to comply with local building codes after covered loss to your dwelling or when repair or replacement results in increased cost due to the enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair or demolition of your dwelling.

2. Coverage F — Fire Department Charges

The \$500 limit applying to the fire department service charges under Section I — Additional Protection is increased to the amount shown on the Policy Declarations.

3. Coverage G

Loss Assessments

If your ownership of your dwelling requires that you be a member of, and subject to the rules of, an association governing areas held in common by all building owners as members of the association, we will pay your share of any special assessment charged against all building owners by the association up to the limit of liability shown on the Policy Declarations, when the assessment is made as a result of:

- a) sudden and accidental direct physical loss to the property held in common by all building owners caused by a loss we cover under Section I of this policy; or
- b) bodily injury or property damage covered under Section II of this policy.

However, this optional coverage shall apply only to special assessments made as a result of covered losses occurring while this optional coverage is in force.

Any reduction or elimination of payments for losses because of any deductible applying to the insurance coverage of the association of building owners collectively is not covered under this protection.

Allstate will pay only when the assessment levied against the insured person, as a result of any one loss, for bodily injury or property damage exceeds \$250 and then only for the amount of such excess. This coverage is not subject to any deductible applying to Section I of this policy.

In the event of an assessment, this coverage is subject to all the exclusions applicable to Sections I and II of this policy and the Section I and II Conditions, except as otherwise noted.

This coverage is excess over any insurance collectible under any policy or policies covering the association of building owners.

4. Coverage SD
Satellite Dish Antennas
Coverage C—Personal Property Protection
is extended to pay for sudden and accidental
direct physical loss to your satellite dish
antennas and their systems on your

residence premises, subject to the
provisions of Coverage C—Personal
Property Protection.
The amount of coverage is shown on the
Policy Declarations.

NOV. 25. 2006 3:43PM
RMBC FOLLOW-UP
OPS FOLLOW-UP

PROPERTY
FIXED

NO. 2596
NORTHWEST REGION
INSPECTION REQUEST

5/30

| ACTION TAKEN by SHANNON D. | REVIEW policy | RESTATE policy | REWRITE policy | Condition / NOT RECTIFIED |
|-------------------------------|------------------|-------------------|-------------------|------------------------------|
|-------------------------------|------------------|-------------------|-------------------|------------------------------|

Susan Hunter
Insured's NAME

917132071 5/11
Policy/Control # Effective Date

509-463-2003
Insured's Home PHONE #

Grea Schlage
AGENT Name

251 Bryskum Lane
ADDRESS of property to be inspected

(509) 764-8110
Agent's PHONE #

Naches WA 9937
City, State, Zip Code

(509) 764-7210
Agent's FAX #

Line of Insurance

22 Mobile Home

80 Fire

70 Dlx & Dlx Plus Homeowners

72 Landlords

Type of Inspection

Exterior only

Reinspection

Mobile Home

Dwelling Information

Construction Class 2.0

Square Footage 1800

Replacement Cost 108138

Year Built 1980

Unacceptable

Shannon Davis
Requested By

10/23/2006
Date Requested

Please
RETURN BY: 10/20/2006

Have following concerns been rectified?

Does the dwelling have lead paint?
Yes. Should be checked

wrong home
house

inspected / solid block

3/7 A lot has been going on
I guess.

INSPECTOR: Please return this form
with completed inspection

EXHIBIT
B
HART

28 d

276

1228558808

BT:LT

7-11-2004

Inspection Information

Control Number: 0000254131881571
 Requested By: Agent
 Ordered On: 05/10/2004
 Line: 72 LANDLORD PACKAGE
 Exterior
 Recorded On: Jun 20, 2004 1:13 pm (Entered by Dispatcher)
 Customer Name: SUSAN HUNTER
 Address Inspected: 251 BRISKEY LANE
 NACHES, WA 98937
 Inspected By: Bethlyn Rowa
 Inspector Number: 529
 Property Found: Yes
 Customer Interviewed: Yes ~~TENANT~~
 Inspection Result: Unacceptable
 Agent: Greg Schlegel
 Agent Phone Number: (509) 784-8110

Inspection Number: 0007001000
 529 766 2427 P. 03

FURNITURE WEST

MAR-13-2006 15:53

1974 X25
ACE Information

1258099200

| | <u>Inspector</u> | <u>Agent</u> |
|------------------------------|------------------|--------------|
| Replacement Cost: | \$159,239 | \$129,138 |
| Total Living Area: | 2,991 | 1,800 |
| Number of Stories: | 1 Story | 1 Story |
| Number of Families: | 1 | |
| Townhouse: | No | |
| Year Built: | 1960 | 1960 |
| Construction Class: | 2.0 | 2.0 |
| Town Class: | 0 | |
| Basic Location Multiplier: | 1.91 | 1.91 |
| Current Location Multiplier: | 1.91 | |
| Number of Full Baths: | 2 | 2 |
| Number of Half Baths: | 0 | 0 |
| Basement: | No | No |
| Percent Finished: | 0 | 0 |
| Central Air: | No | No |
| Number of Fireplaces: | 1 | 0 |
| Cars in Garage: | | |
| Attached: | 2 | 0 |
| Detached: | 0 | 0 |
| Built-in: | 0 | 0 |
| Carport: | 0 | 0 |
| Deck Square Feet: | | |

Inspector Number
 509 766 2427 P.25
 10004 2004

FURNITURE WEST

MAR-13-2006 15:53

507 P.D.
Structure

206

1258258003

Replacement Cost: \$168,298
 Construction Type: Block
 Roof Type: Wood Shaker
 Roof Life Remaining: < 5 years
 Occupancy: Tenant
 Deadbolts: Front
 Fire Extinguisher: No
 Smoke Detectors: No
 Fire Protection: Fire Department within 5 miles, No Fire Hydrant within 1000 feet
 Business on Premises: No
 Mobile Home: Sidet Tied Down In a Park

Inspection Number: 000700010000
 509 766 2427 P.D.
 000100070000

FURNITURE WEST

MAR-13-2006 15:53

98 P. 85
Inspector Notes

125859888

BT:71

REENTER = WRONG HOME INSPECTED. KR8-29-04/ KR5-28-04

528 755 2427 P. 87
INSURANCE COMPANY

FURNITURE WEST

MAR-13-2006 15:33

Allstate

ALLSTATE INSURANCE COMPANY
75 EXECUTIVE PARKWAY
HUDSON OH 44237-0001

RO700301

NOTICE OF CANCELLATION

Policy Description:
Policy Number:
Cancellation Date and Time:

June 12, 2004
LANDLORD PACKAGE
00000917132671
August 07, 2004 at 12:01AM Standard Time
At the location of the property involved

SUSAN HUNTER
253 BRISKEY LANE
NACHES WA 98937-9723

Location of Property: 251 BRISKEY LANE NACHES WA 98937-9723

We are writing to inform you that the policy identified above will be canceled as of the cancellation date and time shown above due to the following reason(s):

Your mobile home does not qualify for an Allstate Landlord Package policy.

The protection provided by your policy will remain in effect until the cancellation date and time shown above. However, in the event that any policy premiums are not paid when due, we may cancel the policy prior to that cancellation date and time.

Please contact your Allstate agent if you correct the reason(s) listed above. He or she may be able to reinstate your policy or offer you a new policy.

Because you will be without protection as of the cancellation date and time shown above, we encourage you to obtain insurance coverage elsewhere.

If you have any questions about your policy or the reason(s) for this cancellation, please don't hesitate to contact your Allstate agent.

Sincerely,

E.S. Cooper

copy to:
GREG SCHLAGEL
509-764-3110

IMPORTANT NOTICE(S)

Replacement of Property Insurance. You may possibly be eligible to obtain insurance through another insurer or through the Washington FAIR Plan. For further information, please contact your agent.

1000007132671000001

Page 1



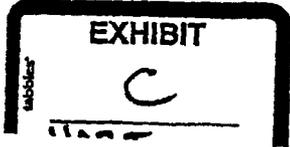
P.28 509 766 2427

FURNITURE WEST

MAR-13-2005 15:15A

EXHIBIT

C



WKFPQ45 GL

CFS Client Portfolio

08/05/2008 13:41:53

Select Policy or Claim to access detail, then press Enter.

SUSAN HUNTER
POA
253 BRISKEY LN
NACHES, WA 98937

Phone: (509) 653-2003
SSN: ***-**-5095
DOB: 10/06/1955
Sex: F

Customer Status : Current
Relationship Since: 12/14/1998

| Line | Rel | Policy/Claim | Eff Date | Stat | Term Date | Rsn | Agent | AR | RC |
|------|-----------|--------------|------------|------|------------|-----|---------|----|----|
| 1 | AFCA Ins+ | 920736492 | 01/14/2008 | | | | 4130898 | | |
| 2 | Home Ins+ | 064099122 | 12/14/1998 | | | | 4130898 | * | |
| 3 | Land Ins | 917132671 | 05/11/2004 | Term | 08/07/2004 | 57 | 4157528 | | UR |

Page: 1 of 1

Selection ==> Next Screen ==>
F1=Help F2=Display SSN F3=Exit F7=Bkwd F8=Fwd

RECEIVED
AUG 06 2008

COLE, LETHER,
WATHEN, & LEID, P.C.



9 17 132671 05/11 05/11/04 05/11/05 LPP-95 MK TERMINATED 08/07/04 UR
HUNTER 509 653 2003 AGENT: GREG SCHLAGEL 41 57528
TERM RSN: ALL OTHER

ENTRY NUMBER: 01 DEPARTMENT: OPERATING UNIT: R PERSON: CP
PROCESS DATE: 10/11/06 TEXT: IC COMPLAINT. CONTACT 10390318. CHAR

ENTRY NUMBER: 01 DEPARTMENT: UNDERWRITING UNIT: U PERSON: SD
PROCESS DATE: 06/30/04 TEXT: NEW INSPECTION ORDERED DUE TO WRONG HOME INI
TIAL INPSECTED. INSPECTION UNACCEPTABLE DUE TO ROOF IS LIFTING/BUCKLED. VALU
E SHOULD BE 156,238..SDOYLE

_____ D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE. NA001M
C DD P P P P P ENTER NEXT POLICY NUMBER. DISPLAY WA

Appendix F

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

SUSAN HUNTER, a single person,
Plaintiff,
vs.
GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife
d/b/a
Defendants.

NO.
COMPLAINT FOR DAMAGES

COMES NOW the PLAINTIFF SUSAN HUNTER, by and through her attorney of record, DAVID B. TRUJILLO, and alleges as follows:

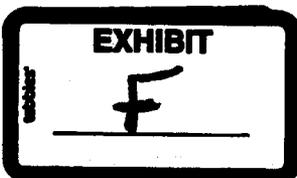
I. PARTIES

1.1 Plaintiff Susan Hunter, is a single person residing in Yakima County, Washington and is fully entitled to bring the claims asserted herein.

1.2 Defendant Gregory Schlagel is married to Jane Doe Schlagel and all acts alleged herein were performed for and on behalf of the marital community comprised thereof. Greg Schlagel is a sole proprietor who did business at all material times to this lawsuit as Greg Schlagel, Exclusive Agent, Allstate Insurance Company, out of his office in Grant County, Washington.

COMPLAINT - 1

LAW OFFICES OF DAVID B. TRUJILLO
3805 FIFTH DRIVE
YAKIMA, WASHINGTON 98902
PHONE (509) 972-3838
FACSIMILE (509) 972-3841



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II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over this matter, and venue is properly placed in Grant County, Washington, because the Defendants reside in and do business in Grant County, Washington.

III. GENERAL ALLEGATIONS

3.1 In May of 2004, Defendant Gregory Schlagel was hired by the Plaintiff to obtain Allstate insurance coverage on a home for the Plaintiff at 251 Briskey Lane in Naches, Yakima County, Washington.

3.2 In June of 2004, Plaintiff received a cancellation notice and refund from Allstate notifying her that the policy on the home would terminate in August of 2004.

3.3 In response thereto, Defendant Schlagel represented to the Plaintiff that the notice was erroneous and that Allstate had inspected the wrong home.

3.4 Defendant Schlagel instructed Plaintiff Hunter to write a new check in the amount of \$255.00 to Allstate for policy coverage and he would take care of everything.

3.5 On June 29th, 2004, Plaintiff performed as instructed and paid and delivered the full amount requested by Defendant to the Defendant for the Defendant to secure insurance for the home for the Plaintiff as promised.

3.6 Thereafter everything seemed fine to the Plaintiff as Allstate and Schlagel did not notify the Plaintiff of any new cancellation or any new problems thereafter and Plaintiff never indicated anything other than that she wanted the insurance.

COMPLAINT-2
O'Devia

LAW OFFICES OF DAVID S. TRUJILLO
2808 TIEBON DRIVE
YAKIMA, WASHINGTON 98902
PHONE (509) 972-3838
FACSIMILE (509) 972-3941

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3.7. On March 6th, 2006, a fire destroyed the Plaintiff's house and the contents of 251 Briskey Lane in Naches, Washington.

3.8 Plaintiff soon learned thereafter for the first time that Defendant Schlagel had simply held onto her check and had failed to ever procure insurance for the home at 251 Briskey Lane as agreed

3.9 As a direct and proximate result, Allstate denied the Plaintiff's insurance claim based on Defendants' failure to renew the policy.

3.10 After news of the fire and lack of insurance broke, in an apparent initial attempt to distance himself from the check that had gotten left in his file, Defendant Schlagel suddenly mailed the June 29th, 2004 check back to the Plaintiff without any cover letter.

IV. PLAINTIFF'S FIRST CAUSE OF ACTION
NEGLIGENCE

4.1 Plaintiff re-alleges all of the foregoing paragraphs in their entirety as if set forth fully herein.

4.2 The actions of Defendants Schlagel in failing to act reasonably and diligently to ensure that the Plaintiff's home was insured as agreed, constituted negligence for which the Plaintiff has suffered significant damages to both personal and real property, as a direct and proximate result, including but not limited to significant repair costs, lost rents, lost use and enjoyment, emotional distress, and other damages in amounts to be proven at trial.

//

//

COMPLAINT-3
G:David

LAW OFFICES OF DAVID B. TRUJILLO
3805 TUSTON DRIVE
YAKIMA, WASHINGTON 98902
PHONE (509) 972-3838
FACSIMILE (509) 972-2841

V. PLAINTIFF'S SECOND CAUSE OF ACTION:

BREACH OF CONTRACT

1
2
3
4 5.1 Plaintiff re-alleges all of the foregoing paragraphs in
5 their entirety as if set forth fully herein.

6
7 5.2 Defendants Gregory Schlagel took payment from the
8 Plaintiff and assumed a contractual duty to act diligently to secure
9 insurance for the Plaintiff.

10
11 5.3 Defendant Gregory Schlagel owed the Plaintiff a
12 contractual duty of good faith and fair dealing, but Defendant
13 Schlagel never forwarded the payment to Allstate as promised, nor
14 ever properly communicated any problem whatsoever to the Plaintiff
15 until after the fire loss occurred.

16
17 5.4 The actions of Defendant Schlagel as described above
18 constitute a breach of contract, for which the Plaintiff has
19 suffered damages as a direct, proximate, and foreseeable result in
20 monetary amounts to be proven at trial.

21
22 VI. PRAYER FOR RELIEF

23
24 WHEREFORE, Plaintiff having asserted her claims for relief, now
25 prays for judgment against the Defendants as follows:

26
27 6.1 For judgment against Defendants on the Plaintiff's First
28 and Second Causes of Action in such monetary amounts as may be
29 proven at trial;

30
31 6.2 For an award of attorney's fees and costs as provided by
32 law;

33
34 6.3 For such other and further relief as the Court may deem
just and equitable.

COMPLAINT-4
GHD/via

LAW OFFICES OF DAVID B. TRUJILLO
3805 PINTON DRIVE
YAKIMA, WASHINGTON 98903
PHONE (509) 972-3838
FACSIMILE (509) 972-3841

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DATED this 4th day of January, 2007.
Attorney for Plaintiff Hunter

BY: David Trujillo
DAVID B. TRUJILLO, WSBA# 25580

COMPLAINT - 5
C:David

LAW OFFICES OF DAVID B. TRUJILLO
3805 TIGON DRIVE
YAKIMA, WASHINGTON 98902
PHONE (509) 972-3838
FACSIMILE (509) 972-3842

Appendix G

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

THE ESTATE OF SUSAN HUNTER,)
)
 Plaintiff,)
)
 vs.)
)
 GREGORY SCHLAGEL and JANE DOE)
 SCHLAGEL, husband and wife and)
 the marital community)
 comprised thereof; and)
 ALLSTATE INSURANCE COMPANY,)
)
 Defendants.)

NO. 07-2-00020-4

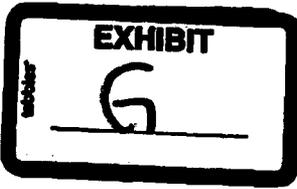
AMENDED COMPLAINT FOR DAMAGES

COMES NOW the PLAINTIFF, THE ESTATE OF SUSAN HUNTER, by and through her attorney of record, DAVID B. TRUJILLO, and alleges as follows:

I. PARTIES

1.1 Plaintiff, the Estate of Susan Hunter, is fully entitled to bring the claims asserted herein on behalf of the decedent and former Plaintiff, Susan Hunter.

1.2 Defendant Gregory Schlagel is married to Jane Doe Schlagel and all acts alleged herein were performed for and on behalf of the marital community comprised thereof. Greg Schlagel is a sole proprietor who did business at all material times to this lawsuit as Greg Schlagel, Exclusive Agent, Allstate Insurance Company, out of his office in Grant County, Washington.



1.3 Defendant Allstate Insurance Company, is a foreign insurer doing business in Yakima County and throughout Washington State and the Washington State Insurance Commissioner accepts service of process for this defendant.

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over this matter, and venue is properly placed in Grant County, Washington, because the Defendants reside in and do business in Grant County, Washington.

III. GENERAL ALLEGATIONS

3.1 In May of 2004, Defendant Gregory Schlagel was hired by the Plaintiff to obtain Allstate insurance coverage on a brick rental home for the Plaintiff at 251 Briskey Lane in Naches, Yakima County, Washington.

3.2 In June of 2004, Susan Hunter received a cancellation notice and refund from Allstate notifying her that the policy on the brick rental home would terminate in August of 2004 because Allstate said it would not insure a mobile home as a rental.

3.3 In response thereto, Susan Hunter notified Defendant Schlagel of the cancellation notice and reminded him that she resided in the mobile home and the brick rental home was a different home and Defendant Schlagel represented to the Plaintiff that the notice was erroneous and that Allstate had inspected the wrong home.

3.4 Defendant Schlagel instructed Plaintiff Hunter to write a new check in the amount of \$255.00 to Allstate for policy coverage and he would take care of everything.

3.5 On June 29th, 2004, Plaintiff performed as instructed and paid and delivered the full amount requested by Defendant to the

1 Defendant for the Defendant to secure insurance for the brick rental
2 home for the Plaintiff as promised.

3
4 3.6 Thereafter everything seemed fine to the Plaintiff as
5 Allstate and Schlagel did not notify the Plaintiff of any
6 cancellation or lapse on the correct home, or any new problems
7 thereafter and Plaintiff never indicated anything other than that
8 she wanted the insurance.

9
10 3.7. On March 6th, 2006, a fire destroyed the Plaintiff's
11 house and the contents of 251 Briskey Lane in Naches, Washington.

12
13 3.8 Susan Hunter soon learned thereafter for the first time
14 that Defendant Schlagel had simply held onto her check and had
15 failed to ever procure insurance for the home at 251 Briskey Lane
16 as agreed, and or that Allstate had failed to notify Ms. Hunter of
17 any rejection, cancellation, or lapse either.

18
19 3.9 As a direct and proximate result, Allstate denied the
20 Plaintiff's insurance claim based on Defendants' failure to renew
21 the policy as promised and or Allstate's own failure to notify Ms.
22 Hunter of any rejection, cancellation, or lapse thereof.

23
24 3.10 After news of the fire and lack of insurance broke, in
25 an apparent initial attempt to distance himself from the check that
26 had gotten left in his file, Defendant Schlagel suddenly mailed the
27 June 29th, 2004 check back to the Plaintiff without any cover
28 letter.

29
30 **IV. PLAINTIFF'S FIRST CAUSE OF ACTION**

31 **NEGLIGENCE**

32 **(AGAINST DEFENDANTS SCHLAGEL ONLY)**

33 4.1 Plaintiff re-alleges all of the foregoing paragraphs in
34 their entirety as if set forth fully herein.

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4.2 The actions of Defendants Schlagel in failing to act reasonably and diligently to ensure that the Plaintiff's home was insured as agreed, constituted negligence for which the Plaintiff has suffered significant damages to both personal and real property, as a direct and proximate result, including but not limited to significant repair costs, lost rents, lost use and enjoyment, emotional distress, and other damages in amounts to be proven at trial.

V. PLAINTIFF'S SECOND CAUSE OF ACTION:

BREACH OF CONTRACT

(AGAINST DEFENDANTS SCHLAGEL ONLY)

5.1 Plaintiff re-alleges all of the foregoing paragraphs in their entirety as if set forth fully herein.

5.2 Defendants Gregory Schlagel took payment from the Plaintiff and assumed a contractual duty to act diligently to secure insurance for the Plaintiff.

5.3 Defendant Gregory Schlagel owed the Plaintiff a contractual duty of good faith and fair dealing, but Defendant Schlagel never forwarded the payment to Allstate as promised, nor ever properly communicated any problem whatsoever to the Plaintiff until after the fire loss occurred.

5.4 The actions of Defendant Schlagel as described above constitute a breach of contract, for which the Plaintiff has suffered damages as a direct, proximate, and foreseeable result in monetary amounts to be proven at trial.

VI. PLAINTIFF'S THIRD CAUSE OF ACTION:

**BREACH OF CONTRACT AND DUTY OF GOOD FAITH AND FAIR DEALING
AGAINST ALLSTATE**

6.1. The Plaintiff re-alleges all of the foregoing paragraphs

1 in their entirety as if set forth fully herein.

2
3 6.2 Up through August 12th, 2004, Defendant Allstate had an
4 insurance contract with the Plaintiff for the brick rental home at
5 issue in this case, which Allstate refused to acknowledge and which
6 should have continued on thereafter until a valid notice of lapse
7 or termination could have been but never was sent to Susan Hunter
8 as required by law.

9
10 6.3 Allstate, according to Defendant Schlagel, was on notice
11 that the wrong home had been rejected and Susan Hunter had sent Greg
12 Schlagel a new payment and that Greg Schlagel had requested a new
13 inspection/appraisal of the proper home, the brick rental home, in
14 order to secure and maintain and/or otherwise reinstate and
15 adequately establish her insurance contract and coverages and proper
16 levels of the same and the contractual relationship with Allstate
17 including all the rights and benefits and duties of good faith and
18 fair dealing and statutory rights arising therefrom.

19
20 6.4 Allstate did receive and initially acted on the above
21 notice from Schlagel and did send an inspector/appraiser who did in
22 fact come back out and inspect/appraise the correct home and did
23 nothing but verbally compliment it's quality, making all seem fine
24 unless otherwise notified; however, Allstate failed to send any
25 notice of any concern if any by Allstate over any results of that
26 inspection to allow Ms. Hunter to challenge any alleged subsequent
27 coverage denial thereon, the basis therefore, or to point out any
28 inadequate appraisal amount and coverage level and did not send any
29 notice whatsoever to Susan Hunter that her policy on the correct
30 house had not been re-instated with the full benefits and all rights
31 and protections thereunder and at law as promised, and did not ever
32 notify Susan Hunter that the policy had ever lapsed for non-payment
33 or any reason whatsoever.

34 6.5 When Susan Hunter reported the fire loss and opened a

1 claim on the original insurance contract with Allstate, Allstate
2 denied Susan Hunter's claim by asserting the original August 12,
3 2004 erroneous notice of termination of the policy based on the
4 inspection of the wrong home pretending as if Ms. Hunter and/or
5 Defendant Schlagel had never taken any action to reinstate the
6 policy on the correct home and this was despite Allstate knowing
7 full well at the time that Allstate had in fact failed to send Ms.
8 Hunter the required written notice of any proposed lapse or any
9 notice of cancellation or notice of any allegedly failed inspection
10 after the inspection/appraisal on the correct home.

11
12 6.6 Defendant Allstate had a contractual duty to provide a
13 prompt and fair investigation and settlement of Susan Hunter's
14 reinstatement and fire damage claim which was reported by Susan
15 Hunter and Defendant Greg Schlagel to Defendant Allstate within a
16 prompt and reasonable time and for which Defendant Allstate owed the
17 Plaintiff a contractual duty of good faith investigation and fair
18 dealing and fair claims settlement practices at all times.

19
20 6.7 The actions of Defendant Allstate constitute a material
21 breach of contract and a breach of the duty of good faith and fair
22 dealing for which Susan Hunter / now the Plaintiff Estate of Susan
23 Hunter suffered significant monetary damages as a direct and
24 proximate result in amounts to be proven at trial.

25
26 **VII. PLAINTIFF'S FOURTH CAUSE OF ACTION:**
27 **BAD FAITH (AGAINST DEFENDANT ALLSTATE ONLY)**

28
29 7.1 Plaintiff re-allege all of the foregoing paragraphs in
30 their entirety as if set forth fully herein.

31
32 7.2 The Defendant Allstate had a duty to provide insurance
33 claims investigation and settlement services in accordance with
34 industry standards set forth by law and their contractual
obligations to the Plaintiffs in order to avoid evading or

1 prolonging the claim, exacerbating damages or causing further
2 injuries or inconvenience, or impairing the Plaintiffs' use and
3 enjoyment of her properties as well as any other inconveniences and
4 unnecessary legal fees incurred to litigate over what should have
5 been promptly and professionally paid in full under the policies
6 Defendant Allstate had or should have had with Susan Hunter.

7
8 7.3 The actions of Defendant Allstate, as alleged above AND
9 ONGOING, constitute BAD FAITH for which Susan Hunter, now her Estate
10 of Susan Hunter, the current Plaintiff, have suffered damages as a
11 direct and proximate result in an amount to be proven at trial.

12
13 VIII. PLAINTIFFS FIFTH CAUSE OF ACTION
14 (AGAINST DEFENDANT ALLSTATE INSURANCE COMPANY ONLY)
15 VIOLATION OF THE CONSUMER PROTECTION ACT
16

17
18 8.1 Plaintiffs re-allege all of the foregoing paragraphs in
19 their entirety as if set forth fully herein.

20
21 8.2 The actions of Defendant Allstate constitute multiple and
22 ongoing unfair or deceptive acts or practices in general and
23 pursuant to violations of RCW 48.30 and/or WAC 284-30;

24
25 8.3 The actions of Defendant Allstate at issue in this case
26 were conducted within their trade or in commerce;

27
28 8.4 The actions of Defendant Allstate at issue in this case
29 affect the public interest;

30
31 8.5 The actions of Defendant Allstate perpetrated in violation
32 of the Consumer Protection Act at RCW 19.86.020 in this case are
33 causally related to injuries which the Susan Hunter/Plaintiff have
34 suffered to their business or property in monetary amounts to be
proven at trial.

IX. PRAYER FOR RELIEF

1
2
3 WHEREFORE, Plaintiff having asserted her claims for relief, now
4 prays for judgment against the Defendants, jointly and severally,
5 as follows:

6
7 9.1 For judgment against Defendants on the Plaintiff's Causes
8 of Action in such monetary amounts as may be proven at trial;

9
10 9.2 For an award of attorney's fees and costs as provided by
11 law and or RCW 19.86.090, and or Olympic Steamship, including any
12 appropriate multipliers thereon;

13
14 9.3 For a permanent injunction against Allstate Insurance
15 Company in the public interest to promote and foster fair and honest
16 competition and business practices all expressly pursuant to RCW
17 19.86.090, requiring affirmative corrective policy changes and
18 employee training and corrective actions to prevent any further
19 violations, and permanently enjoining and restraining Defendant
20 Allstate Insurance Company and all of its parent corporations and
21 subsidiaries in the insurance industry and each of them, their
22 officers, directors, agents, servants, employees, partners, and co-
23 conspirators and all other persons in active concert or
24 participation with this Defendant, from ever again engaging in the
25 conduct complained of in this complaint which would otherwise
26 constitute a violation of any part of RCW 48.30 and/or WAC 284-30
27 and/or RCW 19.86 if this matter is contested;

28
29 9.4 For such other and further relief as the Court may deem
30 just and equitable.

31 DATED this 5th day of June, 2008.

32 Attorney for Plaintiff:

33 BY: David B. Trujillo
34 DAVID B. TRUJILLO, WSBA# 25580

Appendix H

The Honorable John Knodell
Hearing Date: March 19, 2009
Hearing Time: 4:00 p.m.

FILED

FEB 12 2009

KIMBERLY A. ALLEN
Grant County Clerk

IN THE SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

THE ESTATE OF SUSAN HUNTER

Plaintiff,

v.

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and the marital
community comprised thereof; and ALLSTATE
INSURANCE COMPANY,

Defendants.

No. 07-2-00020-4

**DECLARATION OF MASAKI
YAMADA IN SUPPORT OF
ALLSTATE'S MOTION FOR
SUMMARY JUDGMENT ON
BREACH OF CONTRACT CLAIMS**

MASAKI J. YAMADA makes the following declaration certified to be true under penalty of perjury pursuant to R.C.W. 9A.72.085:

1. I am an attorney for Defendant Allstate Insurance Company ("Allstate") in the above-captioned matter and am licensed to practice law in the State of Washington.

2. I have personal knowledge of the facts and pleadings contained in this declaration and am competent to testify to the facts and exhibits attached thereto.

3. Attached hereto are the following true and correct copies of documents cited in Allstate's Motion for Partial Summary Judgment in the above-referenced matter:

Exhibit A: Plaintiff's Responses to Defendant Schlagel's Requests for Admissions and exhibits;

Exhibit B: Cited pages from the Deposition of Greg Schlagel taken on April 29, 2008, transcript;

Exhibit C: Quit Claim Deed for Tax Parcel Numbers 171415-13005, 171415-

DECLARATION OF MASAKI YAMADA -
F:\FILES\Hunter, Susan 08202\SJ(Breach.Contract).Yamada.Dec.wpd

EXHIBIT

H

OLE, LETHER, WATHEN & LEID, P.C.
1000 SECOND AVENUE, SUITE 1300
SEATTLE, WA 98104-1082
(206) 622-0494

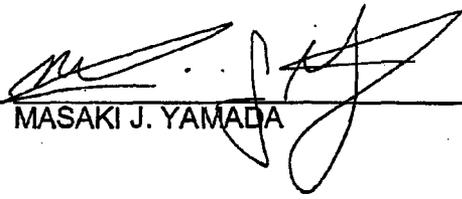
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13006 recorded on October 15, 2004; and

Exhibit D: B7 Engineering Report dated February 25, 2008, produced in response to request for productions.

I declare under penalty of perjury under the laws of the State of Washington that the above statements are true and correct.

Dated this 30th day of January, 2009, at Seattle, Washington.


MASAKI J. YAMADA

TRUJILLO
COPY

1
2 **CERTIFICATE OF TRANSMITTAL**

3 On this day, the undersigned sent to the attorneys of record for
4 ~~the~~ defendants a copy of this document by U.S. Mail, postage
5 prepaid, ~~on~~ ~~the~~ ~~date~~ ~~of~~ ~~_____~~. I certify under penalty
6 of perjury under the laws of the State of Washington that the fore
7 going is true and correct.

fax and by

RECEIVED
JAN 14 2008
BY: *ABT*

8 02-12-08 Yakima, WA
9 Date Place
10 David Trujillo
11 Signature

12 GRANT COUNTY SUPERIOR COURT

13 STATE OF WASHINGTON

14 SUSAN HUNTER, a single person,

15 Plaintiff,

16 v.

17 GREGORY SCHLAGEL and JANE DOE
18 SCHLAGEL, husband and wife,

19 Defendant.

NO. 07-2-00020-4

**DEFENDANTS' SECOND REQUESTS
FOR ADMISSION TO PLAINTIFF**

20 TO: SUSAN HUNTER, Plaintiff;
21 AND TO: David Trujillo, Attorney for Plaintiff.

22 The following Requests for Admission are served upon you in accordance with CR 26 and
23 36. Please respond to each of the following requests separately and fully under oath within thirty
24 (30) days of the date of service, and serve your responses upon the undersigned attorney.

25 DATED this 10th day of January, 2007.

JACKSON & WALLACE LLP

26 *Gordon G. Hauschild*
Gordon G. Hauschild, WSBA #21005
Attorneys for Defendants

EXHIBIT
A

DEFENDANTS' 2D REQUESTS FOR
ADMISSION TO PLAINTIFF- 1

JACKSON & WALLACE LLP
Washington Mutual Tower
1201 Third Avenue, Suite 3080
Seattle, WA 98101
(206) 386-0214

C:\nrPort\b\l\Manage\GGH\1477295

COPY ORIGINAL

REQUESTS FOR ADMISSION

For all Responses - See Attached DBT

REQUEST FOR ADMISSION NO. 9: Admit or deny that the document attached as Exhibit 1 is

a true and correct copy of a letter which you received from Allstate.

Admit Deny

REQUEST FOR ADMISSION NO. 10: Admit or deny that the document attached as Exhibit 1 is

the same document referred to as the "cancellation notice" in paragraphs 3.2 and 3.3 of your Complaint.

Admit Deny

REQUEST FOR ADMISSION NO. 11: Admit or deny that you tendered payment for a 12-month term of coverage for the subject rental property described in your Complaint.

Admit Deny

REQUEST FOR ADMISSION NO. 12: Admit or deny that you knew that coverage for your rental property was contingent upon a satisfactory inspection of the house.

Admit Deny

REQUEST FOR ADMISSION NO. 13: Admit or deny that you never received notice, written or verbal, of a satisfactory inspection of your rental house.

Admit Deny

REQUEST FOR ADMISSION NO. 14: Admit or deny that the document attached as Exhibit 2 is a true and correct copy of a refund statement which you received from Allstate along with a premium rebate/refund.

Admit Deny

DEFENDANTS' 2D REQUESTS FOR
ADMISSION TO PLAINTIFF- 2

C:\NrPortb\NiManaget\GQH1477295

JACKSON & WALLACE LLP
Washington Mutual Tower
1201 Third Avenue, Suite 3080
Seattle, WA 98101
(206) 386-0214

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REQUEST FOR ADMISSION NO. 15: Admit or deny that the document attached as Exhibit 2 pertains to the "refund" you reference in paragraph 3.2 of your Complaint.

Admit Deny

REQUEST FOR ADMISSION NO. 16: Admit or deny that the property in question was not being rented at the time of the fire which destroyed the structure.

Admit Deny

REQUEST FOR ADMISSION NO. 17: Admit or deny that at all times material hereto you knew that Greg Schlagel was an agent for Allstate Insurance.

Admit Deny

REQUEST FOR ADMISSION NO. 18: Admit or deny that at all times material hereto you knew that Greg Schlagel was not your agent or employee.

Admit Deny

REQUEST FOR ADMISSION NO. 19: Admit or deny that each check you tendered to defendant Greg Schlagel was made payable to the order of Allstate.

Admit Deny

REQUEST FOR ADMISSION NO. 20: Admit or deny that each check you tendered to defendant Greg Schlagel was not made payable to the order of Greg Schlagel or his spouse.

Admit Deny

DEFENDANTS' 2D REQUESTS FOR
ADMISSION TO PLAINTIFF- 3

C:\N\Portb\N\Managel\GGH1477295

JACKSON & WALLACE LLP
Washington Mutual Tower
1201 Third Avenue, Suite 3080
Seattle, WA 98101
(206) 386-0214

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Responses signed this 28th day of January, 2008.

LAW OFFICES OF DAVID B. TRUJILLO

David Trujillo
David Trujillo, WSBA #25580
Attorneys for Plaintiff Susan Hunter

Susan Hunter declares as follows under penalty of perjury under the laws of the State of Washington: I am the above-named Plaintiff; I have read the foregoing Requests for Admission and the Answers thereto, know the contents thereof, and believe the same to be true.

Signed at _____ Washington, on this _____ day of _____, 2008.

Susan Hunter

EXHIBIT 1



ALLSTATE INSURANCE COMPANY
75 EXECUTIVE PARKWAY
HUDSON OH 44237-0001

R0700301

NOTICE OF CANCELLATION

June 12, 2004

Policy Description: LANDLORD PACKAGE
Policy Number: 000000917132671
Cancellation Date and Time: August 07, 2004 at 12:01AM Standard Time
At the location of the property involved

SUSAN HUNTER
253 BRISKEY LANE
NACHES WA 98937-9723

Location of Property: 251 BRISKEY LANE NACHES WA 98937-9723

We are writing to inform you that the policy identified above will be canceled as of the cancellation date and time shown above due to the following reason(s):

Your mobile home does not qualify for an Allstate Landlord Package policy.

The protection provided by your policy will remain in effect until the cancellation date and time shown above. However, in the event that any policy premiums are not paid when due, we may cancel the policy prior to that cancellation date and time.

Please contact your Allstate agent if you correct the reason(s) listed above. He or she may be able to reinstate your policy or offer you a new policy.

Because you will be without protection as of the cancellation date and time shown above, we encourage you to obtain insurance coverage elsewhere.

If you have any questions about your policy or the reason(s) for this cancellation, please don't hesitate to contact your Allstate agent.

Sincerely,

E.S. Cooper

copy to:
GREG SCHLAGEL
509-764-8110

IMPORTANT NOTICE(S)

Replacement of Property Insurance. You may possibly be eligible to obtain insurance through another insurer or through the Washington FAIR Plan. For further information, please contact your agent.



EXHIBIT 2



10815 DAVID TAYLOR DRIVE CHARLOTTE NC 28262-1045

Type of Policy
LANDLORDS

SUSAN HUNTER
253 BRISKEY LANE
NACHES WA 98937-9723

Loan Number
NONE

Policy Issued To

SUSAN HUNTER
253 BRISKEY LANE
NACHES WA 98937-9723

Policy Number Description

9 17 132671 05/11 251 BRISKEY LANE
NACHES WA 98937

Agent And Telephone Number

GREG SCHLAGEL (509) 764-8110

Important Information

You are entitled to a refund of part of your premium. The amount reflects any payments(s) you may have made, less the charge for coverage provided prior to when your policy terminated on August 7, 2004.

If you have any questions, please contact your agent or producer of record.



*This is for reinstatement of Insurance,
as we talked on the phone.*

Thank you.

(OVER)

7-20-04

Mail

This statement as of June 15, 2004.

9. Admitted that this letter was dated June 12th and postmarked June 14th and then mailed to Ms. Hunter's home address while she was working and staying out of town and during which time Ms. Hunter did not return home any sooner than after her 11 and ½ hour Friday night-shift ended on Saturday morning the 19th of June, 2004, assuming she came home at all that weekend to open any of her accumulating mail in order to receive such a notice which her co-worker named Bonnie can speak to. This notice along with the refund check were found together when Ms. Hunter finally came back into town and had a chance to go through all her mail. This led to Ms. Hunter calling to give the news contained therein to a surprised Mr. Schlagel who then instructed her to write the new check dated June 29th, 2004 so Schlagel could then cure the problem noted therein.

10. Admitted that this was a cancellation notice for the brick rental home triggered by the inspection of the wrong house, a mobile home, which this notice erroneously indicated was not insurable simply because it was a mobile home, even though the mobile home was not only fully insurable but moreover was already in fact fully insured by and serviced by, none other than Allstate, and Ms. Hunter's insurance agent, Defendant Gregory Schlagel. Apparently, Allstate insures rental homes and also mobile homes, but did not want to insure a mobile home to be used as a rental, which was not what was happening anyhow.

11. Admitted that Plaintiff Susan Hunter, a long time and loyal Allstate customer, tendered her payment exactly as instructed by her agent, Defendant Gregory Schlagel, to reinstate the insurance policy and for all the attendant insurance and agency services for that policy on the rental home for at least a full year along with all the reminders, assistance, and services that came with that agency and policy coverage and during that term and thereafter by and through her agent, Defendant Gregory Schlagel.

12. Denied. The rental home was to be insured "as is" as long as it was not a mobile home. The inspection/appraisal was always merely to ascertain the type and size of the home and to appraise the home to make sure a sufficient amount of coverage was obtained for the home as promised by Schlagel. The second inspector/appraiser greeted Mrs. Hunter's tenant and adult son, Joshua Hunter, at the rental home and said she was there to appraise the home but declined an invitation to enter inside the rental home. The appraiser then simply asked if there were smoke detectors in the home and after he answered in the affirmative, she indicated that she just needed to take a few measurements outside. She then walked around the home, took some measurements, complimented the excellent condition of the home, and then got back into her vehicle and left.

13. Denied. See appraiser/inspector's comments and praises noted above. Also, Plaintiff's agent, Defendant Gregory Schlagel, stated that he didn't anticipate any problems and that there would be no notices regarding the inspection and the appraisal unless there was a problem, which Plaintiff could then dispute and challenge or remedy within a reasonable period of time (like she just did for the clearly erroneous notice that the brick home at issue was a "mobile home") which reasonable time for cure or straightening out any error would be given for Plaintiff to do so if needed. Defendant Schlagel stated in advance that "no news would be good news" since notices were only sent if there was a problem. Thus, it is misleading and inappropriate for Defendant Schlagel or his defense lawyers to try to state that Ms. Susan Hunter ever needed any notice and or did not receive any notice of approval when her agent, Defendant Schlagel, reassured Ms. Hunter that his verbal assurance that he was taking care of securing her insurance was all she needed. Mr. Schlagel's motto and promise to Mrs. Hunter was that "You're in good hands" and Mrs. Susan Hunter reasonably relied on everything he said and claimed, as well as the feedback from the inspector/appraiser given to her tenant/son, Joshua Hunter.

14. Denied (as to the handwriting thereon). Exhibit 2 is actually a photocopy which Ms. Hunter used as a cover letter for sending Schlagel her June 29th, 2004 check to reinstate coverage with her handwritten notation to Schlagel "This [the check accompanying this document] is for reinstatement of insurance as we talked on the phone. Thank you." The hand written notes to the right are Mr. Schlagel's writing wherein he acknowledged the date he received Ms. Hunter's note and check by writing "7-2-04 [received via] Mail". This is Schlagel's internal notes acknowledging that exhibit #2 with Ms. Hunter's handwritten note and check enclosed were received and had been sent to him as he instructed based on his promise that he would immediately forward the check to Allstate to immediately get the insurance reinstated for the correct house. This was to be just like when Ms. Hunter sent her first check dated May 29th, 2004 with the inspection appraisal to follow shortly thereafter to ensure the proper valuation and adequate coverage for rebuilding costs.

15. Admitted.

16. Denied. The property was being rented by Joshua Hunter and Terry Forgey for a total of \$750 per month.

17. Denied. Defendant Greg Schlagel was Susan Hunter's agent.

18. Denied. Defendant Greg Schlagel was Susan Hunter's agent.

19. Admit that Defendant Greg Schlagel instructed Ms. Hunter to

write the check covering the policy including his commission to the name of "Allstate" which he would immediately send to Allstate and split with them to cover his commission, the inspection/appraisal costs, and the policy premium.

20. Admit that Defendant Greg Schlagel instructed Ms. Hunter to write the check covering the policy including his commission to the name of "Allstate" which he would immediately send to and split with them later to cover his commission, the inspection/appraisal costs, and the policy premium, for and on behalf of and for the benefit of his marital community.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

SUSAN HUNTER, a single person,

Plaintiff,

vs.

GREGORY SCHLAGEL and JANE DOE

SCHLAGEL, husband and wife,

Defendants.

RECEIVED
SEP 05 2008

COLE, LETHER,
WATHEN, & LEID, P.C.

NO. 07-2-00020-4

DEPOSITION UPON ORAL EXAMINATION OF
GREG SCHLAGEL

TAKEN ON: Tuesday, April 29, 2008
TAKEN AT: Shiloh Inn
1819 East Kittleson Road
Moses Lake, Washington 98837

REPORTED BY: MARILYNN S. McMARTIN, RMR, CRR
CCR NO. 2515



Page 30

1 A. Oh, probably within a couple weeks after writing the policy,
 2 approximately.
 3 Q. All right. And do you know when the inspection took place?
 4 A. Within that two-week period.
 5 Q. Okay. So you actually get an e-mail that shows up in your
 6 e-mails at work?
 7 A. Yes.
 8 Q. And what is your e-mail at work?
 9 A. Gregschlagel@allstate.com.
 10 Q. And your e-mail recognizes that that is not a junk e-mail?
 11 It wouldn't get filtered out?
 12 A. Yeah, I guess. I'm not that privy on it, but . . .
 13 Q. All right. And you do recall getting an e-mail in this case
 14 regarding Susan Hunter's policy that you initially wrote
 15 being rejected because it was a mobile home?
 16 A. That's correct.
 17 Q. Okay. And did you know Susan Hunter's e-mail address?
 18 A. No.
 19 Q. So you didn't forward her an e-mail by e-mail?
 20 A. No. At that time I wasn't using e-mail to respond to
 21 people. I mean, unless they sent me an e-mail, I don't
 22 respond by e-mail.
 23 Q. Okay. And the only phone number you had for Susan Hunter
 24 was her home phone number, correct?
 25 A. As far as I recall.

Page 32

1 Q. Okay. In discovery that you provided me there was a
 2 document from Allstate showing it was postmarked on the
 3 14th, so I know it was sent -- I think it was sent after the
 4 14th, according to your discovery, but you don't recall when
 5 you actually received Exhibit No. 2?
 6 A. Boy, I don't recall right now.
 7 Q. Would it be fair to say it was sometime shortly after or
 8 some point after the date of the document, which says
 9 June 12?
 10 A. Yeah, I would imagine so.
 11 Q. Okay.
 12 A. Within a couple days.
 13 Q. Okay. You think it was within a couple days of it being
 14 mailed or a couple days of it being written?
 15 A. I don't know. However long it takes them to put it in the
 16 mail and however many days it takes for this to get to me.
 17 I mean, I don't . . .
 18 Q. And you don't have a policy of date stamping incoming
 19 correspondence?
 20 A. No, we do not.
 21 Q. At all?
 22 A. No, ever.
 23 Q. And Exhibit No. 2 was copied to you. It does appear, does
 24 it not, that it's addressed actually to Susan Hunter?
 25 A. That's correct.

Page 31

1 Q. Okay. And would that have been something you wrote down on
 2 your intake sheet or the handwritten notes that you took
 3 from interviewing her over the phone?
 4 A. I don't recall.
 5 Q. Okay. You say you received an e-mail regarding the home not
 6 qualifying because it was a mobile home; is that correct?
 7 A. As far as I can remember, yes.
 8 Q. Okay. And isn't it also correct that you also received a
 9 written notice?
 10 We'll mark this as Exhibit No. 2.
 11 (EXHIBIT NOS. 1 AND 2 MARKED.)
 12 Q. (By Mr. Trujillo) I am handing you what's been marked as
 13 Exhibit No. 2 to your deposition.
 14 A. You know, to back up a little bit, I don't recall for sure
 15 if I did get an e-mail from the company, but I do recall
 16 this.
 17 Q. Exhibit No. 2?
 18 A. Yes.
 19 Q. You do recognize it?
 20 A. Yes.
 21 Q. And you do recall receiving it?
 22 A. That's correct.
 23 Q. Okay. Do you remember how long after the date of
 24 Exhibit No. 2 did you actually receive Exhibit No. 2?
 25 A. I don't.

Page 33

1 Q. Okay. And did you and Susan Hunter have a conversation
 2 regarding Exhibit No. 2 over the phone?
 3 A. Yes.
 4 Q. Okay. And do you recall when that conversation was?
 5 A. I don't recall the exact date, but we did have a
 6 conversation about it. And when she called, we talked. You
 7 know, she had called and told me that it was not a mobile
 8 home; that she lived in the mobile home, and it was another
 9 house next-door.
 10 So I said okay. Let me contact the inspection --
 11 the people that handle the inspections in our Property
 12 Services Department, and we'll have the house reinspected.
 13 In the meantime -- and I did tell her, in the
 14 meantime, send me a check for the balance, which I think was
 15 like \$252, and as long as the house passes inspection, I'll
 16 go ahead and when it's reinstated, I'll apply the check to
 17 the policy.
 18 Q. Okay. And this, you say, occurred in the telephone
 19 conference with Susan after Exhibit No. 2 was received by
 20 the two of you?
 21 A. Yes.
 22 MR. TRUJILLO: Okay. And I'll hand you what
 23 I'll mark as Exhibit No. 3.
 24 THE WITNESS: Can I get a drink of water?
 25 MR. TRUJILLO: Yeah. Go ahead.

Page 70

1 of this. I guess if we would have sat down and talked about
 2 this, then I would know the exact answer today, but I don't.
 3 I can't answer that.
 4 Q. I've read your answer in Exhibit No. 4, your answer in
 5 Exhibit No: 5 --
 6 A. Uh-huh.
 7 Q. -- both to Interrogatory No. 8, and I can't understand the
 8 answers in the interrogatory answers, and it sounds like you
 9 can't explain it much better?
 10 A. Might be more clear when you talk to Oneida.
 11 Q. Okay. So she's the witness -- if this stuff happened, as
 12 explained in your answer to Exhibit No. -- I'm sorry, in
 13 your answer to Interrogatory No. 8, as reflected in
 14 Exhibits 4 and 5, Oneida is going to be the one who can
 15 speak to that, if anyone can?
 16 A. If anyone can.
 17 Q. Okay. Because there are no records that correspond to the
 18 facts that are alleged in your answer?
 19 A. As far as I know, there's no record.
 20 Q. Okay. You haven't been able to match it with a phone record
 21 in your possession or control?
 22 A. No.
 23 Q. And you've talked with Oneida. Have you asked Oneida
 24 whether she used her personal cell phone, if she had one
 25 back then?

Page 71

1 A. No, and she wouldn't have.
 2 Q. Okay. Certainly not.
 3 So your understanding is that she did not make a
 4 personal phone call on her own cell phone to do a
 5 work-related task like this as alleged in your answer to
 6 Exhibits 4 and 5?
 7 A. No.
 8 MR. TRUJILLO: Okay. Why don't we take a
 9 break.
 10 (11:30 P.M. RECESS 11:35 P.M.)
 11 MR. TRUJILLO: Why don't we go back on the
 12 record. I'm going to have this marked as the next exhibit,
 13 which would be Exhibit No. 6.
 14 (EXHIBIT NO. 6 MARKED.)
 15 Q. (By Mr. Trujillo) Greg, I'm going to hand you what's been
 16 marked as Exhibit No. 6, and I can tell you, just to speed
 17 things up, to the best of my knowledge, this is the packet
 18 of phone records that you've produced to me through your
 19 attorney, and I've taken the liberty of tabbing for you all
 20 of the areas that you had identified by your own marks or
 21 highlights phone calls from or to Susan Hunter.
 22 A. Okay.
 23 Q. There were no other phone records that were produced to me
 24 of any phone calls between the two of you or anyone at your
 25 office other than this document, Exhibit No. 6.

Page 72

1 In looking at Exhibit No. 6 and the tabbed and
 2 highlighted items, to the best of your knowledge, are there
 3 any other records other than Exhibit No. 6 of any telephonic
 4 contacts between you and Susan Hunter or anyone at your
 5 office and Susan Hunter?
 6 A. No other records.
 7 MR. TRUJILLO: No other records, okay.
 8 And I'll then have marked as Exhibit No. 7.
 9 (EXHIBIT NO. 7 MARKED.)
 10 Q. (By Mr. Trujillo) Greg, I'm going to hand you what has been
 11 marked as Exhibit No. 7. That is the third and final
 12 version of your answer to Interrogatory No. 8. This
 13 apparently corrected what your counsel described as a typo
 14 regarding the June 20 date that was in Exhibit No. 5. Now
 15 this corrects it back to June 30.
 16 But other than that, there don't appear to be any
 17 other changes in your supplemental answer to Interrogatory
 18 No. 8; is that correct?
 19 MR. HAUSCHILD: There was -- not to 8, but
 20 there was to 16. Your question is only regarding 8?
 21 MR. TRUJILLO: Yes.
 22 MR. HAUSCHILD: Okay.
 23 Q. (By Mr. Trujillo) And do you know what the change was to
 24 No. 16, or was that something that your counsel was just
 25 pointing out?

Page 73

1 A. Something that counsel was pointing out.
 2 Q. Okay. And do you know what that change was with regards to
 3 No. 16 on Exhibit No. 7?
 4 A. I don't recall.
 5 Q. Okay. Fair enough.
 6 Now, this conversation that you say that you think
 7 Ms. Montemayor had with Susan Hunter regarding the failed
 8 roof inspection and what was going to happen with the check,
 9 was that the last contacts that were had between anyone at
 10 your office, including yourself and Susan Hunter, up through
 11 the date of the fire?
 12 A. As far as I know.
 13 Q. Okay.
 14 A. Well, I think that we may have had conversations with her
 15 regarding -- and sometimes people call in and make their
 16 payments over the phone, and I don't know if we had contact
 17 with her regarding her manufactured home policy or not. But
 18 that was the last conversation that we had about the
 19 landlord package policy that we wrote for her.
 20 Q. Okay. And when you say that was the last conversation, you
 21 are referring to any conversation that Oneida had as
 22 indicated in your answer to Interrogatory No. 8?
 23 A. Yes.
 24 Q. Okay. So is it fair to say that the next time your office
 25 was contacted by or on behalf of Susan Hunter was the day

Page 74

1 after the fire?
 2 A. Day of or day after. I'm not positive.
 3 Q. And I'll tell you the day of the fire was March 6, 2006.
 4 A. Okay.
 5 Q. Do you recall having a conversation with anyone on Susan
 6 Hunter's behalf, either herself or her sister Meg Forgey,
 7 with regard to the fire?
 8 A. Oneida had the initial conversation with her.
 9 Q. All right. And were you seeing another client when Oneida
 10 was having her conversation with anyone on behalf of Hunter?
 11 A. I don't know.
 12 Q. On or about March 6, 2006, which is the date of the fire,
 13 how was your office configured? Are you able to overhear
 14 conversations that Oneida has on her phone, or do you guys
 15 have separate offices?
 16 A. Oneida and Gloria are in the main part of the office.
 17 Q. The front area?
 18 A. The front area.
 19 Q. Okay.
 20 A. And I have an office, a closed office.
 21 Q. Do you work normally with your door open or shut?
 22 A. Open.
 23 Q. Do you meet clients back there or do you --
 24 A. Yes.
 25 Q. And as you recall today, if you do recall, when Oneida was

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1 having a conversation from anyone on behalf of Susan Hunter
 2 regarding the fire, what were you doing?
 3 A. I don't recall.
 4 Q. And do you recall if you overheard that conversation or
 5 participated in it in any way on this initial phone call
 6 with Oneida?
 7 A. No.
 8 Q. Okay. So you don't recall?
 9 A. Don't recall.
 10 Q. Okay. So you are not here to say that you did participate
 11 in that particular conversation?
 12 A. No.
 13 Q. Okay. But at some point thereafter, you did become involved
 14 in conversations?
 15 A. Yes.
 16 Q. What happened? Did Oneida come to you and say: Hey, the
 17 Hunters just called and said there was a fire?
 18 A. You know, I don't recall that either.
 19 Q. Okay. Tell me what you do recall.
 20 A. I recall talking to Mrs. Hunter -- or Mrs. Forgey, actually.
 21 Mrs. Hunter had just had surgery, and I recall talking to
 22 Mrs. Forgey about there not being any coverage.
 23 Q. And she asked you why?
 24 A. Right.
 25 Q. Did you guys go over that?

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1 A. Yes.
 2 Q. Did Ms. Forgey ask you -- what did you tell Ms. Forgey was
 3 the reason?
 4 A. From a failed inspection.
 5 Q. Okay. And did she ask you about that?
 6 A. I don't remember the exact conversation with her. I
 7 remember talking to her about that and the reasons, the
 8 reasons why it wasn't reinstated.
 9 Q. I've met Ms. Forgey. Was she pushy with you?
 10 A. You know, I really don't recall.
 11 Q. Okay. Was she upset with you?
 12 A. No, not that I recall.
 13 Q. Okay. Now, she let you know that Susan was recovering from
 14 surgery, or that's what your understanding was, okay?
 15 A. (Nodding head.)
 16 Q. And that's a yes?
 17 A. Yes.
 18 Q. And at some point she got Susan on the phone?
 19 A. Yes.
 20 Q. And --
 21 A. Well, I don't know if it was that day that I talked to
 22 Mrs. Hunter or not. I don't recall. I remember talking to
 23 Mrs. Hunter, though.
 24 Q. Okay. All right. And I want to talk to you about the time
 25 you talked to her, if it was on or about the same day that

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1 you talked to Meg.
 2 A. Okay.
 3 Q. Do you agree that you did talk to Susan Hunter the same day
 4 or near the time that you talked to Meg?
 5 A. Yeah. Yes.
 6 Q. All right. Do you think there was any subsequent or
 7 additional conversations after that day?
 8 A. Could have been.
 9 Q. But you've produced all the phone records you can find in
 10 that regard?
 11 A. Yes.
 12 Q. And, in fact, I didn't see any phone records from you, and
 13 I'm not sure if you didn't produce any for the period of
 14 time of March of 2006, and I just need to know if you've
 15 gathered those.
 16 A. I don't think that I have gathered them. I think it was all
 17 based on or around the time of the ...
 18 Q. The initial --
 19 A. The initial purchase of the insurance.
 20 Q. Got you.
 21 A. For that four- or five-month period that we would have had
 22 conversation.
 23 Q. And I think it may even be correct that maybe in follow-up
 24 to Interrogatory No. 8, I only asked for your phone records
 25 around the June 2004 period. As I sit here right now, I'm

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1 not sure if I did ask for any records in March of 2006.
 2 But the fire was reported to your office; correct?
 3 A. Yes.
 4 Q. And would you agree with me that that was on or about the
 5 day after the fire, March 7, 2006?
 6 A. That could be. You know, I don't know the date. I would
 7 imagine if you have a fire, you know, you're going to try to
 8 contact somebody about whether they, you know . . .
 9 But obviously, they thought they -- I can't speak
 10 for them, but . . .
 11 Q. And Oneida took the initial call?
 12 A. As far as I remember, yes.
 13 Q. Okay. After Oneida's call, was it you that called Susan
 14 Hunter's home?
 15 A. Yes. As far as I remember, I remember a phone call to her,
 16 yes.
 17 Q. And you think that Meg answered because Susan was recovering
 18 from surgery?
 19 A. Yes.
 20 Q. Okay. But at some point you think that Meg got Susan on the
 21 phone?
 22 A. Yes.
 23 Q. And was that because they wanted to hear it from you what --
 24 A. I don't know, I can't remember if it was that day or maybe a
 25 day later that I talked to Mrs. Hunter, because she was, you

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1 policy.
 2 Q. Did you actually remember that first, or did that come to
 3 you later as you guys continued talking?
 4 A. Oh, I'm 95 percent sure that I remembered it right at first.
 5 Q. Okay. And so you would disagree if Meg said otherwise, that
 6 you did not know why the check was still in the file at
 7 first?
 8 A. Oh, yes.
 9 Q. So you disagree with that?
 10 A. Yes.
 11 Q. And you don't recall whether Meg was furious or upset?
 12 A. No. I'm sure that she was upset from the fire but not upset
 13 any other way that I recall.
 14 Q. No one likes to hear that they're not covered, correct?
 15 A. Exactly, yeah.
 16 Q. Would it be fair to say that those are uncomfortable
 17 conversations?
 18 A. Uncomfortable, yeah.
 19 Q. And do you think that's why Meg bothered Susan, even though
 20 she wasn't feeling well?
 21 A. I think so.
 22 Q. Okay. And Susan did get on the phone with you?
 23 A. As far as -- you know, like I can't remember, like I said
 24 before, I can't remember if it was that day or maybe a day
 25 or two later that I talked to Mrs. Hunter.

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1 know, not feeling good.
 2 Q. And then that is my follow-up question to you. So is it
 3 possible that there could have been days after March 7,
 4 2006, that there were additional conversations between you
 5 and anyone at Susan Hunter's house, that is, Meg or Susan --
 6 A. Yes.
 7 Q. -- regarding the fire?
 8 A. Sure.
 9 Q. Okay. So it's possible?
 10 A. Yeah. I think that there were several conversations.
 11 Q. And it's possible that I may not have asked you to look in
 12 your phone records regarding March of 2006.
 13 A. Not that I know of.
 14 Q. But as you sit here today, you think that the phone records
 15 you have produced to date are all the records you can find
 16 regarding the May, June, July period of 2004?
 17 A. I think I supplied May through September or October.
 18 Q. Okay. All right. Do you agree that this conversation with
 19 Meg -- what did you tell her about, what did you at first
 20 tell her was the reason why the check was still in the file?
 21 A. That we were waiting for -- you know, that we had contacted
 22 Mrs. Hunter about the roof not passing inspection, and we
 23 were waiting for a phone call from her to let us know that
 24 the roof had been repaired so that we could apply -- get the
 25 policy reinstated so that we could apply the check to the

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1 Q. And you were not able to tell them when you called about the
 2 roof? Let me back up for a minute.
 3 In this conversation with Meg, you claim that you
 4 had called Susan and told her about the roof; isn't that
 5 correct?
 6 A. Uh-huh, maybe.
 7 Q. But now today and in your discovery answers, you've
 8 clarified now for us that the conversation, if any, was
 9 Oneida and Mrs. Hunter?
 10 A. As far as I can remember. You know, maybe it was more clear
 11 two years ago than it is now.
 12 Q. I can just tell you, Meg says that you told her that you had
 13 called Susan, and then that's when she got Susan on the
 14 phone so that she wasn't playing middle person with you.
 15 A. Okay.
 16 Q. She just said: I'll get Susan on the phone.
 17 You tell us.
 18 A. Okay.
 19 Q. But you couldn't tell them when you had called about the
 20 roof; isn't that correct?
 21 A. I don't think they asked.
 22 Q. You don't think they asked when you called and told them
 23 about the roof?
 24 A. No.
 25 Q. Because, I mean, this was your explanation for why there was

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1 no coverage, right?
 2 A. I think that the --
 3 Q. They asked you about it, didn't they?
 4 A. Well, I don't recall exactly.
 5 Q. Okay. And they asked you about this inspection?
 6 A. Yes, maybe. You know, I'm not recalling the whole
 7 conversation, so I don't know exactly what was said that
 8 day.
 9 Q. Okay. So no matter what else I ask you about --
 10 A. I do know I made some notes on a piece of paper as I was
 11 having the conversation with Mrs. Hunter.
 12 Q. And did you produce those to your attorney?
 13 A. Yes, everything that was in the file.
 14 Q. Okay. All right. I've seen some notes, but they just say
 15 when the fire was.
 16 A. When the fire happened. And I asked her why, had she
 17 checked, you know, what the cause was.
 18 And as we got deeper in our conversation, you know,
 19 I asked her, you know, if she had checked her checkbook to
 20 see if she had cashed the check or not, and she said that
 21 she was, you know, too busy with foster children. And I
 22 then asked her don't you balance your checkbook, and she
 23 said, she said no, she hadn't balanced it.
 24 So I did have some questions for her, you know,
 25 regarding that.

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1 Q. Did she tell you she had three different checking accounts
 2 because she had just inherited all her father's money?
 3 A. No, she did not.
 4 Q. And didn't Susan and Meg ask you about the inspection that
 5 you say failed because of a bad roof?
 6 A. Could have.
 7 Q. Okay. Did they ask you to produce your records on it or
 8 anything you had?
 9 A. Could have. I think that they may have done that.
 10 Q. You think they might want that?
 11 MR. HAUSCHILD: Objection, form of the
 12 question.
 13 Q. If you know. Did they tell you they wanted that?
 14 A. See, I don't have a copy of the inspection.
 15 Q. Okay. And did you tell them that?
 16 A. Probably. I mean, if they asked me --
 17 MR. HAUSCHILD: Don't guess. Tell him what
 18 you remember. If you don't remember, tell him you don't
 19 remember.
 20 A. If they asked me, yeah, I don't have a copy of the
 21 inspection.
 22 Q. So if they asked you that, that's what you would have told
 23 them?
 24 A. Yes.
 25 Q. And do you recall if they asked you to give them anything

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1 you had about this inspection?
 2 A. That would probably be something that they would ask, but
 3 don't recall.
 4 Q. And did they appear to be frustrated with your explanation
 5 of why there was no coverage and yet there was not a single
 6 record to back it up?
 7 A. If I was in their situation, I'd probably be frustrated.
 8 MR. HAUSCHILD: Greg, focus on the question,
 9 though. He didn't ask what your reaction would be. He
 10 asked did they appear to be frustrated.
 11 A. I don't recall.
 12 MR. TRUJILLO: Okay. I'm going to have this
 13 next exhibit marked. This will be No. 8.
 14 (EXHIBIT NO. 8 MARKED.)
 15 Q. (By Mr. Trujillo) Greg, I'm going to hand to you what's
 16 been marked as Exhibit No. 8 to your deposition. It's
 17 several pages. Take your time and look through each page,
 18 and when you've had a chance to review them all, let me
 19 know.
 20 A. Okay.
 21 Q. Do you recognize Exhibit No. 8?
 22 A. Yes.
 23 Q. What is Exhibit No. 8?
 24 A. Print screens.
 25 Q. Okay.

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1 MR. HAUSCHILD: And? It's not all, entirely
 2 print screens.
 3 Q. The cover page of Exhibit No. 8, that's an envelope from
 4 your office, isn't it, on the front page of Exhibit No. 8?
 5 A. Yes.
 6 Q. And what's the last page of Exhibit No. 8?
 7 A. It's a copy of the check.
 8 Q. Okay. And do you agree that Exhibit No. 8 is a copy of an
 9 envelope and the documents inside that you sent back to
 10 Susan Hunter?
 11 A. Yes.
 12 Q. And the postmarked date, which indicates March 8, 2006, that
 13 is the date that you put that in the mail back to Susan
 14 Hunter?
 15 A. Well, okay.
 16 Q. Do you agree with that?
 17 A. I don't remember the exact date we mailed it back, but...
 18 Q. Sound about right?
 19 A. Yeah.
 20 Q. Okay. And these are all of the documents that you sent back
 21 to Susan Hunter?
 22 A. She -- I guess from the question earlier where you said did
 23 they ask for some documentation, this is what I mailed them.
 24 Q. Okay. All right. And why did you mail them back the -- why
 25 did you mail Susan back the check?

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1 A. Because I told her I would, and that I had it in her file
 2 waiting for a response from her regarding the roof.
 3 Q. I can tell you that caused uproar from her. She thought
 4 that you were doing something wrong by sending that check
 5 back, like you wanted to distance yourself from the check.
 6 A. No.
 7 MR. HAUSCHILD: There is no question there.
 8 Wait for a question.
 9 Q. And that was not your intent, was it? You weren't trying to
 10 get the check out of your file like --
 11 A. Absolutely not.
 12 Q. Okay.
 13 A. If I wanted to do that, I would have thrown it in a
 14 shredder.
 15 Q. Correct.
 16 So you sent these print screens because they wanted
 17 whatever you had on why their coverage was being denied and
 18 about this alleged failed inspection, correct?
 19 A. I sent the print screens because this is the information I
 20 had up-front on the information on when the policy was going
 21 to be terminated.
 22 Q. And are these print screens that you printed off your
 23 computer, and you could hit a print button at your desk?
 24 A. Yes.
 25 Q. You didn't go to Oneida and say: Oneida, I need you to

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1 print whatever you can find on Susan Hunter for me?
 2 A. Oh, I don't remember. I don't remember who print screened
 3 them, but I can do whatever.
 4 Q. But this was done at your direction?
 5 A. Yeah. If it was either me or her, yeah.
 6 Q. And this was in response to the conversations you had just
 7 recently had with Meg and Susan Hunter?
 8 A. I don't recall, but I know that I told her I'd send back the
 9 check and any information based on : : :
 10 I can't answer that. I just remember the
 11 conversation. I told her I still have the check in the
 12 file, and I'd be glad to send it back to her.
 13 Q. Did they want the check back?
 14 A. I don't know. I don't remember.
 15 Q. Okay. But you are not here to testify that you sent it back
 16 because someone requested you to send it back?
 17 A. As far as I can remember, the conversation -- maybe I'm
 18 starting to trigger a few memories here, but I think I told
 19 her that I still had the check in the file, and I'd be glad
 20 to mail it back to her along with any other information that
 21 they might want. I would think that's my response to her.
 22 Q. And so you sent back everything you could find?
 23 A. At the time, yes.
 24 MR. TRUJILLO: Okay. All right. I'm going to
 25 hand you what I'll mark as Exhibit No. 9 to your deposition.

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1 (EXHIBIT NO. 9 MARKED.)
 2 Q. (By Mr. Trujillo) I'm handing you Exhibit No. 9. That's a
 3 couple pages there. After you've had a chance to review it,
 4 let me know.
 5 A. Okay.
 6 Q. Do you recognize Exhibit No. 9?
 7 A. Yes.
 8 Q. Okay. What is Exhibit No. 9?
 9 A. A letter from you.
 10 Q. Okay. And did you receive it --
 11 A. Yes.
 12 Q. -- on or about, shortly thereafter the date listed on the
 13 front page of Exhibit No. 9? I wish I could give you a
 14 clue, but I accidentally hole punched there.
 15 A. Was that on purpose?
 16 Q. No. I don't care when you guys received it.
 17 So you guys did receive it, though, right?
 18 A. Yes.
 19 Q. Would it be fair to say a few days after the date of the
 20 letter?
 21 A. Yes.
 22 Q. Do you recall receiving the letter from me in March of 2006?
 23 A. Yes.
 24 Q. And you notified your errors and omissions insurer regarding
 25 the receipt of this letter?

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1 A. Yes.
 2 Q. Okay. And this letter is the reason you did that, correct?
 3 A. Yes.
 4 Q. Okay. So at this point you knew that Ms. Hunter had
 5 retained counsel and felt that she had a claim against you?
 6 A. Yes.
 7 Q. Okay. And did you write any response back to this letter?
 8 I'm just curious. I didn't receive anything back.
 9 A. Directly?
 10 Q. Yes.
 11 A. No.
 12 Q. On the prior Exhibit No. 8, you did not put a cover letter.
 13 with your envelope and the print screens, did you?
 14 A. No.
 15 Q. There's no cover letter?
 16 A. No.
 17 Q. All right. So what else did you do besides notify your
 18 errors and omissions carrier regarding the receipt of the
 19 March 10, 2006, letter from my office?
 20 A. Nothing that I can recall.
 21 Q. Did you gather your file on Susan Hunter and make sure that
 22 you had everything?
 23 A. I'm sure I had the file on my desk at that point.
 24 Q. Yeah. Did you duplicate the file and make sure that that
 25 was sent to your errors and omissions carrier?

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1 intention only to enter page 1 of this?
 2 MR. TRUJILLO: Yeah.
 3 Q. (By Mr. Hauschild) I know there have been a number of
 4 questions about this, but I just want to make it real clear.
 5 In your answer, are you indicating that you specifically
 6 remember you having a conversation with Susan Hunter about
 7 the second inspection failure, or are you saying that you
 8 simply know that a conversation occurred?
 9 A. A conversation occurred.
 10 Q. Okay. And you don't recall today whether that was a
 11 conversation strictly with you, strictly with Oneida, or
 12 whether there was one of each or more?
 13 A. In my mind, to this day, I thought that I had a conversation
 14 with Mrs. Hunter directly, myself. And now -- and Oneida
 15 remembers thoroughly that she had a conversation with her.
 16 And now I can't honestly say that I remember the
 17 time that I dialed her number and talked to her, but in my
 18 mind, I remember talking to her about the \$255 check, having
 19 her mail it to me, and that I would get the policy
 20 reinstated upon a reinspection.
 21 I don't know if that answers your question or not.
 22 I'm kind of bouncing around. There's too many times for me
 23 right now.
 24 Q. Was that a conversation specifically with Susan Hunter or
 25 with Meg Forgey, or who?

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1 A. I never talked to Meg Forgey until the day of the claim or
 2 the day after. It was always with Susan.
 3 Q. So none of the cancellation, reinstatement, sending a new
 4 check issue, none of that was with Meg?
 5 A. No.
 6 MR. HAUSCHILD: All right. That's all I have.
 7 MR. TRUJILLO: I don't have anything further.
 8 MR. HAUSCHILD: You have the right to read
 9 this transcript if it's ordered and get a correction page to
 10 correct anything that you think was misstated, misspelled,
 11 or you can waive that.
 12 THE WITNESS: I'll waive it. I'll waive it.
 13 (DEPOSITION CONCLUDED AT 2:29 P.M.)
 14 (SIGNATURE WAIVED.)
 15
 16
 17
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1 CERTIFICATE
 2 STATE OF WASHINGTON)
) ss.
 3 COUNTY OF YAKIMA)
 4 THIS IS TO CERTIFY that I, Marilyn S. McMartin,
 5 Notary Public in and for the State of Washington, residing
 6 at Selah, Washington, reported the within and foregoing
 7 testimony; said testimony being taken before me as a Notary
 8 Public on the date herein set forth; that the witness was
 9 first by me duly sworn; that said testimony was taken by me
 10 in shorthand and thereafter under my supervision
 11 transcribed, and that same is a full, true and correct
 12 record of the testimony of said witness, including all
 13 questions, answers and objections, if any, of counsel, to
 14 the best of my ability.
 15 I further certify that I am not a relative,
 16 employee, attorney, counsel of any of the parties; nor am I
 17 financially interested in the outcome of the cause.
 18 Transcribed notes will be destroyed three years
 19 from the affixed date unless requested by counsel to retain
 20 them.
 21 IN WITNESS WHEREOF, I have hereunto set my hand and
 22 affixed my official seal this _____ day of
 23 _____, 2008.
 24
 25 Marilyn S. McMartin, RMR, CRR
 CCR NO. 2515

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1 THE FOLLOWING ORIGINAL TRANSCRIPT(S) FILED WITH
 2 DAVID B. TRUJILLO, ESQ.
 3 3805 Tieton Drive
 4 Yakima, WA 98902
 5
 6
 7 CAUSE
 8
 9 SUPERIOR COURT, GRANT COUNTY
 10 IN RE: HUNTER vs. SCHLAGEL
 11 NO. 07-2-00020-4
 12 DEPONENT(S): GREG SCHLAGEL
 13
 14
 15 PLEASE SIGN THIS SHEET, DATE IT, AND RETURN IT
 16 TO: AFFILIATED COURT REPORTERS
 17 P.O. BOX 994, YAKIMA, WA 98907
 18
 19 RECEIVED BY: _____
 20
 21 DATE: _____
 22
 23
 24 MM 3337
 25 MARILYNN S. McMARTIN, RMR, CRR
 CCR NO. 2515

COUNTY EXCISE TAX
DATE: 10-15-2004
PAID \$: none
REC. NO: 367711
BY: [Signature]
Yakima County Treasurer's Office

Return to: Flower & Andreotti
303 East "D" Street #1
Yakima, WA 98901

Document Title: Quit Claim Deed

Grantor: Hunter, Susan W., Personal Representative of the
Estate of William W. Hunter.

Grantee: Hunter, Susan W., a single person.

Abbreviated Legal Description: A portion of the Northwest quarter of the Southwest quarter of the
Northeast quarter of Section 15, Township 14 North, Range 17 E.W.M.
(Additional legal description on pp. 1-2)

Tax Parcel Numbers: 171415-13005, 171415-13006

QUIT CLAIM DEED

The Grantor, SUSAN W. HUNTER, Personal Representative of the Estate of William W. Hunter, in consideration of making a distribution from the Estate, conveys and quit-claims to SUSAN W. HUNTER, a single person, the following-described Yakima County, Washington real property together with all after-acquired title of Grantor therein:

Parcel A: That portion of the Northwest quarter of the Southwest quarter of the Northeast quarter of Section 15, Township 14 North, Range 17 E.W.M., described as follows: Beginning at the Southwest corner of said subdivision; thence North 00°00'00" East along the West line of said subdivision 667.98 feet to the Northwest corner of said subdivision; thence North 88°23'47" East along the North line of said subdivision



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Page 1 of 2
10/15/2004 04:03

B7 ENGINEERING1614 Eastway Drive
Sunnyside, WA 98944
(509) 837-8600Nicole Reese
Executor, Susan Hunter Estate
601 N. 39th St.
Yakima WA 9890125 February 2008
08015**Subject:** Structural Needs Evaluation, Fire Damage to the Susan Hunter Home,**References:**

- (a) International Residential Code (IRC) 2006

Attachments:

- (1) Map of Damage, Susan Hunter

Dear Ms. Reece:

This letter forwards my evaluation regarding the structural needs of the subject building. It is my understanding that the home was burned out about 2 years ago. You tasked me to provide a list of items that need to be addressed in the repair plans of the structure.

The IRC allows repair of existing structures without up-grading areas not repaired provided that the areas repaired conform to the requirements for new construction. This condition means that the un-reinforced concrete masonry walls may remain provided that they can be declared undamaged structurally. This provision is special because unreinforced concrete masonry is no longer allowed in this area for new construction due to a weak resistance to earthquake.

Some code officials may reference Section 506.2.2 of the International Existing Building Code (IEBC) 2006, which addresses repairs to damaged buildings. This section requires a structural evaluation to determine whether the vertical element of the lateral force resisting system conforms to the current requirements of the International Building Code (IBC). Since the walls are obsolete, they will not comply with IBC and they would not be allowed as a structural component. Because the IRC is the most relevant code compared to the IBC, it is my opinion that the IEBC does not apply.

On 14 February I visited the site along with representatives from G M McClure Construction, and the Susan Hunter Estate. I was on site for about 2 hours. The home was observed to be composed of three parts, the main house, the garage wing, and the two story master suite. The main house was built first, reportedly 1950. The garage and master suites were subsequently added, reportedly 1964. All three have walls constructed of un-reinforced concrete masonry. The masonry walls were furred with 1x4s and paneled. Partition walls were finished with either paneling or plaster. The ceilings were finished with plaster.

The outside of all three parts of the home are weathered about equally. Both the garage and the main house have stick-framed gabled roof with about 6 to 12 pitch. Roof framing rests on a box girders built up from 2x6s that are likely bolted to the concrete masonry. The master suite has a flat roof. Details of the second floor attachment to the masonry walls are covered and uncertain, but it appears that a ledger is bolted through the walls, from which the floor joists are attached.



Susan Hunter Report

2

In general, the home was well built for homes of this era. The eaves and ridge are observed to be straight. Except for localized charring near the front door, the roof appears to be weather tight.



Photo showing straight eaves and ridge.

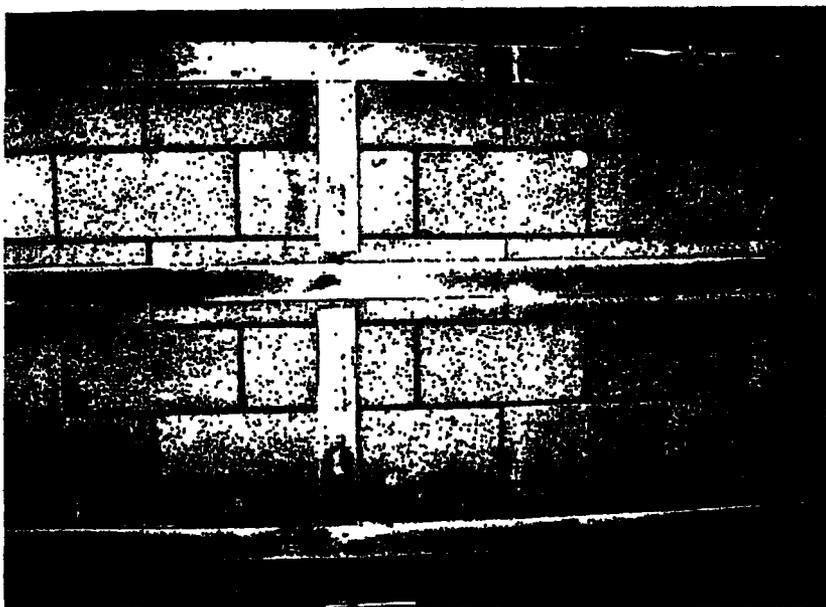


Localized damage to roof at front door

Susan Hunter Report

3

Smoke damage and exposure to high temperature gas is clearly evident throughout the interior of the home and attic. The hottest area of the fire was confined to the corner of the house near the front door. Paneling near the front door was generally consumed but 1x4 furring remained intact. In this area near the front door, the fire apparently burnt through the soffit and then attacked the roof framing and the box header on top of the walls. It also broke the picture window at the south side of the living room and burned the wall siding covering the gable at the south end of the home. The attached drawing, originally prepared by G M McClure Construction, maps this area of intense burn damage.



Exterior wall furring

The current roof framing system composed of site-built face-nailed trusses will not conform to the load resisting standards of the IRC. Consequently, any repair to the roof will have to be engineered to meet the current standards of the IRC. Using plate trusses is the easiest and cheapest means to engineer roof framing. Difficulty matching roof slopes and providing continuity in the roof sheathing will force replacing all gabled roof portions with plate trusses.

The box header at the door was charred about 3/16 inch deep. Analysis indicated there is sufficient residual strength to meet the load resistance standards; but it is difficult fitting new trusses to uneven bearing surfaces, consequently, all charred portions of the box header need to be rebuilt.

Susan Hunter Report

4

The plywood sheathing for the flat roof over the master suite displays some localized charring and delamination. The plywood should be removed and replaced. Two rafters were also charred and need to be either replaced or sistered. Analysis of the rafters indicate that they are under sized for the span and load. It is my opinion that the IRC demands that if the roof is opened for repair of sheathing and rafters, then it must meet the current standards before it is closed. Consequently, the 2x8 rafters observed in the flat roof must be replaced with 2x10s or the spacing of 2x8s must be reduced to average 10 inches.

The garage has two localized areas of wall damage unrelated to the fire. There are two holes in the blocks on both sides of the garage entrance, and a crack in the corner between the house and the garage.

Electrical system was damaged by fire throughout the main house. The electrical system was made up of wiring obsolete by current electrical codes and needs to be replaced.

The drain and plumbing system will have to be replaced due to obsolescence. All of the system appears to be galvanized pipe which remains an acceptable material but generally obsolete for residential applications. Repairs to restore electrical and interior wall surfaces will generally force rerouting and rebuilding nearly all the plumbing above the floor slab. Material compatibility issues will force use of one material throughout.

All interior surfaces, finish work, and furnishings were destroyed in the living room and kitchen and will have to be replaced. Interior surfaces on exterior walls will require 2x4 furring to accommodate new electrical boxes and conform to the Washington Energy Code for wall insulation. Other interior surfaces in the bath rooms, laundry room, and bed rooms are damaged by heat and smoke. Selective demolition and restoration maybe possible on some partition walls, but not practical given the extent of electrical repairs, plumbing repairs, and need for insulation in exterior walls.

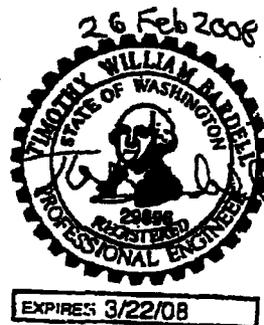
Windows frames in the living room and kitchen were completely destroyed or severely damaged. To maintain consistent appearance and meet the Washington Energy Code, all the windows in the structure will have to be replaced.

If I can be of further assistance in this matter please call.

Sincerely,



Timothy W. Bardell, PE



Appendix I

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

THE ESTATE OF SUSAN HUNTER

Plaintiff,

v.

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and the
marital community comprised thereof; and
ALLSTATE INSURANCE COMPANY,

Defendants.

No. 07-2-00020-4

**RESPONSE IN OPPOSITION TO
PLAINTIFF'S CR 60 MOTION FOR
RELIEF FROM DISMISSAL OF IFCA
CLAIM**

COMES NOW, Defendant Allstate Insurance Company (hereinafter "Allstate"), by and through its attorneys of record, Cole | Wathen | Leid | Hall, P.C., and presents the following Response in Opposition to Plaintiff's Motion for Reconsideration.

I. INTRODUCTION

Plaintiff is seeking relief under CR 60 from a prior order dismissing claims under the Insurance Fair Conduct Act ("IFCA"). (See Order at DKT 285.) Plaintiff seeks to have its IFCA reinstated. This motion cannot be considered, as it is brought 2.5 years after the maximum time allowed under CR 60.



1 This issue was been correctly addressed by this Court in its ruling of November 29, 2010.
2 This Court ruled that IFCA is not retroactive and that conduct occurring during litigation does
3 not give rise to a tort claim of bad faith or claims under IFCA.

4 Additionally, the documents which Plaintiff asserts provide new information relevant to its
5 case provide no new information whatsoever. Multiple documents showing the same
6 information have been in Plaintiff's possession for years.

7 FACTS

8 A. Procedural Posture

9 Plaintiff initiated the present lawsuit against Defendant Greg Schlagel on January 5,
10 2007.¹ Plaintiff subsequently joined Allstate as Defendant in June of 2008, alleging breach of
11 contract, breach of duty of good faith, bad faith, and violation of the CPA.² Multiple summary
12 judgment motions and cross motions followed.

13 In February of 2009, Plaintiff moved to amend the complaint again to add an IFCA
14 claim against Allstate.³ Allstate opposed this motion on the ground that the statute is not
15 retroactive, and all allegations of misconduct preceded the statute's date of enactment,
16 December 6, 2007.⁴

17 This Court entered an order allowing Plaintiff to amend the complaint to add the IFCA
18 claim based on Civil Rule 15(a). However, no substantive rulings were made as to Plaintiff's
19 IFCA claim. *See, Order on Motions for Reconsideration.*

20 The Court ultimately ruled that there can be no "bad faith" acts that occur in litigation
21 such as give rise to a tort claim of bad faith or are a violation of IFCA. Dinning Declaration,
22 Exhibit A. Plaintiff's IFCA claim against Allstate was dismissed.

23 ¹ *See, Summons and Complaint, Dkt. No. 1.*

² *Summons and Complaint, Amended, Dkt. No. 44.*

³ *Pltfs CR 11/15 Mtn For Ord Allowing Amended Complaint Against Def. Allstate, Dkt. No. 95.*

⁴ *See, Allstate's Opposition to Plaintiff's Mtn to Amend., Dkt. No. 99.*

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II. ISSUES

- 1. Can they bring CR 60 motion? No.
- 2. Can an IFCA claim stand when denial occurred before enactment of IFCA? No.

III. EVIDENCE RELIED UPON

- 1. The previously filed Declaration of Jennifer P. Dinning in Support of Motion to Bifurcate ("Dinning Declaration") and exhibits thereto, including but not limited to the previously filed Declaration of David Hart (declaration exhibit E) and previously filed Declaration of Masaki Yamada (declaration exhibit D);
- 2. Declaration of Jennifer P. Dinning in Support of Opposition to Plaintiff's Motion for Summary Judgment ("Dinning Dec.");
- 3. The Record and file herein.

V. LEGAL ARGUMENT

A. A CR 60 Motion is not Timely

Under CR 60, relief may be requested from an order in several circumstances, including:

- (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

Although Plaintiff's motion does not cite the portion of CR 60 on which Plaintiff bases its request for relief, Plaintiff's request appears to be made under CR 60(b)(3), request based on newly discovered evidence.

However, a motion for relief must be made in a timely way. For requests made under CR 60(1-3), a motion must be made within one year of the order from which the party seeks relief.

1 The motion shall be made within a reasonable time and for
2 reasons (1), (2) or (3) not more than 1 year after the
3 judgment, order, or proceeding was entered or taken.

4 The time for bringing such a motion cannot be altered. Expansion of the time allowed to
5 bring a motion under CR 60(b) is prohibited by CR 6(b).

6
7 (b) Enlargement. When by these rules or by a notice given
8 thereunder or by order of court an act is required or allowed
9 to be done at or within a specified time, the court for cause
10 shown may at any time in its discretion, (1) with or without
11 motion or notice, order the period enlarged if request
12 therefor is made before the expiration of the period
originally prescribed or as extended by a previous order or,
(2) upon motion made after the expiration of the specified
period, permit the act to be done where the failure to act
was the result of excusable neglect; but it may not extend
the time for taking any action under rules 50(b), 52(b),
59(b), 59(d), and 60(b).

13 CR 6(b)(emphasis added).

14 Defendant anticipates that Plaintiff may respond that it actually means to bring its claim
15 under catch-all CR 60(b)(11). However, that provision is not applicable, and cannot be used
16 simply to circumvent the time requirement of CR 60(b)(1-3). "As with its federal counterpart,
17 subsection (b)(11) of CR 60 applies only in situations involving "extraordinary circumstances"
18 relating to "irregularities which are extraneous to the action of the court or go to the question
19 of the regularity of its proceedings." *Tatham v. Rogers*, 170 Wn. App. 76, 100, 283 P.3d 583,
20 (2012). Further, "CR 60(b)(11) cannot be used to circumvent the one-year time limit applicable
21 to CR 60(b)(1)." *Friebe v. Supancheck*, 98 Wn. App. 260, 267, 992 P.2d 1014 (1999).

22 Plaintiff brings this motion to vacate the Court's order at Docket 285, filed November
23 29, 2010. Plaintiff brings this motion approximately three and a half years after the order it
wishes to vacate. This is well beyond the one year time limit.

1 Further, we anticipate that Plaintiff will argue that its time limit should begin from the
2 time that it discovered the "new information" on which its motion is based. There is no basis
3 for this assertion and it is in complete opposition to CR 60(b) and CR 6(b). However, EVEN IF
4 this Court were to entertain such an argument, Plaintiff obtained this information no later than
5 December 15, 2011. *See Docket 292*. Plaintiff brings this motion two and a half years after the
6 date it discovered the "new information" on which its motion is based. This is still a year and a
7 half late.

8 This Court is specifically barred from extending the amount of time permitted for this
9 motion by CR 6(b). This Motion cannot be entertained.

10
11 **B. The Insurance Fair Conduct Act Does Not Apply As a Matter of Law.**

12 The Insurance Fair Conduct Act ("IFCA"), set out at RCW § 48.30.015, does not apply
13 to this case as a matter of law. Plaintiff has conceded on all prior motions concerning IFCA
14 that the statute is not retroactive. Plaintiff concedes Allstate denied its claim on April 7, 2006.
15 It is undisputed that the IFCA became law on December 6, 2007, over one and one-half years
16 after denial of Plaintiff's claim.

17
18 The IFCA provides plaintiffs a cause of action arising from an insurance
19 company's unreasonable denial of coverage or payment of benefits. RCW
20 48.30.015. "The operative date in determining whether the IFCA applies is the
21 date that a claim for coverage is denied."

22 *Dees v. Allstate Ins. Co.*, 933 F. Supp. 2d 1299, 1312 (2013). IFCA is not retroactive, and
23 Plaintiff's claim was denied before IFCA became law. Therefore, based on the undisputed
facts, the Insurance Fair Conduct Act does not apply as a matter of law.

1. The IFCA does not apply to post denial conduct;

1 Plaintiff has, in past briefing, attempted to argue a “prospective” application of the
2 IFCA, based on conduct that occurred nearly two years after litigation commenced, and almost
3 three years after Plaintiff’s claim was denied. Specifically, Plaintiff argues that a discovery
4 error, the failure to provide “Amended Landlord’s Package Policy Declarations”, gives rise to a
5 claim under the IFCA.

6 Plaintiff’s position is severely flawed, and in opposition to established law. *See Dees v.*
7 *Allstate Ins. Co.*, 933 F. Supp. 2d 1299, 1312 (2013). The exact same argument was raised and
8 rejected in *HSS Enterprises, v. Amco Ins. Co.*, 2008 WL 312695, at 4 (W.D. Wash). In *HSS*
9 *Enterprises*, Plaintiff argued that even if the IFCA does not apply retroactively, it should be
10 permitted to assert claims against the defendant for failure to pay benefits and other
11 unreasonable conduct occurring after December 6, 2007. *Id.* The court disagreed, reasoning
12 that “this argument necessarily relies on pre-IFCA enactment grounds for a present-and
13 allegedly a continuing-IFCA violation. Such an argument not only raises serious continuing
14 tort and statute of limitations concerns, but it also invokes the same retroactivity position ...
already rejected.” *Id.*

15 The Court in *RSUI Indemnity* rejected a similar attempt to argue that the IFCA applied
16 to post-act allegations of bad faith, holding that “the operative date for determining whether the
17 IFCA applies is the date that a claim for coverage is denied.” *RSUI Indem. Co. v. Vision One,*
18 *LLC*, 2009 U.S. Dist. LEXIS 118425 (W.D. Wash. Dec. 18, 2009). “Therefore, defendants may
19 pursue an IFCA claim only if the denial occurred after December 6, 2007.” *Id.* (internal
20 citations omitted). The law is clear: If the denial occurs prior to December 6, 2007, there is no
action under the IFCA. *Id; Dees v. Allstate Ins. Co.*, 933 F. Supp. 2d 1299, 1312 (2013).

21 Plaintiff admits that the claim was denied over a year and one-half before the IFCA
22 became effective. Moreover, the “prospective” argument that Plaintiff attempts to make has
23 been tried and rejected. As such, Plaintiff’s IFCA claim, which never had a chance of success,
should not now be renewed three and a half years after being dismissed by this Court. .

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SEATTLE, WASHINGTON 98121-1419
(208) 622-0494/FAX (208) 587-2476

1 **2. The IFCA does not apply to allegations of misconduct occurring after**
2 **litigation commenced.**

3 Although the point is moot, as Plaintiff's IFCA claim is untenable as a matter of law,
4 Defendant notes that conduct occurring in litigation does not give rise to an IFCA claim.

5 Washington law is clear that actions taken during litigation will not serve as a basis for
6 extra contractual claims. *See Blake v. Federal Way Cycle Center*, 40 Wn.App. 302, 312, 698
7 P.2d 578, *reconsideration denied, review denied*, 104 Wn.2d 1005 (1985) (holding alleged
8 Consumer Protection Act claim was inapplicable to alleged violation after the lawsuit was
9 filed). The court reasoned that once the lawsuit had been filed, the dispute was under control of
10 the courts. *Id.* The sound reasoning is equally applicable here.

11 **3. Plaintiff has possessed the relevant information throughout litigation**

12 Plaintiff has been provided with the same information contained in the "Amended
13 Landlord's Package Policy Declarations" in multiple documents produced in discovery by
14 Defendant Allstate and Defendant Schlager. Dinning Dec., Exhibits 1 & 2.

15 These documents include an e-mail by Mr. Schlager to Shannon Doyle regarding the
16 inspection and cancellation of Ms. Hunter's policy. Ms. Doyle informed Mr. Schlager that the
17 inspection showed the home to be a mobile home, and notified him of cancellation of the
18 policy. Dinning Dec., Exhibit 1. Mr. Schlager responds, informing Ms. Doyle that the
19 inspection must have been incorrect and that the correct property is a solid block home.
20 Dinning Dec., Exhibit 1.

1 **Schlagel, Greg**

2 **From:** Schlagel, Greg
3 **Sent:** Friday, June 04, 2004 3:24 PM
4 **To:** Doyle, Shannon
5 **Subject:** RE: Unacceptable New Business Inspection: HUNTER, SUSAN 917132671

6 hey shannon, weve emailed alot lately! the house we wrote is a solid block house, not a mobile home they must of
7 inspected the wrong place

8 **-----Original Message-----**

9 **From:** Doyle, Shannon
10 **Sent:** Wednesday, June 02, 2004 12:35 PM
11 **To:** Schlagel, Greg
12 **Subject:** Unacceptable New Business Inspection: HUNTER, SUSAN 917132671
13 **Importance:** High

14 **To:** GREG SCHLAGEL

15 **RE: Unacceptable New Business Inspection**

16 **Policy #: 917132671 Effective Date: 5/11/2004**
17 **Insured: HUNTER, SUSAN**

18 We are informing you in advance, of the Customer's notification of cancellation of the policy
19 identified above. We will start the cancellation process 7 days after the above date of this email.
20 The customer will then have 10 - 40 days of coverage before termination, to fix all major conditions
21 or hazards.

22 ***MAJOR: Foundation - Not Continuous Inspector Comments: MOBILE HOME WRITTEN AS
23 A LINE 72**

Dinning Dec., Exhibit 2

Underwriting file notes provided to plaintiffs with discovery show the same information. Dinning Dec., Exhibit 2. Allstate inspected the wrong home and cancelled the policy. Allstate was informed that they inspected the wrong property. Allstate updated the description of the property in its file.

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SEATTLE, WASHINGTON 98121-1419
(206) 622-0494/FAX (206) 587-2478

1 0 17 132671 05/11 05: . /04 05/11/05 LPP-05 MK .ERMINATED 05/07/04 UR
 HUNTER 500 663 2003 AGENT: GREG SCHLAGEL 41 57528
 TERM RSN: ALL OTHER
 2 *DWELLING INFORMATION* OCCUPANTS: UNREL OCC: UNITS: 1
 FT/HYD: 600 MILES/FD: 2 RESP FD: NACHES FLOOR #: 1
 BUILDERS RISK DATE: MM/YY OCC. DATE: 05/04 SMOKERS HH: UNOCC:
 3 OTHR UNOCC:
 PHOTO DESQ:
 ARC CODE: N
 DECILE/SCORE: /000 NO. OF ROOMS: ROOF TYPE: COMPOSITION ROOF YR: 1978
 4 WATER SUPPLY: N
 PROP MGMT CO.:
 DWELLING VALUES CONST: BRICK STONE/MASN PHONE#: ()
 5 REPL COST CALD: 00000 DATE PURCH: 05 04 PIA: Y
 PURCH PRICE: 135000 MARKET VALUE: 142000 REPL VALUE: 128100
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8
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10 Dinning Dec., Exhibit 2

11 Cancellation had already occurred, but Allstate returned and inspected the correct property.

12 Allstate found issues with that property, and chose not to rescind its cancellation of the policy.

13 0 17 132671 05/11 05/11/04 05/11/05 LPP-05 MK TERMINATED 05/07/04 UR
 HUNTER 500 663 0000 AGENT: GREG SCHLAGEL 41 57020
 TERM RSN: ALL OTHER

14 ENTRY NUMBER: 01 DEPARTMENT: OPERATING UNIT: R PERSON: CP
 PROCESS DATE: 10/11/05 TEXT: IC COMPLAINT. CONTACT 18390316. CHAR

15
 16 ENTRY NUMBER: 01 DEPARTMENT: UNDERWRITING UNIT: U PERSON: AD
 PROCESS DATE: 06/30/04 TEXT: NEW INSPECTION ORDERED DUE TO WRONG HOME INI
 TIAL INSPECTED. INSPECTION UNACCEPTABLE DUE TO ROOF IS LIFTING/BUCKLED. VALU
 E SHOULD BE 158,238..BOYLE

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 18 _____ D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE. NA001M
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20 Dinning Dec., Exhibit 2

21 Cancellation had already occurred, but Allstate returned and inspected the correct
 22 property. Allstate found issues with that property, and chose not to rescind its cancellation of
 23 the policy.

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 SEATTLE, WASHINGTON 98121-1419
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1 All of these facts are the same facts that have been in play throughout the litigation of
2 this case. In fact, these are the facts that Plaintiff has rested its arguments on throughout
3 litigation. Plaintiff has consistently argued that Ms. Hunter's policy was never cancelled due to
4 **the incorrect inspection.**

5 "...it is beyond argument that Allstate's only written notice ever sent (and dated
6 6-12-04) alleging a mobile home status disqualification, **WAS NOT A TRUE OR**
7 **ACTUAL REASON** for ever claiming that Ms. Hunter's correct home did not
8 meet the underwriting standards of Allstate for the insurance policy at issue.
9 In fact, Defendants all readily admitted that the notice was an utter mistake and
10 resulted from an inspection of the entirely **WRONG HOME!**"⁵

11 Thus, mobile home disqualification was not the "actual reason" for Allstate's alleged
12 August 7th, 2004 cancellation.⁶

13 Plaintiff has consistently asserted that the fact of Allstate's incorrect inspection
14 rendered its cancellation void. Allstate has never disputed that it initially inspected the wrong
15 home. Allstate has never disputed that it was informed of its mistake, updated its file, and
16 performed a second inspection. This Court has ruled that Allstate's initial cancellation based on
17 the incorrect belief that the property to be insured was a mobile home was effective as a matter
18 of law.⁷ The factual information regarding this argument by Plaintiff remains the same.
19 Plaintiff had all the information relevant to its arguments and was not prejudiced. Defendant's
20 error has in no way impacted Plaintiff's ability to prepare its case.

21 VI. CONCLUSION

22 For the reasons stated above, Defendant respectfully requests that Plaintiff's Motion for
23 Relief under CR 60 be dismissed with prejudice.

24 ⁵ See Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Reconsideration on
25 Plaintiff's Motion for Summary Judgment Against Defendant Allstate, pg. 4.

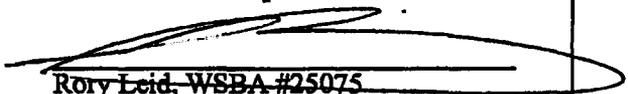
26 ⁶ See Plaintiffs' Motion for Summary Judgment on All Three of Plaintiff's Claims Against
27 Defendant Allstate, pg. 21.

28 ⁷ See Order of November 18, 2010.

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DATED this 20th day of May, 2014.

COLE, WATHEN, LEID & HALL, P.C.



~~Rory Leid, WSBA #25075~~
Jennifer P. Dinning, WSBA #38236
Attorneys for Allstate

1 **CERTIFICATE OF SERVICE**

2 The undersigned makes the following declaration certified to be true under
3 penalty of perjury pursuant to RCW 9A.72.085:

4 On the date given below, I hereby certify that I caused the foregoing to be sent
5 for filing with the Grant County Superior Court via FedEx overnight, and true and
6 correct copies served on the following individuals in the manner indicated:

| | |
|--|---|
| 7 David Trujillo Attorney at Law 3805 Tieton Dr. Yakima, WA 98902 tdtrujillo@Yahoo.com Counsel to Plaintiff | [] FedEx [] Legal Messenger [XX] E-Mail only <i>per email agreement</i> [XX] US Mail |
| 10 Gordon G. Hauschild Wood Smith Henning & Berman LLP 520 Pike Street, Suite 1205 Seattle, WA 98101 ghauschild@wshblaw.com Counsel to Schlager | [] FedEx [] Legal Messenger [XX] E-Mail only <i>per email agreement</i> [XX] US Mail |
| 13 Michael D. Kinkley, P.S. 4407 N. Division, Suite 914 Spokane, WA 99207 mkinkley@me.com | [] FedEx [] Legal Messenger [XX] E-Mail only <i>per email agreement</i> [XX] US Mail |

15 I declare under penalty of perjury under the laws of the State of Washington
16 that the foregoing is true and correct.

17
18 DATED at Seattle, Washington, this 20th day of May, 2014.

19 
20 Kathleen M. Forgett, Legal Assistant

Appendix J

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

THE ESTATE OF SUSAN HUNTER

Plaintiff,

v.

GREGORY SCHLAGEL and JANE DOE
SCHLAGEL, husband and wife and the
marital community comprised thereof; and
ALLSTATE INSURANCE COMPANY,

Defendants.

No. 07-2-00020-4

**DECLARATION OF JENNIFER P.
DINNING IN SUPPORT OF RESPONSE
IN OPPOSITION TO MOTION FOR
RECONSIDERATION AND RESPONSE
IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

I, Jennifer P. Dinning, make the following declaration certified to be true under penalty of perjury pursuant to RCW 9A.72.085:

- 1. I am over eighteen years of age, competent to testify in this matter, and this declaration is based on direct personal knowledge.
- 2. I am one of the attorneys representing Defendant Allstate Insurance Company in the above captioned matter.
- 3. Attached hereto as **Exhibit 1** is a true and correct copy of email correspondence dated June 4, 2004, produced by Defendant Schlagel.
- 4. Attached hereto as **Exhibit 2** are underwriting file notes produced to Plaintiff with Allstate's document production.

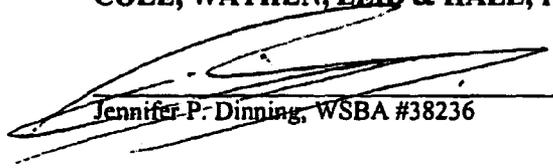


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I declare, under penalty of perjury, under the laws of the state of Washington, that the information contained in this document is true and correct to the best of my knowledge and information.

DATED this 9th day of March, 2012.

COLE, WATHEN, LEID & HALL, P.C.



Jennifer P. Dinning, WSBA #38236

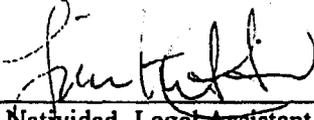
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the parties mentioned below as indicated:

| | |
|---|--|
| <p>David Trujillo Attorney at Law 3805 Tieton Dr. Yakima, WA 98902</p> <p>Fax: 509-972-3841 Email: tdtrujillo@Yahoo.com <i>Counsel to Plaintiff</i></p> | <p><input checked="" type="checkbox"/> FedEx <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> E-Mail</p> |
| <p>Gordon G. Hauschild Wood Smith Henning & Berman LLP 520 Pike Street, Suite 1205 Seattle, WA 98101</p> <p>F: (206) 299-0400 ghauschild@wshblaw.com <i>Counsel to Schlagel</i></p> | <p><input checked="" type="checkbox"/> FedEx <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> E-Mail</p> |
| <p>Scott M. Kinkley Michael D. Kinkley, P.S. 4407 N. Division, Suite 914 Spokane, WA 99207</p> <p>(509) 484-5611 (509) 484-5972 FAX skinkley@gwestoffice.net</p> | <p><input checked="" type="checkbox"/> FedEx <input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> E-Mail</p> |

Dated this 9th day of March, 2012.



Liana Natrividad, Legal Assistant

Schlagel, Greg

From: Schlagel, Greg
Sent: Friday, June 04, 2004 3:24 PM
To: Doyle, Shannon
Subject: RE: Unacceptable New Business Inspection: HUNTER, SUSAN 917132671

hey shannon, weve emailed alot lately! the house we wrote is a solid block house, not a mobile home they must of inspected the wrong place

-----Original Message-----

From: Doyle, Shannon
Sent: Wednesday, June 02, 2004 12:36 PM
To: Schlagel, Greg
Subject: Unacceptable New Business Inspection: HUNTER, SUSAN 917132671
Importance: High

To: GREG SCHLAGEL

RE: Unacceptable New Business Inspection

Policy # 917132671 Effective Date: 5/11/2004
Insured: HUNTER, SUSAN

We are informing you in advance, of the Customer's notification of cancellation of the policy identified above. We will start the cancellation process 7 days after the above date of this email. The customer will then have 10 - 40 days of coverags before termination, to fix all major conditions or hazards.

***MAJOR: Foundation - Not Continuous Inspector Comments: MOBILE HOME WRITTEN AS A LINE 72**

Note to Customer: When these conditions or hazards have been corrected, please contact your agent, who will then contact Judy in Property Services. We will then re-inspect your property. Note: Receipts from contractors verifying that the work needed to correct the conditions or hazards has been completed will be an acceptable alternative to a re-inspection.



9 17 132871 06/11 05, /04 05/11/05 LPP-05 MK .ERMINATED 08/07/04 UR
HUNTER 500 653 2003 AGENT: GREG SCHLAGEL 41 57528

TERM RSN: ALL OTHER

DWELLING INFORMATION OCCUPANTS: UNREL OCC: UNITS: 1
FT/HYD: 500 MILES/FD: 2 RESP FD: NACHES FLOOR #:
BUILDERS RISK DATE: MM/YY OCC.DATE: 05/04 SMOKERS HH: UNOCC:
OTHR UNOCC: DWELL COND:

PHOTO DESC:

ARC CODE: N

DECILE/SCORE: /000 NO. OF ROOMS: ROOF TYPE: COMPOSITION ROOF YR: 1970
WATER SUPPLY: N

PROP MGMT CO.:

DWELLING VALUES CONST: BRICK-STONE/MASN PHONE#: () -

REPL COST CALC: 00020 DATE PURCH: 05 04 PIA: Y
PURCH PRICE: 135000 MARKET VALUE: 140000 REPL VALUE: 128138

DWELLING QUESTIONS

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HUNTER 500 653 2003 AGENT: GREG SCHLAGEL 41 57528

TERM RSN: ALL OTHER

DWELLING INFORMATION OCCUPANTS: UNREL OCC: UNITS: 1
FT/HYD: 500 MILES/FD: 2 RESP FD: NACHES FLOOR #:
BUILDERS RISK DATE: MM/YY OCC.DATE: 05/04 SMOKERS HH: UNOCC:
OTHR UNOCC: DWELL COND:

PHOTO DESC:

ARC CODE: N

DECILE/SCORE: /000 NO. OF ROOMS: ROOF TYPE: COMPOSITION ROOF YR: 1970
WATER SUPPLY: N

PROP MGMT CO.:

DWELLING VALUES CONST: BRICK-STONE/MASN PHONE#: () -
REPL COST CALC: 00020 DATE PURCH: 05 04 PIA: Y
PURCH PRICE: 135000 MARKET VALUE: 140000 REPL VALUE: 128138

DWELLING QUESTIONS

NUMBER:

NUMBER:

NUMBER:

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NUMBER:

D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE.

C DD P P P P P

ENTER NEXT POLICY NUMBER.

DISPLAY

RD001M

WA

9 17 132671 05/11 05/11/04 05/11/05 LPP-95 MK TERMINATED 08/07/04 UR
HUNTER 500 663 2003 . AGENT: GREG SCHLAGEL 41 57528
TERM RSN: ALL OTHER
INSURED: SUSAN HUNTER
253 BRISKEY LANE NACHES WA 989379723
NO ZIP4:
STAT STATE/RO: WA 48 NORTHWEST COUNTY: 039 BOOTH:
TYPE: REIMBURSE PROVIS TOWN CLS(ADJ): 07 VERS: 0004
CLS: 2157200 TER ZN: 002 ORG YR/NTR: 04 00 REYR: CITY: 088
TERM RENL: INSP: X MM/DD/YY
FAMILIES: 1 STORIES: SQ FT: 1800 YR BUILT: 1960
BLDG REMOD/RENOV: PROOF RENOVATE:
TIER CODE:
LEGAL DESC RTD ZIP: 98937
UL ROOF:
ALSTAR#: 000035413180167 REVIST: HMEDT: 05/11/2004
PROGRAM DATE: ORIG OWNER: NON-RESIDUAL: CPI DATE:
PREFERRED LANGUAGE: POLICY INCIDENT WAIVED: HCPI DATE:
AGE OF RISK:
INITIAL LAPSE: C/R REASON:
D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE. PD001M
C DD P P P P P ENTER NEXT POLICY NUMBER. DISPLAY WA

00121

9 17 132871 05/11 05/11/04 05/11/05 LPP-95 MK TERMINATED 08/07/04 UR
HUNTER 509 853 2003 AGENT: GREG SCHLAGEL 41 57528
TERM RSN: ALL OTHER

ENTRY NUMBER: 01 DEPARTMENT: OPERATING UNIT: R PERSON: CP
PROCESS DATE: 10/11/06 TEXT: IC COMPLAINT. CONTACT 10300318. CHAR

ENTRY NUMBER: 01 DEPARTMENT: UNDERWRITING UNIT: U PERSON: SD
PROCESS DATE: 06/30/04 TEXT: NEW INSPECTION ORDERED DUE TO WRONG HOME INI
TIAL INPSECTED. INSPECTION UNACCEPTABLE DUE TO ROOF IS LIFTING/BUCKLED. VALU
E SHOULD BE 158,238..SDOYLE

___ D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE. .
C DD P P P P P ENTER NEXT POLICY NUMBER. DISPLAY

NA001M
WA

00338

9 17 132871 05/11 05/11/04 05/11/05 LPP-98 MK TERMINATED 08/07/04 UR
HUNTER 509 853-2000 AGENT: GREG SCHLAGEL 41 57528

TERM RSN: ALL OTHER

DWELLING INFORMATION OCCUPANTS: UNREL OCC: UNITS: 1
FT/HYD: 500 MILES/FD: 2 RESP FD: NACHES FLOOR #: .
BUILDERS RISK DATE: MM/YY OCC.DATE: 05/04 SMOKERS HH: UNOCC: .
OTHR UNOCC: DWELL COND:
PHOTO DESC:

ARC CODE: N

DECILE/SCORE: /000 NO. OF ROOMS: ROOF TYPE: COMPOSITION ROOF YR: 1970
WATER SUPPLY: N

PROP MGMT CO.:

DWELLING VALUES CONST: BRICK-STONE/MASN PHONE#: () -

REPL COST CALC: 00020 DATE PURCH: 05 04 PIA: Y

PURCH PRICE: 135000 MARKET VALUE: 140000 REPL VALUE: 128138

DWELLING QUESTIONS RENT WK:

NUMBER:

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RD001M

C DD P P P P P

ENTER NEXT POLICY NUMBER.

DISPLAY

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00350

9 17 132671 05/11 05/11/04 05/11/05 LPP-05 MK TERMINATED 05/07/04 UR
HUNTER 509 053 2003 AGENT: GREG SCHLAGEL 41 57528
TERM RSN: ALL OTHER

INSURANCE REFUND CHECK
ALLSTATE INSURANCE COMPANY
DATE OF ISSUE: JUNE 16, 2004

POLICY NUMBER: 9 17 132671 05/11 12
PAY TWO HUNDRED SEVENTY AND 00/100 DOLLARS

CHECK AMOUNT: \$ 270.00

TO THE ORDER OF
SUSAN HUNTER
253 BRISKEY LANE
NACHES WA 98937-9723

_____ D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE. BI001M
C DD P P P P P ENTER NEXT POLICY NUMBER. DISPLAY WA

9 17 132671 05/11 05/11/04 05/11/05 LPP-05 MK TERMINATED 08/07/04 UR
HUNTER 300 653-2003 AGENT: GREG SCHLAGEL 41 57528
TERM RSN: ALL OTHER
PAYMENT OPTIONS POLICY REFUND CHECK PAGE 2

| DUE DATE | MINIMUM AMOUNT DUE | TO PAY IN FULL | TOTAL INSTALL FEE |
|----------|--------------------|----------------|-------------------|
| | | | |

(EACH MONTHLY PAYMENT INCLUDES A INSTALLMENT FEE.)
D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE. BI002M
C DD P P P P P ENTER NEXT POLICY NUMBER. DISPLAY E WA

9 17 132671 05/11 05/11/04 05/11/05 LPP-95 MK TERMINATED 08/07/04 UR
HUNTER 509 653 2003 AGENT: GREG SCHLAGEL 41 57528
TERM RSN: ALL OTHER

POLICY REFUND CHECK PAGE 3
TRANSACTION HISTORY (FROM 05/22/04 TO 06/16/04)

| | | |
|----------|--------------------------------|------------|
| 05/22/04 | PREVIOUS BALANCE | \$ 352.00+ |
| 06/04/04 | PAYMENT RECEIVED - THANK YOU | \$ 352.00- |
| 06/04/04 | POLICY CHANGE | \$ 15.00- |
| 06/16/04 | POLICY CANCELLATION ADJUSTMENT | \$ 255.00- |
| 06/16/04 | REFUND ISSUED | \$ 270.00+ |
| <hr/> | | |
| 06/16/04 | BALANCE(TO PAY IN FULL) | \$ 0.00 |

D ENTER NEXT. FORMAT CODE, PAGE NUMBER AND MODE... BI003M
C DD P P P P P ENTER. NEXT POLICY NUMBER. DISPLAY WA

9 17 132671 05/11 05/11/04 05/11/05 LPP-96 MK TERMINATED 08/07/04 UR
HUNTER 509 853 2003 AGENT: GREG SCHLAGEL 41 57528
TERM RSN: ALL OTHER

POLICY REFUND CHECK

PAGE 4

IMPORTANT INFORMATION:

You are entitled to a refund of part of your premium. The amount reflects any payment(s) you may have made, less the charge for coverage provided prior to when your policy terminated on AUGUST 07, 2004.

If you have any questions, please contact your agent or producer of record.

_____ D ENTER NEXT FORMAT CODE, PAGE NUMBER AND MODE.
C DD P P P P P ENTER NEXT POLICY NUMBER. DISPLAY

BI004M
WA

00323

Allstate

ALLSTATE INSURANCE COMPANY
75 EXECUTIVE PARKWAY
HITCHCOCK OH 44237-0001

RO700301

NOTICE OF CANCELLATION

Policy Description:
Policy Number:
Cancellation Date and Time:

June 12, 2004
LANDLORD PACKAGE
00000917132673
August 07, 2004 at 12:01AM Standard Time
At the location of the property involved

SUEAN HODNER
253 BRISKEY LANE
NACHES WA 98937-9723

Location of Property: 251 BRISKEY LANE NACHES WA 98937-9723

We are writing to inform you that the policy identified above will be canceled as of the cancellation date and time shown above due to the following reason(s).

Your mobile home does not qualify for an Allstate Landlord Package policy.

The protection provided by your policy will remain in effect until the cancellation date and time shown above. However, in the event that any policy premium has not yet been paid, we may cancel the policy prior to the cancellation date and time.

Please contact your Allstate agent if you cannot be reached at the reason(s) listed above. He or she may be able to reinstate your policy or offer you a new policy.

Because you will be without protection as of the cancellation date and time shown above, we encourage you to obtain insurance coverage elsewhere.

If you have any questions about your policy or the reason(s) for this cancellation, please don't hesitate to contact your Allstate agent.

Signature:

R.S. Cooper

my tel
CRISO MCCLAGEL
302-784-8110

IMPORTANT NOTICE(S)

Replacement of Property Insurance. You may qualify to obtain insurance through another insurer or through the Washington FAIR Plan. For further information, please contact your agent.

Page 1

529 766 2427

FURNITURE WEST

MR-13-2005 15:54

00024

50 d
Structure

206

125855888

JUN-28-2004 17:18

Replacement Cost: \$168,238

Construction Type: Block

Roof Type: Wood Shakes

Roof Life Remaining: < 5 years

Occupancy: Tenant

Exits: Front

Fire Extinguisher: No

Smoke Detectors: No

Fire Protection: Fire Department within 5 miles, No Fire Hydrant within 1000 feet

Business on Premises: No

Mobile Home: Shift Tied Down In a Park

Inspection Number: J80700810305
 Date: 4/27/04 10:28 AM

125855888

JUN-28-2004 17:18

00108

Appendix K

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COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

THE ESTATE OF SUSAN HUNTER,)
)
 Plaintiff,)
)
 v.)
)
 GREGORY SCHLAGEL and JANE DOE)
 SCHLAGEL, husband and wife and the)
 marital community comprised thereof; and)
 ALLSTATE INSURANCE COMPANY)
)
 Defendants.)

Case No.: 07-2-00020-4
RE-NOTE FOR HEARING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
(SUB# 332) FILED ON 2-21-2012

TO: DEFENDANTS SCHLAGEL, by and through their attorney of record, Gordon Hauschild;
TO: DEFENDANT ALLSTATE INSURANCE COMPANY, by and through their attorney of
record Rory W. Leid, III; and
TO: THE CLERK OF THE COURT;

PLEASE NOTE that the Plaintiff Estate of Susan Hunter is re-noting Plaintiff's Motion
for Summary Judgment (Sub #332 filed on February 21, 2012) to be heard on January 8, 2014 at
4:00 p.m. before the honorable Judge Antosz. The Plaintiff requests that the court consider
clerk's sub #'s 300, 331, 332, 333, and 334 filed February 21, 2012 in support of this motion.

RENOTE FOR HEARING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT- 1

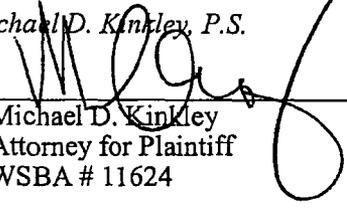
Michael D. Kinkley P.S.
4407 N. Division, Suite 914.
Spokane, WA 99207
(509) 484-5611



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Dated this the 10th day of December, 2013.

Michael D. Kinkley, P.S.



Michael D. Kinkley
Attorney for Plaintiff
WSBA # 11624

RENOTE FOR HEARING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT- 2

Michael D. Kinkley P.S.
4407 N. Division, Suite 914.
Spokane, WA 99207
(509) 484-5611

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COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

THE ESTATE OF SUSAN HUNTER,)
)
Plaintiff,)
)
v.)
)
GREGORY SCHLAGEL and JANE DOE)
SCHLAGEL, husband and wife and the)
marital community comprised thereof; and)
ALLSTATE INSURANCE COMPANY)
)
Defendants.)

Case No.: 07-2-00020-4
NOTE FOR HEARING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
FOR INSURANCE POLICY CONTRACT
DAMAGES

TO: DEFENDANTS SCHLAGEL, by and through their attorney of record, Gordon Hauschild;
TO: DEFENDANT ALLSTATE INSURANCE COMPANY, by and through their attorney of
record Rory W. Leid, III; and
TO: THE CLERK OF THE COURT;

PLEASE NOTE that the Plaintiff Estate of Susan Hunter has filed Plaintiff's Motion for
Summary Judgment for Insurance Policy Contract Damages to be heard on January 8, 2014 at
4:00 p.m. before the honorable Judge Antosz.

Dated this the 10th day of December, 2013.

Michael D. Kinkley, P.S.

Michael D. Kinkley
Attorney for Plaintiff
WSBA # 11624

NOTE FOR HEARING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT - 1

Michael D. Kinkley P.S.
4407 N. Division, Suite 914.
Spokane, WA 99207
(509) 484-5611

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF GRANT

10 THE ESTATE OF SUSAN HUNTER,)
11)

12 Plaintiff,)

13 v.)

14 GREGORY SCHLAGEL and JANE DOE)
15 SCHLAGEL, husband and wife and the)
16 marital community comprised thereof; and)
17 ALLSTATE INSURANCE COMPANY)

18 Defendants.)
19)
20)
21)
22)
23)
24)
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Case No.: 07-2-00020-4

MOTION FOR SUMMARY JUDGMENT
FOR JUDGMENT AGAINST ALLSTATE
INSURANCE COMPANY FOR PAYMENT
FOR MARCH 6, 2006 INSURED FIRE
LOSS, FOR BREACH OF CONTRACT, FOR
INSURANCE BAD FAITH

18 On March 6, 2006, a fire destroyed the residence and surrounding property
19 located at 351 Briskey, Natches, Washington. The property was owned by Mrs.
20 Susan Hunter. She has now died and her estate has been substituted as the Plaintiff
21 in this lawsuit. Mrs. Hunter inherited the property when her father died March 6,
22 2006. Mr. Schlagel had for a long time been providing Mrs. Hunter, Allstate
23 Insurance on her own residence. Naturally when she inherited her father's house,
24 she contacted Mr. Schlagel to arrange insurance for her father's home, as well.

MOTION FOR SUMMARY JUDGMENT - 1

Michael D. Kinkley P.S.
4407 N. Division, Suite 914.
Spokane, WA 99207
(509) 484-5611

1 Allstate had for a long time been providing Mrs. Hunter, Allstate Insurance on her
2 residence, so naturally when she inherited her father's house, she contacted Mr.
3 Schlagel who arranged insurance for the father's home as well.

4 The inherited house was rented. The house was a fixed dwelling made of
5 "brick". Clerks sub 334, EX 305, p. 2. Mrs. Hunter lived next door in a fabricated
6 home. An independent contractor hired by Allstate apparently became confused
7 between the two homes. She mistakenly lead Allstate to believe that it had issued
8 an insurance policy on a *rented mobile* home, which apparently they do not do.
9 Allstate notified their Agent Schlagel of the intent to cancel since they did not
10 insure rented mobile homes.
11
12

13 Mr. Schlagel discussed with Mrs. Hunter that the newly insured property
14 was *not* a mobile home, that it was fixed and constructed of "brick", and that
15 Allstate already insured (through him) the "mobile home", that she lived in.
16

17 Mr. Schlagel informed Allstate. On June 5, 2004. Allstate issued "Amended
18 Declarations" showing the property as "brick" .
19

20 *But* on June 12, 2004, Allstate sent a notice of cancellation canceling for the
21 *sole reason* that the property was a *mobile home*. Since the property is not a
22 mobile home, the notice was legally ineffective to cancel the policy. RCW
23 48.18.390; Judge Knodell Order, clerk's sub # 405. Allstate had refused to pay
24
25

1 benefits due under the policy claiming it had been cancelled in 2004. Allstate still
2 has not paid, but has failed to identify any reason it is not now paying.

3 Allstate failed to follow the Insurance code in attempting cancellation so
4 that the cancellation was not legally effective. Clerk's sub #405. Allstate
5 continues to refuse to pay under the insurance policy despite the court's ruling that
6 the property was insured at the time of the fire.

8 Allstate insured the property against the fire loss by a policy of insurance
9 dated May 11, 2004, together with Amended Declarations of Insurance dated June
10 5, 2004¹. The policy automatically renewed (on its anniversary) by operation of
11 law on May 11, 2005(coverage from May 11, 2005 through **May 11, 2006**). RCW
12 48.18.2901. The loss occurred on **March 6th, 2006**,

14 Plaintiff, Hunter Estate requests that the court enter a money judgment
15 again in favor of the *Estate of Susan Hunter*, against Allstate Insurance Company
16 based on the policy of insurance issued by Allstate on May 11, 2004 together with
17 the amended Declarations effective June 5, 2004. In addition, Plaintiff requests a
18
19
20

21 ¹ Allstate misrepresented the policy provisions and concealed the existence of the "Amended Declarations" until
22 January 2012. DR 300. Allstate had previously been misrepresenting that the May 11, 2004 Insurance Declarations
23 were a part of the policy but the June 5, 2004 Declarations had superseded the May 11, 2004 Declarations. This is
24 important because to successfully defend Plaintiff's 2009 Summary Judgment Allstate was able to convince Judge
25 Knodell that Allstate "sincerely believed" that the insured property was a mobile home. But the (concealed) June 5,
2004 specifically identified the dwelling as being "brick". Allstate wrote the insurance contract (policy declarations)
and set the premium price for "brick" home.

In 2009, if it had revealed the June 5, 2004 Insurance policy Declarations it would not have been able to
argue that it "sincerely believed he brick home it insured was a Mobil home. See attached. DR ___ (ct order sincerely
believe) In 2009, Mr. Hart affirmatively identified *only* the May 11, 2004 Insurance Policy Declarations filed to
defeat Plaintiff motion for Summary Judgment. DR 82, Declaration of David Hart.

1 determining that Allstate committed the tort of bad faith for refusing to pay the
2 claim.

3 The Plaintiff, Estate of Susan Hunter is entitled to payment on several
4 provisions of the policy. Plaintiff has filed evidence demonstrating that the losses
5 are greater than the overages available.
6

| | | |
|----|---|------------------------------|
| 7 | 1. Dwelling Protection: | \$127,638 ² . |
| 8 | 2. Other Structure Protection: | \$12,314.00 ³ |
| 9 | 3. CONTENTS | up to \$10,000 |
| 10 | 4. CLEANUP AND DEBRIS REMOVAL | \$6406.00 ⁴ |
| 11 | | |
| 12 | | |
| 13 | SubTotal: | \$156,358 |
| 14 | | |
| 15 | 5. Prejudgment Interest on above ⁵ | \$147,289.65 |
| 16 | Subtotal: | \$303,647.65 |
| 17 | | |
| 18 | 5. Lost Rental Income: | \$63,000.00 |
| 19 | 6. Interest on lost rent: | \$ _____, see attached table |
| 20 | | |

21
22 ² \$128,138 - \$500.00 deductible = \$127,638, June 5, 2004 Insurance Policy Declarations, attached.

23 ³ \$12,814 minus \$500.00 deductible = \$12,314.00. June 5, 2004, Amended Insurance Declarations, see attached.

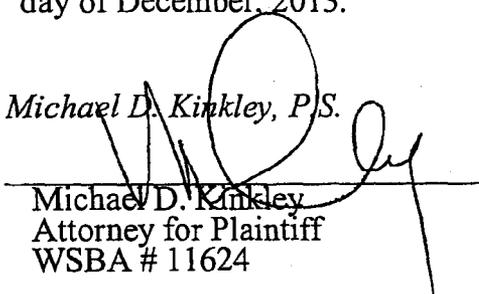
24 ⁴ 5% of 128,138 = \$6406. Amended Insurance Declarations, see attached.

25 ⁵ \$156,358 x .12 = \$18,762.18 per year divided by 365 = \$51.41 per day, x 2865 days (since fire March 6, 2006) to
January 8, 2007 = \$147,289.65.

1 Plaintiff requests that the court enter a judgment in favor of the Estate of Susan
2 Hunter against Allstate Insurance Company for insurance coverage available for
3 the fire loss on March 6, 2006.

4 Dated this the 11th day of December, 2013.

5
6 *Michael D. Kinkley, P.S.*

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8 
9 Michael D. Kinkley
10 Attorney for Plaintiff
11 WSBA # 11624
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COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

THE ESTATE OF SUSAN HUNTER,)
)
Plaintiff,)
)
v.)
)
GREGORY SCHLAGEL and JANE DOE)
SCHLAGEL, husband and wife and the)
marital community comprised thereof; and)
ALLSTATE INSURANCE COMPA)
)
Defendants.)
)
)
)

Case No.: 07-2-00020-4
MEMORANDUM FOR SUMMARY
JUDGMENT AGAINST ALLSTATE
INSURANCE COMPANY FOR BREACH OF
CONTRACT FOR FAILING TO PAY FOR
PLAINTIFF'S MARCH 6, 2006 INSURED
FIRE LOSS

I. Breach of Contract.

Plaintiff seeks a judgment for damages for Allstate's breach of the insurance policy contract. On May 11, 2004, Allstate issued an insurance policy on May 11, 2004. On June 5, 2004, Allstate issued amended insurance policy declarations that became part of the policy and superseded the Declarations issued on May 11, 2004. Plaintiff hereby incorporates by reference Plaintiff

1 memorandum in support of Summary Judgment filed February 29, 2012 at Clerk's
2 sub number 333, as though fully set forth herein.

3 On March 6, 2006, a fire destroyed the residence and surrounding property
4 located at 351 Briskey Lane, Naches, Washington. The property was owned by
5 Mrs. Susan Hunter. She has now died and her estate has been substituted as the
6 Plaintiff in this lawsuit.

8 On May 11, 2004, Allstate issued an annual policy of Insurance for
9 property located at 351 Briskey Lane, Naches, Washington (for a policy period of
10 May 11, 2004 through May 11, 2005)¹. On June 5, 2004, Allstate issued Amended
11 Insurance Policy Declarations. On May 11, 2005, the annual policy automatically
12 renewed by operation of law. RCW 48.18.2901(1). Allstate did not attempt to
13 cancel in writing therefore the insurance policy automatically renews on an annual
14 basis from May 11, 2005 through May 11, 2006).

17 On March 6, 2004, a fire destroyed the property. Allstate Insurance
18 Company has refused to pay under this insurance contract.

20 Allstate defended this lawsuit by claiming the Insurance policy had been
21 cancelled on June 12, 2004. But that defense has now been fully rejected by the
22 court since Allstate's attempt at cancellation did not comply with the insurance
23

24
25

¹ Allstate's agent Shlagel received the check for the premium but

1 code and was therefore legally ineffective. Clerk's sub #405 Order of Judge
2 Knodell.

3 The insurance policy was *not* cancelled prior to the fire. On May 11, 2005,
4 the insurance policy automatically (by operation of law, RCW 48.18.3901(1)²,
5 renewed on its anniversary (For a new period of insurance coverage from May 11,
6 2005 to May 11, 2006). RCW 48.18.3901³(annual policy of homeowners
7 insurance automatically renews for one year if insurer does not cancel in writing).
8

9 On March 6, 2006, a fire destroyed the insured property. The Plaintiff,
10 Estate of Susan Hunter is entitled to payment pursuant to the insurance policy. See
11 May 11, 2004 Insurance Policy and Amended Insurance Declarations (June 5,
12 2004), attached.
13

14 "Interpretation of an insurance policy is a question of law and '[w]here the
15 language in a contract for insurance is clear and unambiguous, the court should
16 enforce the policy as written.' *Matthews v. Penn-America Ins. Co.*, 106
17
18
19
20

21 ² None of the exceptions to automatic renewal apply. RCW 48.18.2901. Allstate admits that it
22 failed to send any notice of cancellation relate to the automatic annual renewal. "Summary
23 judgment entitles one party to judgment as a matter of law and is reviewed de novo." *Troxell v.*
24 *Rainier Pub. Sch. Dist. No. 307*, 154 Wash.2d 345, 350, 111 P.3d 1173 (2005) citing *Castro v.*
25 *Starwood Sch. Dist. No. 401*, 151 Wash.2d 221, 224, 86 P.3d 1166 (2004)); *Rivas v. Overlake*
Hosp. Med. Ctr., 164 Wash. 2d 261, 266, 189 P.3d 753, 755 (2008). Allstate has admitted that
the only "writing" sent in an attempt to cancel the policy or avoid renewal was the letter dated
June 12, 2004.

1 Wash.App. 745, 747-48, 25 P.3d 451 (2001); *Am. States Ins. Co. v. Symes of*
2 *Silverdale, Inc.*, 150 Wash. 2d 462, 472, 78 P.3d 1266, 1271 (2003).

3 II. Summary Judgment Standard- Issues of Fact Not disputed

4 Summary judgments shall be granted only if the pleadings, affidavits,
5 depositions or admissions on file show there is no genuine issue as to any material
6 fact, and that the moving party is entitled to judgment as a matter of law. CR 56;
7 *Balise v. Underwood*, 62 Wash. 2d 195, 199, 381 P.2d 966, 968-69 (1963);
8 *Capitol Hill Methodist Church of Seattle v. Seattle*, 52 Wash.2d 359, 324 P.2d
9 1113.
10
11

12 “An adverse party may not rest upon the mere allegations or denials of his
13 pleading, but his response, by affidavits or as otherwise provided in this rule, must
14 set forth specific facts showing that there is a genuine issue for trial. If he does not
15 so respond, summary judgment, if appropriate, shall be entered against him.” CR
16 56(e). Summary Judgment may be entered for portions of Plaintiff’s case. CR 56
17 (a) and (d). In this case, “Material facts exist without substantial controversy”. CR
18 56(d). There is no dispute so the court should enter a determination of the terms of
19 the Insurance Policy and to the covered Loss incurred.
20
21

22 III. Terms of the Insurance Policy- Contract

23 “The interpretation of an insurance policy is a question of law, and
24 summary judgment is appropriate if the contract has only one reasonable meaning
25

1 when viewed in the light of the parties' objective manifestations. *Hall v. Custom*
2 *Craft Fixtures, Inc.*, 87 Wash.App. 1, 9, 937 P.2d 1143 (1997); *Port of Seattle v.*
3 *Lexington Ins. Co.*, 111 Wash. App. 901, 907, 48 P.3d 334, 337 (2002).

4 The court should determine that on March 6, 2006 (at the time of the fire),
5 the property was insured by Allstate Insurance Company pursuant to the terms of
6 the May 11, 2004 Policy of Insurance and June 5, 2004 amended Insurance
7 Declarations (hereafter "Contract"). It is undisputed that the June 5, 2004,
8 "Amended Landlord's Package Policy Declarations" provide for the following
9 coverage and limits:
10
11

| | | |
|----|-----------------------------------|----------|
| 12 | i. Dwelling Protection | 128, 138 |
| 13 | ii. Other Structure Protection | 12, 814 |
| 14 | iii. Personal Property Protection | 10,000 |
| 15 | iv. Fair Rental Income Protection | |

16
17 Clark's sub # 334, EX 305, "Amended Landlord's Package Policy Declarations"
18 filed by Allstate at clerk's sub # 300 (Declaration of Jennifer Dinning). The above
19 coverage is to be reduced by a "\$500.00 all peril deductible".
20

21 IV. Summary Judgment – Loss, Payment Due

22 The court may enter Summary Judgment if "Material facts exist without
23 substantial controversy" (CR 56(d),(a)). "The purpose of money damages in
24 contract cases is to place the injured party in as good a position as if he had
25

1 received full performance. *Baldwin v. Alberti*, 58 Wash.2d 243, 245, 362 P.2d 258
2 (1961); *Prier v. Refrigeration Eng'g Co.*, 74 Wash. 2d 25, 30, 442 P.2d 621, 624
3 (1968).

4 Allstate admitted the value of the property exceeded the limits of coverage.
5
6 Bates # Value 156, In response to discovery requests, Allstate produced internal
7 computer records which indicted that Allstate admits that the property "Value
8 should be \$156, 238.00 according to Allstate employee S. Doyle. Allstate Bates #
9 338.

| | | |
|----|---|-----------------|
| 11 | 1. Dwelling Protection: | \$127, 638. |
| 12 | a. Other Structure Protection: | \$12, 314.00 |
| 13 | b. CONTENTS | up to \$10,000 |
| 14 | CLEANUP AND DEBRIS REMOVAL | \$6406.00 |
| 15 | Subtotal | \$156, 358 |
| 16 | c. Prejudgment Interest on above | \$\$147, 289.65 |
| 17 | d. Subtotal: | |
| 18 | | |
| 19 | | |
| 20 | \$303,647.65 | |
| 21 | e. Lost rent (\$750.00 per month x 84 months) | 63,000.00 |

22 Lost rent under the policy is limited to one year. The remaining years are images
23 for failing to pay the claim.

24 V. Allstate committed the tort of Insurance Bad Faith

1 The tort of bad faith recognizes that traditional contract damages do not
2 provide an adequate remedy for a bad faith breach of contract because an
3 insurance contract is typically an agreement to pay money, and recovery of
4 damages is limited to the amount due under the contract plus interest. 15A Ronald
5 A. Anderson, *Couch on Insurance* § 56:10, at 17 (2d ed. 1983).

7 An insurer has a duty of good faith to its policyholder and violation of that
8 duty may give rise to a tort action for bad faith. *Truck Ins. Exch. v. Vanport*
9 *Homes, Inc.*, 147 Wash.2d 751, 765, 58 P.3d 276 (2002). To succeed on a bad
10 faith claim, the policyholder must show the insurer's breach of the insurance
11 contract was **unreasonable, frivolous, or unfounded**. *Overton v. Consol. Ins.*
12 *Co.*, 145 Wash.2d 417, 433, 38 P.3d 322 (2002). Whether an insurer acted in bad
13 faith is a question of fact. *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142
14 Wash.2d 784, 796, 16 P.3d 574 (2001).

17 Accordingly, an insurer is only entitled to a directed verdict or a dismissal on
18 summary judgment of a policyholder's bad faith claim if there are no disputed
19 material facts pertaining to the reasonableness of the insurer's conduct under the
20 circumstances, or the insurance company is entitled to prevail as a matter of law
21 on the facts construed most favorably to the nonmoving party. *Indus. Indem. Co.*
22 *of the NW, Inc. v. Kallevig*, 114 Wash.2d 907, 920, 792 P.2d 520 (1990); *Smith v.*
23 *Safeco Ins. Co.*, 150 Wash. 2d 478, 484, 78 P.3d 1274, 1276-77 (2003).

1 Claims by insured against their insurers for bad faith are analyzed applying the
2 same principles as any other tort: duty, breach of that duty, and damages
3 proximately caused by any breach of duty. See, e.g., *Safeco Ins. Co. v. Butler*, 118
4 Wash.2d 383, 388, 823 P.2d 499 (1992). As a substantive matter, an insurer has a
5 duty of good faith to all of its policyholders, and to succeed on a bad faith claim, a
6 policyholder must show the insurer's breach of the insurance contract was
7 **unreasonable, frivolous, or unfounded**. *Overton*, 145 Wash.2d at 433, 38 P.3d
8 322. *Ellwein* clarifies that part of this inquiry is **whether the insurance company**
9 **did have a cognizable reason to deny coverage**. *Smith v. Safeco Ins. Co.*, 150
10 Wash. 2d 478, 485, 78 P.3d 1274, 1277 (2003).

13 Allstate's refused to pay the claim based on its argument that the policy had
14 been cancelled before the fire by a "notice of cancelation" dated June 12, 2004.
15 That argument was rejected by the court. Allstate's refusal to pay the claim was
16 based on a misunderstanding of Washington Insurance law which made Allstate's
17 attempt at cancelling legally invalid. An error in understanding Washington law
18 cannot be an excuse for an insurance company's failure to pay a claim.
19
20

21 In addition, John Miller, an Allstate employee recognized that Allstate had
22 not legally cancelled the policy, so Allstate was aware that their grounds for
23 refusing to pay the claim was unfounded.
24
25

1 Determinations of what reason(s) Allstate is claiming for failing to pay the claim
2 is complicated by Allstate's violation of other sections of the Insurance Code.
3 Allstate was required to specify the reason(s) I was refusing to pay the claim.
4 Wash. Admin. Code 284-30-380(1)⁴. provides that: "(1) ...the insurer must notify
5 the first party claimant whether the claim has been accepted or denied. The insurer
6 must not deny a claim on the grounds of a specific policy provision, condition, or
7 exclusion unless **reference to the specific provision, condition, or exclusion is**
8 **included in the denial.** The denial must be **given to the claimant in writing** and
9 **the claim file of the insurer must contain a copy of the denial.** Allstate failed to
10 provide writing and their claim file does not reflect any writing showing the reason
11 for the failure to pay the claim. Wash. Admin. Code 284-30-380(1).
12
13

14 In order to establish bad faith, an insured is required to show the breach was
15 **unreasonable, frivolous, or unfounded.** *Wolf v. League Gen. Ins. Co.*, 85
16 Wash.App. 113, 122, 931 P.2d 184 (1997). Bad faith will not be found where a
17 denial of coverage or a failure to provide a defense is based upon a reasonable
18 interpretation of the insurance policy. *Transcontinental Ins. Co. v. Washington*
19 *Pub. Utils. Dists.' Util. Sys.*, 111 Wash.2d 452, 470, 760 P.2d 337 (1988); *Kirk v.*
20
21
22
23

24 ⁴ (1) Within fifteen working days after receipt by the insurer of fully completed and executed proofs of loss, the
25 insurer must notify the first party claimant whether the claim has been accepted or denied. The insurer must
not deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to the
specific provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in
writing and the claim file of the insurer must contain a copy of the denial. Wash. Admin. Code 284-30-380

1 *Mt. Airy Ins. Co.*, 134 Wash. 2d 558, 560-61, 951 P.2d 1124, 1126 (1998). There
2 is nothing in the policy that supports a denial of the claim.

3 It was unreasonable for Allstate to refuse to pay the claim. Allstate is
4 required to know Washington insurance law.. Allstate insured a fixed "brick"
5 dwelling. To claim as s reason for cancellation was that the property was a mobile
6 home was unreasonable. Allstate did not state an actual reason for cancellation.
7 But even more importantly, Allstate was required to know that the notice they had
8 sent out in 2004 did not state an actual reason so was legally ineffective, to know
9 when the claim was made that the policy had not been cancelled.
10
11

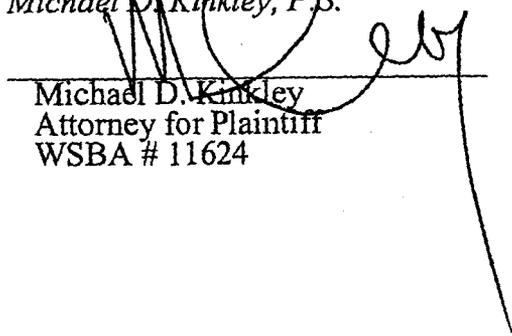
12 It was unreasonably for Allstate to argue the policy had ben canceled. The
13 "cancelled" argument was unfounded because it was wrong as a matter of law.
14

15 On September 28, 2006, Allstate was informed by their own employee,
16 John Miller that the cancellation had been ineffective and that if Allstate had a
17 different reason for cancellation a new written notice needed to have been sent.
18 Allstate Bates #246. Allstate may claim it refused to pay due o the alleged
19 condition of the roof. But no Notice of cancelation was ever sent identifying that
20 as a reason. As Allstate's own employee informed Allstate that its claim of
21 cancellation base on any condition of roof was "unfounded" since no letter
22 regarding "roof" was ever sent. Such a letter would have been required if Allstate
23
24
25

1 intended to cancel the policy for this reason. RCW 48.18.290; Allstate Bates
2 #246, memo from John Miller.

3
4 Dated this the 11th day of December, 2013.

5
6 *Michael D. Kinkley, P.S.*

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8 _____
9 Michael D. Kinkley
10 Attorney for Plaintiff
11 WSBA # 11624

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MEMORANDUM FOR SUMMARY
JUDGMENT - 11

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