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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Circuit Court Judge

Court of Appeals Case No. 2013-002578
Circuit Court Case No. 2012-CP-07-1352

Bruce R. Hoffman,

Appellant,

v.

Seneca Specialty Insurance Company; CRC Insurance Company; CRC Insurance Services, Inc. d/b/a
Southern Cross Underwriters of Sumter; Aydlette Services of Lowcountry, Inc., and Capstone ISG, Inc.,
Defendants,

Of whom Seneca Specialty Insurance Company is the Respondent.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
BRUCE R. HOFFMAN,	)	CASE NO. 2012-CP-07-01352
	)	
PLAINTIFF,	)	
	)	
VS.	)	
	)	
SENECA SPECIALTY INSURANCE	)	
COMPANY; CRC INSURANCE	)	
SERVICES, INC. D/B/A SOUTHERN	)	
CROSS UNDERWRITERS OF	)	
SUMTER; AYDLETTE SERVICES OF	)	
LOWCOUNTRY, INC.; AND	)	
CAPSTONE ISG, INC.	)	
	)	
DEFENDANTS.	)	
	)	

ORDER

2012 MAY 30 PM 4:10
 CLERK OF COURT
 JUDICIAL CIRCUIT
 BEAUFORT COUNTY, S.C.

This matter comes before me on Plaintiff's Motion for Summary Judgment, which was filed with this Court on May 4, 2012. Having read and considered the motion, memoranda of law and submissions from counsel and having heard oral arguments on May 22, 2012, I find as follows:

FACTS

This case arises out of an insurance claim involving the Plaintiff's property located at 574 Sea Island Parkway, Saint Helena Island, South Carolina. Plaintiff seeks to recover insurance proceeds for damage to his office building caused by raccoons. Defendant Seneca Specialty Insurance Company denied Plaintiff's claim due to an exclusion in its policy regarding damage caused by "animals". Plaintiff alleges that the exclusion is ambiguous and seeks summary judgment as to the issue of coverage.

1871

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SUMMARY JUDGMENT LEGAL STANDARD

Summary judgment is only appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." South Carolina Rules of Civil Procedure (SCRCP) 56(c). Under Rule 56(c), the party seeking summary judgment must clearly establish by the record the absence of a triable issue of fact. *Baughman v. American Tel. & Tel. Co.*, 410 S.E.2d 537, 545 (1991).

To determine whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Osborne v. Adams*, 550 S.E.2d 319, 320 (2001). After the moving party has met this initial burden, the non-moving party must set forth or point to specific facts showing there is a genuine issue of material fact. *Thomas v. Waters*, 445 S.E.2d 654, 660 (S.C. Ct. App. 1994). The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment. *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995).

LAW

At the heart of the issue is the Plaintiff's assertion that, as a matter of law, the use of the words "...other animals" in the context of an insurance exclusion is vague and ambiguous on its face.¹ The policy in question excludes coverage for damage caused by "...Nesting or infestation,

¹ As a preliminary matter, Defendant Seneca objects to the timing of the motion, asserting the fact that there has been inadequate time for discovery. I find that hearing Plaintiff's motion requires no discovery as the determination sought by Plaintiff involves nothing more than examining the exclusion to determine if the use of "other animals" is ambiguous. Therefore Defendant's motion to continue the hearing is denied.

or discharge or release of waste products or secretions, by insects, birds, rodents or other animals."

A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business. *Hansen ex rel. Hansen v. United Services Auto. Ass'n*, 565 S.E.2d 114, 116 - 117 (Ct. App. 2002). Furthermore, a contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. *Id.* at 117. Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted. *Id.*

In this case, Plaintiff citing certain case law about the word "vermin," asserts the alleged ambiguity of the words "other animals." See *Umanoff v. Nationwide Mut. Fire Ins. Co.*, 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981); *Marks v. Trinity Universal Ins. Co.*, 531 So.2d 516, 517 (La. Ct. App. 1988).

"Animal" according to Black's Law Dictionary (5th) is a "non-human, animate being which is endowed with the power of voluntary motion." "Animal" according to Webster's Online Dictionary is:

1. A living organism characterized by voluntary movement.
2. An organized living being endowed with sensation and the power of voluntary motion, and also characterized by taking its food into an internal cavity or stomach for digestion; by giving carbonic acid to the air and taking oxygen in the process of respiration; and by increasing in motive power or active aggressive force with progress to maturity.
3. One of the lower animals; a brute or beast, as distinguished from man; as, men and animals.

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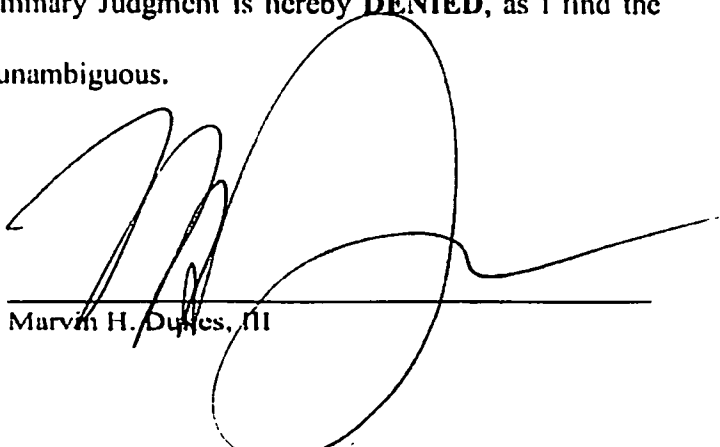
"Other" according to Black's Law Dictionary (5th) is "Different or distinct from that already mentioned; additional or further. Following an enumeration of particular classes "other" must be read as "other such like," and includes only others of like kind and character.

The term "vermin" has been the subject of much litigation in policy exclusion law and has been found to be an undefined colloquial term. *See Umanoff v. Nationwide Mut. Fire Ins. Co.*, 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981); *Marks v. Trinity Universal Ins. Co.*, 531 So.2d 516, 517 (La. Ct. App. 1988). By contrast, "animal", while broad, is clearly defined, commonly used and well-understood. Further, in reported cases dealing with the issue, the Courts continually refer to such exclusion clauses as "animal exclusions".

I deny Plaintiff's motion to find the exclusion void specifically with regard to the alleged ambiguity of "other animals". In brief, I find the words "other animals" not to be ambiguous. Because the issues were extensively discussed, I feel that it is important to point out that I am not ruling on the issues of what type of animal created the damage nor am I ruling on the nature, scope or cause of the damage itself. These issues may require discovery, and, to the extent the motion sought determinations of the same, I find that they are premature without discovery.

Therefore, Plaintiff's Motion for Summary Judgment is hereby **DENIED**, as I find the referenced language in the policy exclusion unambiguous.

5/22/2012


Marvin H. Dukes, III

1/1/1

✓

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Bruce R. Hoffman,)
)
Plaintiff,)

Civil Action No. 12-CP-07-1352

v.)

ORDER

Seneca Specialty Insurance Company,)
CRC Insurance Services, Inc. d/b/a)
Southern Cross Underwriters of Sumter,)
Aydlette Services of Lowcountry, Inc.,)
Capstone ISG, Inc.,)
)
Defendants.)

2013 JAN -7 PM 1:39

This matter came before the Court on two motions: (1) the Plaintiff Bruce Hoffman's Motion to Reconsider this Court's prior ruling denying Plaintiff's Motion for Summary Judgment; and (2) the Defendant Aydlette Services of Lowcountry's Motion for Summary Judgment.

As to the Plaintiff's Motion to Reconsider, this Court previously denied Plaintiff's Motion for Summary Judgment regarding the exclusion in the insurance policy at issue that excluded coverage for "nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals." The Court found that the exclusion was not ambiguous. See Order of Judge Dukes, dated May 30, 2012.

Plaintiff filed a Motion to Reconsider its previous position arguing that the doctrine of *ejusdem generis*. The Plaintiff argued that under that doctrine, the only "other animals" excluded under the policy provision were animals like insects, birds, or rodents, and that raccoons would not be excluded under the policy.

Having considered the Plaintiff's argument, the Court denies his Motion for Reconsideration. The Court finds that the group of animals in this policy is a broad group containing what in scientific circles are all "Kingdom Animalia." Therefore, the policy is not ambiguous when it excludes "nesting or infestation, or discharge or release of waste products or secretions" by other "animals."

Defendant Aydlette Services's moved for summary judgment as to the following causes of action: (1) breach of contract, (2) bad faith refusal to pay benefits, (3) declaratory judgment, declaring the rights and obligations under the insurance contract, and (4) unfair trade practices act. For the reasons set forth herein, I grant the motion as to the second, third, and fourth causes of action.

As to the second cause of action, it is well established in South Carolina the duties arising out of an insurance contract do not extend to an entity like Aydlette Services who is not a party to the *insurance contract*. See Carter v. American Mut. Fire Ins. Co., 279 S.C. 368, 307 S.E.2d 227 (1983) (a cause of action does not extend to a person who is not a party to or a named insured under the insurance contract); Carolina Bank and Trust Co. v. St. Paul Fire and Marine Co., 279 S.C. 576, 310 S.E.2d 163 (Ct. App. 1983) (the duty of good faith in the performance of obligations based on or arising under the contract does not extend to a person who is not a party to the insurance contract, affirming dismissal of bad faith claim); Cf. Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co., 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) (independent adjusters are not parties to the contract and therefore cannot be held liable for a breach or bad faith). Accordingly, the Defendant Aydlette Services cannot be held liable for bad faith

refusal to pay benefits, as it is not a party to the insurance contract, and summary judgment is appropriate.

As to the third cause of action for declaratory judgment, the contract the Plaintiff seeks to have his rights and obligations construed under is the contract of insurance. Again, since Aydlette Services is not a party to that contract, the Court could not construe the contract in any manner that would impact Aydlette Services. Accordingly, summary judgment is appropriate on this cause of action.

As to the fourth cause of action, an unfair trade practices act claim, the Plaintiff alleges that the conduct set forth in the Complaint (breach of the insurance contract, unreasonable adjusting, failure to pay the claim, failure to properly interpret the policy, etc) is unfair or deceptive and capable of repetition and affects the public interest. However, again, this is all conduct that arises out of, and is only applicable to the parties of, the insurance contract. Aydlette Services is not a party to this contract and therefore cannot be held liable for an unfair trade practices claim that's basis is the insurance contract. Moreover, a breach of contract between private parties does not support a UTPA claim in this State. Noack Enterprises, Inc. v. Country Corner Interiors, 290 S.C. 475, 479, 351 S.E.2d 347, 350 (Ct. App.1986) (holding an unfair or deceptive act or practice that affects only the parties to a commercial transaction is beyond the SCUPTA's embrace); Ardis v. Cox, 314 S.C. 512, 518-19, 431 S.E.2d, 267, 271 (Ct. App. 1993) (holding a mere breach of contract, even one that is intentional and deliberate, does not constitute a violation of the SCUTPA).

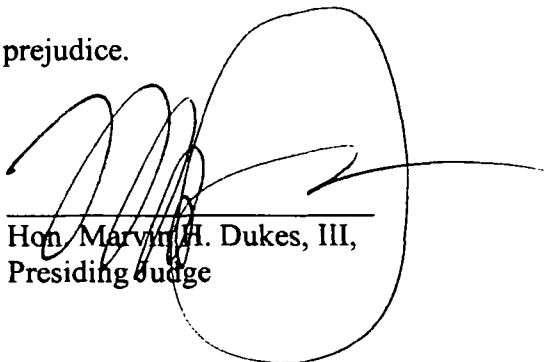
Additionally, under South Carolina's Unfair Trade Practices Act, certain practices and transactions are exempt. Section 39-5-40 states, in relevant part:

Nothing in this article shall apply to:

(a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.

S.C. Code Ann. 39-5-40. The South Carolina insurance industry is one of the most heavily regulated fields of law, and have their own regulatory body to govern the insurance industry. Moreover, the Legislature has passed unfair practices legislation specifically directed to the insurance industry, for which a cause of action was not pled. See S.C. Code Section 38-59-20 et seq.

As to the breach of contract cause of action, Plaintiff produced an affidavit stating that he contacted Aydlette Services about a second insurance policy through Harleysville that Plaintiff has indicated would have covered the loss in question. He alleges that Aydlette Services induced him to stay with the current policy when the Harleysville policy would have covered the loss in question (Complaint ¶9). The Court finds at this time that there is a question of fact on a breach of a contract between Aydlette Services and Hoffman regarding procurement of coverage. Accordingly, the Court denies the Motion for Summary Judgment at this time without prejudice.



Hon. Marvin H. Dukes, III,
Presiding Judge

Beaufort, South Carolina

January ____, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NO.: 2012-CP-07-1352
Bruce R. Hoffman,	)	
	)	
Plaintiff,	)	
vs.	)	
Seneca Specialty Insurance Company,	)	
CRC Insurance Services, Inc. d/b/a	)	
Southern Cross Underwriters of Sumter,	)	
Aydlette Services of Lowcountry, Inc.,	)	
Capstone ISG, Inc.,	)	
Defendants.	)	

2013 APR -8 AM 9:10

JERAM ROSENEAU

BEAUFORT COUNTY, S.C.

CLERK OF COURT

ORDER

This matter came before the Court January 22, 2013, on a Motion for Summary Judgment filed by CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter ("Defendant CRC Insurance"). The Court heard arguments and reviewed the pleadings, exhibits, and memoranda filed with the Court. For the reasons set forth below, Defendant CRC Insurance's Motion for Summary Judgment is GRANTED:

This is a case about the interpretation of insurance policy language. Plaintiff purchased a commercial insurance policy from Seneca Specialty Insurance, which provides insurance coverage on Plaintiff's office building located at 574 Sea Island Parkway, Saint Helena Island, South Carolina. The policy at issue is policy number BAK-1002868 and was effective 6/12/11 through 6/12/12 (the "Subject Policy"). Plaintiff made a claim under the Subject Policy for damage sustained at his office building caused by raccoons. Seneca Insurance denied coverage for this loss, claiming such damage falls within a policy exclusion. Plaintiff brought suit against all defendants under the following theories – breach of insurance contract, bad faith refusal to pay insurance claim, declaratory judgment, and violations of the Unfair Trade Practices Act.

Defendant CRC Insurance is a brokerage and underwriting company. It does not insure persons or businesses nor does it write insurance policies. It is not party to the Subject Policy. It is not party to any written or oral contract with Plaintiff. Defendant CRC did not investigate Plaintiff's claim. It did not deny Plaintiff's claim. Defendant CRC acted strictly as an underwriter/broker for the Subject Policy.

The Court finds that Defendant CRC is not party to the insurance policy at issue. The Subject Policy is between Plaintiff and Seneca Specialty Insurance Company. To hold a defendant liable for breach of contract or bad faith refusal to pay a claim, Plaintiff must first establish the existence of a contract to which the defendant is a party. The existence of a contract is the key element for both causes of action. See, e.g., Carter v. Am. Mut. Fire Ins. Co., 307 S.E.2d 227 (S.C. 1983); Carolina Bank & Trust Co. v. St. Paul Fire & Marine Co., 310 S.E.2d 163 (S.C. Ct. App. 1983); Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co., 586 S.E.2d (S.C. 2003).

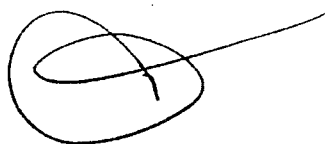
The Court finds that Defendant CRC is not party to the Subject Policy. The Subject Policy confers no duties or obligations upon Defendant CRC to pay claims, make coverage decisions, or to do anything else alleged by Plaintiff. Therefore, the Court finds that Defendant CRC is entitled to summary judgment on Plaintiff's claims for breach of contract and bad faith refusal to pay a claim.

Plaintiff further requests a declaratory judgment to have the Court declare the "rights and obligations of the parties under said insurance contract[.]" Even if Plaintiff is successful and the Court ultimately declares the loss was covered by the Subject Policy, this would in no way implicate CRC because it is not party to the insurance contract. Thus, the Court finds that Defendant CRC is entitled to summary judgment on Plaintiff's claim for declaratory judgment.

Plaintiff also alleges violation of the Unfair Trade Practices Act ("UTPA") by all defendants based on "their bad faith conduct" described in the Complaint. However, Plaintiff has failed to properly allege any bad faith conduct on the part of Defendant CRC. This claim concerns conduct that arises out of the insurance contract and the defendants' alleged duties under that contract. Because Defendant CRC is not party to the insurance contract and owes no duties or obligations to Plaintiff under the Subject Policy, Defendant CRC is entitled to summary judgment on Plaintiff's claim for violation of the UTPA.

Therefore, for the reasons set forth above, it is hereby ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment filed by CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter is GRANTED.

IT IS SO ORDERED.



Carmen T. Mullen
Fourteenth Judicial Circuit

Beauford, South Carolina
4-4, 2013

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BRUCE R. HOFFMAN,

PLAINTIFF,

vs.

SENECA SPECIALTY INSURANCE
COMPANY; CRC INSURANCE
SERVICES, INC. D/B/A SOUTHERN
CROSS UNDERWRITERS OF
SUMTER; AYDLETTE SERVICES OF
LOWCOUNTRY, INC.; AND
CAPSTONE ISG, INC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-07-01352

ORDER

13 APR 24 AM 11:24
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter is before me on Plaintiff's Motion for Summary Judgment, which was filed with this Court on March 25, 2013. Having read and considered the motion, memoranda of law and submissions from counsel and having heard oral arguments by counsel on April 15, 2013, I hereby **DENY** Plaintiff's Motion for Summary Judgment.

IT IS SO ORDERED.

4-23, 2013



Judge Carmen T. Mullen
Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

ORDER OF PROTECTION

In the matters of:

Case No. 12-CP-07-2236;
Case No. 12-CP-07-1352;
Case No. 09-CP-07-1723;
Case No. 09-CP-07-2608.

2013 MAY -6 AM 9:12
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

IT APPEARING to the Court that Bruce R. Hoffman, attorney at law, practicing with the law firm of LAW OFFICE OF BRUCE R. HOFFMAN, LLC, with offices in Saint Helena Island and Bluffton, South Carolina, will be out of the country from May 13 through May 31, 2013.

IT FURTHER APPEARS that attorney Bruce R. Hoffman is requesting, and should be granted, for good cause being shown, an Order protecting him from all court appearances in all court proceedings at all jurisdiction levels for May 13-31, 2013. It is therefore,

ORDERED that Bruce R. Hoffman be, and is hereby granted protection from any and all court proceedings at all jurisdictional levels in the State of South Carolina, on the above listed dates.

AND IT IS SO ORDERED this 30 day of April, 2013, at Beaufort, South Carolina.



The Honorable Carmen T. Mullen
Chief Administrative Judge

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 6 day of may, 2013
By [Signature]

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Bruce R. Hoffman,

Plaintiff,

vs.

Seneca Specialty Insurance Company,
CRC Insurance Services, Inc. d/b/a
Southern Cross Underwriters of Sumter,
Aydlette Services of Lowcountry, Inc.,
Capstone ISG, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) Civil Action No. 2011-CP-26-667

**ORDER GRANTING AYDLETTE
SERVICES OF LOWCOUNTRY,
INC.'S MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

13 OCT 31 PM 3:32
JUDICIAL CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter is before the Court on Defendant Aydlette Services of Lowcountry, Inc.'s ("Aydlette") Motion for Summary Judgment and Plaintiff Bruce R. Hoffman's ("Hoffman" or "Plaintiff") Motion for Summary Judgment. Aydlette's motion was filed on April 30, 2013. Hoffman's motion was filed on March 25, 2013. The Court held a hearing on the motions¹ on October 2, 2013. Hoffman represented himself at the hearing. Aydlette was represented by William H. Jordan of Sowell Gray Stepp & Laffitte, LLC.

After hearing the arguments of counsel at the hearing and considering the briefs, the record, and other materials submitted by the parties in connection with the motions, the Court finds that Aydlette is entitled to judgment as a matter of law. The Court therefore grants summary judgment in favor of Aydlette and denies Hoffman's motion.

¹ At the hearing, Hoffman argued that his pending appeal of a prior order granting summary judgment in favor of CRC Insurance Services, Inc. divests this Court of jurisdiction to rule upon the instant motions. This Court disagrees. As is clear from Rule 205, SCACR, and the South Carolina Supreme Court's decision in Metts v. Mims, 384 S.C. 491, 498, 682 S.E.2d 813, 817 (2009), a trial court may proceed "with matters not affected by the appeal." The Court finds that Aydlette's motion for summary judgment is not affected by Plaintiff's appeal.

DCB
P. 175

LEGAL STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." Singleton v. Sherer, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Singleton, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, "[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 198, 659 S.E.2d at 203. "It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine." Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). "Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper." Id.

Applying this standard to the undisputed facts of this case, the Court grants Aydlette's Motion for Summary Judgment for the reasons discussed below.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Plaintiff owns real property located at 574 Sea Island Parkway, Saint Helena, South Carolina (the "Property"). (Compl. ¶ 3.) Plaintiff purchased a commercial insurance policy on the Property through Defendant Seneca Specialty Insurance Company ("Seneca"). (Compl. ¶ 3.) Aydlette served as the insurance agent for Plaintiff in Plaintiff's purchase of the insurance policy at issue. Plaintiff alleges that the Property "sustained substantial damage proximately caused by raccoons." (Compl. ¶ 5.) Plaintiff filed a claim relating to the alleged damage with Seneca on or about February 3, 2012. (Compl. ¶ 7.) After Defendant Capstone ISG investigated the loss, Seneca denied the claim. (Compl. ¶ 8.)

The Seneca policy at issue contains the following exclusion:

B. Exclusions

2. We will not pay for loss or damages caused by or resulting from any of the following:
 - d.(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(Seneca Policy.) Seneca denied coverage based, in part, on this exclusion.

Plaintiff filed this case on April 3, 2012. With respect to Aydlette, Hoffman asserted four causes of action: (1) breach of insurance contract; (2) bad faith refusal to pay insurance claim; (3) declaratory judgment; and (4) violations of unfair trade practices act. (Compl. ¶¶ 1-22.) Aydlette filed its initial motion for summary judgment on July 23, 2012. The Honorable Marvin H. Dukes, III heard Aydlette's initial summary judgment motion and entered an order on January 7, 2013 granting summary judgment in Aydlette's favor on all causes of action except for breach of insurance contract. (Dukes Order dated 1/7/13.) With respect to the breach of insurance contract cause of action, Judge Dukes found as follows:

3 DCB
p 345

As to the breach of contract cause of action, Plaintiff produced an affidavit stating that he contacted Aydlette Services about a second insurance policy through Harleysville that Plaintiff has indicated would have covered the loss in question. He alleges that Aydlette Services induced him to stay with the current policy when the Harleysville policy would have covered the loss in question (Complaint ¶9). The Court finds at this time that there is a question of fact on a breach of contract between Aydlette Services and Hoffman regarding procurement of coverage. Accordingly, the Court denies the Motion for Summary Judgment at this time without prejudice.

(Dukes Order p. 4.)

While Judge Dukes found—at the time he considered Aydlette’s initial motion for summary judgment—that there was a question of fact concerning whether Aydlette induced Hoffman to stay with the Seneca policy while the Harleysville policy would have covered the loss in question, this Court finds that this issue no longer presents a genuine issue of material fact. The record now clearly demonstrates as follows:

On or around June 15, 2011, shortly after renewing the Seneca policy, Plaintiff received a commercial insurance proposal from Harleysville. (Commercial Insurance Proposal; see also Hoffman Dep. p. 57, line 20 – p. 59, line 7.) The proposal is labeled “Version 001” and contains policy number BOP00000012097L. (Commercial Insurance Proposal.) Hoffman testified that this is the proposal he provided to Aydlette when he questioned whether he should switch from the Seneca policy to the Harleysville policy. (Hoffman Dep. p. 58, lines 7-10.) In June of 2012, Plaintiff obtained commercial insurance coverage for the Property through Harleysville and obtained policy number BOP00000012097L, the very policy he claims Aydlette should have advised him to obtain in lieu of the Seneca policy. (Harleysville Policy; see also Hoffman Dep. p. 77, line 21 – p. 78, line 6.) The Harleysville policy contains the following exclusion from coverage:

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2. We will not pay for loss or damage caused by or resulting from any of the following:

...
1. Other Types of Loss
...

(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(Harleysville Policy at 17-18.)

The exclusion in the Harleysville policy is the exact same exclusion that is in the Seneca policy and that is at issue in this case. Judge Dukes found that there was a question of fact regarding procurement of coverage because Plaintiff produced an affidavit stating that the Harleysville policy would have covered the loss in question. There is no longer of question of fact. The Harleysville policy contains the exact same exclusion. As a result, Aydlette is entitled to summary judgment on the remaining cause of action.

For the reasons set forth herein, the Court now grants summary judgment in favor of Aydlette as to Plaintiff's one remaining cause of action: breach of insurance contract. In connection therewith, the Court denies Plaintiff's Motion for Summary Judgment as to Aydlette.

IT IS SO ORDERED.



The Honorable D. Craig Brown
Presiding Judge

10-24, 2013

DCB
P. 5/15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
BRUCE R. HOFFMAN,	)	CASE NO. 2012-CP-07-01352
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
SENECA SPECIALTY INSURANCE	)	
COMPANY; CRC INSURANCE	)	ORDER
SERVICES, INC. D/B/A SOUTHERN	)	
CROSS UNDERWRITERS OF	)	
SUMTER; AYDLETTE SERVICES OF	)	
LOWCOUNTRY, INC.; AND	)	
CAPSTONE ISG, INC,	)	
	)	
DEFENDANTS.	)	

This matter is before me on Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc.'s Motion for Summary Judgment. Having read and considered the motion, memoranda of law and submissions from all counsel, and having heard oral arguments by all counsel on October 2, 2013, I hereby grant Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc.'s Motion for Summary Judgment for the following reasons:

FACTS / PROCEDURAL HISTORY

This case arises out of an insurance claim involving the Plaintiff's property located at 574 Sea Island Parkway, Saint Helena Island, South Carolina. On February 3, 2012, Plaintiff reported a loss to his property. The damage was reportedly caused by an infestation of raccoons and possibly other animals in the attic, HVAC system and work spaces of Plaintiff's office building. On February 8, 2012, in response to the Plaintiff's notice of claim, a representative of Defendant Capstone ISG, Inc., Robert Dodd, on behalf of Seneca Specialty Insurance Company,

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personally inspected Plaintiff's office. Dodd Aff. ¶ 3. Through his investigation and conversations with the Plaintiff, Mr. Dodd determined that the damage to Plaintiff's office was, in fact, caused by infestation, waste products and secretions of animals in the duct work of the HVAC system and elsewhere on the Plaintiff's property. Dodd Aff. ¶ 4. Additionally, Mr. Dodd observed animal droppings beneath the office HVAC ducts. Dodd Aff. ¶ 4.

Plaintiff's insurance policy contains the following exclusions:

B. Exclusions

2. We will not pay for loss or damages caused by or resulting from any of the following:
 - d.(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a through 3.c. But if an excluded cause of loss that is listed in 3.a through 3.c results in a Covered Cause of Loss, we will pay for the loss or damage caused by the Covered Cause of Loss.
 - c. Faulty, inadequate or defective:
 - (4) Maintenance;
of part of all of any property on or off the described premises.

Seneca Specialty Insurance Company determined that the loss sustained to the Plaintiff's property was caused by animal infestation, which was excluded from coverage under the Plaintiff's insurance policy, and it denied Plaintiff's claim for coverage under the policy on March 15, 2012.

Plaintiff filed this lawsuit on April 3, 2012 alleging causes of action against all Defendants for 1) Breach of Contract; 2) Bad Faith Refusal to Pay Insurance Claim; 3) Declaratory Judgment; and 4) Violations of the S.C. Unfair Trade Practices Act (S.C. Code § 39-5-10 *et seq.*) ("SCUTPA"). Plaintiff moved for summary adjudication on the issue of coverage

on or around May 4, 2012. Judge Dukes denied Plaintiff's Motion for Summary Judgment/Adjudication on May 30, 2012 finding that the policy language at issue was not ambiguous. See Dukes Order p. 4. Plaintiff moved for summary judgment on all causes of action on March 25, 2013, which was denied by Judge Mullen on April 15, 2013. Defendants filed this Motion for Summary Judgment on April 25, 2013.¹

SUMMARY JUDGMENT LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." South Carolina Rules of Civil Procedure (SCRCP) 56(c). Under Rule 56(c), the party seeking summary judgment must clearly establish by the record the absence of a triable issue of fact. *Baughman v. American Tel. & Tel. Co.*, 410 S.E.2d 537, 545 (1991).

To determine whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Osborne v. Adams*, 550 S.E.2d 319, 320 (2001). After the moving party has met this initial burden, the non-moving party must set forth or point to specific facts showing there is a genuine issue of material fact. *Thomas v. Waters*, 445 S.E.2d 654, 660 (S.C. Ct. App. 1994). The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment. *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995).

¹ As an initial matter, Plaintiff challenges this Court's power to hear this motion due to the fact that he has appealed the granting of Defendant CRC Insurance Services d/b/a Southern Cross Underwriters of Sumter's Motion for Summary Judgment. Under the guidance of S.C. Appellate Court Rule 205 and *Metts v. Mims*, 384 S.C. 491, 682

LAW / ANALYSIS

Defendants Seneca and Capstone are entitled to summary judgment on all causes of action in the Plaintiff's Complaint for the following reasons: 1) The policy exclusion at issue in this case is clear and unambiguous per the May 30, 2012 Order of Judge Dukes; 2) Plaintiff's reported loss is unambiguously excluded under terms of the Seneca insurance policy, and there is no evidence in the record of bad faith on the part of the Defendants; 3) Plaintiff has failed to prove essential elements of its Unfair Trade Practices Act claim, which is also barred by S.C. Code § 39-5-40; 4) All claims against Defendant Capstone ISG, Inc. fail as a matter of law due to the fact that Capstone is not a party to the underlying insurance contract; and 5) Plaintiff failed to properly answer Defendants' 4/12/2013 Requests to Admit, and therefore, those requests are deemed admitted.

I. The animal exclusion at issue in this case is clear and unambiguous.

An insurance contract is subject to the general rules of contract construction. *Hansen ex rel. Hansen v. United Services Auto. Ass'n*, 350 S.C. 62, 68, 565 S.E.2d 114, 116 - 117 (Ct. App. 2002). "The construction of a contract of insurance, as of other contracts, is the determination of the meaning attached to the words and clauses of the contract." 2 Couch on Ins. § 21:11. "However, it is a well-settled rule that the question of construction can only arise where the language of a policy is susceptible to more than one meaning, and that clear and unambiguous clauses must be accepted as the expression of the intent of the parties, and enforced by the courts as written." 2 Couch on Ins. § 21:11. An ambiguity is required as a prerequisite to construction; however, the rule of ambiguity does not require that the court search for an ambiguity when the meaning of the policy is clear. 2 Couch on Ins. § 21:18. "The purpose of all rules of construction

S.E.2d 813 (2009), I disagree with Plaintiff's argument. This Court maintains jurisdiction over matters unaffected by the pending appeal.

is to ascertain the intention of the parties to the contract.” *Hansen*, at 116. Where the terms of a contract are clear and unambiguous, its construction is for the court; but where the terms are ambiguous, the question of the parties' intent must be submitted to the jury. *Id.* “A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Id.* at 117. Furthermore, “[a] contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.” *Id.* at 117.

Insurance policies are subject to the general rules of contract construction. *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). “Courts must enforce, not write, contracts of insurance....” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (quoting *Sloan Constr. Co. v. Central Nat'l Ins. Co.*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977)). The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). If a contract's language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect. *Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 512, 709 S.E.2d 85, 88 (Ct. App. 2011), reh'g denied (May 25, 2011), cert. dismissed (Dec. 20, 2011).

In the present case, there is only one reasonable way to interpret the language of the insurance contract. Plaintiff's insurance policy clearly states that the insurer will not pay for loss or damages caused by or resulting from the “nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.” In Judge Dukes'

Order Denying Plaintiff's Motion for Summary Judgment dated May 30, 2012, he specifically determined that the word "animal", while broad, is clearly defined, commonly used and well-understood, and he also made the specific reference that these types of exclusions are commonly referred to by many courts as "animal exclusions." See Dukes Order p. 4. Judge Dukes further stated and found that the words "other animals" contained in the policy exclusion were not ambiguous. See Dukes Order p. 4.

Although Judge Dukes has previously ruled that the applicable exclusion is unambiguous, I also find that the word "animal", while broad, is clearly defined and reasonably understood, and the words "other animals" contained in the insurance policy exclusion at issue in the case are not ambiguous. I further find that the Plaintiff's claim seeks to recover the cost of repairing damage caused by infestation of raccoons, mice and possibly a snake which shed its skin in an HVAC duct's grill. The damages Plaintiff seeks are excluded under his insurance policy.

II. There is no evidence of unreasonableness or bad faith on the part of Defendants Seneca and Capstone.

The evidence in this case establishes that Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. promptly and fully investigated Plaintiff's claim, and Seneca Specialty Insurance Company's denial of the Plaintiff's claim was appropriate. In *Nichols v. State Farm Mut. Automobile Ins. Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983), the South Carolina Supreme Court recognized an action for bad-faith refusal to pay benefits under an insurance policy. The Court held in *Nichols* that "if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action." *Id.*, 306 S.E.2d at 619. Bad faith is defined as "a knowing failure on the part of the insurer to exercise an honest and informed judgment in processing a claim." *Am. Fire & Cas. Co. v. Johnson*, 332 S.C. 307, 311, 504 S.E.2d 356, 358

(Ct. App. 1998). "An insurer acts in bad faith where there is no reasonable basis to support the insurer's decision." *Id.*, 504 S.E.2d at 358. On the other hand, if there is a reasonable basis for denial of the insured's claim, there can be no bad faith. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (1992).

In the present case, Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. fully investigated Plaintiff's claim, and Seneca Specialty Insurance Company's denial of the Plaintiff's claim was appropriate and supported by the investigation of Capstone ISG, Inc. and the surrounding factual circumstances. On the basis of Mr. Dodd's on-site investigation, the representations made by the Plaintiff, himself, as well as personnel from Critter Management that were hired by the Plaintiff, it is uncontroverted that animal infestation was the cause of the damage to the property. Seneca acted appropriately and reasonably in evaluating the Plaintiff's claim. There is no evidence in the record to indicate bad faith on the part of Defendants Seneca and Capstone, and therefore, Defendants' Motion for Summary Judgment should be granted as to those claims in the Plaintiff's Complaint.

III. Plaintiff's Unfair Trade Practices Act claim is barred by the application of S.C. Code § 39-5-40 and also fails for lack of proof of essential elements of a SCUTPA claim.

Under South Carolina's Unfair Trade Practices Act, a plaintiff may only recover when the plaintiff has suffered "any ascertainable loss of money or property . . . as a result of the use or employment by another person of an unfair or deceptive method, act or practice." S.C. Code § 39-5-140(a). However, certain practices and transactions are exempt from the Act. Section 39-5-40 states, in relevant part:

Nothing in this article shall apply to:

(a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or

the United States or actions or transactions permitted by any other South Carolina State law.

...

(c) This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, §§ 38-57-10 through 38-55-320.

S.C. Code Ann. §§ 39-5-40 (a) & (c).

The South Carolina insurance industry is one of the most heavily regulated fields of law and has its own regulatory body to govern the insurance industry. Moreover, the S.C. Legislature has passed unfair practices legislation specifically regulating claims handling by the insurance industry. Recognizing that specific statutory provisions govern the fairness of insurance claims practices, our legislature has exempted those practices from the more general provisions of the SCUTPA. *See Trs. of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 131 (D.S.C. 1994). The Plaintiff has failed to produce any evidence to establish that the Defendants' actions were in any manner unfair or deceptive, and the Plaintiff did not plead a violation of any South Carolina insurance-related unfair trade or claims practice statute in his Complaint. *See S.C. Code § 38-57-30 et seq. and S.C. Code § 38-59-20 et seq.*

Furthermore, even if the Plaintiff was able to establish a breach of contract on the part of the Defendants, a breach of contract between private parties is not enough in order to support a UTPA claim. *Noack Enterprises, Inc. v. Country Corner Interiors*, 290 S.C. 475, 479, 351 S.E.2d 347, 350 (Ct. App. 1986) (holding an unfair or deceptive act or practice that affects only the parties to a commercial transaction is beyond the SCUPTA's embrace); *Ardis v. Cox*, 314 S.C. 512, 518-19, 431 S.E.2d, 267, 271 (Ct. App. 1993) (holding a mere breach of contract, even one that is intentional and deliberate, does not constitute a violation of the SCUTPA).

The Plaintiff has also failed to produce any evidence to establish the essential element of impact upon the public interest. The statute is not available to redress a private wrong where the public interest is unaffected. Absent proof of that element, Plaintiff's SCUTPA claim fails as a matter of law. *See Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996); *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (1996).

For these reasons, Plaintiff's SCUTPA claim fails as a matter of law, and the Defendants' Motion for Summary Judgment should be granted, accordingly.

IV. Plaintiff's claims against Defendant Capstone ISG, Inc. fail as a matter of law because Capstone is not a party to the underlying insurance contract.

It is well established in South Carolina that the duties arising out of an insurance contract do not extend to an such as Capstone ISG, Inc., an independent adjuster hired by Defendant Seneca Specialty Insurance Company, who is not a party to the contract. *See Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) (independent adjusters are not parties to the contract and therefore cannot be held liable for a breach or bad faith); *Carter v. American Mut. Fire Ins. Co.*, 279 S.C. 368, 307 S.E.2d 227 (1983) (a cause of action does not extend to a person who is not a party to or a named insured under the insurance contract); *Carolina Bank and Trust Co. v. St. Paul Fire and Marine Co.*, 279 S.C. 576, 310 S.E.2d 163 (Ct. App. 1983) (the duty of good faith in the performance of obligations based on or arising under the contract does not extend to a person who is not a party to the insurance contract, affirming dismissal of bad faith claim).

Accordingly, the Defendant Capstone ISG, Inc. cannot be held liable for bad faith refusal to pay benefits, as it is not a party to the insurance contract with the Plaintiff, and therefore, summary judgment is appropriate as to all causes of action alleged in the Plaintiff's Complaint against Defendant Capstone ISG, Inc.

V. Plaintiff failed to properly answer Defendants' Requests to Admit, and therefore, those matters are deemed admitted.

On April 12, 2013, Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. served the following Requests to Admit to the Plaintiff, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure.

REQUESTS TO ADMIT

1. Admit that a raccoon is an animal.
2. Admit that raccoons or other animals caused damage to the subject property.
3. Admit that on February 3, 2012, Plaintiff made a claim for damages to the subject property to Defendant Seneca Specialty Insurance Company.
4. Admit that on February 8, 2012, Robert Dodd of Capstone ISG, Inc. personally inspected the Plaintiff's property on behalf of Seneca Special Insurance Company.
5. Admit that the attached photographs of the subject property were taken by Robert Dodd during his inspection on February 8, 2012.
6. Admit that the photographs depict damage to the subject property caused by animals.
7. Admit that the photographs depict damage to the subject property caused by animal infestation.
8. Admit that the photographs depict damage to the subject property caused by animal waste products and/or secretions.

Defendants Requests to Admit, 4/12/2013, Ex. I.

The only response to these requests from the Plaintiff was included in a letter dated May 16, 2013, addressed to Cheri L Young, a court reporter, to which all counsel was copied, wherein the Plaintiff was ordering a transcript in connection with his appeal of the order granting summary judgment in favor of Defendant CRC Insurances Services Inc. At the end of the letter Plaintiff included the following statement: "BPS: As to Requests to Admit served by Seneca and Capstone on 4/12/2013, they are all denied given the present circumstances of this case." The letter was signed by the Plaintiff's office staff, not the Plaintiff, and, as mentioned above, the appeal of the order granting summary judgment in favor of Defendant CRC Insurances Services

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Inc. did not affect the Plaintiff's claims against the remaining defendants, and the appeal did not obviate the need for the Plaintiff to admit or deny each request, which he has failed to do.

This response fails to comport with the requirements of Rule 36 of South Carolina Rules of Civil Procedure, and thus, Defendants' Requests should be deemed admitted. Not only did this document fail to separately answer each of the Defendants' Request to Admit, as required by SCRCP 36, it also was not signed by the "party or his attorney", as it was clearly only signed and sent from Hoffman's office staff. See SCRCP 36(a). As such, Plaintiff's failure to properly answer Defendants Requests to Admit renders all matters included in those requests conclusively admitted. *Scott v. Greenville Housing Authority*, 353 S.C. 639, 645-46, 579 S.E.2d 151, 154 (Ct. App. 2003).

Consequently, there are no genuine issues of material fact for a jury to decide in this case, and the grant summary judgment in favor of Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. is appropriate.

CONCLUSION

For the foregoing reasons, I hereby **GRANT** Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc.'s Motion for Summary Judgment on all causes of action contained in the Plaintiff's Complaint.

IT IS SO ORDERED.

10-24, 2013


D. Craig Brown
Presiding Judge
Fourteenth Judicial Circuit

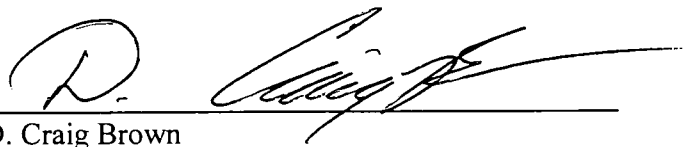
DCB
P-11-11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	JUDICIAL CIRCUIT
	)	
BRUCE R. HOFFMAN,	)	CASE NO. 2012-CP-07-01352
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
SENECA SPECIALTY INSURANCE	)	
COMPANY; CRC INSURANCE	)	ORDER
SERVICES, INC. D/B/A SOUTHERN	)	
CROSS UNDERWRITERS OF	)	
SUMTER; AYDLETTE SERVICES OF	)	
LOWCOUNTRY, INC.; AND	)	
CAPSTONE ISG, INC,	)	
	)	
DEFENDANTS.	)	

This matter is before me on Plaintiff's Motion for Summary Judgment. Having read and considered the motion, memoranda of law and submissions from counsel and having heard oral arguments by counsel on October 2, 2013, I hereby **DENY** Plaintiff's Motion for Summary Judgment.

IT IS SO ORDERED.

10-24, 2013


 D. Craig Brown
 Presiding Judge
 Fourteenth Judicial Circuit

The South Carolina Court of Appeals

Bruce R. Hoffman, Appellant,

v.

Seneca Specialty Insurance Company, CRC Insurance
Services, Inc. d/b/a Southern Cross Underwriters of
Sumter, Aydlette Services of Lowcountry, Inc., Capstone
ISG, Inc., Respondents.

Appellate Case No. 2013-001068

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2012CP0701352

ORDER

It appears that Appellant wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY

Joy A. Kitchip
CLERK

Columbia, South Carolina

FILED

12/20/13 AT

cc:

Bruce Robert Hoffman, Esquire

Joshua P. Cantwell, Esquire

Christopher William Nickels, Esquire

William Hammond Jordan, Esquire

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO: 12-CP-07- 1352

BRUCE R. HOFFMAN,

2012 APR -3 PM 3:56

Plaintiff,

vs.

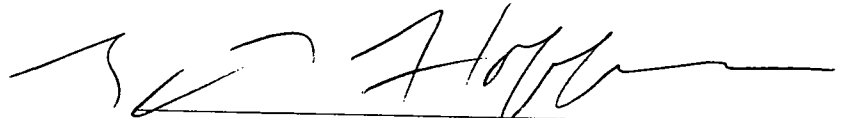
SUMMONS
JESSICA ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

To the Defendants above named:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your answer upon the undersigned at his office, LAW OFFICE OF BRUCE R. HOFFMAN, LLC, 574 Sea Island Parkway, Saint Helena Island, South Carolina, 29920, within (30) days from the date of service hereof, exclusive of the day of such service, and if you fail to answer within the time aforesaid, the Plaintiff will apply to the Court for judgment by default and for the relief demanded in the attached Complaint.



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

This 3rd day of April, 2012.

STATE OF SOUTH CAROLINA

2012 APR -3 PM 3:56

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

JUDICIAL CIVIL ACTION NO. 12-CP-07-1352
BEAUFORT COUNTY, S.C.

BRUCE R. HOFFMAN,

Plaintiff,

COMPLAINT

(Breach of Contract)

(Bad Faith Refusal To Pay Insurance
Claim)

(Declaratory Relief)

(SC Unfair Trade Practices Act)

vs.

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE
SERVICES, INC. d/b/a SOUTHERN
CROSS UNDERWRITERS OF SUMTER,
AYDLETTE SERVICES OF LOWCOUNTRY,
INC., CAPSTONE ISG, INC.,

Defendants.

The Plaintiff, herein, complaining of the Defendants, would respectfully show unto
this Honorable Court:

FOR A FIRST CAUSE OF ACTION
(Breach of Insurance Contract)

1. Plaintiff, Bruce R. Hoffman, is a citizen and resident of Beaufort County, State of
South Carolina, an owner of the commercial building at issue, and the named insured on
the commercial insurance policy at issue.

2. That Plaintiff is informed and believes that Defendant, Seneca Specialty Insurance
Company, is a corporation organized and existing under the laws of a state other than
South Carolina, but is licensed to do and does insurance business in the State of South
Carolina, County of Beaufort, through its agents, servants and/or employees, including
Defendants CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter,

Aydlette Services of Lowcountry, Inc., and Capstone ISG, Inc.

3. That, at all times hereinafter mentioned, Defendant, Seneca Specialty Insurance Company, through its agents, servants and/or employees, sold Plaintiff a commercial insurance policy effective 6/12/11 through 6/12/12, and designated as policy number BAK-1002868, providing certain package insurance coverage on Plaintiff's office building, located at 574 Sea Island Parkway, Saint Helena Island, South Carolina.

4. That, at all times hereinafter mentioned, Plaintiff has paid all insurance premiums due to Defendant, Seneca Specialty Insurance Company, and in exchange therefore, Defendant, Seneca Specialty Insurance Company, agreed to cover loss to said office building.

5. That during the winter of 2011-2012, Plaintiff's said office building, sustained substantial damage proximately caused by raccoons, a North American wild animal, descended from bears, or by other cause that should have been covered.

6. That Plaintiff's office building was severely damaged, including but not limited to the roof, and the heating/cooling air ducts. Plaintiff made a claim for this damage to Defendant Seneca, through its agents, servants and/or employees, on or about February 3, 2012.

7. In response to said claim, Defendant Capstone ISG, acting as an agent for Defendant Seneca, came to the property and investigated, evaluated, reported and adjusted said claim for Defendant Seneca. This agent, acknowledging that the proximate cause of the damage to Plaintiff's building was from raccoons, gave Plaintiff the (negligently or intentionally) false impression that the damage would be covered by the insurance policy and quickly repaired, leading Plaintiff to rely on these representations,

not take other actions, and have a false sense of security that the matter would ultimately be taken care of, and quickly, before the heat of the summer.

8. But then, to Plaintiff's great surprise given the prior representations, Defendant Seneca, denied Plaintiff's claim by letter dated March 15, 2012 (copy attached), acknowledging that raccoons proximately caused all damage, but claiming that this cause is excluded from coverage by virtue of a provision in the policy that provides, "We will not pay for loss or damage caused by or resulting from any of the following ... Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals". This provision, and the policy as a whole, is ambiguous: nowhere in the policy is damage caused by raccoons, or raccoons, specifically mentioned, and the provision of the policy cited could have, but doesn't say, all animals, and the only reasonable interpretation is that "other animals" is other animals *like* insects, birds, rodents, i.e. vermin, not wild animals like raccoons, descended from bears, which den not nest, and one of which growled at Plaintiff when he confronted them (which vermin are not known to do).

9. Denying coverage on this basis is thus a breach of the insurance contract (and/or all Defendants are responsible, particularly Defendant CRC and Defendant Aydlette, for (negligently or intentionally) having induced Plaintiff to purchase a policy unsuitable for the building's location and otherwise.

10. That by virtue of this breach of insurance contract/denial of coverage, by all Defendants, and each of them, Plaintiff has suffered actual, special and consequential damages in amounts to be proven, and punitive damages of not less than \$500,000.

11. That all Defendants, and each of them, acted in bad faith or in an unreasonable

manner in denying said claim, and Plaintiff is informed and believes that he is also entitled to recover reasonable attorney fees and costs pursuant to South Carolina Code Section 38-9-320 or other authority.

FOR A SECOND CAUSE OF ACTION
(Bad Faith Refusal to Pay Insurance Claim)

12. Plaintiff reaffirms and reiterates all the allegations above as if fully repeated and incorporated herein verbatim.

13. That Plaintiff is informed and believes that Defendants owed Plaintiff a duty of good faith and fair dealing and implicitly covenanted to refrain from doing anything to impair Plaintiff's rights to receive benefits under the insurance contract.

14. That Defendants knowing that Plaintiff's claim is wholly valid and should be paid, have wrongfully and in breach of the implied covenant of good faith and fair dealing, withheld and denied benefits due Plaintiff. In denying his claim for benefits, Defendants have acted wrongfully, unreasonably and in bad faith in the following respects, among others:

- a. Defendants failed and refused to make an adequate investigation before withholding benefits under the insurance policy.
- b. Defendants refused and continue to refuse to give reasonable interpretations to the provisions in the policy of insurance, or any reasonable application of such provisions to Plaintiff's claim and has acted to protect its own financial interest therein at the expense of the Plaintiff's rights.
- c. Defendants have failed to provide Plaintiff with any reasonable or justifiable basis for denying Plaintiff's claim in relation to the insurance policy, the facts

or applicable law.

- d. Defendants' refusal to pay benefits due has compelled Plaintiff to litigate to recover such benefits.

15. That as a direct and proximate result of the conduct of Defendants, and each of them, the Plaintiff has sustained substantial compensable losses including withheld benefits, other actual, special and consequential damages as proven, attorney fees and costs.

16. That Defendants' actions were willful, wanton and/or in reckless disregard for Plaintiff's rights and Plaintiff is informed and believes that he is entitled to punitive damages from Defendants, jointly and severally, in an amount not less than \$500,000.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

17. Plaintiff reaffirms and reiterates all the allegations above as if fully repeated and incorporated herein verbatim.

18. This is an action for a declaratory judgment brought pursuant to Rule 57, SCRCP, and SC 15-53-10 et seq. because a justifiable controversy exists among the parties.

19. Upon information and belief, Plaintiff is entitled to have the Court declare the rights and obligations of the parties under said insurance contract and otherwise, as well as to receive all the relief requested by Plaintiff in other paragraphs of this Complaint, or that the Court deems proper.

FOR A FOURTH CAUSE OF ACTION
(Violations of Unfair Trade Practices Act (SC CODE 39-5-10 ET SEQ))

20. Plaintiff reaffirms and reiterates all the allegations above as if fully repeated and incorporated herein verbatim.

21. Plaintiff contends that Defendants by their bad faith conduct described above, and otherwise to be determined, violated the South Carolina Unfair Trade Practices Act, by engaging in unfair or deceptive acts or practices, capable of repetition and thus affecting the public interest.

22. As a direct and proximate result of these acts and practices by Defendants, Plaintiff has suffered and should be awarded actual, special and consequential damages in amounts to be proven, and further that Plaintiff should also be awarded punitive damages, of not less than \$500,000, for such willful and malicious bad faith conduct, with all damages awarded to be trebled, and attorney fees and costs under the Act.

WHEREFORE, Plaintiff prays that this Honorable Court grant him judgment as follows:

a. On the First Cause of Action against Defendants, jointly and severally, actual, special and consequential damages in amounts to be proven, plus punitive damages of not less than \$500,000;

b. On the Second Cause of Action against Defendants, jointly and severally, actual, special and consequential damages in amounts to be proven, plus punitive damages of not of not less than \$500,000;

c. On the Third Cause of Action, for declaratory relief/judgment as to the rights/liabilities/obligations of the parties under the insurance contract and otherwise, and any other associated relief deemed proper;

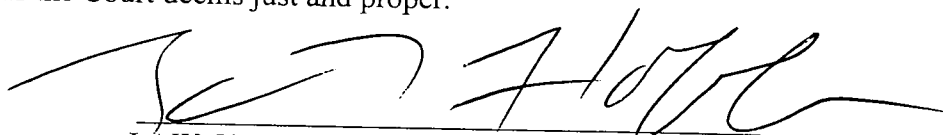
d. On the Fourth Cause of Action, against Defendants, jointly and severally, actual, special and consequential damages in amounts to be proven, plus punitive

damages of not of not less than \$500,000, and that all such damages be trebled;

e. On all causes of action, for attorney fees and costs;

f. On all causes of action, for any such other and further relief, including but not limited to injunctive relief, as the Court deems just and proper.

Dated: April 3, 2012



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29920
843/838-5290

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 12-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

v.

**NOTICE OF MOTION AND MOTION
FOR SUMMARY ADJUDICATION OF
ISSUE (Rule 56)/INJUNCTIVE RELIEF**

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

2012 MAY -4 PM 12:13
JERRY A. HOFFMAN, JR.
BEAUFORT COUNTY, SC
CLERK OF COURT

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiff Bruce R. Hoffman, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will and does hereby move in the Courtroom of the Honorable Marvin L. Dukes III, at 102 Ribaut Road, Beaufort, South Carolina, on **May 22, 2012 at 8:30 a.m.**, for summary adjudication on the issue of coverage/injunctive relief against Defendants Seneca Specialty Insurance Company, CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter, Aydlette Services of Lowcountry, Inc. and Capstone ISG, Inc.

This motion is made on the ground that there is coverage under the insurance policy for the damage to the office building at issue, proximately caused, Defendants claim, by raccoons. Plaintiff is thus entitled to judgment/injunctive relief as a matter of law on the same. This motion is based on the pleadings on file in this action, as well as such other testimony, evidence and authority as may be presented at the hearing on the motion.

Plaintiff was surprised given the prior representations, when Defendant Seneca denied Plaintiff's claim by letter dated March 15, 2012 (copy with pertinent portion of insurance policy attached), acknowledging that raccoons

proximately caused all damage, but claiming that this cause is excluded from coverage by virtue of a provision in the policy that provides, "We will not pay for loss or damage caused by or resulting from any of the following ... Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals". This provision, and the policy as a whole, is ambiguous, and this ambiguity is construed (particularly with an exclusion) against the writer of the policy, Defendant Seneca - nowhere in the policy is damage caused by raccoons, or raccoons, specifically mentioned, and the provision of the policy cited could have, but doesn't say, all animals or even all other animals, and the only reasonable/logical interpretation is that "other animals" is other animals *like* insects, birds, rodents, i.e. vermin, not wild animals like raccoons, descended from bears, which den not nest, and one of which, as noted in the complaint, growled at Plaintiff when he confronted them (which vermin are not known to do). Under these circumstances, the burden to prove raccoon damage is excluded is on the insurer, not on the Plaintiff, and objectively here, their use of "other animals" is ambiguous on its face, and coverage and repair thus must occur.

Jones v. Equicredit Corp., 347 S.C. 535, 556 S.E.2d 713 states that "when there is no South Carolina case directly on point, our court may look to other jurisdictions for persuasive authority". In this regard, see, e.g., Umanoff v. Nationwide Mut. Fire Ins. Co., 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981) where it was held that raccoons are not vermin and, as not named specifically as excluded in the policy, there was coverage for raccoon damage under a policy that excluded vermin damage. Also, in Marks v. Trinity Universal Ins. Co., 531 So.2d 516, 517 (La. Ct. App. 1988), the court concluded a similar exclusion in a policy was ambiguous, in a case involving a squirrel. In this regard it is generally accepted that raccoons, as a member of the bear family, fall outside any vermin-like exclusion in a policy, vermin coming from the Latin *vermis*, which means "worm", i.e. insect-like animals.

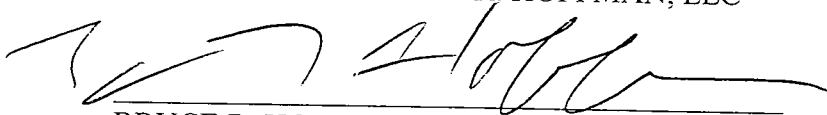
WHEREFORE, Plaintiff moves that the Court enter summary adjudication in their favor against Defendant Seneca Specialty Insurance Company, et. al., on the issue of insurance coverage for the losses claimed, and for

such other and further relief as the Court deems just and appropriate (including but not limited to injunctive relief to compel coverage and repair of the office building, roof, heating and air ducts, cleanup, etc).

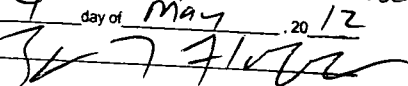
Sworn to and subscribed before me this 4th day of May, 2012

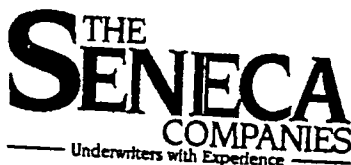

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 08/08/14

LAW OFFICE OF BRUCE R. HOFFMAN, LLC



BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties *for parties themselves*
This 4 day of May, 20 12
By 



CERTIFIED MAIL/RRR
7010 0780 0001 8547 1355
COPY BY REGULAR MAIL

March 15, 2012

Bruce Hoffman
574 Sea Island Parkway
Saint Helena Island, SC 29920

INSURED: Bruce Hoffman
POLICY #: BAK 1002868
CLAIM #: 12BBN034
LOSS DATE: 2/3/2012

Dear Mr. Hoffman:

Seneca Specialty Insurance Company, Inc., ("Seneca"), has concluded its investigation into the facts and circumstances surrounding this claim with the assistance of independent adjuster Robert Dodd of Capstone ISG. Mr. Dodd has completed his inspection of the premises with you and Mr. Joe Maffo of Critter Management and advises there were multiple signs of raccoon and other animal activity widely observed around the risk. Raccoon tracks were observed on the handrails of the front porch and there were animal droppings observed in multiple locations. There was also pulled insulation within the HVAC duct work and also beneath the risk and in the surrounding heavily wooded area. Also there was insulation and debris observed on the interior surfaces, book cases and desks. Mr. Maffo stated that the raccoons were entering the crawlspace beneath the HVAC platform and also gaining access to the attic through the HVAC duct. Mr. Maffo also stated that the animals had free and easy access and were obviously using the attic for nesting. He stated the risk was also being infested by rats and squirrels due to the close proximity of the surrounding heavily wooded area. Mr. Maffo stated he believed the entire attic insulation and HVAC duct work would require replacement. This loss is not covered under the terms and conditions of the policy and therefore we must deny coverage to the insured for this loss.

We refer you to policy form entitled, CP 10 30 04 02 Causes of Loss - Special Form, which reads in relevant part:

B. Exclusions

2. We will not pay for loss or damage caused by or resulting from any of the following:

160 Water Street, New York, NY 10038
(212) 344-3000

Seneca Specialty Ins. Co. 000166 (2012-0293)

- d. (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- 3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
 - c. Faulty, inadequate or defective:
 - (4) Maintenance;
of part or all of any property on or off the described premises.

Unfortunately, the loss sustained by the insured is excluded from coverage under this form, therefore, Seneca, can not make any payments to the insured, or anyone on the insured's behalf with respect to this claim.

In denying coverage to the insured for the above captioned claim, Seneca does not waive, but rather, expressly reserves all of the rights and defenses to which it is entitled to under the terms and conditions of the policy, whether mentioned herein or not.

Should the insured possess documentation or information that it believes will impact Seneca's decision on this claim, we invite the insured to forward such documentation or information as soon as possible for our review. Should you wish to discuss this matter further, please feel free to call me at 212-277-3487.

In the event that the insured wishes to review this matter with the South Carolina Department of Insurance, you may write to them at The Capitol Center, 1201 Main Street, Suite 1000, Columbia SC 29201-3105 or P.O. Box 100105, Columbia, SC 29202-3105 or contact them at 803-737-6229.

Very truly yours,



Robert D'Alessandro

CC: Southern Cross Underwriters of Sumter

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are always three pairs of legs in the adult, and these are all borne upon the thorax; and in most insects two pairs of membranous wings are developed [upon] the thorax The head is composed of several segments amalgamated together and carries a pair of jointed feelers or antenna, a pair of eyes, usually compound, and the appendages of the mouth Beetles, flies, wasps, mosquitoes, etc. are insects."

Other common pests in the insect class include termites, ants, bedbugs, some lice, flies, moths, aphids, fleas, cockroaches, bees, hornets, crickets, and butterflies. Popularly, some small animals, usually wingless, including spiders, centipedes, wood lice, ticks, and mites, are considered insects, though they are not technically in that classification.

Webster's New Twentieth Century Dictionary 948 (Unabridged 2d ed. 1979).

Birds

A "bird" is defined as "any of a class (Aves) of warm-blooded vertebrates distinguished by having the body more or less completely covered with feathers and the forelimbs modified as wings." Webster's New Collegiate Dictionary 111 (1980).

Rodents

Rodents (Rodentia order) is an order of small mammals whose chief characteristic is their teeth. While they have no canines, their large chisel-like incisors are used for gnawing and nibbling. The Encyclopedia Britannica, vol. 19 p. 430, and vol. 23, p. 619 (1968), describes rodents as including squirrels, beavers, mice, rats, lemmings, muskrats, gophers, chipmunks, and groundhogs or woodchucks. Also, some animals raised for commercial profit or as domestic pets are rodents: chinchillas, nutrias, hamsters, gerbils, and guinea pigs.

(Animals frequently mistaken for rodents are opossums (Marsupialia order), moles and hedgehogs (Insectivor order), and raccoons and skunks (Carnivora order).) Disagreement in the zoology field surrounds the classification of rabbits and hares. While American zoologists characterize these gnawing and hopping mammals as belonging to the Lagomorpha order, the European school prefers to recognize them as part of the Rodentia order.

Other Animals

The term "animal" is defined as "[a]ny animate being which is endowed with the power of voluntary motion. An animate being, not human." Black's Law Dictionary 80 (5th Ed. 1979)

"Animal" has also been defined as:

1. any living organism except a plant or bacterium: most animals can move about voluntarily and have specialized sense organs that enable them to react more quickly than plants to stimuli: animals are unable to make their own food, the way plants do, from inorganic matter by photosynthesis
2. any such organism other than a human being, esp. a mammal or, sometimes, any four-footed creature.

Webster's New World Dictionary (2d College ed. 1984).

Resulting Loss

Like the other exclusions in the wear and tear grouping, this exclusion is subject to a resulting loss exception. If the nesting, infestation, etc. results in a "specified causes of loss" or building

glass breakage, there will be coverage for the "specified cause of loss" or building glass breakage. This resulting loss provision is discussed at Key BP56.

Recovery has been allowed for losses that resulted from damage caused by creatures which are subject to similar exclusions and resulting loss provisions. For example, in Roberts v. State Farm Fire & Cas. Co., 705 P.2d 1335 (Ariz. 1985), reviewed at PLRB, Prop. Ins. L. Rev. 2056 (1985), bees had constructed a hive in the attic of the insured's home. An exterminator was hired to kill them. A few days after the extermination, the insureds noticed that honey was dripping into the dining room of their home. Coverage under a Homeowners policy was denied by the insurer on the basis of an exclusion which eliminated coverage for losses caused by insects. The insureds conceded that the actual damage done by the bees was not covered. However, they insisted that the damage to the dining room was covered under the ensuing loss exception which read that "any ensuing loss . . . not excluded is covered." The court noted that the term "ensuing loss" was not defined in the policy, and that dictionary and case law definitions all were to the effect that an "ensuing loss" was one which took place afterward. It concluded that the loss due to the honey seepage was an ensuing loss which was covered by the policy in the absence of some applicable exclusion.

While the court in Roberts was discussing an ensuing loss provision, the holding could apply to a resulting loss provision as well. (Ensuing loss is the Homeowners version of resulting loss in commercial policies). However, keep in mind that the resulting loss provision that applies to the nesting, infestation, etc., of insects, birds, rodents or other animals, only covers those resulting losses caused by the "specified causes of loss" or building glass breakage, not any covered loss.

See CQ-2009.02.12a - nesting exclusion did not apply to damage caused by one mouse.

POLICY LANGUAGE

BP 00 02 01 97 - BP 00 03 01 10

I. Other Types Of Loss

-
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;

Copyright, ISO Properties, Inc., 2009

LANGUAGE HISTORY

BP 00 02 01 97 - BP 00 03 01 10

No change.

Includes copyrighted material of ISO Properties, Inc. with its permission.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	JUDICIAL CIRCUIT
	)	
BRUCE R. HOFFMAN,	)	CASE NO. 2012-CP-07-01352
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
SENECA SPECIALTY INSURANCE	)	ANSWER OF DEFENDANT
COMPANY; CRC INSURANCE	)	SENECA SPECIALTY INSURANCE
SERVICES, INC. D/B/A SOUTHERN	)	COMPANY
CROSS UNDERWRITERS OF	)	
SUMTER; AYDLETTE SERVICES OF	)	
LOWCOUNTRY, INC.; AND	)	
CAPSTONE ISG, INC,	)	
	)	
DEFENDANTS.	)	
	)	

TO: BRUCE R. HOFFMAN, ATTORNEY PRO SE

Defendant Seneca Specialty Insurance Company (hereinafter referenced as "Seneca" or "Defendant") by and through their undersigned attorneys, hereby answers the Complaint of Bruce R. Hoffman (hereinafter referred to as "Plaintiff") as follows:

1. Each and every allegation not specifically admitted below is hereby denied.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Insurance Contract)

2. Defendant admits upon information and belief the allegations contained in Paragraph 1 of the Plaintiff's Complaint.

3. Defendant admits that it is "a corporation organized and existing under the laws of a state other than South Carolina, but is licensed to do and does insurance business in the State of South Carolina, County of Beaufort." Defendant denies the remaining allegations contained in Paragraph 2 of the Plaintiff's Complaint as written.

4. Defendant admits the allegations contained in Paragraph 3 of the Plaintiff's Complaint.

5. In response to Paragraph 4 of the Plaintiff's Complaint, Defendant admits upon information and belief that "Plaintiff has paid all insurance premiums due to Defendant, Seneca Specialty Insurance Company." Defendant denies the remaining allegations contained in Paragraph 4 of the Plaintiff's Complaint as written.

6. In response to Paragraph 5 of the Plaintiff's Complaint, Defendant admits that the Plaintiff's office building sustained damage caused by raccoons. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 5 of the Plaintiff's Complaint, and therefore it denies the same.

7. In response to Paragraph 6 of the Plaintiff's Complaint, Defendant admits that the Plaintiff's office building was damaged and that Plaintiff made a claim for this damage on or about February 3, 2012. Defendant denies the remaining allegations contained in Paragraph 6 of the Plaintiff's Complaint.

8. In response to Paragraph 7 of the Plaintiff's Complaint, Defendant admits that a representative of Capstone ISG, Inc. came to the Plaintiffs property and investigated the Plaintiff's claim. The remaining allegations contained in Paragraph 7 of the Plaintiff's Complaint are conclusions of law to which no response is required by the Defendant. To the extent that a response is required, Defendant denies the remaining allegations contained in Paragraph 7 of the Plaintiff's Complaint.

9. In response to Paragraph 8 of the Plaintiff's Complaint, Defendant admits that it denied Plaintiff's claim due to an exclusion in its policy which specifically and unambiguously states "We will not pay for loss or damage caused by or resulting from any of the following...Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or

other animals.” The Defendant denies the remaining allegations contained in Paragraph 8 of the Plaintiff’s Complaint.

10. The allegations contained in Paragraphs 9, 10, and 11 of the Plaintiff’s Complaint are conclusions of law to which no response is required by the Defendant. To the extent that a response is required, Defendant denies the allegations contained in Paragraphs 9, 10, and 11 of the Plaintiff’s Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Bad Faith Refusal to Pay Insurance Claim)

11. In response to Paragraph 12 of the Plaintiff’s Complaint, Defendant re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

12. Defendant denies the allegations contained in Paragraphs 13 through 16 of the Plaintiff’s Complaint, including subparts therein.

AS TO THE THIRD CAUSE OF ACTION
(Declaratory Judgment)

13. In response to Paragraph 17 of the Plaintiff’s Complaint, Defendant re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

14. Defendant denies the allegations contained in Paragraphs 18 and 19 of the Plaintiff’s Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Violation of Unfair Trade Practices Act (SC Code 39-5-10 ET SEQ))

15. In response to Paragraph 20 of the Plaintiff’s Complaint, Defendant re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

16. Defendant denies the allegations contained in Paragraphs 21 through 22 of the Plaintiff’s Complaint.

FURTHERING ANSWERING BY WAY OF AFFIRMATIVE DEFENSES

For a First Affirmative Defense
(Failure to State a Claim)

17. Plaintiff's claims fail to state facts sufficient to constitute a cause of action against Defendant. Therefore, Plaintiff's claims against Defendant should be dismissed under Rule 12(b)(6) SCRCF with prejudice.

For a Second Affirmative Defense
(Mitigation of Damages)

18. Plaintiff had an obligation to mitigate his damage but has failed to do so in whole or in part.

For a Third Affirmative Defense
(Lack of Proximate Cause)

19. Defendant alleges that the Plaintiffs' alleged damages, if any, are not the proximate cause of any act or omission by Defendant.

For a Fourth Affirmative Defense
(Punitive Damages)

20. The imposition of punitive or exemplary damages against the Defendant would violate its constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, the Double Jeopardy clause in the Fifth Amendment to the Constitution of the United States, similar provisions in applicable State Constitutions, and/or the common law and public policies of pertinent States, and/or applicable statutes and court rules, in the circumstances of this litigation, including but not limited to:

- a. imposition of such punitive damages by a jury which (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award, (2) is not adequately and clearly instructed on

the limits on punitive damages imposed by the principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state or residence of the Defendant, (4) is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and the furtherance of legitimate purposes on the basis of objective standards;

b. imposition of such punitive damages, and determination of the amount of an award thereof, where applicable state law is impermissibly vague, imprecise, or inconsistent;

c. imposition of such punitive damages, and determination of the amount of an award thereof, employing a burden of proof less than clear and convincing evidence;

d. imposition of such punitive damages, and determination of the amount of an award thereof, without bifurcating the trial and trying all punitive damages issues only if and after the liability of Defendants has been found on the merits;

e. imposition of such punitive damages, and determination of the amount of an award thereof, under any state's law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount;

f. imposition of such punitive damages, and determination of the amount of any award thereof, based on anything other than Defendant's conduct in connection with the sale of the products alleged in this litigation, or in any other way subjecting Defendant to impermissible multiple punishment for the same alleged wrong; and/or

g. imposition of punitive damages by the jury as opposed to the Court, as the issues of the imposition and amount of punitive damages are matters of constitutional fact that must be determined by the Court, not the jury.

For an Fifth Affirmative Defense
(Compliance with Industry Customs, Practices, and Standards)

21. Any and all services that Defendant may have provided met all industry customs, practices, and standards applicable to the claims of Plaintiff.

For a Thirteenth Affirmative Defense
(Additional Defenses)

22. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserve the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiffs' Complaint and asserted these affirmative defenses, Defendant Seneca Specialty Insurance Company prays that the Plaintiff's Complaint be dismissed together with the costs and disbursements of this action and for such other and further relief as this Court deems proper.

YOUNG CLEMENT RIVERS, LLP

By: Edward D. Buckley, Jr.
Edward D. Buckley, Jr.
ebuckley@ycrlaw.com
Joshua P. Cantwell
jcantwell@ycrlaw.com
P.O. Box 993, Charleston, SC 29402
(843) 720-5446
Attorneys for the Defendants
Seneca Specialty Insurance Company and
Capstone ISG, Inc.

Charleston, South Carolina

Dated: May 11, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this 14th day of
May, 2012.

Denise Brown

IN THE COURT OF COMMON PLEAS

14th JUDICIAL CIRCUIT

COUNTY OF BEAUFORT

CASE NO. 2012-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION OF 05/30/12
ORDER**

SENECA SPECIALTY INSURANCE
COMPANY; CRC INSURANCE SERVICES
INC. D/B/A SOUTHERN CROSS
UNDERWRITERS OF SUMTER; AYDLETTE
SERVICES OF LOWCOUNTRY, INC.; and
CAPSTONE ISG, INC.,

Defendants.

2012 JUN 28 AM 10:02
JOSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

Plaintiff, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, or other authority, will move before the Honorable Marvin H. Dukes III, Master in Equity for Beaufort County, on the 10th (tenth) day after service hereof, or as soon thereafter as Counsel may be heard, for reconsideration of his order dated May 30, 2012, denying Plaintiff's Motion for Summary Judgment.

This Motion is made within 10 (ten) days of the Court's order being emailed, taking into account Plaintiff's protection from June 5 through 25, 2012. This is putting aside the fact that the 5/30/12 order has never actually been served as required by the SCRCP.

A party may wish to file a Rule 59(e) motion when the party believes the Court has misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the Court to reconsider or rule on it (See *Elam v. South Carolina Dept. of Transp.*, 602 S.E.2d 772 [2004]). Here, Plaintiff believes that the Court misunderstood the point that Plaintiff was making, as borne out by the Court's own order. Plaintiff believes the Court erred when it found the referenced language in the policy exclusion to be unambiguous, and as such must reconsider this order and grant the summary adjudication motion.

In this regard, at the hearing somehow it morphed from being a Motion for Summary Judgment on the following issue: If raccoons caused the damage, raccoon damage is not excluded under the policy, to whether the phrase "other animals" was vague and ambiguous so that the exclusion was unenforceable. Either way, this Motion for Summary Judgment, objectively, has to be resolved in Plaintiff's favor.

The grounds for this motion are as follows:

The Court in its order stated "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business. *Hansen ex rel. Hansen v. United Services Auto. Ass'n*, 565 S.E.2d 114, 116 - 117 (Ct. App. 2002).

Furthermore, a contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.

Id. at 117. Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted. *Id.* The Court denied the Motion for Summary Judgment because it found the referenced language in the policy exclusion unambiguous.

The language at issue here is ambiguous and capable of two reasonable interpretations.

The order states that "Defendant Seneca Specialty Insurance Company denied Plaintiff's claim due to an exclusion in its policy regarding damage caused by 'animals'." The phrase actually used in the policy was "or other animals".

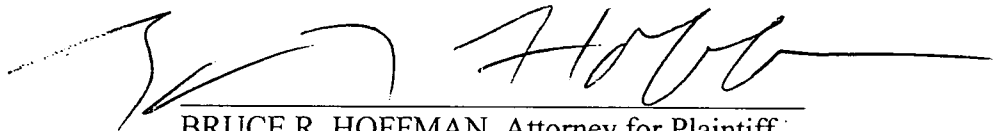
The Court, in its own order, cited Black's Law Dictionary (5th) stating that "'Other' is 'Different or distinct from that already mentioned; additional or further'" and in particular, "Following an enumeration of particular classes 'other' must be read as 'other such like, and includes ONLY others of like kind and character'." The enumeration of particular classes stated in the exclusion were 'insects, birds and rodents' which are considered vermin. That is why I argued during the hearing and submitted case law after the hearing that raccoons are not vermin, and thus not of like kind and character with the classes enumerated in the beginning of the exclusion, but evidently the Court did not understand why I was drawing the distinction between raccoons (what Defendant Seneca's adjuster says caused the damage at issue in this case), and the specifically enumerated class in the exclusion.

So 1) as raccoons are not vermin, they cannot be considered as 'other such like', and are not "of like kind and character", with the specifically enumerated class in the policy exclusion, so that the phrase "or other animals" IS vague and ambiguous as to whether raccoons are excluded or what exactly is excluded, and/or 3) the exclusion cannot possibly exclude raccoons as they are not vermin like the animals listed. Under these circumstances, and objectively so no discovery on the issue necessary, raccoon damage would not be excluded under the policy, based on the Black's Law Dictionary definition of "or other animals", and/or that the phrase "or other animals" is vague and ambiguous because who knows what is being excluded by that phrase - what other animals? - could have said all other, or any other, but doesn't, vague on its face. So the exclusion, objectively, is certainly capable of two differing interpretations, is thus, by definition, ambiguous, and the exclusion (to be construed in favor of the insured and against the insurer in any event) is thus unenforceable with no discovery necessary to draw this conclusion.

This Motion will also be based on such testimony, evidence and authority as may be presented at the hearing on the Motion. Consultation with opposing counsel would have been futile and/or could not be timely held.

Dated: June 28, 2012

LAW OFFICE OF BRUCE R. HOFFMAN, LLC



BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.
This 28 day of June, 2012
By B. R. Hoffman

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO. 12-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

v.

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

2012 SEP 12 AM 9:46

JEAN ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**SUPPLEMENT TO MOTION FOR
SUMMARY ADJUDICATION OF
ISSUE (RECONSIDERATION OF
SAME)**

**OTHER ANIMALS IN POLICY IS NOT ALL OTHER ANIMALS. INSTEAD IS
OTHER ANIMALS LIKE THOSE SPECIFICALLY LISTED AND RACCOONS ARE
NOT VERMIN LIKE THE OTHER ANIMALS SPECIFICALLY LISTED. BURDEN
ON INSURANCE COMPANY TO PROVE EXCLUSION, HERE EXCLUSION IS
AMBIGUOUS AS TO RACCOON DAMAGE, SO RACCOON DAMAGE NOT
EXCLUDED, IS COVERED.**

There are myriad writings, on the Internet and otherwise, demonstrating that the phrase "other animals", as in the policy at issue here, is commonly considered, by the average person, to mean "and the like", in other words, "other animals" like the "insects, birds, rodents" specifically listed just before the phrase "other animals" in the exclusion. It does not mean "all other animals", if that was the intention (and the policy is supposed to be construed against the insurance company, not against the insured) it would have said "all other animals". As raccoons are not specifically listed, and are not an animal like insects, birds and rodents, then either damage from raccoons is not excluded or it is ambiguous whether damage from raccoons is excluded or not – either way the

damage in this case, which the insurance company and their adjuster say was caused by raccoons, is covered.

For just one example (besides the Black's Law Dictionary definition cited in a previous filing), attached and incorporated by reference is an article from the Boston College Environmental Affairs Law Review, Volume 14, Issue 4, Article 3, which, referencing primarily Couch on Insurance, states in pertinent part:

"Where a contract's terms are ambiguous, courts favor a reasonable construction that supports coverage.

When a court construes ambiguities in favor of coverage it prevents frustration of the basic purpose for

purchasing insurance: the indemnification of losses. Provisions in a contract are ambiguous if particular words are reasonably susceptible to more than one interpretation. Courts require those phrases that create exceptions to the basic coverage provisions – "exclusions" – to clearly exclude coverage in order to prevent the elimination of more coverage than intended by the insured.

Courts will not honor the insurer's intention to limit coverage of certain risks if this intention is ambiguously expressed. Instead, courts look for both parties' objectively-manifested intent, as implied by the words of the contract. One principle of contract interpretation that courts will use to imply the parties' intent is that of *ejusdem generis* (latin for "of the same kind"). This principle allows a court to infer that specific words restrict the meaning of general terms when the specific terms precede the general terms in a particular phrase. Thus, in a phrase "cattle, hogs and other animals," "animals" may not refer to much more than farm animals, because the specific animals mentioned before the general word are hogs and cattle.

Ejusdem generis is only one aspect of a broader doctrine holding that general phrases may be restricted in meaning by being grouped with specific terms regardless of the ordering. Thus, as in the above example, the term "animals" in the phrase "animals, cattle and hogs" may be limited to farm animals under this broader doctrine [with "other animals" in the policy at issue having to be limited the same way]. In applying construction doctrines, courts look to the ordinary meanings of the words used in a phrase to discern the intent of the parties.

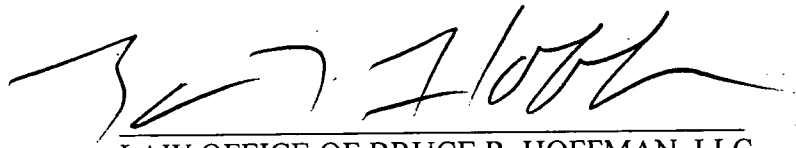
Closely related to a court's attempt to find the objective intent of the parties is the court's attempt to discern the

reasonable expectations of the insured as to coverage. Since the insurer drafts and controls the wording of the insurance policy, the expectations of a reasonably prudent person buying the insurance is given more weight than the expectations of the insurer. The known character of the insured's business [in a rural office as here] affects the assumed expectations of both parties to the contract. **When a risk is one that a prudent person in the position of the insured would reasonably expect to be covered, an exclusion clause must clearly bar coverage to be effective.** Insurers have the burden of establishing that an exclusion clause clearly denies coverage."

Further, in discovery, Seneca produced pages from the PLRB, Property Loss Research Bureau, obviously a resource they rely on in making coverage determinations. Included was the attached definition of "Rodents" which notes that "Animals frequently mistaken for rodents are opossums, moles and hedgehogs, and raccoons and skunks. Also received in discovery was the attached page from the report of Robert Dodd, adjuster, to Seneca, noting in "recommendations" that "Per the instructions received from your office on 2/12/12, raccoons are considered rodents and are excluded from coverage. As such, we recommend denial of this claim and closing the file without payment."

Besides Mr. Dodd clearly not being the independent adjuster he claimed to be 1) that Seneca was pondering whether raccoons are rodents, shows that even they know the policy exclusion at issue does not exclude all other animals, but only other animals like rodents, of that same kind and 2) if they were telling Dodd to say that raccoons are rodents, when raccoons, which are wild animals descended from bears that den not nest, are objectively not rodents, and their own PLRB research material says raccoons are not rodents, then they are trying to invent an exclusion that they know does not exist, to limit coverage when there should clearly be coverage. Either the exclusion is ambiguous or raccoons are not part of the exclusion, but either way, there is coverage here for the losses claimed, and the Court must so order (as well as compel the repair of the office building, roof,

heating and air ducts, cleanup, etc).



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

Sworn to and subscribed before me
This 12th day of September, 2012



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 08/08/24

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
14TH JUDICIAL CIRCUIT

CASE NO. 2012-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

v.

SENECA SPECIALTY INSURANCE
COMPANY; CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS
UNDERWRITERS OF SUMTER; AYDLETTE
SERVICES OF LOWCOUNTRY, INC.; and
CAPSTONE ISG, INC.,

Defendants.

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION OF
01/07/13 ORDER GRANTING PARTIAL
SUMMARY JUDGMENT TO
DEFENDANT AYDLETTE SERVICES
OF LOWCOUNTRY INC.**

FILED
JAN 17 PM 12:42
CLERK OF COURT
ROSENEAU
COUNTY, S.C.

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

Plaintiff, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, or other authority, will move before the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, on the 10th (tenth) day after service hereof, or as soon thereafter as Counsel may be heard, for reconsideration of his Order dated January 7, 2013, granting Defendant Aydlette partial summary judgment.

This Motion is made within 10 (ten) days of the date of the Court's order.

A party may wish to file a Rule 59(e) motion when the party believes the Court has misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the Court to reconsider or rule or at least clarify a ruling on it (See Elam v. South Carolina Dept. of Transp., 602 S.E.2d 772 (2004)).

The grounds for this Motion are as follows:

Defendant Aydlette, at the least third party beneficiary of, and liable by association on, the Seneca insurance contract at issue, knew or had notice that my office building was located in a rural, wooded area on Saint Helena Island, where there are lots of raccoons. They nonetheless procured me a policy that may have excluded damage caused by raccoons (this is in dispute), without telling me, for their own gain. Defendant Aydlette is thus liable on all causes of action, by association and for both having misrepresented the coverage they were procuring for me

(contract breach accompanied by misrepresentation), and for having soon thereafter convinced me not to switch to another, less expensive Harleysville policy that I asked them about, which did not contain any such exclusion, secretly because they did not do business that with that other insurance company and would lose their commission. See, e.g. Turner v Milliman, 708 S.E.2d 766 (2011).

This Motion will also be based on such testimony, evidence and authority as may be presented at the hearing on the Motion. Consultation with opposing counsel would have been futile and/or could not be timely held.

LAW OFFICE OF BRUCE R. HOFFMAN, LLC



BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

Sworn to and subscribed before me
This 17th day of January, 2013



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 08/08/2021

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.
This 17 day of January, 2013
By [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 12-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT OR
SUMMARY ADJUDICATION OF
ISSUES (RULE 56)/INJUNCTIVE
RELIEF**

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

2013 MAR 25 PM 1:11
JENNIFER A. HARRIS, CLERK
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiff Bruce R. Hoffman, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will and does hereby move in the Courtroom of the Honorable Carmen T. Mullen, at 102 Ribaut Road, Beaufort, South Carolina, on a date and time to be determined, for summary judgment or summary adjudication of issues, including the issues of coverage/injunctive relief/damages against all Defendants, most notably Defendant Seneca Specialty Insurance Company.

This motion is made on the ground that, unless an exclusion clearly applies, and this is strictly construed against the insurance company not the insured, there is coverage, and here objectively no exclusion applies under the insurance policy for the damage to the office building at issue, proximately caused, Defendants claim, by raccoons. Plaintiff is thus entitled to judgment/injunctive relief as a matter of law on the same, along with consequential/resulting damages. This motion is based on the pleadings on file in this action, as well as such other testimony, evidence and authority as may be presented at the hearing on the motion.

Plaintiff was surprised given the prior adjuster representations that the damage would be fixed, when Defendant

Seneca denied Plaintiff's claim by letter dated March 15, 2012 (copy with pertinent portion of insurance policy attached), acknowledging that raccoons proximately caused all damage, but claiming that this cause is excluded from coverage by virtue of a provision

in the policy that provides, **"We will not pay for loss or damage caused by or resulting from any of the following ... Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals"**. This provision, and the policy as a whole, is ambiguous, and this ambiguity is construed (particularly with an exclusion) against the writer of the policy, Defendant Seneca - nowhere in the policy is damage caused by raccoons, or raccoons, specifically mentioned, and the provision of the policy cited could have, but doesn't say, all animals or even all other animals, and the only reasonable/logical interpretation is that "other animals" is other animals *like* insects, birds, rodents, i.e. vermin, not wild animals like raccoons, descended from bears, which den not nest, and one of which, as noted in the complaint, growled at Plaintiff when he confronted them (which vermin are not known to do). Under these circumstances, the burden to prove raccoon damage is excluded is on the insurer, not on the Plaintiff, and objectively here, their use of "other animals" is ambiguous on its face, and coverage and repair thus must occur.

Jones v. Equicredit Corp., 347 S.C. 535, 556 S.E.2d 713 states that "when there is no South Carolina case directly on point, our court may look to other jurisdictions for persuasive authority". In this regard, see, e.g., Umanoff v. Nationwide Mut. Fire Ins. Co., 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981) where it was held that raccoons are not vermin and, as not named specifically as excluded in the policy, there was coverage for raccoon damage under a policy that excluded vermin damage. Also, in Marks v. Trinity Universal Ins. Co., 531 So.2d 516, 517 (La. Ct. App. 1988), the court concluded a similar exclusion in a policy was ambiguous, in a case involving a squirrel. In this regard it is generally accepted that raccoons, as a member of the bear family, fall outside any vermin-like exclusion in a policy, vermin coming from the Latin *vermis*, which means "worm", i.e. insect-like animals.

Further as to Defendant Seneca's claim that an exclusion applies, **OTHER ANIMALS IN POLICY IS**

NOT ALL OTHER ANIMALS. INSTEAD IS OTHER ANIMALS LIKE THOSE SPECIFICALLY LISTED AND RACCOONS ARE NOT VERMIN LIKE THE OTHER ANIMALS SPECIFICALLY LISTED. HEAVY BURDEN ON INSURANCE COMPANY TO PROVE EXCLUSION OR THERE IS COVERAGE, HERE EXCLUSION IS AMBIGUOUS AS TO RACCOON DAMAGE, SO RACCOON DAMAGE NOT EXCLUDED, IS COVERED.

There are myriad writings, on the Internet and otherwise, demonstrating that the phrase “other animals”, as in the policy at issue here, is commonly considered, by the average person, to mean “and the like”, in other words, “other animals” like the “insects, birds, rodents” specifically listed just before the phrase “other animals” in the exclusion. It does not mean “all other animals”, if that was the intention (and the policy is supposed to be construed against the insurance company, not against the insured) it would have said “all other animals”. As raccoons are not specifically listed, and are not an animals like insects, birds and rodents, then either damage from raccoons is not excluded or it is ambiguous whether damage from raccoons is excluded or not – either way the damage in this case, which the insurance company and their adjuster say was caused by raccoons, is covered.

For just one example (besides the Black’s Law Dictionary definition cited in a previous filing), attached and incorporated by reference is an article from the Boston College Environmental Affairs Law Review, Volume 14, Issue 4, Article 3, which, referencing primarily Couch on Insurance, states in pertinent part:

“Where a contract’s terms are ambiguous, courts favor a reasonable construction that supports coverage. When a court construes ambiguities in favor of coverage it prevents frustration of the basic purpose for purchasing insurance: the indemnification of losses. Provisions in a contract are ambiguous if particular words are reasonably susceptible to more than one interpretation. Courts require those phrases that create exceptions to the basic coverage provisions – “exclusions” – to clearly exclude coverage in order to prevent the elimination of more coverage than intended by the insured.

Courts will not honor the insurer's intention to limit coverage of certain risks if this intention is ambiguously expressed. Instead, courts look for both parties' objectively-manifested intent, as implied by the words of the contract. One principle of contract interpretation that courts will use to imply the parties' intent is that of *ejusdem generis* (latin for "of the same kind"). This principle allows a court to infer that specific words restrict the meaning of general terms when the specific terms precede the general terms in a particular phrase. Thus, in a phrase "cattle, hogs and other animals," "animals" may not refer to much more than farm animals, because the specific animals mentioned before the general word are hogs and cattle.

Ejusdem generis is only one aspect of a broader doctrine holding that general phrases may be restricted in meaning by being grouped with specific terms regardless of the ordering. Thus, as in the above example, the term "animals" in the phrase "animals, cattle and hogs" may be limited to farm animals under this broader doctrine [with "other animals" in the policy at issue having to be limited the same way]. In applying construction doctrines, courts look to the ordinary meanings of the words used in a phrase to discern the intent of the parties.

Closely related to a court's attempt to find the objective intent of the parties is the court's attempt to discern the reasonable expectations of the insured as to coverage. Since the insurer drafts and controls the wording of the insurance policy, the expectations of a reasonably prudent person buying the insurance is given more weight than the expectations of the insurer. The known character of the insured's business [in a rural office as here] affects the assumed expectations of both parties to the contract. **When a risk is one that a prudent person in the position of the insured would reasonably expect to be covered, an exclusion clause must clearly bar coverage to be effective.** Insurers have the burden of establishing that an exclusion clause clearly denies coverage."

Further, in discovery, Seneca produced pages from the PLRB, Property Loss Research Bureau, obviously a resource they rely on in making coverage determinations. Included was the attached definition of "Rodents" which notes that "Animals frequently mistaken for rodents are opossums, moles and hedgehogs, and

raccoons and skunks. Also received in discovery was the attached page from the report of Robert Dodd, adjuster, to Seneca, noting in "recommendations" that "Per the instructions received from your office on 2/12/12, raccoons are considered rodents and are excluded from coverage. As such, we recommend denial of this claim and closing the file without payment."

Besides Mr. Dodd clearly not being the independent adjuster he claimed to be 1) that Seneca was pondering whether raccoons are rodents, shows that even they know the policy exclusion at issue does not exclude all other animals, but only other animals like rodents, of that same kind; and 2) if they were telling Dodd to say that raccoons are rodents, when raccoons, which are wild animals descended from bears that den, not nest, are objectively not rodents, and their own PLRB research material says raccoons are not rodents, then they are trying to invent an exclusion that they know does not exist, to limit coverage when there should clearly be coverage.

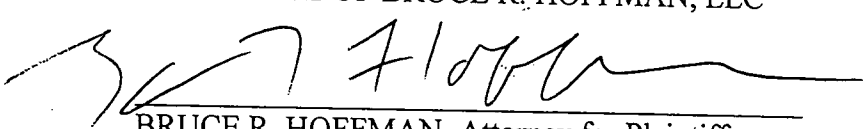
Either the exclusion is ambiguous or raccoons are not part of the exclusion, but either way, there is coverage here for the losses claimed, and the Court must so order (as well as compel the repair of the office building, roof, heating and air ducts, cleanup, etc).

The only defense that Defendant has raised in over a year of litigation is this exclusion, and I have proven why this exclusion does not apply. Further, if for some reason there is not coverage for raccoon damage, then Defendant Aydlette sold (and induced me not to cancel) a bogus policy and they should be ordered to pay for all repairs.

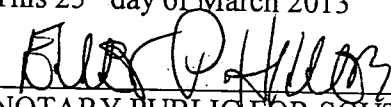
WHEREFORE, Plaintiff moves that the Court enter summary adjudication in their favor against Defendant Seneca Specialty Insurance Company, et. al., on the issue of insurance coverage for the losses claimed, and for such other and further relief as the Court deems just and appropriate (including but not limited to injunctive relief to compel coverage and repair of the office building, roof, heating and air ducts, cleanup, etc and all

consequential/resulting damages from bad faith denial of claim, the adjuster lying to me, the insurance agent selling me/inducing me not to cancel a policy that may turn out to have been completely unsuitable for where they knew the office was located, and otherwise).

LAW OFFICE OF BRUCE R. HOFFMAN, LLC

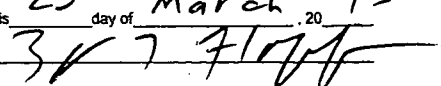

BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

Sworn to and subscribed before me
This 25th day of March 2013


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 08/08/21

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 25 day of March, 2013
By 

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 12-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

v.

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

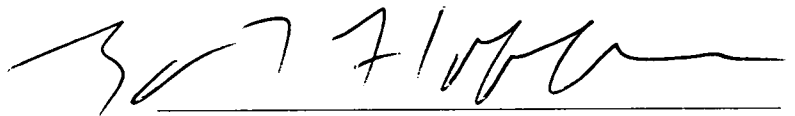
**PLAINTIFF'S MOTION FOR
PRE-TRIAL HEARING/STATUS
CONFERENCE (RULE 16) AND
FOR SUMMARY JUDGMENT
(RULE 56)**

Defendants.

Notice is hereby given that Plaintiff Bruce R. Hoffman will and does hereby move for 1) a Pre-Trial Hearing/Status Conference pursuant to Rule 16, SCRCF; and 2) Summary Judgment or summary adjudication of issues under Rule 56, SCRCF, now that discovery recently ordered by the Court to completed has been completed, including Plaintiff's deposition . This motion is based on the ground that disposing of this Motion will assist in effectively and efficiently preparing this case for trial, and on other evidence and authority to be presented (as well as Plaintiff's previous summary judgment motions, incorporated in full by reference).

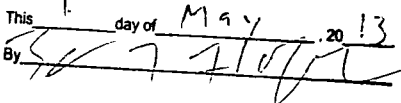
Consultation with Defendants regarding this Motion would be futile or could not be timely held.

Dated: May 1, 2013



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 1 day of May, 2013
By 

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BRUCE R. HOFFMAN,

Plaintiff,

v.

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 12-CP-07-1352

**SUPPLEMENT TO MOTION FOR
SUMMARY JUDGMENT, ETC.**

2013 MAY -6 AM 9:18
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

1. Copy of exclusion in policy for “nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents *or other animals*” attached, which Defendant Seneca seeks to use to deny coverage for the raccoon damage at my law office building at 574 Sea Island Parkway, Saint Helena Island, SC 29920, which building is in very close proximity to and surrounded by heavily wooded areas with lots of animals, including raccoons. The words “raccoon” or “raccoons” appear nowhere in the policy.
2. Copy of explanation of the “ejusdem generis” doctrine from Boston College Environmental Affairs Law Review article, quoting Couch on Insurance, this doctrine being a rule of insurance policy construction, that specific words restrict the meaning of general terms when the specific terms precede the general terms in a particular phrase in a policy. So “other animals” in the policy exclusion at issue, which is to be strictly construed anyway against the insurer and for the insured, would be other animals like insects, birds and rodents, not the entire animal kingdom.
3. Raccoons, objectively, are not like insects, birds and rodents, raccoons are not vermin. They are wild animals descended from bears, they den, not nest, and as a furbearing animals, they are protected in South Carolina, and attached is scientific literature to this effect.
4. Further, attached is a page produced by Defendant Seneca from the PLRB, Property Loss Research

Bureau, a resource they use in making coverage determinations – which states “Animals frequently mistaken for rodents are opossums, moles and hedgehogs, and raccoons and skunks.” By having produced this page in discovery, Seneca has admitted that raccoons are not rodents, and they are certainly not birds nor insects.

5. Attached also is another page received in discovery from Seneca, from the report of Robert Dodd, supposed “independent” adjuster of the claim at issue, noting in recommendations that “Per the instructions received from your office on 2/12/12, raccoons are considered rodents and are excluded from coverage. As such, we recommend denial of this claim and closing this file without payment.” So their own PLRB research says raccoons are not rodents, but they are telling the adjuster to say raccoons are rodents to deny coverage, this is clearly bad faith denial of a claim, for which substantial damages are due.
6. Even if the Court did find that raccoon damage was excluded under this policy, an impossibility given the foregoing, another page produced by Defendant Seneca from their PLRB manual, says that the exclusion could be subject to an ENSUING LOSS EXCEPTION, that “Recovery has been allowed for losses that resulted from damage caused by creatures which are subject to similar exclusions and resulting loss provisions.” The resource notes that ensuing loss is called resulting loss in commercial policies, and that as any ensuing or resulting loss not excluded is covered, all ensuing losses here, e.g. all the damage to the HVAC system, etc. would be covered. So one way or the other there is coverage, and summary judgment to this effect must be entered and the repairs made.
7. If somehow this Court finds that the exclusion above does apply here, and none of the resulting losses are covered either, again, an impossibility given the foregoing, then Defendant Aydlette sold Plaintiff a completely inappropriate policy given the location of this particular office building on Saint Helena Island, in very close proximity to and surrounded by heavily wooded areas with lots of animals, including raccoons, and must be held responsible therefore, and further must be held responsible for inducing Plaintiff, a few days after the policy was purchased, not to switch to another Harleysville policy that did

not contain the same exclusion (see attached), because Aydlette would have lost their commission as they do not do business with Harleysville (in this regard, Plaintiff objects to the affidavits of Tom Aydlette and Gale Fox, for lack of personal knowledge of what they both have sworn to, for both stating Kinghorn originally sold me the Seneca policy at issue, which is not true, and otherwise).

Dated: April 15, 2013



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	JUDICIAL CIRCUIT
BRUCE R. HOFFMAN,	)	CASE NO. 2012-CP-07-01352
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANTS SENECA SPECIALTY
SENECA SPECIALTY INSURANCE	)	INSURANCE COMPANY & CAPSTONE
COMPANY; CRC INSURANCE	)	ISG, INC.'S NOTICE OF MOTION AND
SERVICES, INC. D/B/A SOUTHERN	)	MOTION FOR SUMMARY JUDGMENT
CROSS UNDERWRITERS OF	)	
SUMTER; AYDLETTE SERVICES OF	)	
LOWCOUNTRY, INC.; AND	)	
CAPSTONE ISG, INC,	)	
	)	
DEFENDANTS.	)	
	)	

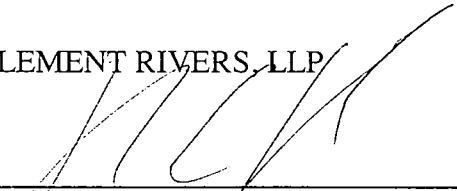
TO: BRUCE R. HOFFMAN, ATTORNEY PRO SE

PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendant Seneca Specialty Insurance Company & Capstone ISG, Inc., will move before the presiding Judge of the Beaufort County Court of Common Pleas, on the tenth (10) day after service hereof, or as soon as counsel may be heard, for an Order granting summary judgment as to all claims in the Plaintiff's Complaint. This motion is made on the following grounds: 1) the policy exclusion at issue in this case is clear and unambiguous per the May 30, 2012 Order of Judge Dukes. *See Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995) (The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment); 2) Plaintiff's reported loss was caused by animals, which is unambiguously excluded under terms of the Seneca insurance policy; and 3) the evidence in the case establishes

that Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. fully investigated Plaintiff's claim in good faith, and Seneca Specialty Insurance Company's denial of the Plaintiff's claim was appropriate.

This motion may be supplemented and supported by such affidavits, memoranda of law, and such other documents as appropriate.

YOUNG CLEMENT RIVERS, LLP

By: 

Edward D. Buckley, Jr.

ebuckley@ycrlaw.com

Joshua P. Cantwell

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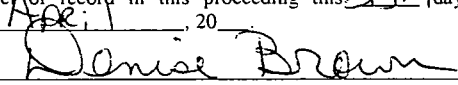
Attorneys for Defendants Seneca Specialty
Insurance Company & Capstone ISG, Inc.

Charleston, South Carolina

Dated: 4/25/2013

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 25th day of

Apr, 2013


STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BRUCE R. HOFFMAN,

PLAINTIFF,

vs.

SENECA SPECIALTY INSURANCE
COMPANY; CRC INSURANCE
SERVICES, INC. D/B/A SOUTHERN
CROSS UNDERWRITERS OF
SUMTER; AYDLETTE SERVICES OF
LOWCOUNTRY, INC.; AND
CAPSTONE ISG, INC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

JUDICIAL CIRCUIT

CASE NO. 2012-CP-07-01352

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS SENECA SPECIALTY
INSURANCE COMPANY & CAPSTONE
ISG, INC.'S MOTION FOR SUMMARY
JUDGMENT**

TO: ALL COUNSEL OF RECORD

Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. file this memorandum of law in support of their Joint Motion for Summary Judgment.

STATEMENT OF THE CASE

This case arises out of an insurance claim involving the Plaintiff's property located at 574 Sea Island Parkway, Saint Helena Island, South Carolina. On February 3, 2012, Plaintiff reported to Defendant Seneca Specialty Insurance Company a loss to his property. The damage was reportedly caused by an infestation of raccoons and possibly other animals in the attic, HVAC system and work spaces of Plaintiff's office building. On February 8, 2012, in response to the Plaintiff's notice of claim, a representative of Defendant Capstone ISG, Inc., Robert Dodd, on behalf of Seneca Specialty Insurance Company, personally inspected Plaintiff's office. Dodd Aff. ¶ 3, Ex. A. Through his investigation and conversations with the Plaintiff, Mr. Dodd

determined that the damage to Plaintiff's office was, in fact, caused by infestation, waste products and secretions of animals in the duct work of the HVAC system and elsewhere on the Plaintiff's property. Dodd Aff. ¶ 4., Ex. A. Additionally, Mr. Dodd observed animal droppings beneath the office HVAC ducts. Dodd Aff. ¶ 4., Ex. A.

Plaintiff's insurance policy contains the following exclusions:

B. Exclusions

2. We will not pay for loss or damages caused by or resulting from any of the following:

d.(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a through 3.c. But if an excluded cause of loss that is listed in 3.a through 3.c results in a Covered Cause of Loss, we will pay for the loss or damage caused by the Covered Cause of Loss.

c. Faulty, inadequate or defective:

(4) Maintenance;

of part of all of any property on or off the described premises.

Therefore, Seneca Specialty Insurance Company determined that the loss sustained to the Plaintiff's property was excluded from coverage under the Plaintiff's insurance policy and denied Plaintiff's claim for coverage under the policy on March 15, 2012. Ex. B.

Plaintiff filed this lawsuit on April 3, 2012 alleging causes of action against all Defendants for 1) Breach of Contract; 2) Bad Faith Refusal to Pay Insurance Claim; 3) Declaratory Judgment; and 4) Violations of the S.C. Unfair Trade Practices Act (S.C. Code § 39-5-10 *et seq.*) ("SCUTPA"). Plaintiff moved for summary judgment/adjudication on the issue of coverage on or around May 4, 2012. Judge Dukes denied Plaintiff's Motion for Summary Judgment/Adjudication on May 30, 2012 finding that the policy language at issue was not ambiguous. *See* Dukes Order p. 4, Ex. C. Plaintiff moved for summary judgment on all causes

of action on March 25, 2013, which was denied by Judge Mullen on April 15, 2013. Defendants filed this Motion for Summary Judgment on April 25, 2013.

SUMMARY JUDGMENT LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." South Carolina Rules of Civil Procedure (SCRCP) 56(c). Under Rule 56(c), the party seeking summary judgment must clearly establish by the record the absence of a triable issue of fact. *Baughman v. American Tel. & Tel. Co.*, 410 S.E.2d 537, 545 (1991).

To determine whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Osborne v. Adams*, 550 S.E.2d 319, 320 (2001). After the moving party has met this initial burden, the non-moving party must set forth or point to specific facts showing there is a genuine issue of material fact. *Thomas v. Waters*, 445 S.E.2d 654, 660 (S.C. Ct. App. 1994). The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment. *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995).

ARGUMENT

The Court should grant summary judgment in favor of the Defendants Seneca and Capstone because 1) the policy exclusion at issue in this case is clear and unambiguous per the May 30, 2012 Order of Judge Dukes; 2) Plaintiff's reported loss was unambiguously excluded under terms of the Seneca insurance policy, and there is no evidence of bad faith on the part of

the Defendants; 3) Plaintiff's Unfair Trade Practices Act claim is barred by S.C. Code § 39-5-40 and thus fails as a matter of law; 4) Plaintiff's claims against Defendant Capstone ISG, Inc. fail as a matter of law due to the fact that Capstone is not a party to the underlying insurance contract; and 5) Plaintiff failed to properly answer Defendants' Request to Admit, and therefore, those requests should be deemed admitted.

I. The animal exclusion at issue in this case is clear and unambiguous.

An insurance contract is subject to the general rules of contract construction. *Hansen ex rel. Hansen v. United Services Auto. Ass'n*, 350 S.C. 62, 68, 565 S.E.2d 114, 116 - 117 (Ct. App. 2002). "The purpose of all rules of construction is to ascertain the intention of the parties to the contract." *Id.* at 116. Where the terms of a contract are clear and unambiguous, its construction is for the court; but where the terms are ambiguous, the question of the parties' intent must be submitted to the jury. *Id.* "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Id.* at 117. Furthermore, "[a] contract is ambiguous only when it may fairly and reasonably be understood in more ways than one." *Id.* at 117. Insurance policies are subject to the general rules of contract construction. *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). "Courts must enforce, not write, contracts of insurance...." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (quoting *Sloan Constr. Co. v. Central Nat'l Ins. Co.*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977)). The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d

132, 134 (2003). If the contract's language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect.

In the present case, there is only one reasonable way to interpret the language of the insurance contract. Plaintiff's insurance policy directly excludes damage caused by all animals. The policy clearly reads that the insurer will not pay for loss or damages caused by or resulting from the "nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals."

In Judge Dukes' Order Denying Plaintiff's Motion for Summary Judgment dated May 30, 2012, he determined that the word "animal", while broad, is clearly defined, commonly used and well-understood, and he also made the specific reference that these types of exclusions are commonly referred to by the Courts as "animal exclusions." *See* Dukes Order p. 4, Ex. C. His Honor further stated and found that the words "other animals" contained in the policy exclusion were not ambiguous and therefore denied Plaintiff's Motion for Summary Judgment. *See* Dukes Order p. 4, Ex. C.

Furthermore, in his motion for summary judgment and during the course of the oral arguments previously made before the Court, Plaintiff has repetitively referred to two cases wherein courts were faced with the issue of interpreting exclusions involving the word "vermin." *See Umanoff v. Nationwide Mut. Fire Ins. Co.*, 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981); *Marks v. Trinity Universal Ins. Co.*, 531 So.2d 516, 517 (La. Ct. App. 1988). The specific policy language in the *Umanoff* case relied upon by the Plaintiff was as follows: "[t]his policy does not insure under either Part I or Part II, against loss resulting from: ...9. Any of the following...(a) birds, domestic animals, termites and other insects, or vermin...." *Umanoff v. Nationwide Mut.*

Fire Ins. Co., 442 N.Y.S.2d at 893. The court found that the word “vermin” was capable of more than one meaning and thus, consequently construed the policy in favor of the insured. *Id.*

Plaintiff’s reliance upon these authorities is misguided, as there is no such issue involving insurance exclusions pertaining to the word “vermin” in the present case. In the present case, the word “animal”, while broad, is clearly defined and reasonably understood, and the words “other animals” are not ambiguous. The loss sustained to the Plaintiff’s property was excluded from coverage under the Plaintiff’s insurance policy due to the fact that the damage was caused by animal infestation, and Seneca Specialty Insurance Company’s denial of the Plaintiff’s claim was appropriate. Therefore, Defendants’ Motion for Summary Judgment should be granted.

II. There is no evidence of unreasonableness or bad faith on the part of Defendants Seneca and Capstone.

Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. promptly and fully investigated Plaintiff’s claim, and Seneca Specialty Insurance Company’s denial of the Plaintiff’s claim was appropriate. In *Nichols v. State Farm Mut. Automobile Ins. Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983), the South Carolina Supreme Court recognized an action for bad-faith refusal to pay benefits under an insurance policy. The Court held in *Nichols* that “if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action.” *Id.*, 306 S.E.2d at 619. Bad faith is defined as “a knowing failure on the part of the insurer to exercise an honest and informed judgment in processing a bad claim.” *Am. Fire & Cas. Co. v. Johnson*, 332 S.C. 307, 311, 504 S.E.2d 356, 358 (Ct. App. 1998). “An insurer acts in bad faith where there is no reasonable basis to support the insurer’s decision.” *Id.*, 504 S.E.2d at 358. On the other hand, if there is any reasonable basis for denial of the insured’s claim, there

can be no bad faith. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (1992).

In the present case, Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. fully investigated Plaintiff's claim in good faith, and Seneca Specialty Insurance Company's denial of the Plaintiff's claim was appropriate and supported by the investigation of Capstone ISG, Inc. and the surrounding factual circumstances.

On February 3, 2012, Plaintiff reported to Defendant Aydlette a loss to his property. The damage was reportedly caused by an infestation of raccoons and possibly other animals in the attic, HVAC system and work spaces of Plaintiff's office building. *See* Notice of Claim, Ex. D. On February 8, 2012, in response to the Plaintiff's notice of claim, a representative of Defendant Capstone ISG, Inc., Robert Dodd, on behalf of Seneca Specialty Insurance Company, personally inspected Plaintiff's office. Dodd Aff. ¶ 3, Ex. A. Mr. Dodd took several photographs of the damage which depict the animal infestation of the Plaintiff's property. Dodd Aff. ¶ 7-8, Ex. A. Through his investigation and conversations with the Plaintiff, Mr. Dodd determined that the damage to Plaintiff's office was, in fact, caused by infestation, waste products and secretions of animals in the duct work of the HVAC system and elsewhere. Dodd Aff. ¶ 6, Ex. A.

Furthermore, both the Plaintiff and personnel from Critter Management that were hired by the Plaintiff to investigate the matter confirmed that the property was infested by animals. *See* Dodd Aff. ¶ 6, Ex. A.; Critter Management Documents, Ex. E. Mr. Dodd conducted his investigation of the premises with both Plaintiff and personnel from Critter Management present, and everyone was fully aware that there were multiple signs of raccoon and other animal activity widely observed around the property. Raccoon tracks were observed on the handrails of the front porch and there were animal droppings observed in many locations inside and outside of

the office. There was pulled insulation within the HVAC ductwork and also beneath the property. *See Dodd Aff. ¶ 7-8, Ex. A.*

During the Plaintiff's deposition, Plaintiff specifically testified concerning a time when he noticed a large animal in his attic:

95

13 Q. So there is no doubt in your mind that
14 there were raccoons in your attic?

15 A. That is what I was told. And it looked
16 like -- I saw the bannister. I heard the growl
17 would one night. And I saw the bannister. And that
18 sure does look like raccoon tracks. Even I could
19 figure that out. And that they would have been the
20 only one strong enough to have done these things --

21 Q. Right.

22 A. -- is the way it was explained to me.

23 Really, it was explained to me.

97

13 A. But I'm sitting in my office at night,
14 7:00 o'clock, 8:00 o'clock working. And like I hear
15 a noise above me. And I have a broom. And I bang
16 it on the ceiling.

17 Q. Uh-huh.

18 A. And something growls.

19 Q. Okay.

20 A. And I said, "Wow, that is -- that is
21 something serious." So maybe it was before I knew
22 it was a raccoon. I might have said to them that
23 something growled at me. So it might have been
24 before they even came out here.

25 Q. Right.

98

1 A. But close in time to when they came out
2 here, that, gee, something growled at me recently.
3 And they said, "Oh, well that is what raccoons do.
4 They growl." I said okay. But it was like close in
5 time to when they both came out here. And, I mean,
6 no one else was here. And I definitely heard

7 something growl at me like almost like a dog
8 growling.
9 Q. Okay. You knew that there was an animal
10 in the attic, right?
11 A. Something serious. Not, you know --
12 something not like birds, insects, or rodents. That
13 this was something serious.
14 Q. Okay. But it was definitely an animal,
15 right?
16 A. Oh, it growled.
17 Q. Yeah. Exactly.
18 A. I mean, humans growl I guess sometimes,
19 but --
20 Q. You can give me that, that it was
21 definitely an animal that growled at you?
22 A. I don't know what it was because I
23 couldn't see it, but to me it seemed like it was an
24 animal. And it was like around this time.
25 Q. In your attic?

99

1 A. Well, I mean, I'm assuming. I mean, it
2 was in my office and it was right like in the
3 ceiling.
4 Q. In your ceiling?
5 A. I couldn't see it, but it was -- it
6 appeared to be right above me.
7 Q. Okay. Fair enough.

Plaintiff Depo, 95:13-23, 97:13-99:7, 4/24/2013, Ex. F.

In addition to the investigation and photos of Mr. Dodd and the testimony of the Plaintiff, numerous invoices from repair contractors provided to the Defendants during discovery indicate that the damage to the Plaintiff's office was as a result of animal infestation. *See* Critter Management Work Order, 1/10/2012 Ex. E ("animals in ceilings & odors" "raccoon infestation"); Pender Brothers Invoice, 4/13/2012, Ex. G ("Raccoons, snakes, rats, etc. have gotten into the ductwork and ruined it"); and Critter Management Quote, 9/4/2012, Ex. H ("raccoon infestation and damage").

On the basis of Mr. Dodd's on-site investigation, the representations made by the Plaintiff, as well as personnel from Critter Management that were hired by the Plaintiff, that animal infestation was the cause of the damage to the property, and the thorough coverage determination of the insurance policy in question, Seneca acted appropriately and reasonably in evaluating the Plaintiff's claim. There is no evidence to indicate bad faith on the part of Defendants Seneca and Capstone, and therefore, Defendants' Motion for Summary Judgment should be granted as to all claims in the Plaintiff's Complaint.

III. Plaintiff's Unfair Trade Practices Act claim is barred by S.C. Code § 39-5-40 and thus fails as a matter of law.

Under South Carolina's Unfair Trade Practices Act, a plaintiff may only recover when the plaintiff has suffered "any ascertainable loss of money or property . . . as a result of the use or employment by another person of an unfair or deceptive method, act or practice." S.C. Code § 39-5-140(a). However, certain practices and transactions are exempt from the Act. Section 39-5-40 states, in relevant part:

Nothing in this article shall apply to:

(a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law.

S.C. Code Ann. 39-5-40.

The South Carolina insurance industry is one of the most heavily regulated fields of law and has its own regulatory body to govern the insurance industry. Moreover, the S.C. Legislature has passed unfair practices legislation specifically regulating claims handling by the insurance industry; however, the Plaintiff did not plead a violation of such statute in his Complaint. See S.C. Code § 38-59-20 *et seq.*

Furthermore, even if the Plaintiff was able to establish a breach of contract on the part of the Defendants, a breach of contract between private parties is not enough in order to support a UTPA claim. *Noack Enterprises, Inc. v. Country Corner Interiors*, 290 S.C. 475, 479, 351 S.E.2d 347, 350 (Ct. App. 1986) (holding an unfair or deceptive act or practice that affects only the parties to a commercial transaction is beyond the SCUPTA's embrace); *Ardis v. Cox*, 314 S.C. 512, 518-19, 431 S.E.2d, 267, 271 (Ct. App. 1993) (holding a mere breach of contract, even one that is intentional and deliberate, does not constitute a violation of the SCUTPA).

The Plaintiff has also failed to produce any evidence to establish the essential element of impact upon the public interest. The statute is not available to redress a private wrong where the public interest is unaffected. Absent proof of that element, Plaintiff's SCUTPA claim fails as a matter of law. See *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996); *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (1996).

For these reasons, Plaintiff's SCUTPA claim fails as a matter of law, and the Court should grant the Defendants' Motion for Summary Judgment, accordingly.

IV. Plaintiff's claims against Defendant Capstone ISG, Inc. fail as a matter of law because Capstone is not a party to the underlying insurance contract.

It is well established in South Carolina that the duties arising out of an insurance contract do not extend to an entity like Defendant Capstone ISG, Inc., an independent adjuster hired by Defendant Seneca Specialty Insurance Company, who is not a party to the contract. See *Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) (independent adjusters are not parties to the contract and therefore cannot be held liable for a breach or bad faith); *Carter v. American Mut. Fire Ins. Co.*, 279 S.C. 368, 307 S.E.2d 227 (1983) (a cause of action does not extend to a person who is not a party to or a named insured under the insurance contract); *Carolina Bank and Trust Co. v. St. Paul Fire and*

Marine Co., 279 S.C. 576, 310 S.E.2d 163 (Ct. App. 1983) (the duty of good faith in the performance of obligations based on or arising under the contract does not extend to a person who is not a party to the insurance contract, affirming dismissal of bad faith claim).

Accordingly, the Defendant Capstone ISG, Inc. cannot be held liable for bad faith refusal to pay benefits, as it is not a party to the insurance contract with the Plaintiff, and therefore, summary judgment is appropriate as to all causes of action alleged in the Plaintiff's Complaint against it.

V. Plaintiff failed to properly answer Defendants' Requests to Admit, and therefore, those matters should be deemed admitted.

On April 12, 2013, Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. served Requests to Admit to the Plaintiff, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure. Ex. I. As of the date of this memorandum, the only response to these requests from the Plaintiff was included in a letter dated May 16, 2013, to Cheri L Young, court reporter, wherein Plaintiff included the following statement: "BPS: As to Requests to Admit served by Seneca and Capstone on 4/12/2013, they are all denied given the present circumstances of this case." Ex. J.

This response fails to comport with the requirements of Rule 36 of South Carolina Rules of Civil Procedure, and thus, Defendants' Requests should be deemed admitted. Not only did this document fail to separately answer each of the Defendants' Request to Admit, as required by SCRCP 36, it also was not signed by the "party or his attorney", as it was clearly sent from Hoffman's office staff. See SCRCP 36(a). As such, Plaintiff's failure to properly answer Defendants Requests to Admit renders all matters included in those requests conclusively admitted. *Scott v. Greenville Housing Authority*, 353 S.C. 639, 645-46, 579 S.E.2d 151, 154 (Ct. App. 2003).

Therefore, the following matters should be deemed admitted by Plaintiff:

REQUESTS TO ADMIT

1. Admit that a raccoon is an animal.
2. Admit that raccoons or other animals caused damage to the subject property.
3. Admit that on February 3, 2012, Plaintiff made a claim for damages to the subject property to Defendant Seneca Specialty Insurance Company.
4. Admit that on February 8, 2012, Robert Dodd of Capstone ISG, Inc. personally inspected the Plaintiff's property on behalf of Seneca Special Insurance Company.
5. Admit that the attached photographs of the subject property were taken by Robert Dodd during his inspection on February 8, 2012.
6. Admit that the photographs depict damage to the subject property caused by animals.
7. Admit that the photographs depict damage to the subject property caused by animal infestation.
8. Admit that the photographs depict damage to the subject property caused by animal waste products and/or secretions.

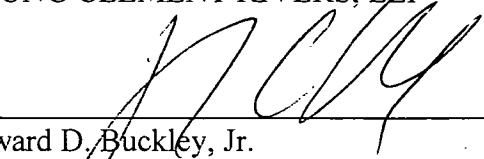
Defendants Requests to Admit, 4/12/2013, Ex. I.

Consequently, there are no genuine issues of material fact for a jury to decide in this case, and the grant summary judgment in favor of Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. is appropriate.

CONCLUSION

For the foregoing reasons, Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc. respectfully request that the Court grant their Joint Motion for Summary Judgment on all causes of action in the Plaintiff's Complaint and for such other relief as the Court deems appropriate. There is no issue of fact for a jury to decide, and these Defendants are entitled to summary judgment because the Plaintiff's damages were caused entirely by animal infestation, an excluded cause under the terms of his policy of insurance.

YOUNG CLEMENT RIVERS, LLP

By: 

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Attorneys for Defendants Seneca Specialty

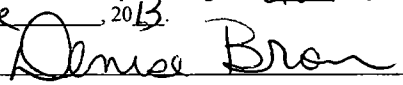
Insurance Company & Capstone ISG, Inc.

Charleston, South Carolina

Dated: 6/20/2013

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 20th day of

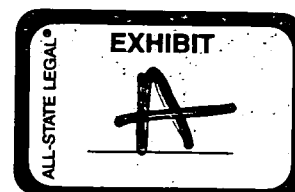
June, 2013.


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	JUDICIAL CIRCUIT
	)	
BRUCE R. HOFFMAN,	)	CASE NO. 2012-CP-07-01352
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
SENECA SPECIALTY INSURANCE	)	
COMPANY; CRC INSURANCE	)	
SERVICES, INC. D/B/A SOUTHERN	)	
CROSS UNDERWRITERS OF	)	
SUMTER; AYDLETTE SERVICES OF	)	
LOWCOUNTRY, INC.; AND	)	
CAPSTONE ISG, INC,	)	
	)	
DEFENDANTS.	)	

**AFFIDAVIT OF
ROBERT DODD**

Personally appeared before Robert Dodd, who, being duly sworn, deposes and says the following:

1. That he is more than 18 years of age and makes this affidavit upon his own personal knowledge.
2. That he investigated a loss reported by Bruce R. Hoffman on February 3, 2012, on behalf of Seneca Special Insurance Company.
3. In connection with my investigation on February 8, 2012, I personally inspected the office of Bruce R. Hoffman where damage was reportedly caused by raccoons and possibly other animals in the attic, HVAC system and work spaces of Mr. Hoffman's office building.
4. Through discussions with Mr. Hoffman and my own observations, I determined that the damage to his office was caused by infestation, waste products and secretions of



animals in the duct work of the HVAC system and elsewhere. Animal droppings were observed beneath HVAC ducts.

5. Mr. Hoffman's insurance policy contains the following exclusion:

B. Exclusions

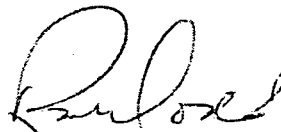
2. We will not pay for loss or damages caused by or resulting from any of the following:

d/(5) Nesting or infestation or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

6. I determined that the cause of Mr. Hoffman's loss was nesting or infestation or discharge or release of waste products by animals, including raccoons and, probably, squirrels and rats as well.

7. Regardless of the species of animal which caused the damage described by Mr. Hoffman and identified in my investigation, the damage was clearly caused by animal infestation, and the waste discharge and secretions are documented in the photographs attached as Exhibit 1-9.

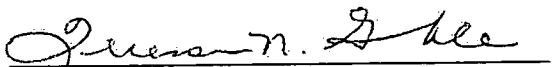
8. The photographs attached as exhibits 1-9 fairly and accurately depict the conditions I observed on February 8, 2012.



Robert Dodd

Sworn to and subscribed before me

this 24th day of April, 2013



Notary Public for the State of South Carolina

My Commission Expires: 2-10-22

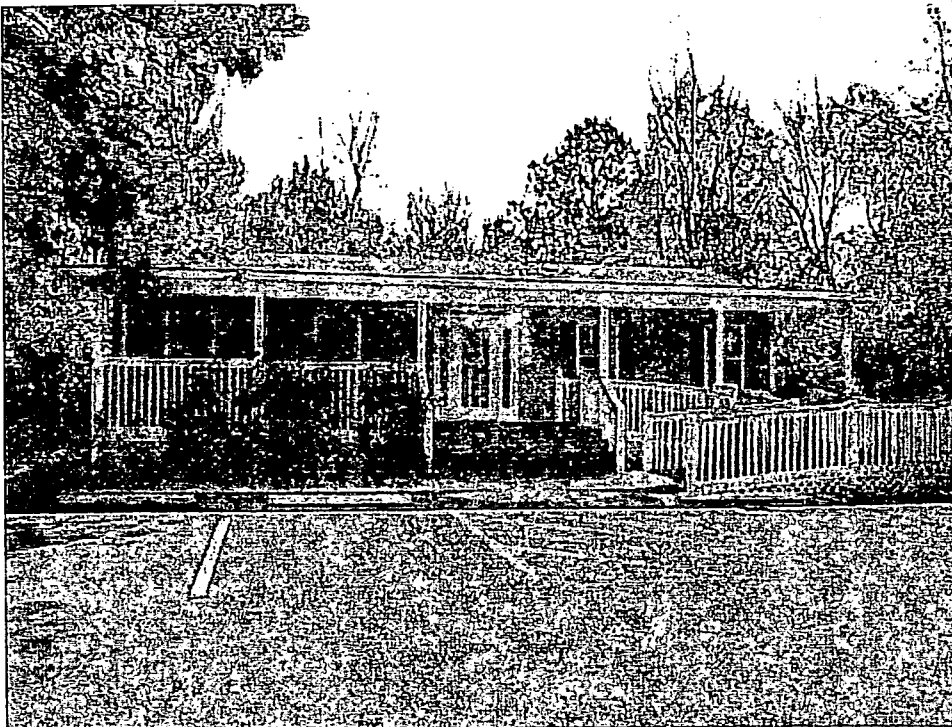
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868

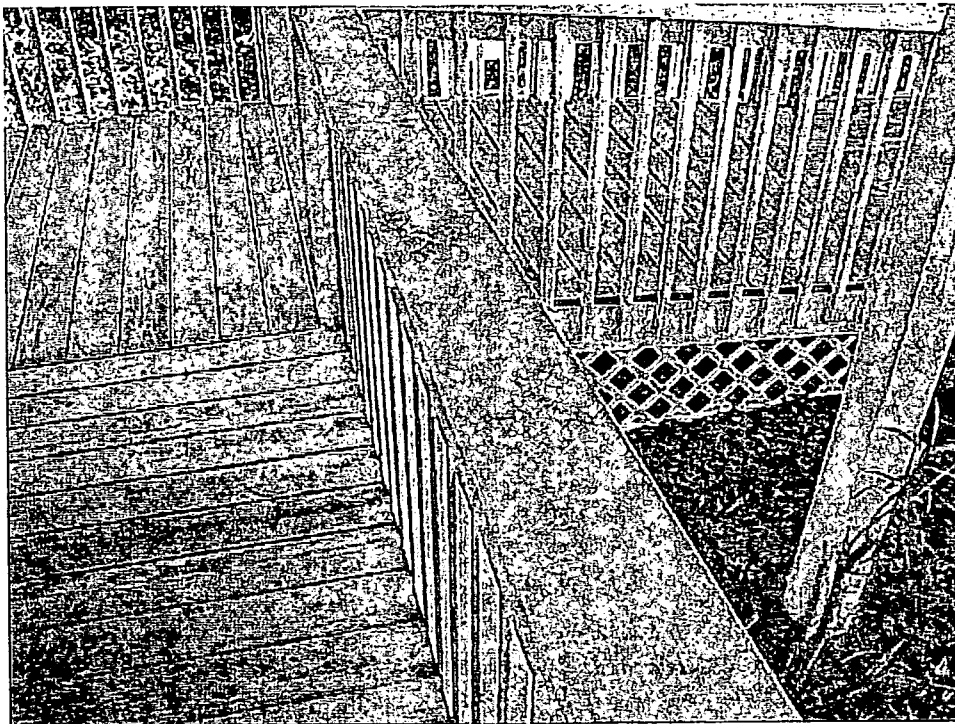


Front Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Front view of the risk located at 574 Sea
Island Pkwy., St. Helena Island, SC
29920



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoon tracks observed around the
exterior of the risk

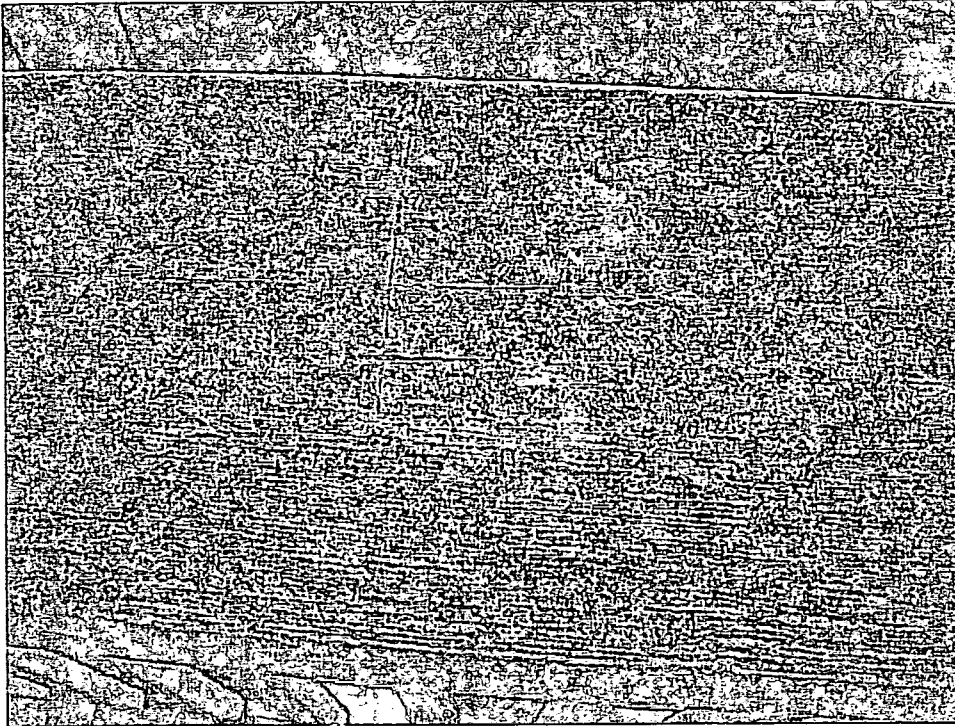
Photo Sheet

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www.capstoneisg.com

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Claim #: 12BBN034

Policy #: BAK1002868



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Close-up of raccoon tracks



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

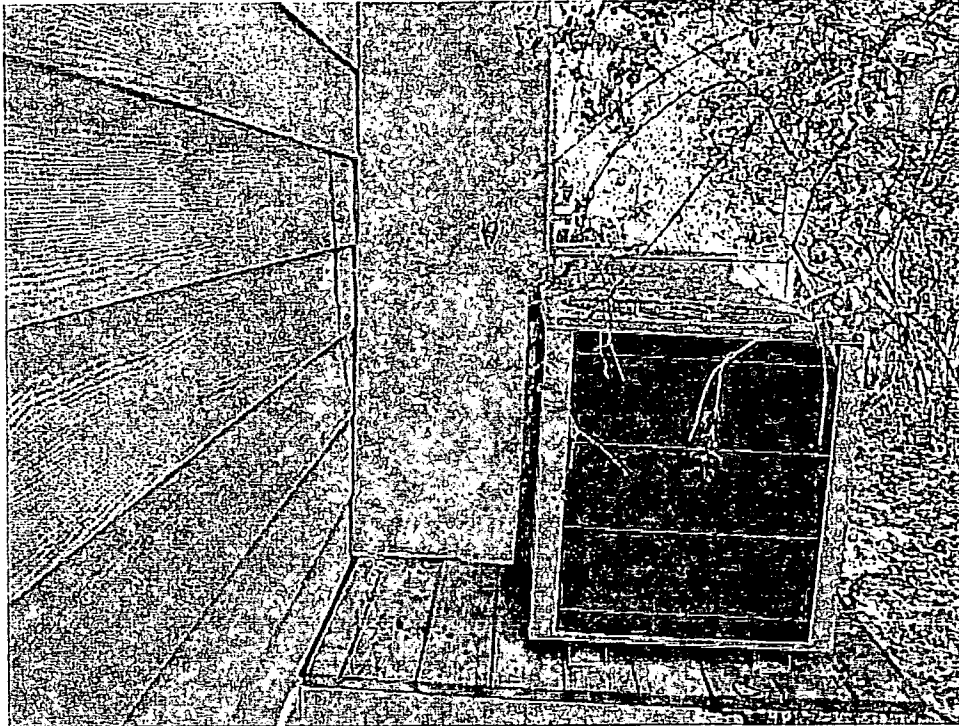
Photo Sheet

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Claim #: 12BBN034

Policy #: BAK1002868



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

HVAC duct and platform



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoons were entering beneath the
HVAC platform

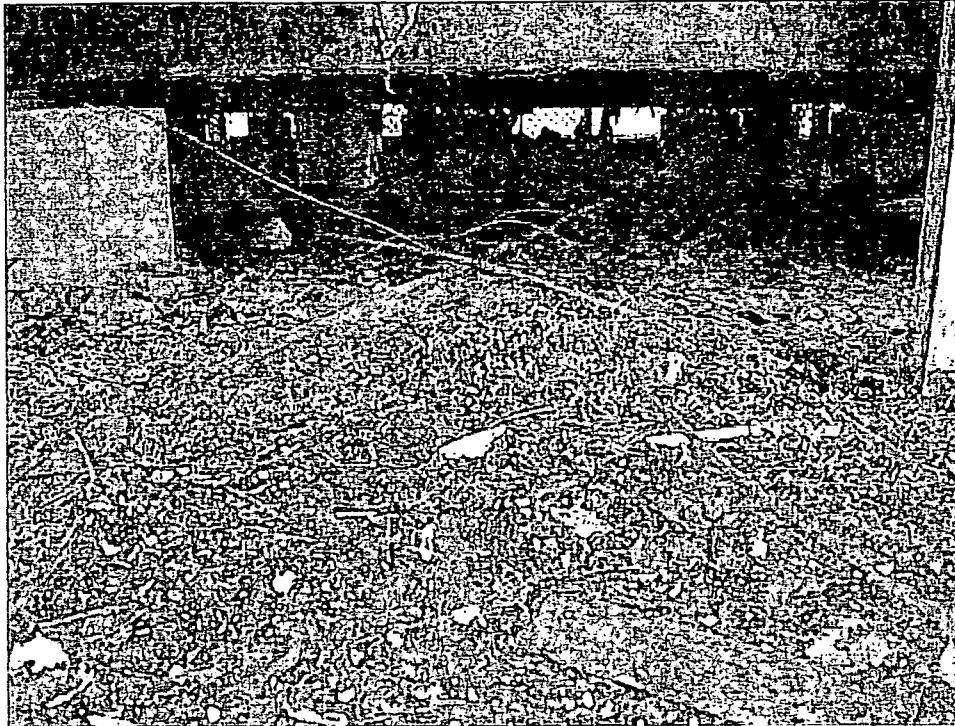
Photo Sheet

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Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

The crawlspace had open access from beneath the HVAC platform



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoon signs were observed beneath the HVAC platform

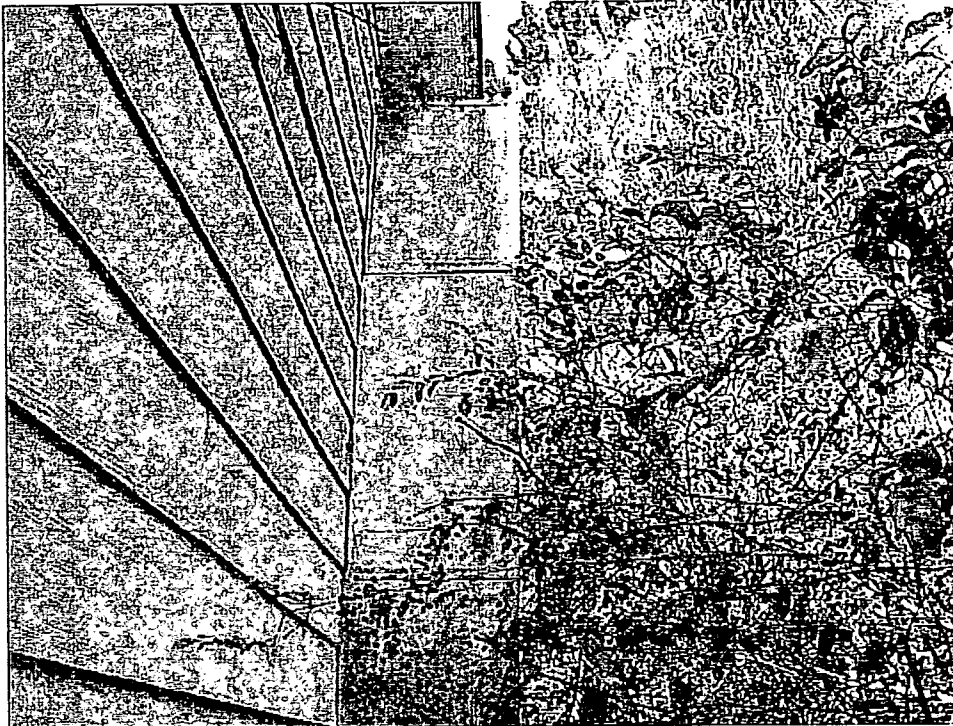
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Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoons were climbing within the HVAC duct to access the attic



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Dense wooded area surrounds the risk on 3 sides

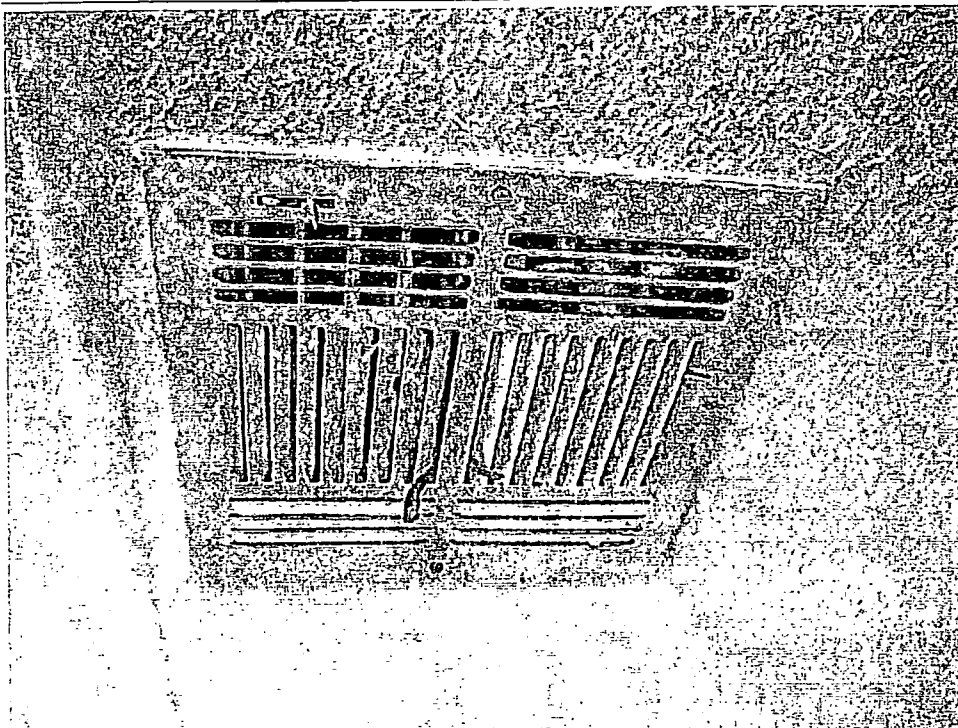
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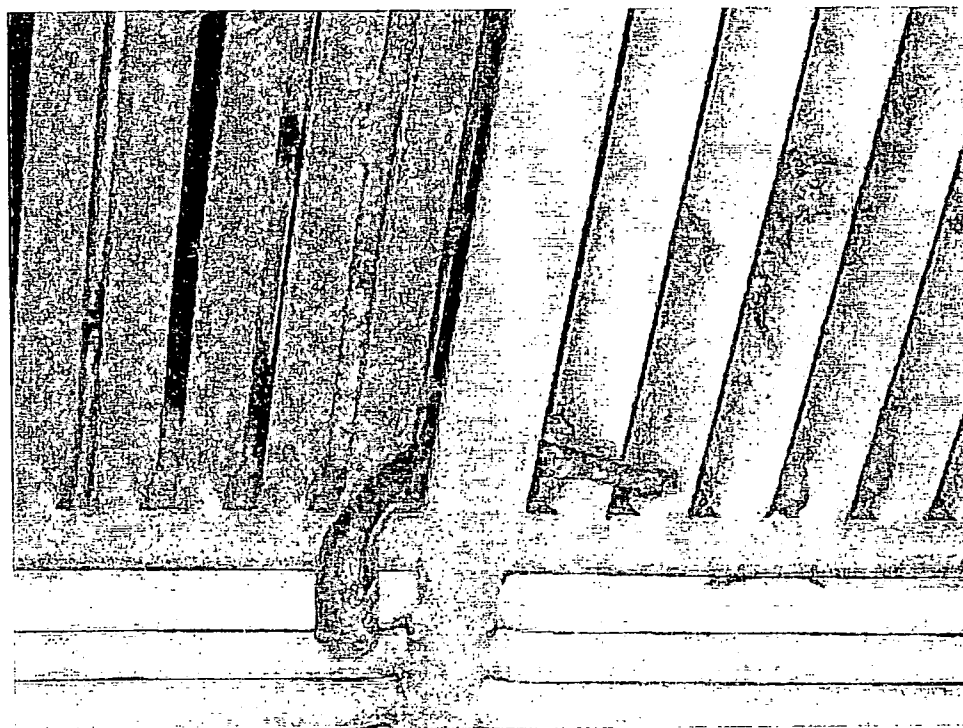


Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Insulation and debris was observed in all HVAC duct vents



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Close-up of insulation and debris in HVAC duct vents

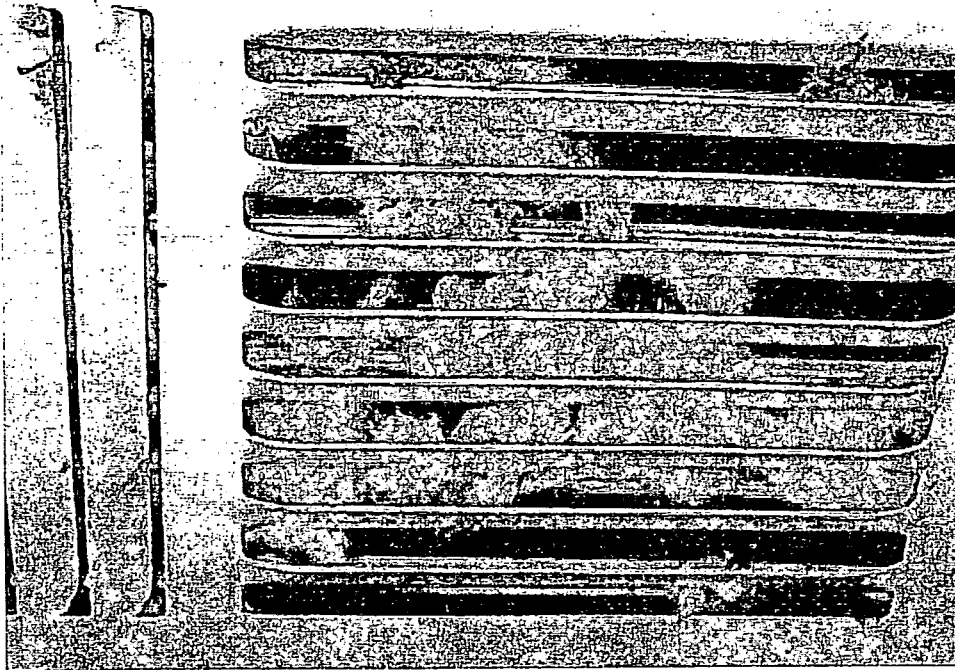
Photo Sheet

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Claim #: 12BBN034

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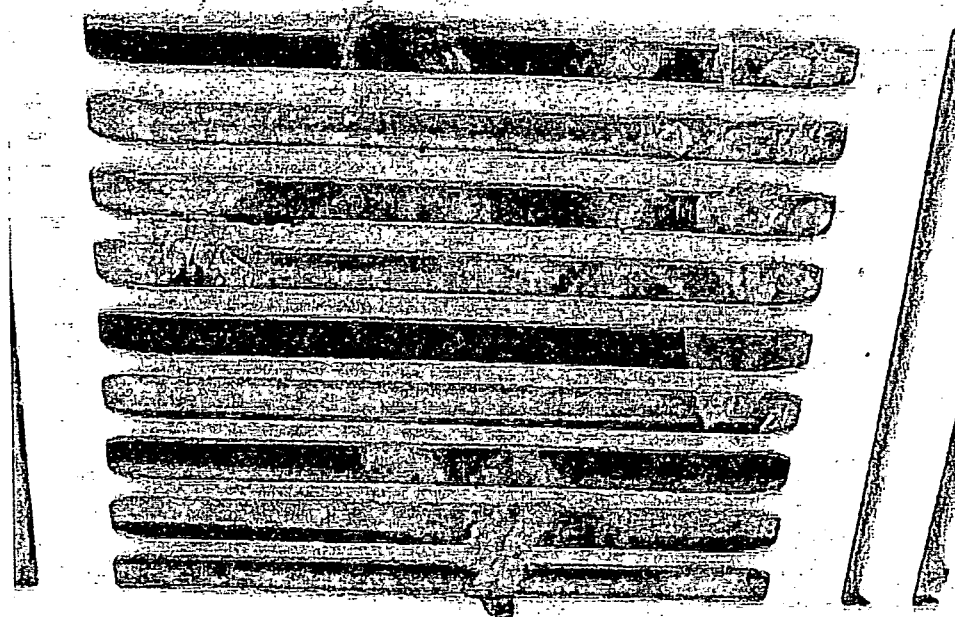


Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Every duct vent showed signs of attic activity



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

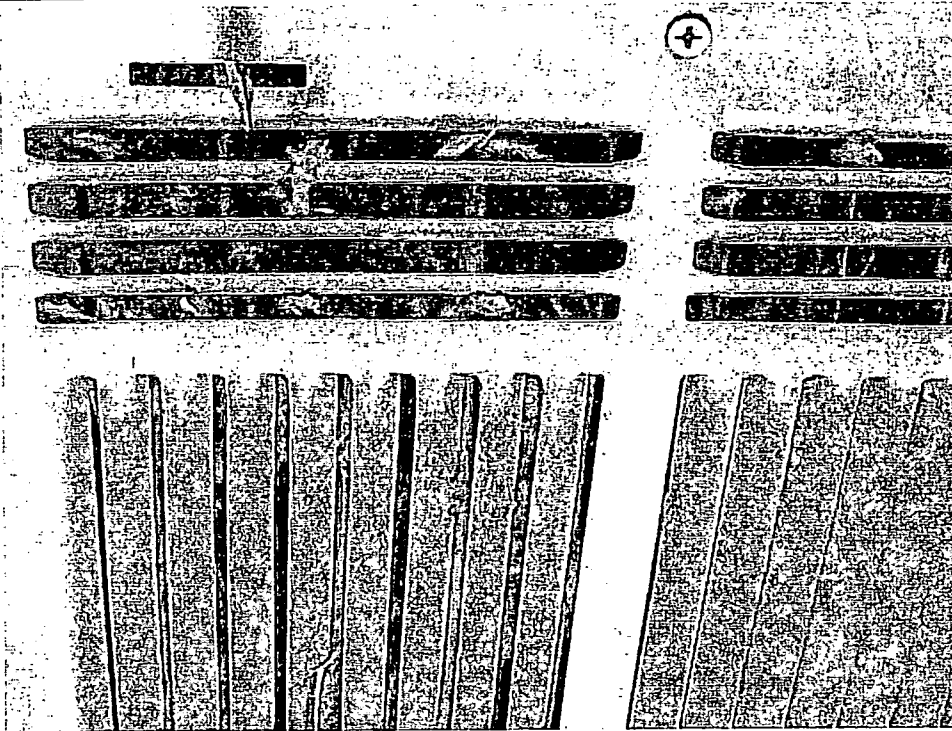
Photo Sheet

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Insured: Bruce Hoffman

Claim #: 12BBN034

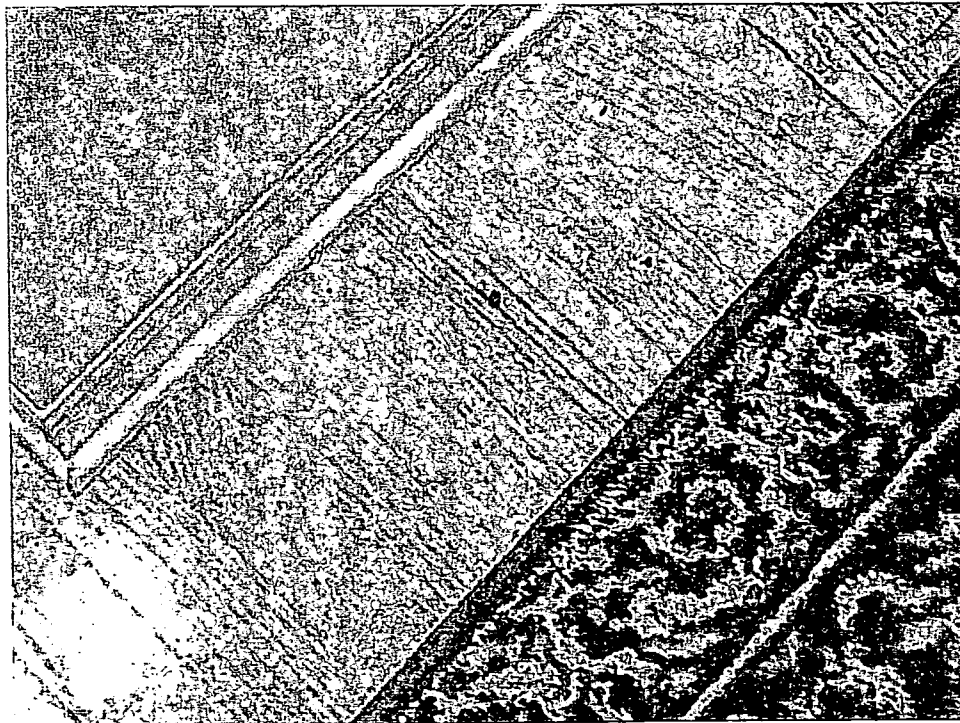
Policy #: BAK1002868



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Animal droppings were observed
beneath multiple HVAC duct vents

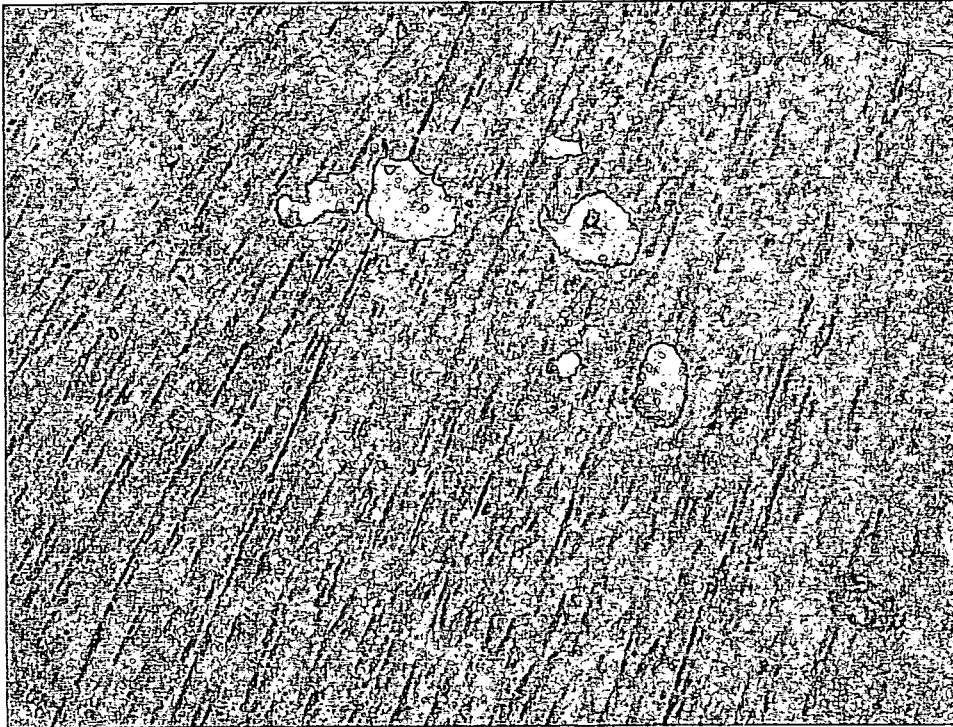
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Close-up of animal droppings observed
beneath HVAC duct that



CERTIFIED MAIL/RRR
7010 0780 0001 8547 1355
COPY BY REGULAR MAIL

March 15, 2012

Bruce Hoffman
574 Sea Island Parkway
Saint Helena Island, SC 29920

INSURED: Bruce Hoffman
POLICY #: BAK 1002868
CLAIM #: 12BBN034
LOSS DATE: 2/3/2012

Dear Mr. Hoffman:

Seneca Specialty Insurance Company, Inc., ("Seneca"), has concluded its investigation into the facts and circumstances surrounding this claim with the assistance of independent adjuster Robert Dodd of Capstone ISG. Mr. Dodd has completed his inspection of the premises with you and Mr. Joe Maffo of Critter Management and advises there were multiple signs of raccoon and other animal activity widely observed around the risk. Raccoon tracks were observed on the handrails of the front porch and there were animal droppings observed in multiple locations. There was also pulled insulation within the HVAC duct work and also beneath the risk and in the surrounding heavily wooded area. Also there was insulation and debris observed on the interior surfaces, book cases and desks. Mr. Maffo stated that the raccoons were entering the crawlspace beneath the HVAC platform and also gaining access to the attic through the HVAC duct. Mr. Maffo also stated that the animals had free and easy access and were obviously using the attic for nesting. He stated the risk was also being infested by rats and squirrels due to the close proximity of the surrounding heavily wooded area. Mr. Maffo stated he believed the entire attic insulation and HVAC duct work would require replacement. This loss is not covered under the terms and conditions of the policy and therefore we must deny coverage to the insured for this loss.

We refer you to policy form entitled, CP 10 30 04 02 Causes of Loss - Special Form, which reads in relevant part:

B. Exclusions

2. We will not pay for loss or damage caused by or resulting from any of the following:

160 Water Street, New York, NY 10038
(212) 344-3000



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d. (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

c. Faulty, inadequate or defective:

(4) Maintenance;
of part or all of any property on or off the described premises.

Unfortunately, the loss sustained by the insured is excluded from coverage under this form, therefore, Seneca, can not make any payments to the insured, or anyone on the insured's behalf with respect to this claim.

In denying coverage to the insured for the above captioned claim, Seneca does not waive, but rather, expressly reserves all of the rights and defenses to which it is entitled to under the terms and conditions of the policy, whether mentioned herein or not.

Should the insured possess documentation or information that it believes will impact Seneca's decision on this claim, we invite the insured to forward such documentation or information as soon as possible for our review. Should you wish to discuss this matter further, please feel free to call me at 212-277-3487.

In the event that the insured wishes to review this matter with the South Carolina Department of Insurance, you may write to them at The Capitol Center, 1201 Main Street, Suite 1000, Columbia SC 29201-3105 or P.O. Box 100105, Columbia, SC 29202-3105 or contact them at 803-737-6229.

Very truly yours,



Robert D' Alessandro

CC: Southern Cross Underwriters of Sumter

105

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BRUCE R. HOFFMAN,

PLAINTIFF,

vs.

SENECA SPECIALTY INSURANCE
COMPANY; CRC INSURANCE
SERVICES, INC. D/B/A SOUTHERN
CROSS UNDERWRITERS OF
SUMTER; AYDLETTE SERVICES OF
LOWCOUNTRY, INC.; AND
CAPSTONE ISG, INC,

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CASE NO. 2012-CP-07-01352

ORDER

2012 MAY 30 PM 4:10
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter comes before me on Plaintiff's Motion for Summary Judgment, which was filed with this Court on May 4, 2012. Having read and considered the motion, memoranda of law and submissions from counsel and having heard oral arguments on May 22, 2012, I find as follows:

FACTS

This case arises out of an insurance claim involving the Plaintiff's property located at 574 Sea Island Parkway, Saint Helena Island, South Carolina. Plaintiff seeks to recover insurance proceeds for damage to his office building caused by raccoons. Defendant Seneca Specialty Insurance Company denied Plaintiff's claim due to an exclusion in its policy regarding damage caused by "animals". Plaintiff alleges that the exclusion is ambiguous and seeks summary judgment as to the issue of coverage.



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[Handwritten signature]

SUMMARY JUDGMENT LEGAL STANDARD

Summary judgment is only appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." South Carolina Rules of Civil Procedure (SCRCP) 56(c). Under Rule 56(c), the party seeking summary judgment must clearly establish by the record the absence of a triable issue of fact. *Baughman v. American Tel. & Tel. Co.*, 410 S.E.2d 537, 545 (1991).

To determine whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Osborne v. Adams*, 550 S.E.2d 319, 320 (2001). After the moving party has met this initial burden, the non-moving party must set forth or point to specific facts showing there is a genuine issue of material fact. *Thomas v. Waters*, 445 S.E.2d 654, 660 (S.C. Ct. App. 1994). The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment. *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 477, 465 S.E.2d 765, 770 (Ct. App. 1995).

LAW

At the heart of the issue is the Plaintiff's assertion that, as a matter of law, the use of the words "...other animals" in the context of an insurance exclusion is vague and ambiguous on its face.¹ The policy in question excludes coverage for damage caused by "...Nesting or infestation,

¹ As a preliminary matter, Defendant Seneca objects to the timing of the motion, asserting the fact that there has been inadequate time for discovery. I find that hearing Plaintiff's motion requires no discovery as the determination sought by Plaintiff involves nothing more than examining the exclusion to determine if the use of "other animals" is ambiguous. Therefore Defendant's motion to continue the hearing is denied.

or discharge or release of waste products or secretions, by insects, birds, rodents or other animals."

A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business. *Hansen ex rel. Hansen v. United Services Auto. Ass'n*, 565 S.E.2d 114, 116 - 117 (Ct. App. 2002). Furthermore, a contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. *Id.* at 117. Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted. *Id.*

In this case, Plaintiff citing certain case law about the word "vermin," asserts the alleged ambiguity of the words "other animals." See *Umanoff v. Nationwide Mut. Fire Ins. Co.*, 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981); *Marks v. Trinity Universal Ins. Co.*, 531 So.2d 516, 517 (La. Ct. App. 1988).

"Animal" according to Black's Law Dictionary (5th) is a "non-human, animate being which is endowed with the power of voluntary motion." "Animal" according to Webster's Online Dictionary is:

1. A living organism characterized by voluntary movement.
2. An organized living being endowed with sensation and the power of voluntary motion, and also characterized by taking its food into an internal cavity or stomach for digestion; by giving carbonic acid to the air and taking oxygen in the process of respiration; and by increasing in motive power or active aggressive force with progress to maturity.
3. One of the lower animals; a brute or beast, as distinguished from man; as, men and animals.

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✓

"Other" according to Black's Law Dictionary (5th) is "Different or distinct from that already mentioned; additional or further. Following an enumeration of particular classes "other" must be read as "other such like," and includes only others of like kind and character.

The term "vermin" has been the subject of much litigation in policy exclusion law and has been found to be an undefined colloquial term. See *Umanoff v. Nationwide Mut. Fire Ins. Co.*, 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981); *Marks v. Trinity Universal Ins. Co.*, 531 So.2d 516, 517 (La. Ct. App. 1988). By contrast, "animal", while broad, is clearly defined, commonly used and well-understood. Further, in reported cases dealing with the issue, the Courts continually refer to such exclusion clauses as "animal exclusions".

I deny Plaintiff's motion to find the exclusion void specifically with regard to the alleged ambiguity of "other animals". In brief, I find the words "other animals" not to be ambiguous. Because the issues were extensively discussed, I feel that it is important to point out that I am not ruling on the issues of what type of animal created the damage nor am I ruling on the nature, scope or cause of the damage itself. These issues may require discovery, and, to the extent the motion sought determinations of the same, I find that they are premature without discovery.

Therefore, Plaintiff's Motion for Summary Judgment is hereby **DENIED**, as I find the referenced language in the policy exclusion unambiguous.

5/14/2012

Marvin H. Dukes, III

1/1/1

✓



PROPERTY LOSS NOTICE

DATE (MM/DD/YYYY)

2/3/12

AGENCY Aydllette Insurance Agency 125 Sea Island Parkway Beaufort, SC 29907		INSURED LOCATION CODE	DATE OF LOSS AND TIME 2/3/12 10:00 AM
CONTACT NAME: PHONE (A/C, No, Ext): (843)521-4663 FAX (A/C, No): (843)521-1380 E-MAIL ADDRESS: CODE: SUBCODE:		PROPERTY / HOME POLICY CARRIER: Seneca Specialty Ins POLICY NUMBER: BAK-1002868 NAIC CODE:	
AGENCY CUSTOMER ID:		FLOOD POLICY CARRIER: NAIC CODE: POLICY NUMBER:	
		WIND POLICY CARRIER: NAIC CODE: POLICY NUMBER:	

INSURED

NAME OF INSURED (First, Middle, Last) Bruce Hoffman		INSURED'S MAILING ADDRESS 574 Sea Island Pkwy St Helena Is, SC 29920	
DATE OF BIRTH	FEIN (if applicable)	MARITAL STATUS	
PRIMARY PHONE #	☐ HOME ☐ BUS ☐ CELL	SECONDARY PHONE #	☐ HOME ☒ BUS ☐ CELL
NAME OF SPOUSE (First, Middle, Last) (if applicable)		SPOUSE'S MAILING ADDRESS (if applicable)	
DATE OF BIRTH	FEIN (if applicable)	MARITAL STATUS	
PRIMARY PHONE #	☐ HOME ☐ BUS ☐ CELL	SECONDARY PHONE #	☐ HOME ☐ BUS ☐ CELL
CONTACT ☐ CONTACT INSURED			
NAME OF CONTACT (First, Middle, Last)		CONTACT'S MAILING ADDRESS	
PRIMARY PHONE #	☐ HOME ☐ BUS ☐ CELL	SECONDARY PHONE #	☐ HOME ☐ BUS ☐ CELL
WHEN TO CONTACT		PRIMARY E-MAIL ADDRESS: SECONDARY E-MAIL ADDRESS:	

LOSS		REVIEWED Martha Pearthree	
LOCATION OF LOSS STREET: 574 Sea Island Pkwy		02/03/2012	
CITY, STATE, ZIP: St Helena Is SC-29920		REPORT NUMBER	
COUNTRY:			
DESCRIBE LOCATION OF LOSS IF NOT AT SPECIFIC STREET ADDRESS:			
KIND OF LOSS	☐ FIRE ☐ LIGHTNING ☐ FLOOD ☐ WIND	PROBABLE AMOUNT ENTIRE LOSS	
DESCRIPTION OF LOSS & DAMAGE (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)			
Raccoon has torn insulation, HVAC Ducts, etc. As per Gitter Management there is Health Issues they have fiberglass on desk & in carpet. There is also Raccoon feces in ductwork.			
REPORTED BY: Bruce Hoffman		REPORTED TO: Gale Fox	



Critter Management
Work Order

ON HOLD
WAITING
FOR
INSURANCE
CLAIM

NAME:

HUFFMAN LAW OFFICE

ADDRESS:

574 SEA BLD PKWY (ST. HELENA)

BUREAU

AND

PHONE:

(843) 838-5290

DATE:

1/10/12

PROBLEM:

ANIMALS IN CEILING & DOORS

COMMENTS:

1/11 JDE WANT TO OFFICES
WALDO INVESTIGATION IN CEILING.
WILL REQUIRE REMOVAL OF CEILING,
INSULATION & DUCTWORK
OR ELSE IS TOXIC ENVIRONMENT.

- RECOMMENDED TO MR. HOFFMAN'S
SECRETARY THEY CAN INSUREANCE
FOR FUTURE DAMAGE CLAIM.

- MR. HOFFMAN TO KEEP US POSTED
IF QUOTATION IS NEEDED. OR IF
JDE TO MEET W/ AN ADVISOR
OFFICE



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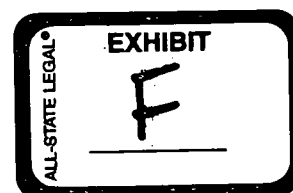
12

13 Q. So there is no doubt in your mind that
14 there were raccoons in your attic?

15 A. That is what I was told. And it looked
16 like -- I saw the bannister. I heard the growl
17 would one night. And I saw the bannister. And that
18 sure does look like raccoon tracks. Even I could
19 figure that out. And that they would have been the
20 only one strong enough to have done these things --

21 Q. Right.

22 A. -- is the way it was explained to me.
23 Really, it was explained to me.



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A. But I'm sitting in my office at night,
7:00 o'clock, 8:00 o'clock working. And like I hear
a noise above me. And I have a broom. And I bang
it on the ceiling.

Q. Uh-huh.

A. And something growls.

Q. Okay.

A. And I said, "Wow, that is -- that is
something serious." So maybe it was before I knew
it was a raccoon. I might have said to them that
something growled at me. So it might have been
before they even came out here.

Q. Right.

1 A. But close in time to when they came out
 2 here, that, gee, something growled at me recently.
 3 And they said, "Oh, well, that is what raccoons do.
 4 They growl." I said, okay. But it was like close in
 5 time to when they both came out here. And, I mean,
 6 no one else was here. And I definitely heard
 7 something growl at me like almost like a dog
 8 growling.

9 Q. Okay. You knew that there was an animal
 10 in the attic, right?

11 A. Something serious. Not, you know, --
 12 something not like birds, insects, or rodents. That
 13 this was something serious.

14 Q. Okay. But it was definitely an animal,
 15 right?

16 A. Oh, it growled.

17 Q. Yeah. Exactly.

18 A. I mean, humans growl I guess sometimes,
 19 but --

20 Q. You can give me that, that it was
 21 definitely an animal that growled at you?

22 A. I don't know what it was because I
 23 couldn't see it, but to me it seemed like it was an
 24 animal. And it was like around this time?

25 Q. In your attic?

1 A. Well, I mean, I'm assuming. I mean, it
2 was in my office and it was right like in the
3 ceiling.

4 Q. In your ceiling?

5 A. I couldn't see it, but it was -- it
6 appeared to be right above me.

7 Q. Okay. Fair enough.

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PENDER BROTHERS INCORPORATED
 Plumbing • Welding • HVAC
 1851 Ribaut Rd.
 PORT ROYAL, SC 29935
 (843) 525-1703
 Fax (843) 525-0645

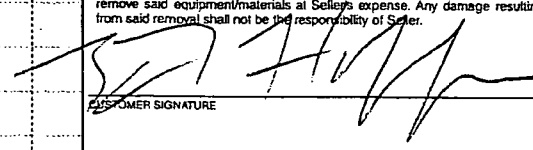


HVAC SERVICE ORDER INVOICE

17005

NAME <u>Bruce Hoffman</u>	
STREET <u>874 Sea Island BLVD</u>	DATE <u>13 Apr 2012</u>
CITY <u>Ladysburg</u>	
PHONE <u>838-5290</u>	TECHNICIAN <u>Mike</u>
WORK TO BE PERFORMED <u>estimate to replace ductwork</u>	

MAKE	MAKE
MODEL	MODEL
SERIAL NUMBER	SERIAL NUMBER
MAKE	MAKE
MODEL	MODEL
SERIAL NUMBER	SERIAL NUMBER

QTY	MATERIALS & SERVICES	AMOUNT	ENVIRONMENTAL CHECK LIST		WORK PERFORMED		
			WORK PERFORMED	QTY.	TYPE/DISPOSITION	CONDENSING UNIT	COND'SATE DRAINS
			☐ RECOVERED			LEVELED	CLEANED MAIN DRAIN
			☐ RECYCLED			CLEANED COIL	REPAIRED MAIN DRAIN
			☐ RECLAIMED			CHECKED CHARGE	CLEANED PAN DRAIN
			☐ RETURNED			REPAIRED LEAK IN COIL	REPAIRED PAN DRAIN
			☐ DISPOSAL			REPAIRED LEAK IN COPPER	FURN. OR FAN COIL
			☐ DISMANTLED			# REF.	REPLACED BELT
			☐ CHANGED OUT/REPLACED		TOTAL \$	CHECKED MOTOR	ADJUSTED BELT
			LIMITED WARRANTY: All materials, parts and equipment are warranted by the manufacturers' or suppliers' written warranty only. All labor performed by the above named company is warranted for 30 days or as otherwise indicated in writing. The above named company makes no other warranties, express or implied, and its agents or technicians are not authorized to make any such warranties on behalf of above named company.				
			I have authority to order the work outlined above which has been satisfactorily completed. I agree that Seller retains title to equipment/materials furnished until final payment is made. If payment is not made as agreed, Seller can remove said equipment/materials at Seller's expense. Any damage resulting from said removal shall not be the responsibility of Seller.				
			 CUSTOMER SIGNATURE				
			EVAPORATOR COIL REPLACED EXP. VALVE ADJUSTED EXP. VALVE REPLACED CAP. TUBE CLEANED CAP. TUBE REPAIRED COIL LEAK REPAIRED COPPER CONN. CLEANED COIL LEVELED COIL				
			DUCT REPAIRED ADJUSTED THERMOSTAT REPLACED ADJUSTED				
			ELECT. HTR. REPLACED LINK REPLACED KILN REPAIRED WIRE REPLACED CONT. FILTERS ☐ CLEANED ☐ REPLACED				
			CLG TOWER CLEANED PUMP(S) GREASED REPAIRED				
			TOTAL SUMMARY MATERIALS DIAGNOSTIC TRAVEL CHARGE GATE FEE TOTAL DUE				

DESCRIPTION OF WORK PERFORMED

There are Two systems on the building. Raccoons snakes, rats etc have gotten into ductwork and ruined it, to the point where pieces of the inside of the duct are coming through the grilles into the office space. Need to tear out all of existing and go back with new. Ductwork will need to come out and go back w the side of the building, where the units are.



Critter Management, Inc.
PO Box 4746
Hilton Head, SC 29938

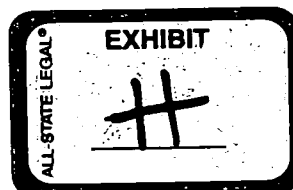
Quotation

Date	Quotation #
9/14/2012	2267

Bruce R. Hoffman
574 Sea Island Parkway
St. Helena Island, SC 29920

Terms	
50% Deposit	
Description	Qty Total
Pack and remove all contents of interior of office building as needed. All items to be stored in rental of two(2) POD Units (16' x 8' x 8'). After completion of raccoon damage repairs all items to be returned to office and installed to original location and condition.	5,652.00
Install poly covering to entire floor area of office (1344 sqft) to protect various floor coverings during project.	672.00
Demo to remove all soiled sheetrock ceilings, crown molding trim, lighting fixtures, air conditioning registers/ductwork, attic insulation, and debris/nesting material and discard as needed. Office total at 1344 square feet.	2,560.00
Demo to remove all soiled under penning, insulation, debris/nesting material at underside of office and discard as needed. Office total at 1344 square feet.	2,560.00
Spray disinfectant and cleaning agent to all areas of joists and decking in attic and underside of flooring and supports as needed to sanitize and deodorize to remove raccoon debris as needed.	600.00
Provide flea treatment services for interior and underside of office building (1344sqft) as needed to remove fleas to allow for workable environment.	275.00
Install 1344 square feet of new R-19 insulation material at underside of office as needed to restore to original condition prior to raccoon infestation and related damage.	4,368.00
Quotation is valid for a period of thirty days.	
Total	
Rep	Signature

Phone #	Fax #	E-mail	Web Site
843-686-8050	843-685-5080	critters@hargray.com	www.crittermangement.com



Critter Management, Inc.

PO Box 4746

Hilton Head, SC 29938

Quotation

Date	Quotation #
9/14/2012	2267

Bruce R. Hoffman
574 Sea Island Parkway
St. Helena Island, SC 29920

Terms	
50% Deposit	
Description	Qty Total
Install 1/4" wire mesh to exterior of lattice work around lower portion of office as needed to repair building to stop further raccoon entry to underside area. Approximately 510 square feet of wire mesh required for installation. Two entry access doors to be installed as required.	3,050.00
Install 1344 square feet of new R-30 insulation material in attic of office as needed to restore to original condition prior to raccoon infestation and damage.	4,704.00
Install all new duct work and register plates in ceiling (13 Qty) to restore to original condition prior to raccoon infestation and damage.	4,210.00
Install all new lighting fixtures in ceiling (currently 23.4' florescent) as needed to restore to original condition prior to raccoon infestation and damage.	2,990.00
Install 1344 square feet of new sheetrock and related crown mouldings to interior of office ceiling as needed to restore to original condition prior to raccoon infestation and damage. Ceiling and trim to be prepped, primed and painted as required.	6,720.00
Provide painting and repair of interior walls of office as needed after removal and re-installing of sheetrock, ceiling and related trims.	2,880.00
Provide interior deep cleaning after all above work is completed as needed to allow for office to have all furniture and related materials moved back to allow for occupation.	625.00
Rental of one(1) 30 yard container at location as needed. Cost to allow for one(1) pick up during demo stage of project.	550.00
Quotation is valid for a period of thirty days.	Total
Rep	Signature

Phone #	Fax #	E-mail	Web Site
843-686-8050	843-686-5080	critters@hargray.com	www.crittermanagement.com

Critter Management, Inc.
PO Box 4746
Hilton Head, SC 29938

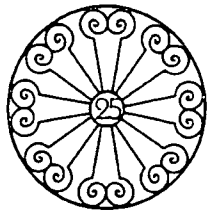
Quotation

Date	Quotation #
9/14/2012	2267

Bruce R. Hoffman
574 Sea Island Parkway
St. Helena Island, SC 29920

Terms	
50% Deposit	
Description	Qty Total
10% Overhead Allowance	4,242.60
10% Profit Allowance	4,656.86
Note: Above cost quotation does not include repair of any damages to electrical or plumbing mechanicals. Inspection will be done after initial demo to determine if damage is present. A separate quotation will be supplied to cover cost of needed repairs due to raccoon occupation.	
Quotation is valid for a period of thirty days.	Total \$51,335.46
Rep	Signature

Phone #	Fax #	E-mail	Web Site
843-685-8050	843-685-5080	critters@hargray.com	www.crittermanagement.com



YCR LAW
Young Clement Rivers, LLP

Joshua P. Cantwell
Associate

Direct Dial: (843) 720-5446
Direct Fax: (843) 579-2942
E-mail: jcantwell@ycrlaw.com

April 12, 2013

Bruce R. Hoffman, Esquire
574 Sea Island Parkway
St. Helena Island, SC 29920-4205

Re: Bruce R. Hoffman v. Seneca Specialty Insurance Company; CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter; Aydlette Services of Lowcountry, Inc.; and Capstone ISG, Inc.
Case No.: 2012-CP-07-01352
Claim No.: 12BBN034
Date of Loss: 2/3/2012
YCR File: 7811-20120293

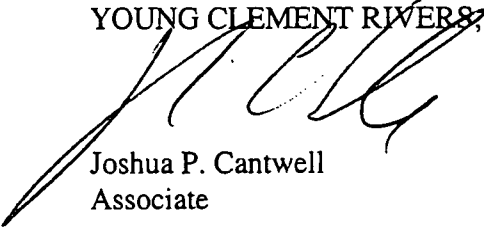
Dear Mr. Hoffman:

Enclosed please find **Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc.'s Requests to Admit to the Plaintiff** in connection with the above-referenced matter. Please send me your responses within the time allotted by the South Carolina Rules of Civil Procedure.

If you have any questions regarding this matter, please do not hesitate to contact me. With kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP


Joshua P. Cantwell
Associate

JPC/ldb

Enclosure(s)

cc: William H. Jordan, Esquire, Sowell, Gray, Stepp & Laffitte, LLC
Christopher W. Nickels, Esquire, Clawson & Staubes, LLC



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	JUDICIAL CIRCUIT
BRUCE R. HOFFMAN,	)	CASE NO. 2012-CP-07-01352
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANTS SENECA SPECIALTY
SENECA SPECIALTY INSURANCE	)	INSURANCE COMPANY AND
COMPANY; CRC INSURANCE	)	CAPSTONE ISG, INC.'S REQUESTS TO
SERVICES, INC. D/B/A SOUTHERN	)	ADMIT TO THE PLAINTIFF
CROSS UNDERWRITERS OF	)	
SUMTER; AYDLETTE SERVICES OF	)	
LOWCOUNTRY, INC.; AND	)	
CAPSTONE ISG, INC,	)	
	)	
DEFENDANTS.	)	

TO: BRUCE R. HOFFMAN, ATTORNEY PRO SE:

PLEASE TAKE NOTICE that you are hereby and herewith served with Defendants Seneca Specialty Insurance Company and Capstone ISG, Inc.'s First Requests to Admit to the Plaintiff to be answered and signed by the party within thirty (30) days of service hereof in accordance with Rule 36 of the South Carolina Rules of Civil Procedure. Pursuant to Rule 37(c) of the South Carolina Rules of Civil Procedure, if Plaintiff fails to admit to the truth of any matter herein and these Defendants thereafter prove the truth of said matter, Defendants have the right to seek reasonable expenses and attorneys fees incurred.

REQUESTS TO ADMIT

1. Admit that a raccoon is an animal.
2. Admit that raccoons or other animals caused damage to the subject property.

3. Admit that on February 3, 2012, Plaintiff made a claim for damages to the subject property to Defendant Seneca Specialty Insurance Company.

4. Admit that on February 8, 2012, Robert Dodd of Capstone ISG, Inc. personally inspected the Plaintiff's property on behalf of Seneca Special Insurance Company.

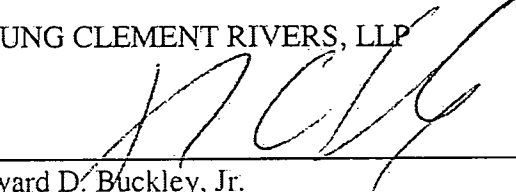
5. Admit that the attached photographs of the subject property were taken by Robert Dodd during his inspection on February 8, 2012.

6. Admit that the photographs depict damage to the subject property caused by animals.

7. Admit that the photographs depict damage to the subject property caused by animal infestation.

8. Admit that the photographs depict damage to the subject property caused by animal waste products and/or secretions.

YOUNG CLEMENT RIVERS, LLP

By: 

Edward D. Buckley, Jr.

ebuckley@ycrlaw.com

Joshua P. Cantwell

jcantwell@ycrlaw.com

P.O. Box 993

Charleston, South Carolina 29402

(843) 720-5446

Attorneys for Defendants Seneca Specialty
Insurance Company & Capstone ISG, Inc.

Charleston, South Carolina

Dated: 4/12/2013

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this 6th day of

April, 2013.

Denise Brown

Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868

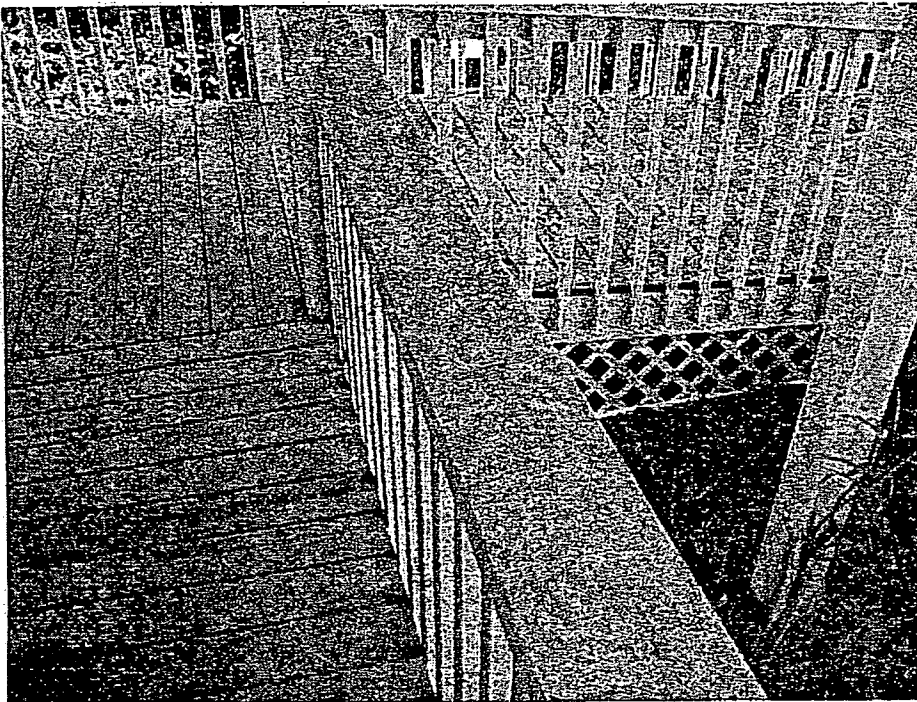


Front Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Front view of the risk located at 574 Sea
Island Pkwy., St. Helena Island, SC
29920



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoon tracks observed around the
exterior of the risk

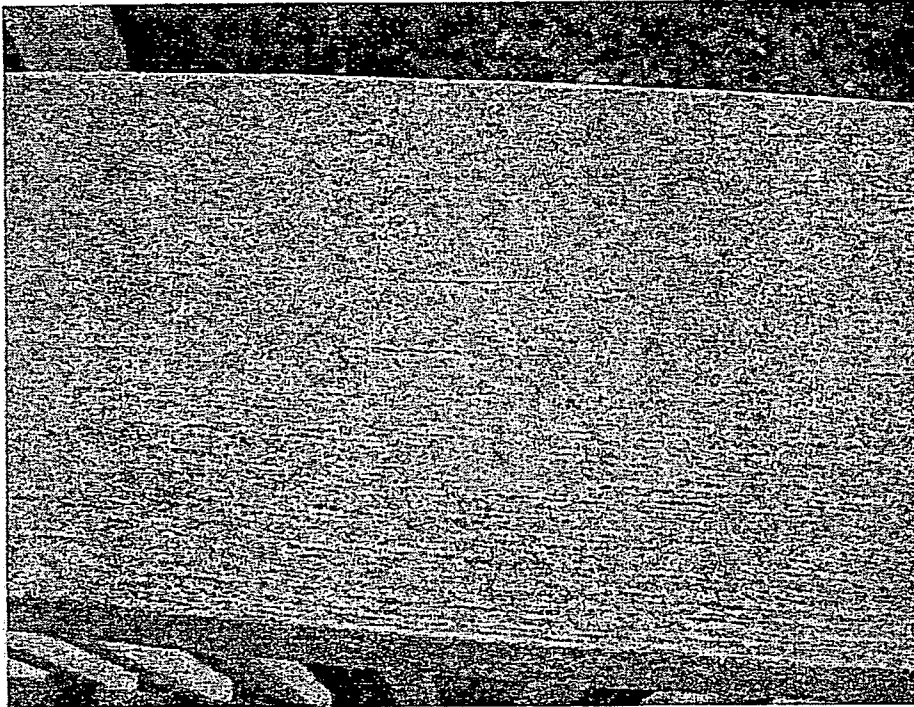
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Close-up of raccoon tracks



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

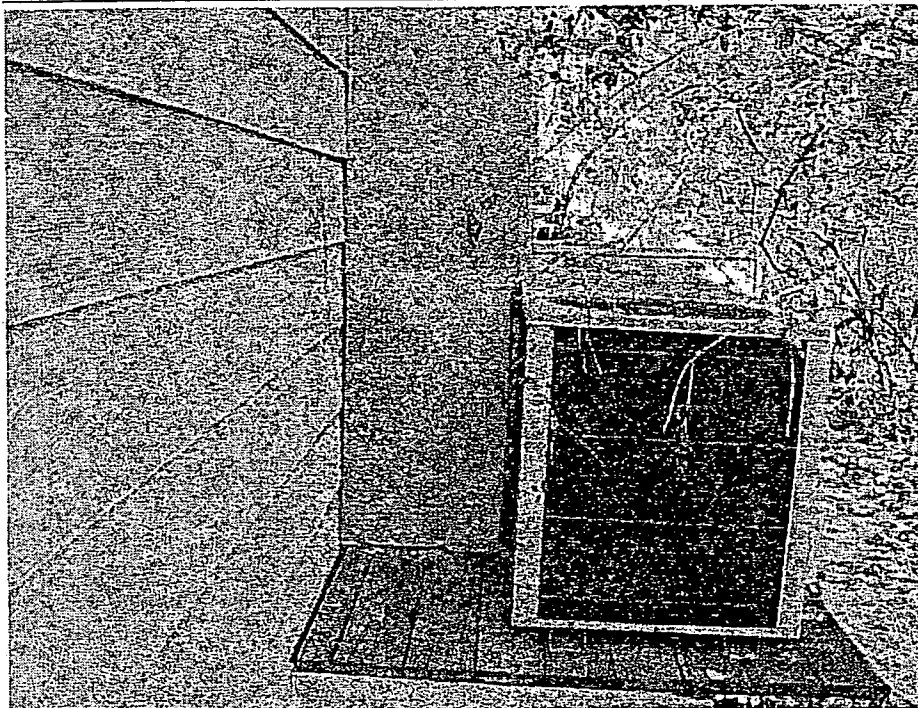
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868

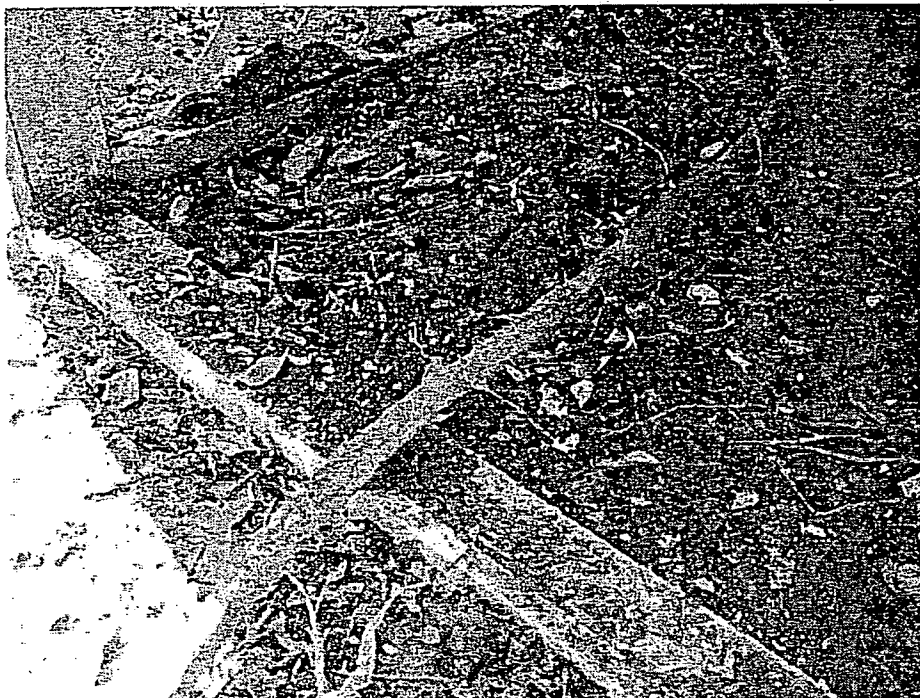


Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

HVAC duct and platform



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoons were entering beneath the
HVAC platform

125

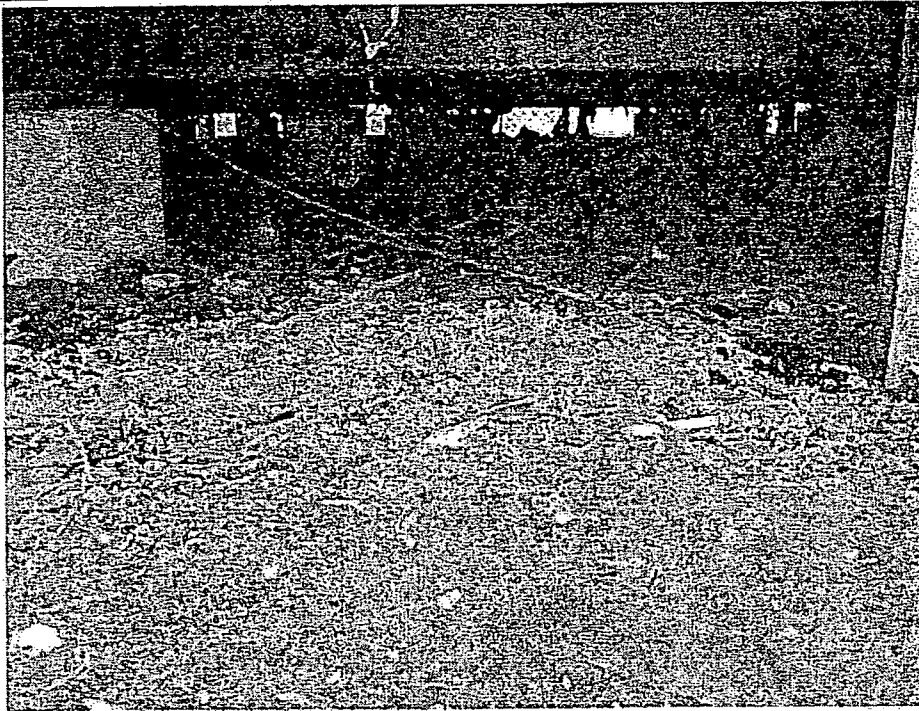
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868

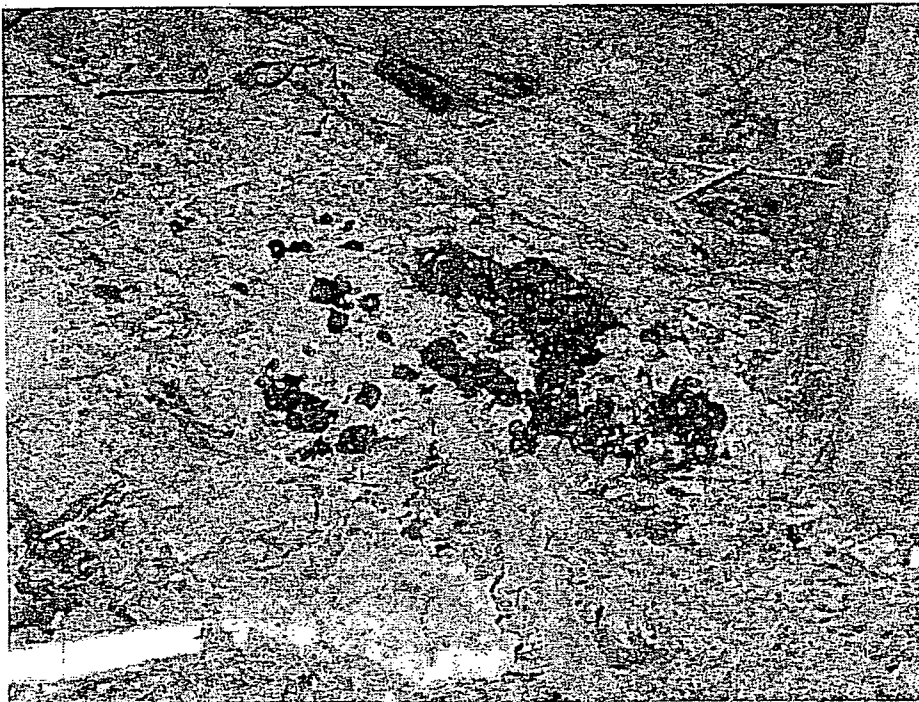


Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

The crawlspace had open access from beneath the HVAC platform



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoon signs were observed beneath the HVAC platform

126

Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Raccoons were climbing within the
HVAC duct to access the attic



Exterior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Dense wooded area surrounds the risk on
3 sides

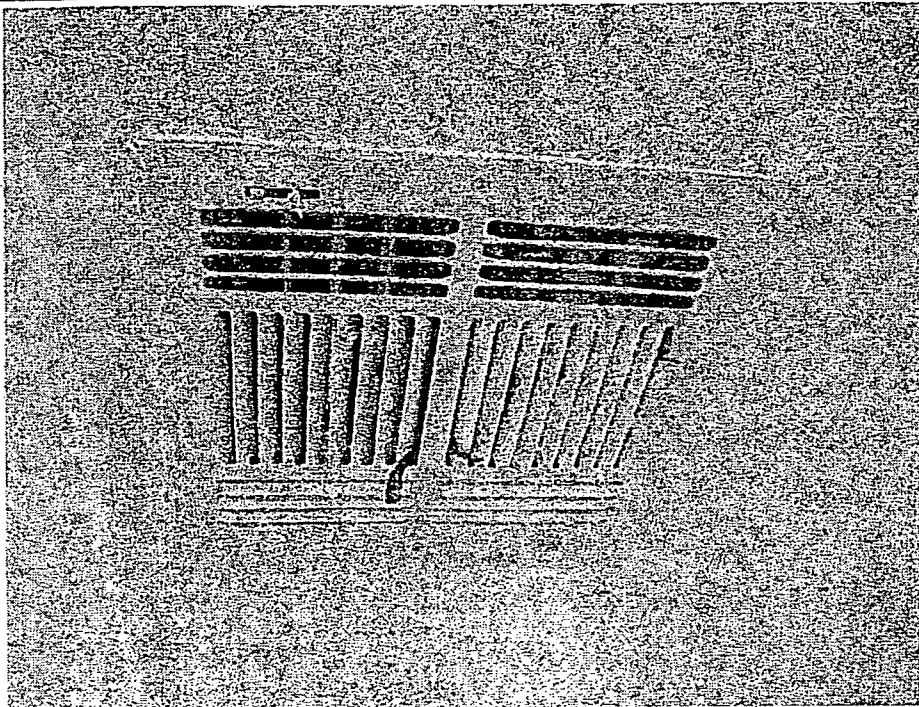
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868

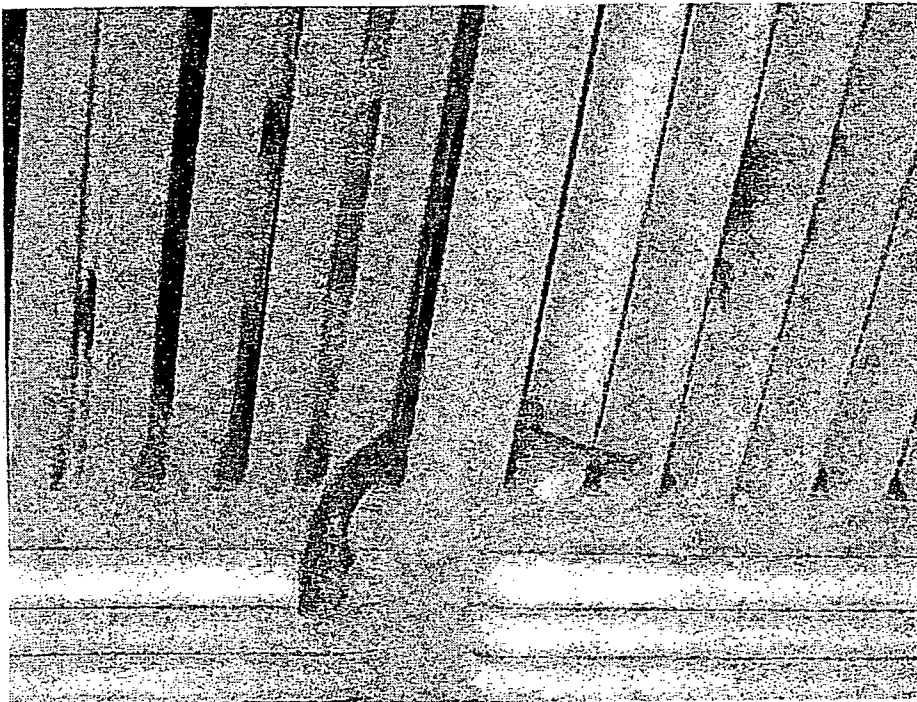


Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Insulation and debris was observed in all HVAC duct vents



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Close-up of insulation and debris in HVAC duct vents

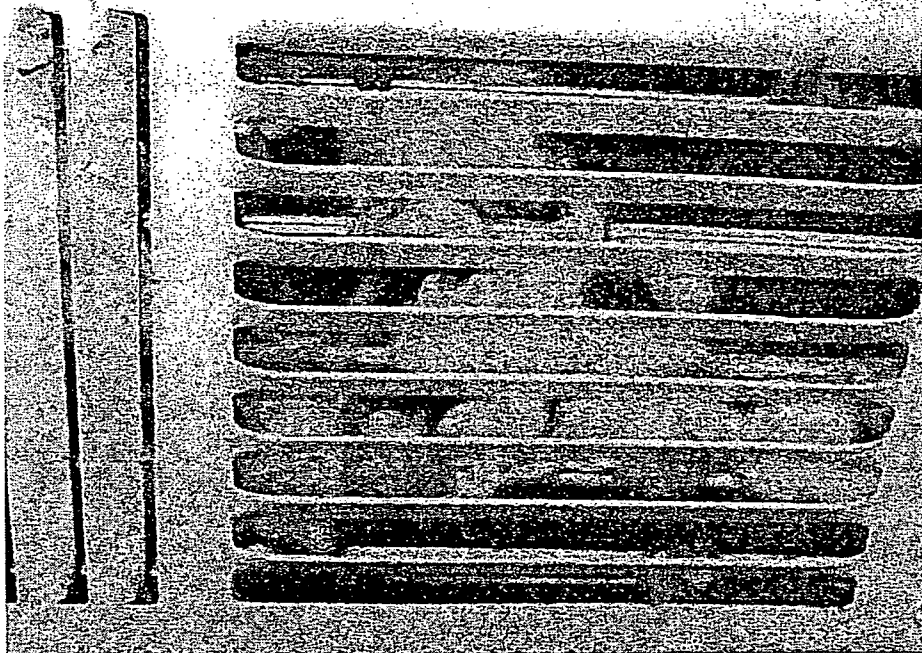
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868

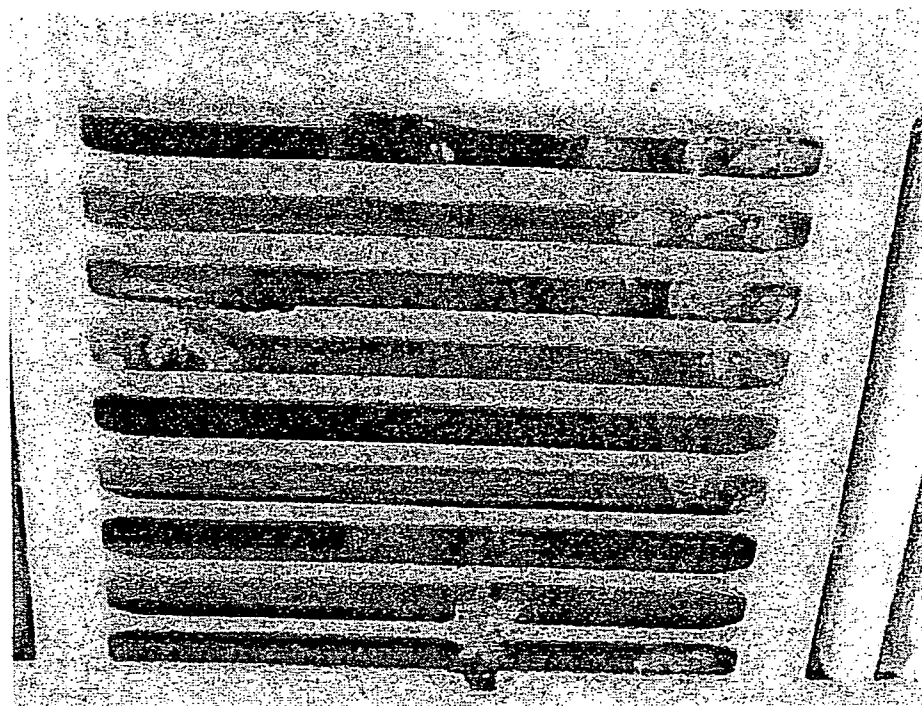


Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Every duct vent showed signs of attic activity



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

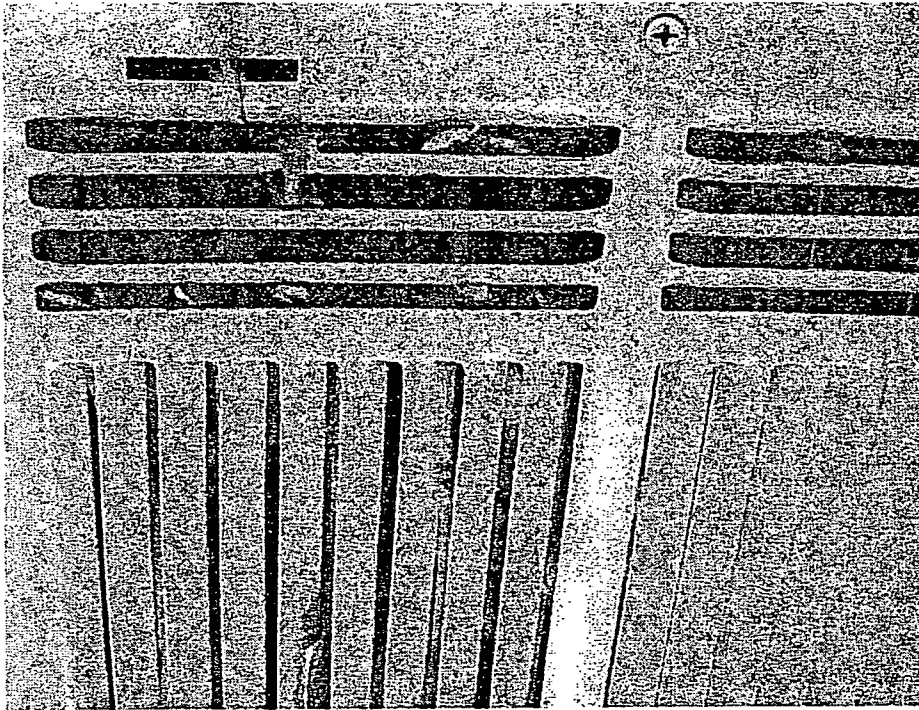
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

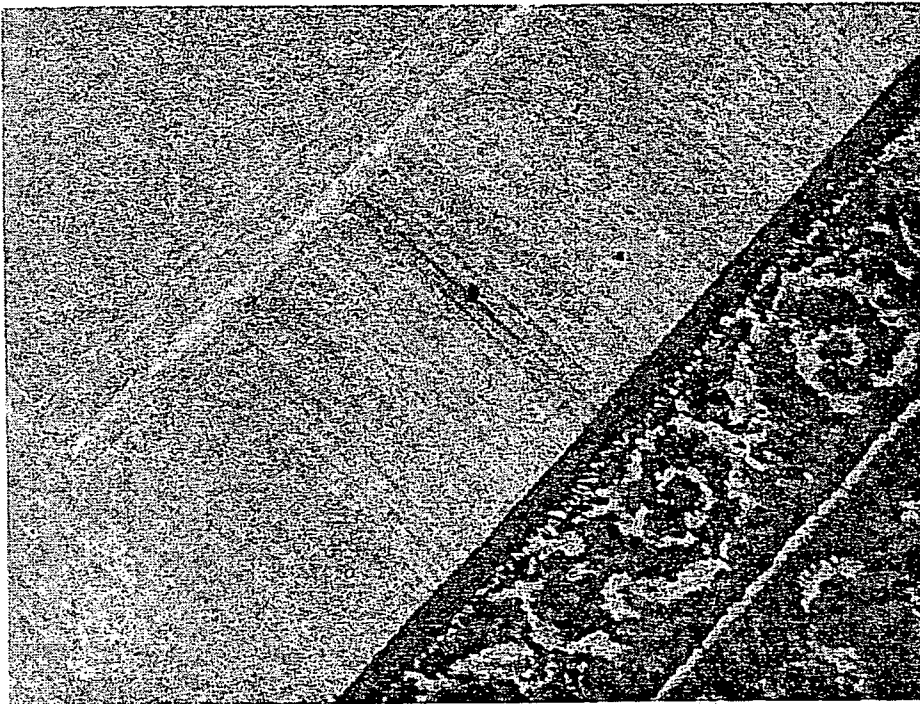
Policy #: BAK1002868



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd



Interior

Date Taken: 2/8/2012

Taken By: Robert Dodd

Animal droppings were observed
beneath multiple HVAC duct vents

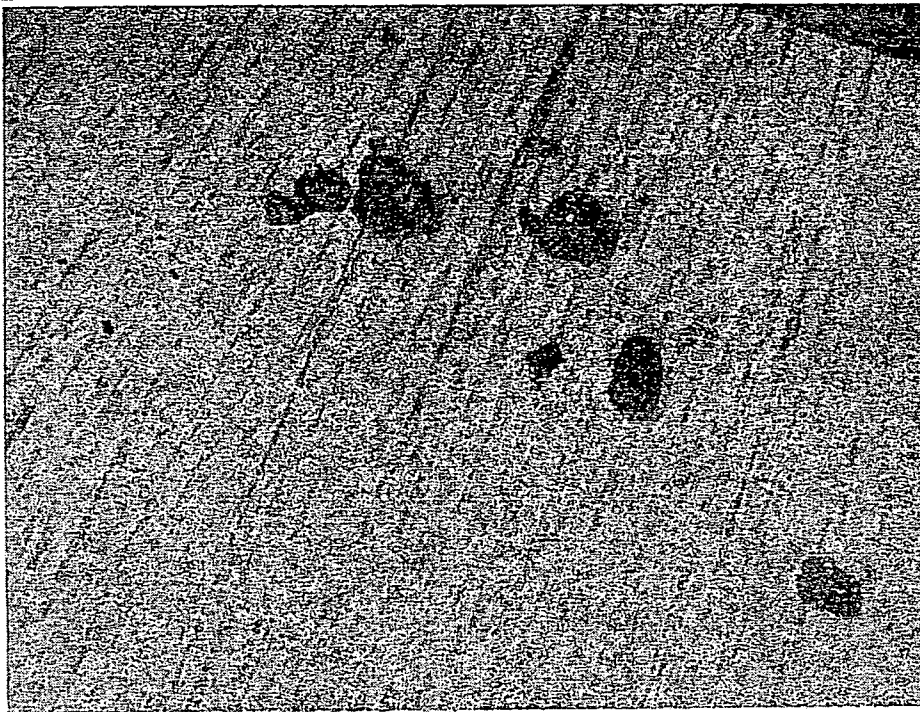
Photo Sheet

Capstone ISG
PO Box 517
Goose Creek, SC 29445
www.capstoneisg.com

Insured: Bruce Hoffman

Claim #: 12BBN034

Policy #: BAK1002868



Interior

Date Taken: 2/8/2012

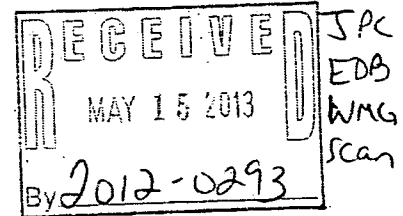
Taken By: Robert Dodd

Close-up of animal droppings observed
beneath HVAC duct that

LAW OFFICE OF
BRUCE R. HOFFMAN, LLC

Licensed: SC, DC and CA
www.BruceRHOffmanLawOffice.com
brucehff@embarqmail.com

574 SEA ISLAND PARKWAY
SAINT HELENA ISLAND, SC 29920-4205
TELEPHONE: 843.838.5290
FACSIMILE: 843.838.1329



181 BLUFFTON ROAD
SUITE F2011
BLUFFTON, SC 29910-6221
TELEPHONE: 843.706.0829

REPLY TO SAINT HELENA ISLAND OFFICE

May 16, 2013

Cheri L. Young, Court Reporter
P.O. Box 5232
Aiken, South Carolina 29804

Re: Transcript Request for Bruce R. Hoffman v. Seneca Specialty Insurance Co., et al, Case No. 12-CP-07-1352

Dear Ms. Young:

It is our understanding that on January 22, 2013, a Motion for Summary Judgment by Defendant CRC was heard by Judge Mullen, and you were the court reporter.

I appealed Judge Mullen's decision on this Motion, and thus need you to prepare a transcript of the hearing, and also an estimate before you begin work would be appreciated. I agree to pay the per page charge for this transcript, as provided by Rule 508, SCACR. I am out of state and on vacation until the end of the month, but look forward to finalizing this issue with you upon my return. Thank you.

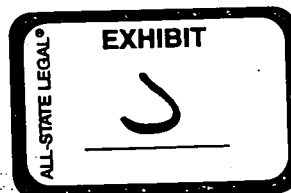
With kind regards,

Bruce R. Hoffman (BRH)
BRUCE R. HOFFMAN

BRH/eph

Cc: Joshua P. Cantwell, Esq.; William H. Jordan, Esq.; Christopher W. Nickels, Esq.

BPS: As to Requests to Admit served by Seneca and Capstone on 4/12/13, they are all denied given the present circumstances of this case.



132

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Resident Circuit Court Judge

Case No. 2012-CP-07-1352

2013 MAY -6 AM 9:15
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Bruce R. Hoffman, ... Plaintiff,

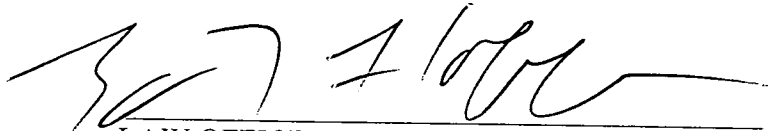
v.

Seneca Specialty Insurance Company; CRC Insurance Services, Inc. d/b/a Southern Cross
Underwriters of Sumter; Aydlette Services of Lowcountry, Inc.; and Capstone ISG, Inc.,
..... Defendants.

NOTICE OF APPEAL

Plaintiff Bruce R. Hoffman appeals the Order Granting Summary Judgment to Defendant
CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter, by the Honorable
Carmen T. Mullen, dated April 4, 2013, copy attached. Plaintiff received email notice of this
order on **April 8, 2013**.

May 6, 2013


LAW OFFICE OF BRUCE R. HOFFMAN, LLC,
BY: BRUCE R. HOFFMAN, Attorney for Plaintiff
Bruce R. Hoffman
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

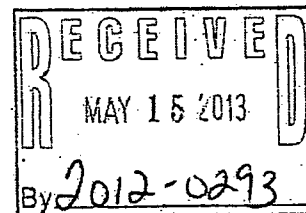
Other counsel of record:

Joshua P. Cantwell
Young Clement Rivers, LLP
PO Box 993
Charleston, SC 29402-0993
Attorney for Defendants Seneca and Capstone

William H. Jordan
Sowell Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211
Attorney for Defendant Aydlette

Christopher W. Nickels
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
Attorney for Defendant CRC

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www.BruceRHoffmanLawOffice.com
brucehff@embarqmail.com



SPK
EDB
WMC
Scan

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TELEPHONE: 843.706.0829

REPLY TO SAINT HELENA ISLAND OFFICE

May 16, 2013

Cheri L. Young, Court Reporter
P.O. Box 5232
Aiken, South Carolina 29804

Re: Transcript Request for Bruce R. Hoffman v. Seneca Specialty Insurance Co., et al, Case No.
12-CP-07-1352

Dear Ms. Young:

It is our understanding that on January 22, 2013, a Motion for Summary Judgment by Defendant CRC was heard by Judge Mullen, and you were the court reporter.

I appealed Judge Mullen's decision on this Motion, and thus need you to prepare a transcript of the hearing, and also an estimate before you begin work would be appreciated. I agree to pay the per page charge for this transcript, as provided by Rule 508, SCACR. I am out of state and on vacation until the end of the month, but look forward to finalizing this issue with you upon my return. Thank you.

With kind regards,

Bruce R. Hoffman (BRH)
BRUCE R. HOFFMAN

BRH/eph

Cc: Joshua P. Cantwell, Esq.; William H. Jordan, Esq.; Christopher W. Nickels, Esq.

BPS: As to Requests to Admit served by Seneca and Capstone on 4/12/13, they are all denied given the present circumstances of this case.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BRUCE R. HOFFMAN,

Plaintiff,

v.

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 12-CP-07-1352

OPPOSITION TO MOTIONS FOR
SUMMARY JUDGMENT OF
SENECA, CAPSTONE, AYDLETTE

2013 JUN 24 PM 12:57
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This lower Court presently has no jurisdiction to proceed with any hearings in this case, including today's hearing on summary judgment motions, with the summary judgment previously granted to Defendant CRC on appeal. This lawsuit seeks to have all Defendants held liable for breach of an insurance contract and otherwise (it is alleged that all Defendants did the same wrongful things, and did the same wrongful things together). This pending appeal is of a summary judgment granted to Defendant CRC that they are not liable for breach of this insurance contract and otherwise, the same exact issues that are raised on the appeal and on the motions to be heard today. With a pending appeal, the lower court only has jurisdiction over matters completely unaffected by the appeal, and that is not the case with these motions. Rule 205(a) SCACR, Andrick Dev. Corp. v Maccaro, 311 SE2d 95 (1984), Jackson v. Speed, 486 SE2d 750 (1997). With the risk of acting without jurisdiction to do so, and the inconsistent decisions and multiplicity of litigation that could result, respectfully, this lower Court must find the case totally stayed by the pending appeal and not proceed with any hearings in this case until the appeal is decided, including today's hearing on summary judgment motions.

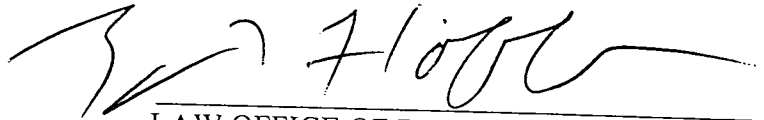
But if this Court does decide it has jurisdiction to proceed today, then as to the summary judgment motions of Plaintiff and Defendants Seneca, Capstone and Aydlette (all Plaintiff's previous filings incorporated here by reference), the exclusion in the policy for damage from nesting, infestation or release of waste products by *insects, birds, rodents or other animals*, does not apply here. The ejusdem generis doctrine (as discussed in Couch on

Insurance, Latin for "of the same kind") holds that in interpreting an exclusion in an insurance policy, the specific controls the general, i.e. the other animals here would not be all animals, but instead other animals like insects, birds or rodents, and objectively, the raccoons that caused the damage at issue here is not an animals like insects, birds or rodents. They den, not nest, they are North American wild animals (furbearing and protected in South Carolina) descended from bears, they growl, they have been held to not be vermin, etc. At the very least there is a triable issue as to whether the exclusion applies or not, just like there is a triable issue as to whether Plaintiff met his maintenance obligations or not (though when renewing the policy for the period at issue, the condition of the property was listed as good), so summary judgment to any of the Defendants on the insurance contract and otherwise, would have to be denied; if anything, summary judgment should be granted to Plaintiff on these issues.

Even if the Court did find the exclusion applied here with raccoon damage, there is an exception to the exclusion for ensuing damage, and there would be liability under the insurance contract for such ensuing damage, or at least a triable issue as to the scope of same (called resulting loss in commercial policies, like to the HVAC system here). Further, all Defendants, lied to me in one way or the other, making them all liable to me for bad faith, unfair trade practices or otherwise, or at least there are triable issues in this regard also. For example, as to Defendant Aydlette, they undertook a duty to give good advice when I asked them if I should switch from the Seneca policy to the Harleystown policy I now have, and breached this duty, by giving bad advice (not to switch to a policy that provided more coverage for less cost), and by failing to disclose that they did not do business with Harleystown and would thus lose their commission if I did switch, so they were self-interested in convincing me not to switch. Whether or not the Harleystown policy contains the same exclusion noted above is irrelevant, as, again, objectively that exclusion does not apply here and/or Aydlette cannot say how Harleystown would have handled the same claim.

For all the foregoing reasons, the Court should acknowledge it does not have jurisdiction to proceed, and not rule on the same issues that are currently pending in the Court of Appeal by keeping this case stayed in the lower Court, or, if this Court does believe it has jurisdiction to proceed, rule for Plaintiff on his summary judgment motion, or deny

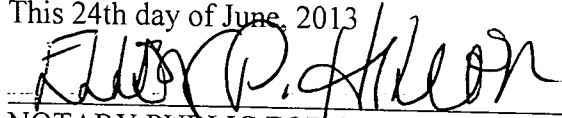
all the pending summary judgment motions as there are a myriad of triable issues in this case.



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

Sworn to and subscribed before me

This 24th day of June, 2013



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 08/08/2021

are always three pairs of legs in the adult, and these are all borne upon the thorax; and in most insects two pairs of membranous wings are developed [upon] the thorax The head is composed of several segments amalgamated together and carries a pair of jointed feelers or antenna, a pair of eyes, usually compound, and the appendages of the mouth Beetles, flies, wasps, mosquitoes, etc. are insects."

Other common pests in the insect class include termites, ants, bedbugs, some lice, flies, moths, aphids, fleas, cockroaches, bees, hornets, crickets, and butterflies. Popularly, some small animals, usually wingless, including spiders, centipedes, wood lice, ticks, and mites, are considered insects, though they are not technically in that classification.

Webster's New Twentieth Century Dictionary 948 (Unabridged 2d ed. 1979).

Birds

A "bird" is defined as "any of a class (Aves) of warm-blooded vertebrates distinguished by having the body more or less completely covered with feathers and the forelimbs modified as wings." Webster's New Collegiate Dictionary 111 (1980).

Rodents

Rodents (Rodentia order) is an order of small mammals whose chief characteristic is their teeth. While they have no canines, their large chisel-like incisors are used for gnawing and nibbling. The Encyclopedia Britannica, vol. 19 p. 430, and vol. 23, p. 619 (1968), describes rodents as including squirrels, beavers, mice, rats, lemmings, muskrats, gophers, chipmunks, and groundhogs or woodchucks. Also, some animals raised for commercial profit or as domestic pets are rodents: chinchillas, nutrias, hamsters, gerbils, and guinea pigs.

Animals frequently mistaken for rodents are opossums (Marsupialia order), moles and hedgehogs (Insectivor order), and raccoons and skunks (Carnivora order). Disagreement in the zoology field surrounds the classification of rabbits and hares. While American zoologists characterize these gnawing and hopping mammals as belonging to the Lagomorpha order, the European school prefers to recognize them as part of the Rodentia order.

Other Animals

The term "animal" is defined as "[a]ny animate being which is endowed with the power of voluntary motion. An animate being, not human." Black's Law Dictionary 80 (5th Ed. 1979)

"Animal" has also been defined as:

1. any living organism except a plant or bacterium: most animals can move about voluntarily and have specialized sense organs that enable them to react more quickly than plants to stimuli: animals are unable to make their own food, the way plants do, from inorganic matter by photosynthesis
2. any such organism other than a human being, esp. a mammal or, sometimes, any four-footed creature.

Webster's New World Dictionary (2d College ed. 1984).

Resulting Loss

Like the other exclusions in the wear and tear grouping, this exclusion is subject to a resulting loss exception. If the nesting, infestation, etc. results in a "specified causes of loss" or building

glass breakage, there will be coverage for the "specified cause of loss" or building glass breakage. This resulting loss provision is discussed at Key BP56.

Recovery has been allowed for losses that resulted from damage caused by creatures which are subject to similar exclusions and resulting loss provisions. For example, in Roberts v. State Farm Fire & Cas. Co., 705 P.2d 1335 (Ariz. 1985), reviewed at PLRB, Prop. Ins. L. Rev. 2056 (1985), bees had constructed a hive in the attic of the insured's home. An exterminator was hired to kill them. A few days after the extermination, the insureds noticed that honey was dripping into the dining room of their home. Coverage under a Homeowners policy was denied by the insurer on the basis of an exclusion which eliminated coverage for losses caused by insects. The insureds conceded that the actual damage done by the bees was not covered. However, they insisted that the damage to the dining room was covered under the ensuing loss exception which read that "any ensuing loss . . . not excluded is covered." The court noted that the term "ensuing loss" was not defined in the policy, and that dictionary and case law definitions all were to the effect that an "ensuing loss" was one which took place afterward. It concluded that the loss due to the honey seepage was an ensuing loss which was covered by the policy in the absence of some applicable exclusion.

While the court in Roberts was discussing an ensuing loss provision, the holding could apply to a resulting loss provision as well. (Ensuing loss is the Homeowners version of resulting loss in commercial policies). However, keep in mind that the resulting loss provision that applies to the nesting, infestation, etc., of insects, birds, rodents or other animals, only covers those resulting losses caused by the "specified causes of loss" or building glass breakage, not any covered loss.

See CQ-2009.02.12a - nesting exclusion did not apply to damage caused by one mouse.

POLICY LANGUAGE

BP 00 02 01 97 - BP 00 03 01 10

I. Other Types Of Loss

-
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;

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LANGUAGE HISTORY

BP 00 02 01 97 - BP 00 03 01 10

No change.

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BRUCE R. HOFFMAN,

Plaintiff,

v.

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 12-CP-07-1352

**SUPPLEMENT REGARDING
PLAINTIFF/DEFENDANTS' MOTIONS
FOR SUMMARY JUDGMENT**

2013 JUN 28 PM 1:58
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Besides being wrong, Judge Dukes' statement as to the "other animals" exclusion at issue in the case is absolutely NOT the law of this case. As noted in, for example, Shirley's Iron Works v City of Union, a South Carolina Supreme Court decision from May 29, 2013, citing with approval Weil v Weil, 382 SE2d 471 (1989):

The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right. . . . Ordinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits.

So Judge Mullen's hands are not tied by anything Judge Dukes may have said in his interlocutory order on my (not Seneca's) motion for summary judgment. Obviously, the phrase "other animals" in the exclusion here is ambiguous, doesn't say all other animals, or all animals (it could have but doesn't), says "other animals", what "other animals" are we talking about, who knows?? ONLY with the application of the ejusdem generis rule, and I previously filed the pages from Couch on Insurance discussing this rule of nationwide insurance policy application, does this objectively ambiguous exclusion become clear, the specific controls the general, "other animals" like insects, birds and rodents, and raccoons are certainly NOT of that same kind as those specifically enumerated in the exclusion.

Again, it is the ejusdem generis rule that cures what would otherwise be an ambiguity (what other animals?) in the exclusion at issue here. The *ejusdem generis* (or *eiusdem generis*, Latin for "of the same kind") rule applies to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear. The rule results that where "general words follow enumerations of particular classes or persons or things, the general words shall be construed as applicable only to persons or things of the same general nature or kind as those enumerated." 49 F Supp 846, 859 *Ejusdem generis* ("of the same kinds, class, or nature"). When a list of two or more specific descriptors is followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them. For example, where "cars, motor bikes, motor powered vehicles" are mentioned, the word "vehicles" would be interpreted in a limited sense (therefore vehicles cannot be interpreted as including airplanes).

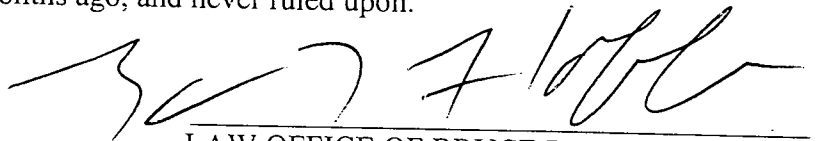
Likewise in this case, with insects, birds, rodent and other animals, the ejusdem generis rule requires that other animals in such a clause be limited to those animals like insects, birds and rodents, and objectively raccoons are not in that category.

While I still don't agree you had jurisdiction to proceed on 6/24, if you thought you did then the above rule MUST guide your ruling as to the exclusion at issue. And even if you somehow find that the exclusion does apply here (that raccoons are animals like insects, birds and rodents), then the exception to the exclusion for ensuing losses would apply, and these ensuing losses would be covered. So any way you look at it, the summary judgment motion of Seneca, having been heard today for the first time, has to be denied. And as Capstone and Aydlette, third party beneficiaries of the insurance contract, lied to me and unjustly profited from their lies, their summary judgment motions have to be denied also.

Further, while I am positive that what Judge Dukes said in an interlocutory order is not the law of the case, and this Court is free to decide the pending summary judgment motions, including Plaintiff's, as it sees fit and fair, if somehow this Court does think that Judge Dukes' statement regarding the exclusion in an interlocutory order is the law of the case, then it would also be the law of the case his denying Aydlette's previous summary judgment motion, as this law of the case concept would have to work both ways, or not at all.

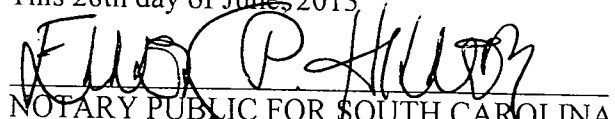
So the Seneca/Capstone motion for summary judgment must be denied, and my motion for summary judgment on coverage must be granted, this exclusion being the only defense Defendants have ever raised as to coverage in the case.

Last, I realized after looking through the Court file after the hearing on 6/24, that my request for leave to amend was an oral motion made at the hearing on the CRC Motion for Summary Judgment. As part of that appeal, I am waiting on the transcript from the court reporter. As soon as I get this transcript, I will send the Court the portion showing the oral motion for leave to amend that was made months ago, and never ruled upon.



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

Sworn to and subscribed before me
This 28th day of June, 2013



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 08/08/2021

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 28 day of June, 2013
By Bruce R. Hoffman *emailed to same*

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 12-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

v.

**PLAINTIFF'S SUPPLEMENT TO
COMPLAINT**

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

Plaintiff Bruce R. Hoffman hereby supplements his Complaint in this action filed April 3, 2012 (incorporated in full by reference) as follows:

FOR A FIFTH CAUSE OF ACTION
(AGAINST DEFENDANTS SENECA SPECIALTY INSURANCE COMPANY and
CRC INSURANCE SERVICES, INC. d/b/a SOUTHERN CROSS UNDERWRITERS OF SUMTER, IN
TORT)

23. Plaintiff reaffirms and reiterates all the allegations in his April 3, 2012 Complaint in this case as if fully repeated and incorporated herein verbatim.
24. After the filing of the April 3, 2012 Complaint in this case, Plaintiff discovered that statutory violation by CRC (as an agent of Seneca, and acting on their behalf) and it was CRC that was directing Seneca and Aydlette what to do. CRC sent me an illegal notice of non-renewal, but under SC law (SC Code 38-75-740), CRC cannot send out a notice of non-renewal without stating the precise reasons for the non-renewal, and they failed to follow SC law in this regard, causing me to have to take the time, effort and expense to complain to the SC Department of Insurance (at which point CRC and Seneca admitted they had acted illegally, and had Aydlette provide me with a renewal quote (and not the better and less costly policy that Aydlette had promised to find me) and otherwise damaging me. Wherefore, Plaintiff prays for all damages, including punitive damages, occasioned thereby, plus attorney fees, costs of suit, and all

other relief the Court deems proper.

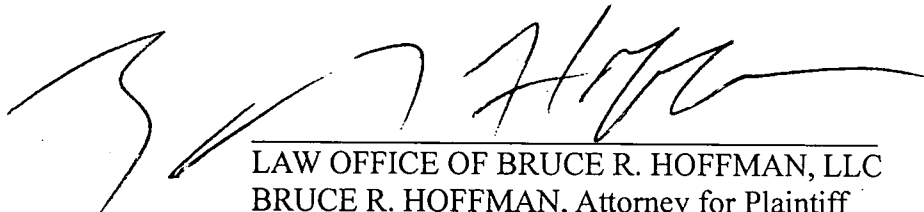
FOR A SIXTH CAUSE OF ACTION
(AGAINST DEFENDANTS SENECA SPECIALTY INSURANCE COMPANY and AYDLETTE SERVICES
OF LOWCOUNTRY, INC., IN TORT)

25. Plaintiff reaffirms and reiterates all the allegations in his April 3, 2012 Complaint in this case as if fully repeated and incorporated herein verbatim.
26. After the filing of the April 3, 2012 Complaint in this case, Plaintiff discovered that Aydlette lied about the policy to induce me not to cancel it. Aydlette (as an agent of Seneca, and acting on their behalf) undertook a duty to give me good advice when I asked them if I should switch from the subject Seneca policy to the Harleysville policy I now have, and breached this duty by giving bad advice (not to switch to a policy that provided more coverage at less cost), and by failing to disclose that they did not do business with Harleysville and would thus lose their commission if I did switch. They were conflicted in advising me and self-interested in advising me not to switch (and/or Plaintiff is informed and believes and thereon alleges, did not even compare the two policies and investigate the matter like they said they would, but represented that they had investigated it. Whether the Harleysville policy would have covered the raccoon and other damage complained of herein, is irrelevant, as the exclusion at issue does not apply here and/or Aydlette cannot say how Harleysville would have handled the same claim, so they would be speculating. Further, Aydlette made no real effort to assist me when Seneca denied my claim, or when CRC illegally sent me a notice of non-renewal. When I called Aydlette about the denied claim, they took the side of the insurance company and the underwriter, rather than their customer. They did nothing to help me regarding the dispute, or the illegal notice of non-renewal, they said they would get back to me regarding the denied claim, and never did, and had to have gotten a copy of the illegal notice of non-renewal and did nothing. Again, they undertook a duty to do things for me, and do it properly, but they didn't, and I was damaged as a result. A duty to look into it fully and advise fully, breached duty by not really looking into it and lying about it, damaged thereby, *Turner v Milliman*, and promised to assist client in processing of claim but didn't, failed to perform the services they agreed to perform, unjustly profiting thereby, return of commission and liability otherwise. Wherefore, Plaintiff prays for all damages, including punitive damages, occasioned thereby, plus attorney fees, costs of suit, and all other relief the Court deems proper.

FOR A SEVENTH CAUSE OF ACTION
(AGAINST DEFENDANTS SENECA SPECIALTY INSURANCE COMPANY and CAPSTONE ISG, INC.,
IN TORT)

27. Plaintiff reaffirms and reiterates all the allegations in his April 3, 2012 Complaint in this case as if fully repeated and incorporated herein verbatim.
28. After the filing of the April 3, 2012 Complaint in this case, Plaintiff discovered that Capstone (as agent and at the behest of/on behalf of Seneca) lied and unjustly profited from their lies about their handling of the claim. Plaintiff justifiably relied on and changed position in reliance on and damaged thereby. To wit, after inspecting the office and confirming that it was raccoons that had caused the damage to the building that formed the basis of the claim, the independent adjuster gave Plaintiff the false impression (negligently or intentionally), in front of a witness, that the damage would be covered by the insurance policy and quickly repaired, even asking Plaintiff if he had another location to work out of while the repairs were done. The adjuster told Plaintiff to his face that this claim would be covered and never said anything to the contrary. Plaintiff relied on this assertion, then was shocked when months later he received a denial of the claim. This is supported by a letter from Capstone stating the exact opposite of what the representative, Mr. Dodd, had told Plaintiff face to face in his office. Also, wrote letter that Seneca directed them to write, more concerned about relationship with Seneca than telling truth, clearly would write whatever Seneca told them to write. Wherefore, Plaintiff prays for all damages, including punitive damages, occasioned thereby, plus attorney fees, costs of suit, and all other relief the Court deems proper.

Dated: October 2, 2013



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29220
(843) 838-5290

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy herof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 2 day of October, 2013

By Bruce R. Hoffman

hand delivery

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

D. Craig Brown, Presiding Judge, Fourteenth Judicial Circuit

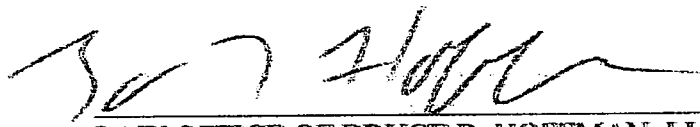
Trial Court Case No. 2012-CP-07-1352

Bruce R. Hoffman, ... Plaintiff/Appellant,
v.
Seneca Specialty Insurance Company, ... Defendant/Respondent.

NOTICE OF APPEAL

Plaintiff/Appellant Bruce R. Hoffman appeals the Order of Judge D. Craig Brown Granting Defendant/Respondent Seneca Specialty Insurance Company Summary Judgment, dated October 24, 2013 (and also the companion Order of Judge D. Craig Brown Denying Plaintiff's Motion for Summary Judgment as to Defendant Seneca Specialty Insurance Company, also dated October 24, 2013), copies attached. Plaintiff received notice of these orders on November 12, 2013.

November 27, 2013



LAW OFFICE OF BRUCE R. HOFFMAN, LLC,
BY: BRUCE R. HOFFMAN, Attorney for
Appellant Bruce R. Hoffman
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

Other counsel of record:
Joshua P. Cantwell
Young Clement Rivers, LLP
PO Box 993
Charleston, SC 29402-0993
Attorney for Respondent Seneca Specialty Insurance Company

RECEIVED

DEC 02 2013

SC Court of Appeals



The South Carolina Court of Appeals

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V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 14, 2014

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: Bruce Hoffman v. Seneca Specialty
Lower Court Case No. 2012CP0701352
Appellate Case No. 2013-001068

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny A. Kitchings". Below the signature, the word "CLERK" is printed in a small, sans-serif font.

CLERK

Enclosure

cc: Bruce Robert Hoffman, Esquire
Joshua P. Cantwell, Esquire

Christopher William Nickels, Esquire
William Hammond Jordan, Esquire

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF

COUNTY OF BEAUFORT)

COMMON PLEAS

CASE NO.: 2012CP0701352

BRUCE R. HOFFMAN,)

PLAINTIFF,)

VS.)

TRANSCRIPT OF RECORD

SENECA SPECIALTY INSURANCE)
COMPANY, ET AL.,)

DEFENDANTS.)

June 24, 2013

Beaufort, South Carolina

BEFORE:

THE HONORABLE CARMEN T. MULLEN, JUDGE

APPEARANCES:

Bruce R. Hoffman, Esquire
Pro se

Joshua P. Cantwell, Esquire
Attorney for Seneca Specialty Insurance Company and Capstone, ISG

William H. Jordan, Esquire
Attorney for Aydlette Services of the Lowcountry

Deborah A. Anderson
Circuit Court Reporter

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INDEX

No testimony taken

Certificate of Reporter page 33

EXHIBITS

None

1 THE COURT: Alright, I believe this leads me to the Hoffman versus Seneca and
2 Aydlette and . . .

3 COURT REPORTER: Can I get your names, please?

4 MR. CANTWELL: Yes, Josh Cantwell and I represent Seneca and Capstone.

5 COURT REPORTER: And your name?

6 MR. JORDAN: I have a card for you.

7 COURT REPORTER: Thank you.

8 MR. JORDAN: I'm Will Jordan and I represent Aydlette.

9 COURT REPORTER: Thank you so much.

10 MR. JORDAN: Thank you.

11 MR. HOFFMAN: Your Honor, Bruce Hoffman for the Plaintiff. Um, I submitted
12 paperwork to you. I don't know if you've had a chance to look at it yet.

13 THE COURT: You just handed it to me.

14 MR. CANTWELL: Your Honor, I also have a memo that I sent to your office last
15 week. I don't know if you have a copy of it or not, but I have an extra one here if you'd
16 like. Thank you.

17 THE COURT: Alright, well, it appears you're raising the issue of jurisdiction. You
18 appealed the last granting of summary judgment as to CRC, is that correct?

19 MR. HOFFMAN: Right, and the issue in that appeal is a breach of insurance
20 contract. The issue in this case is a breach of insurance contract. Um, so what happens in
21 the Court of Appeal will affect what happens in this case. Therefore, this case is stayed.

22 THE COURT: You can go ahead and respond.

23 MR. CANTWELL: Your Honor, I have a case in point, uh, Metts v. Mims, um, 384
24 S.C. 491, which specifically states that the notice of appeal, uh, does not deprive the trial
25 court of subject matter jurisdiction to rule on a summary judgment motion if its matter is not

1 affected under Rule 205 - - -

2 MR. HOFFMAN: The matter is also - - -

3 THE COURT: Well, respectfully, it is to a different party, so, again, which will have
4 different factual issues. So but's that's - - -

5 MR. HOFFMAN: And some of the same factual issues.

6 THE COURT: I have jurisdiction to hear the other two summary judgment motions.

7 MR. HOFFMAN: I've never seen this case before. I still haven't seen it.

8 THE COURT: Alright, so, but Seneca and Capstone have motions for summary
9 judgment, I know. I have received something, uh, from Aydlette, his motion for summary
10 judgment and then, Mr. Hoffman, you told me that you also have a motion for summary
11 judgment - - -

12 MR. HOFFMAN: Yes.

13 THE COURT: - - - as to both Aydlette and Seneca and Capstone?

14 MR. HOFFMAN: Yes.

15 THE COURT: Okay, and y'all have been served notice about it and you have that as
16 well?

17 MR. CANTWELL: Um, we've actually already argued it. Argued it before your
18 Honor and you denied it.

19 THE COURT: That was my understanding. I just need to know if he filed a new
20 motion?

21 MR. HOFFMAN: Yes.

22 THE COURT: Did you file a new motion?

23 MR. HOFFMAN: On May 6th.

24 MR. JORDAN: Your Honor, if I remember the procedure correctly it was Mr.
25 Hoffman had a motion. It was argued and denied. The two of us filed motions for

1 summary judgment following Mr. Hoffman's deposition and following the receipt of his
2 documents in this case and in response to our motions for summary judgment Mr. Hoffman
3 renewed his own. Um, so in fairness to him, he might have one that hasn't been ruled on.
4 Though, I think it's virtually identical to his initial one that was denied.

5 THE COURT: Well, there also is new evidence, I'm assuming, with his deposition
6 being taken, possibly, so . . .

7 MR. HOFFMAN: Right. Well, the - - the last time you considered my summary
8 judgment motion the basis of your ruling, as I understood it, was you wanted the discovery
9 to proceed, so the discovery, now, has proceeded and the summary judgment can be
10 considered on the basis that, uh, that's contained in the motion. I mean, I have the
11 paperwork here if you want to see it.

12 THE COURT: So the renewed - - is May 6th is when you renewed that motion?

13 MR. HOFFMAN: Yeah, it's right here.

14 THE COURT: Is it?

15 MR. HOFFMAN: I mean, there's a way to short circuit a lot of this. A simple way,
16 in my opinion.

17 THE COURT: Can I see what you just showed me? I - - I just - - that I can't find in
18 the file.

19 MR. HOFFMAN: Number 2 just . . .

20 THE COURT: Thank you. Alright, well, let's go ahead and hear, uh, I'm not sure
21 whose motion was filed first, Aydlette's or, um, Seneca and Capstone's. But, um, if you all
22 agree on who's going first.

23 MR. JORDAN: I think mine, technically, was filed first. Although, they're
24 probably a couple of days out. I'm happy to go first, your Honor.

25 THE COURT: Okay.

1 MR. JORDAN: As I stated, Will Jordan on behalf of Aydlette. Um, I think your
2 Honor remembers kind of the factual background of this case.

3 But, um, the Plaintiff, when he filed this lawsuit as to Aydlette, asserted four
4 different causes of action related to the denial of an insurance claim, um, relating to a loss
5 that he had - - that occurred at his office, um, due to some raccoon infestation and the four
6 causes of action asserted against Aydlette were breach of insurance contract, bad faith
7 refusal to pay benefits, declaratory judgment and unfair trade practices.

8 And back in January, Judge Dukes heard some, um, summary judgment motions,
9 including Aydlette's, um, on all of these causes of action and Judge Dukes granted
10 Aydlette's summary judgment motion on all causes of action except for the breach of
11 insurance contract.

12 And I have a copy of Judge Dukes' order if you need it, but I assume it's in your file,
13 um, but here is what Judge Dukes said concerning the one remaining cause of action against
14 Aydlette.

15 As to the breach of contract cause of action the Plaintiff produced an affidavit stating
16 that he contacted Aydlette about a second insurance policy through Harleysville that
17 Plaintiff indicated would have covered the loss in question.

18 He alleges that Aydlette services induced him to stay with the current policy when
19 the Harleysville policy would have covered the loss in question.

20 The Court finds, at this time, that there's a question of fact on the breach of contract
21 between Aydlette Services and Hoffman regarding procurement of coverage.

22 Accordingly, the Court denies the motion for summary judgment, at this time,
23 without prejudice.

24 So Judge Dukes basically said that as to that cause of action there was a question of
25 fact as to whether the Harleysville policy that Plaintiff says he took to Aydlette and Aydlette

1 told him not to switch to would have covered the loss that he is now complaining he wasn't
2 -- that wasn't covered.

3 THE COURT: Okay.

4 MR. JORDAN: Well, we've taken Mr. Hoffman's deposition. We've had a chance
5 to review the documents that Mr. Hoffman has and, your Honor, that's no longer a question
6 of fact.

7 Um, if you look at the documents that I submitted with my memorandum in support
8 of summary judgment, um, in -- in June of 2011, shortly after he renewed his policy with
9 Seneca, Mr. Hoffman received a proposal from Harleysville and that document is attached to
10 Exhibit A to my memorandum.

11 Mr. Hoffman testified during his deposition that this is the document that he handed
12 to Aydlette and said, should I switch to this policy?

13 And if you flip over to the second page of this proposal, you see up there at the top
14 right, it has the policy number, BOP - - -

15 THE COURT: Uh-huh.

16 MR. JORDAN: - - - and a bunch of numbers after that. Um, Mr. Hoffman is now
17 insured through Harleysville and if you look at Exhibit C, this is the Harleysville policy that
18 Mr. Hoffman currently has.

19 If you flip into the policy you will see the exact same policy number as that
20 insurance proposal provided in Exhibit A.

21 Now, this is the policy that Mr. Hoffman says, you should have told me to switch to
22 this one because it would have been covered. It's a better policy.

23 Well, if you flip over to page 18 of this policy, it includes some terms including
24 other, um, exclusions from loss and it specifically says, we will not cover loss from nesting
25 or infestation or discharge or release of waste products or secretions by insects, birds,

1 rodents or other animals. That is word for word of an exclusion that he is now complaining
2 about, your Honor. Um, the one issue of fact is no longer an issue of fact in this case, um,
3 and on that basis we would say that the final - - the final cause of action that he's asserting
4 against us for breach of contract should be dismissed as well.

5 THE COURT: Mr. Hoffman.

6 MR. HOFFMAN: Well, first of all that exclusion does not apply in this case, so
7 whether it's in the Harleysville policy or not is completely irrelevant and I guess I can short
8 circuit this whole thing and explain why the exclusion doesn't apply. Um, but beyond that,
9 there's other issues in the case involving Aydlette besides what the Harleysville policy
10 says. I think - - which I think is irrelevant anyway.

11 I mean, they lied to me. The way they lied to me was that when I asked them if I
12 should switch they failed to tell me that they don't do business with Harleysville and that if I
13 did switch they'd lose their commission and now that, obviously, is all they were interested
14 in.

15 They didn't care about the rest of it. It was a lower cost policy with more coverage.
16 Um, and, you know, I relied on them as to whether I should switch or not and it wasn't just
17 about the exclusion. It was about it was a lower cost policy with more coverage. What
18 should I do?

19 I think once they undertook an obligation, a duty, to advise me on whether I should
20 switch or not they had an obligation to do that properly and they didn't. They lied to me.
21 They didn't tell me that they didn't do business with Harleysville and that if I did switch
22 they'd lose their commission and that's why they induced me not to switch and if I had
23 switched who knows what would have happened.

24 We don't know what Harleysville would have done. They might have covered it,
25 because, again, this exclusion does not apply in this case, which I'd be glad to tell you why

1 it doesn't.

2 THE COURT: Mr. Jordan.

3 MR. JORDAN: Your Honor, I - - I'm a little bit confused. Whether or not the
4 policy exclusion applies or not, I agree as to Aydlette, it doesn't matter. But the bottom line
5 is that the policy exclusion that he's complaining about is the same one that was in the
6 policy that he says we should have - - we should have told him to switch to.

7 Now, if he wants to say that it's not just about the exclusion, well, he hasn't told us
8 what else it's about.

9 The complaint is clear that he is complaining about being denied coverage for this
10 specific loss and Judge Dukes' order is clear that there is one issue remaining that's keeping
11 Aydlette in this case and that's whether or not he should have switched to this policy that
12 covered it and it wouldn't have mattered.

13 Now, there can't be a fact issue as to how Harleysville would have interpreted the
14 policy. It's the same term and so whether it's a question of law or a question fact, the
15 policies are identical.

16 It's gonna be impossible for him to show Harleysville would have done x, y or z.
17 Now, the policy is what it is, but I don't think he can say there's a question of fact about
18 what would have happened under the other policy under a different insurance company.

19 MR. HOFFMAN: What Harleysville says is a red herring. It doesn't matter. They
20 lied to me. They didn't tell me they didn't do business with Harleysville and now all they
21 were concerned about was protecting their commission. They probably didn't even enquire
22 into, um, I mean, I haven't taken their deposition.

23 THE COURT: What are your damages for them lying to you?

24 MR. HOFFMAN: That I'm here today. That I've been messing around with this for
25 two years, that's part of my damage. Because we don't know - - just like he said, we don't

1 know what Harleysville would have done. We don't know if they would have denied it. We
2 don't know if they would have granted it. But the point is that, um, they lied to me, okay, to
3 induce me not to switch to a policy that was a better policy, okay, and that's - - -

4 THE COURT: But the question is, how will you prove that it's a better policy?

5 MR. HOFFMAN: Lower cost and more coverage. It's - - it's - - that's objective and
6 it's like it's a fact question. I just have to show there's a fact question. I don't have to win
7 the case here. There's a - - there's a scintilla of a question. That's all I have to show.

8 THE COURT: The problem, though, is Judge Dukes didn't narrow it as to what this
9 policy would have done. I mean, I understand clearly why he didn't grant the summary
10 judgment in the first place. Again, you stated that they represented to you, this policy did
11 everything that the Harleysville policy. But what they're telling me is it's the exact same
12 policy.

13 MR. HOFFMAN: But that's not what I'm alleging. I'm alleging they lied to me
14 about, generally, about the advice they gave me about whether I should switch or not.

15 MR. JORDAN: Your Honor, if I - - if I may.

16 THE COURT: Yes.

17 MR. JORDAN: In this case we have asked Mr. Hoffman to tell us what his damages
18 are. His damages relate to the loss of his office caused by an infestation of raccoons.

19 THE COURT: Of raccoons.

20 MR. JORDAN: He hasn't told us, oh, I didn't have coverage for a tree that fell on
21 my house. There's no other claimed damage in this case, so it will be impossible for him to
22 say as to what he's plead in this case that anything that we did.

23 Now, I'm not saying Aydlette lied to him. We heavily dispute that, but there's no
24 proximate cause for any damage, A, because there's no other damage other than the raccoon
25 damage and, B, he can't show that anything that we did would have approximately caused

1 any damage.

2 MR. HOFFMAN: There's other damage. It's environmental damage, it's my - - the
3 waste of two years of my time on this. There's other damages.

4 THE COURT: Does the contract provide for - - does your insurance contract
5 provide for, in any way, and it wouldn't really be your insurance contract because you're
6 just the middle man anyway.

7 MR. JORDAN: Well, your Honor, and that - -

8 THE COURT: Yeah.

9 MR. JORDAN: - - - that was our - - I didn't raise that, but that was kind of our
10 initial disagreement with Judge Dukes' order is that there is no - - the claim is breach of
11 insurance contract. There is no insurance contract between Mr. Hoffman and Aydlette.
12 Aydlette was the agency, so there's no written agreement, period, between these two
13 entities, between Aydlette and Mr. Hoffman.

14 THE COURT: Would it be negligence or would it be fraud or something else?

15 MR. HOFFMAN: It would be fraud in evidence. I asked you before to let
16 me amend, you didn't do that. Um, also, they're a third party beneficiary of the insurance
17 contract. They made money off if it. Just like Capstone and everyone else is making money
18 off of it and I'm the only one out in the cold and heat now.

19 MR. JORDAN: And, your Honor, all I can say is I can only swing at pitches that are
20 thrown to me and there's not been a cause of action, other than breach of contract, in front of
21 us right now.

22 So I, you know, we were ready to go to trial in this case a couple of months ago and
23 Mr. Hoffman was the one that was driving that train to push this forward and then showed
24 up one day at trial saying there's no jurisdiction because he's gonna appeal.

25 So we would certainly object to an amendment at this point. We - - we fought long

1 enough to get documents and deposition from Mr. Hoffman and, you know, this case is - -
2 this case has been going on a long enough.

3 MR. HOFFMAN: He said they dispute whether they lied or not. They lied. They - -
4 he disputes it. Sounds like a factual dispute to me. I mean, what more am I supposed to
5 show? That's all I have to show is one dispute. I just showed it. He admitted it.

6 THE COURT: When did you file a motion to amend your complaint - - -

7 MR. HOFFMAN: Several times.

8 THE COURT: - - - and it was denied?

9 MR. HOFFMAN: I - - I can't find it now. It's in writing and it's also verbal - - -

10 THE COURT: Where is it?

11 MR. HOFFMAN: - - - including this Court.

12 THE COURT: The file's right here. The court file is right here.

13 MR. HOFFMAN: Well, if you want - - -

14 THE COURT: Look for it and you won't find it.

15 MR. HOFFMAN: Well, I'll be glad to look.

16 MR. JORDAN: May I just say for the record, your Honor, that I dispute
17 Mr. Hoffman's comment that I admitted that we lied to him about anything. He just - - he
18 threw that out there and I want to be clear - - -

19 MR. HOFFMAN: He admits there's a dispute, not that he admitted that they lied.
20 He admits there's a dispute.

21 THE COURT: He doesn't admit anything, but, okay.

22 MR. HOFFMAN: He said the word dispute. We dispute that. It's gonna take me a
23 while.

24 THE COURT: Okay, well, let's move on then, um, to the next issue. I guess we can
25 - - let's do this. Mr. Hoffman, why don't you put the file to the side right now. Let me hear

1 Capstone, um, and Seneca's motion for summary judgment and then, um, you can go ahead
2 and argue your motion and then we'll take a break and while I hear something else you can
3 go through the file and fine your motions to amend.

4 MR. HOFFMAN: I do - - I do have a case Turner versus Milliman that is exactly on
5 point here.

6 THE COURT: As to what?

7 MR. HOFFMAN: Where statements were made by an agent and it was felt - - found
8 that summary judgment in that instance is inappropriate. That there should be a trial.

9 THE COURT: Okay, but, again, it depends factually on the case, as you know, and
10 what we're trying to figure out and what I'm trying to find out from you are, what are your
11 damages?

12 MR. HOFFMAN: I just said that. I'm here. I've had to mess with this for two
13 years. That's my damages.

14 MR. JORDAN: Your Honor, there - - there's no basis for - - I mean, if that's his
15 damages then we've got plenty of damages of our own. Um, the damages that we've asked
16 Mr. Hoffman to identify, which he has identified, all relate to the loss incurred as his office
17 because of the raccoon infestation.

18 MR. HOFFMAN: Plus the commission that was paid to them. They shouldn't have
19 gotten that commission. Whatever commission they got should be ordered disgorged and
20 returned.

21 THE COURT: So you never originally sued for either negligence or fraud?

22 MR. HOFFMAN: Not originally.

23 THE COURT: As to Aydlette?

24 MR. HOFFMAN: Not originally.

25 THE COURT: Okay.

1 MR. HOFFMAN: But I certainly asked them, uh, Judge Dukes and you several
2 times, to let me amend if you thought that was necessary and no one's ever responded to
3 that.

4 THE COURT: Okay, well, you're gonna need to find it in the file - - -

5 MR. HOFFMAN: Okay, I'll find it.

6 THE COURT: - - - but we'll - - we'll go ahead and hear, uh, Seneca and Capstone's
7 motion for summary judgment, now, and has this one ever been raised?

8 MR. CANTWELL: No, this is the first time for this one, your Honor.

9 THE COURT: Okay, thank you.

10 MR. CANTWELL: Uh, just for the record, Josh Cantwell here for Defendants
11 Seneca and Capstone. Uh, your Honor, Seneca is the insurance company involved in this
12 case and Capstone is the independent adjuster that Seneca hired, um, to go in and investigate
13 the claim.

14 The causes of action against each of these entities are the same as, um, Mr. Jordan
15 just referenced, breach of contract, bad faith, declaratory judgment and UTPA.

16 THE COURT: Okay.

17 MR. CANTWELL: Um, if I may first just, uh, involving Defendant Capstone. Um,
18 as an independent adjuster any duties arising out of the insurance contract, uh, would not
19 extend to them under the, um, Charleston Dry Cleaner's and Laundry vs. Zurich decision.
20 This cite is 355 S.C. 614 and I've also included, um, cites to other cases as well. But
21 essentially they wouldn't have any sort of - - they don't have a contract with Mr. Hoffman
22 so there can be no breach of contract. They don't owe any duties to him, um, arising from
23 that insurance contract.

24 Um, as far as Defendant Seneca, the - - the policy exclusion is clear and
25 unambiguous and Judge Dukes looked at it. It is an animal exclusion. There's no question

1 that the damage caused in this case to, uh, Mr. Hoffman's property was cause by animals.

2 Um, if you look within our memo, uh, attached as Exhibit A, is an affidavit from Mr.
3 Dobb, from Capstone, regarding his investigation of the claim five days after it was
4 reported, um, along with the affidavit are pictures of the exterior and interior of the property,
5 all exhibiting, um, the damage that was caused by animal infestation.

6 In addition to that Mr. Hoffman hired critter management and other subcontractors to
7 go in and price out repairs. In each one of those invoices that we've included as exhibits as
8 well, there have been notations of animal, um, infestation, raccoons, rodents and such.

9 If you look at Exhibits, um, D, Exhibit D is the property loss notice statement where
10 Mr. Hoffman was reporting the loss, stating that there were animal infestation and raccoon
11 feces in the duct work.

12 Exhibit E is the critter management work order which references, again, animals in
13 the ceiling and odors, um, animal infestation, again, down at the bottom of the page.

14 And then if you turn to Exhibit F, this is actually from Mr. Hoffman's deposition
15 where he admits to the fact that there were animals in his attack. He recalls an instance
16 where an animal was growling through him - - growling at him through the ceiling.

17 If you look at Exhibit G, it's an invoice from Pender Brother's, the HVAC, um,
18 subcontractor that he was, um, pricing out the repairs and it clearly states that there are two
19 systems in the building. Raccoons, snakes, rats and etcetera have gotten in the duct work
20 and ruined it.

21 If you look at the Exhibit H, the next exhibit, it's a line item of all the alleged
22 damages that Mr. Hoffman is claiming in this case. Each of these, um, line items from
23 critter management indicate due to, um, debris, nesting material of the underside of animals,
24 after the completion of raccoon damage repairs, all sorts of instances and references to
25 animal infestation and damage that is directly caused by the animals, uh, on the property.

1 Um, there's absolutely no basis or evidence in the record that my clients acted in bad
2 faith in any way. Um, they certainly had a reasonable basis for denial, being that it was
3 certainly caused by an animal and there's an animal exclusion in the policy.

4 Um, as far as the UTPA action, um, it is our position that the UTPA claim would be
5 barred against South Carolina, um, 39-5-40, which limits the UTPA action in regulated
6 industries, um, and specifically the, um, industry, uh, the insurance industry is regulated by,
7 uh, 38-59-20 where there's exact claims for unfair insurance practices of sorts.

8 Mr. Hoffman has not pled any of those in his complaint, um, so that would not be an
9 issue in this case. Um, in addition, a breach of contract is not enough to - - to, uh, maintain
10 a UTPA claim and there's no evidence of any sort of public interest affected as well.

11 In addition to all these things, um, summary judgment is also appropriate because
12 Seneca and Capstone served request to admit on Mr. Hoffman on April 12th, 2013. I have
13 attached those as exhibits as well. Um, as of the date of this hearing, Mr. Hoffman has not
14 responded to any of these requests.

15 Um, on May 16th, in a letter to a court reporter, Mr. Hoffman requested a, um,
16 transcript of a hearing where Co-Defendant CRC was dismissed for his appeal and at the
17 bottom of that letter, which is Exhibit J of our memo, there's a bps and it says; as to your
18 request to admit served by Seneca and Capstone on 4/12/13 they are all denied given the
19 present circumstances of this case.

20 Um, it's our position that these do not comply. This response does not comply with
21 the Rule 36 in that he did not make any specific denials as to our request that we made and,
22 further, this is not signed by either the attorney or the party as required by the language of
23 the Rule.

24 THE COURT: Okay, can I see it?

25 MR. CANTWELL: Yup. The - - the letter from him?

1 THE COURT: Yeah, how could he have not signed it?

2 MR. CANTWELL: Oh, his - - his office staff signed it.

3 MR. HOFFMAN: I don't have to - - with my authority.

4 MR. CANTWELL: And the exhibit previous to that one are the request to admit.

5 MR. HOFFMAN: If he didn't like my response he had a remedy, which is a motion
6 to compel for a response, and he didn't do that, let alone make a motion to deem these
7 admitted. This is the second time in this case I've had to deal with a motion to deem
8 something admitted when I did respond.

9 THE COURT: Your responses as to request to admit served by Seneca and
10 Capstone on 4/12/13, they are all denied given the present circumstances of this case. What
11 does that mean? Given the present circumstances.

12 MR. HOFFMAN: That I - - I - - the case was stayed, in my opinion. It's a response.
13 If they don't like it they can make a motion to compel a further response. If you don't like it
14 I can make - - I can answer the request for admissions if you think I should. But it's
15 certainly - - you can't say I didn't respond. I responded.

16 THE COURT: Anything else, Mr. Cantwell?

17 MR. CANTWELL: Um, no, your Honor. That is it. Um, just based on those legal
18 issues and - - and procedural issues we would ask the Court grant summary judgment as to
19 all causes of action against both Seneca and Capstone.

20 THE COURT: Could we backup for just a quick second. I'm looking at - - I was
21 looking at Judge Dukes' order. Basically, he found that - - and just correct me if I'm wrong
22 - - where is his order?

23 MR. CANTWELL: May I approach, your Honor?

24 THE COURT: Yeah, if you don't mind giving it back to me.

25 MR. CANTWELL: Yes, it's, um, it's an exhibit thrown in there. Bear with me.

1 Um, it is Exhibit C to our memo.

2 THE COURT: Yeah, thank you.

3 MR. JORDAN: Josh, I have an extra copy right here if you want to see it.

4 THE COURT: Thank you.

5 (Whereupon, the Court is reading Judge Dukes' order.)

6 THE COURT: My question is, is that it looks like Judge Dukes said that the
7 exclusion is not ambiguous. So how is that not a matter of law at that point?

8 MR. CANTWELL: Exactly. That's our argument, your Honor.

9 MR. HOFFMAN: That's not the issue in this case, though. It's not ambiguous. It
10 says, animals. The problem is a raccoon is not one of the animals that falls into that
11 exclusion and I've been saying this for two years.

12 There's - - there's a rule of construction for insurance contracts, ejusdem generis, of
13 the same kind. The specific controls the general in an insurance policy.

14 THE COURT: Okay.

15 MR. HOFFMAN: May I be heard?

16 THE COURT: Sure.

17 MR. HOFFMAN: Again, ejusdem generis, from Couch on Insurance and a million
18 other sources. It's a seminal rule of insurance, uh, contract law that says that where you
19 have a fray, an exclusion, where there is specific references and general references that the
20 specific controls the general, the scope of the general.

21 So if the exclusion is birds, insects and rodents and other animals, its other animals
22 like birds, insects and rodents, not all other animals, um, and in that case raccoons,
23 objectively, are not like birds, insects and rodents.

24 I mean, they - - they den. They don't nest. They're protected by the State of South
25 Carolina as fur bearing animals. They're descended from bears.

1 I mean, and I - - I - - over - - over the years of this case I've submitted scientific
2 paperwork to that extent.

3 So, I mean, under ejusdem generis this exclusion - - yes, a raccoon's an animal, but it
4 is not the kind of animal that is referenced by that exclusion.

5 THE COURT: Let me ask you, has the insurance industry changed this exclusion
6 recently?

7 MR. CANTWELL: No, your Honor, they haven't. Um, if you actually look at the
8 material that Plaintiff submitted, um, he included some information that we produced during
9 discovery and it shows the exact, um, exclusion. The version is a 2009 version and I believe
10 it - - it probably went before that when it was created.

11 MR. HOFFMAN: But it doesn't include raccoons because of that doctrine.

12 MR. CANTWELL: What Plaintiff is arguing is the line of cases they use to have in
13 the virmant exclusion.

14 THE COURT: Right.

15 MR. HOFFMAN: No, I'm arguing the doctrine ejusdem generis.

16 MR. CANTWELL: Right, which - - -

17 MR. HOFFMAN: Identifying birds - - -

18 THE COURT: Stop. Stop, Mr. Hoffman. Go ahead.

19 MR. CANTWELL: Which doesn't apply to when it's not ambiguous.

20 THE COURT: Right, okay.

21 MR. CANTWELL: Even though it's a general term, that's very broad. It's
22 unambiguous and it's clear.

23 THE COURT: The word animals.

24 MR. HOFFMAN: It's an - - -

25 THE COURT: The word animals.

1 MR. CANTWELL: The word, other animals, and Judge Dukes found the same that
2 although it's broad and they're very inclusive, it's not unambiguous in any way.

3 MR. HOFFMAN: But there's a triable issue as to whether raccoons are one of those
4 animals based on that doctrine.

5 I mean, it's - - if you don't think the doctrine applies I'd sure like to know why. I
6 mean, it's - - it's hornbook law. It's in Couch on Insurance. It's kind of - - to me I - - I
7 can't - - I couldn't - - why wouldn't the thing just say all animals, then? Why would it say
8 birds, insects, rodents and other animals? Why wouldn't it just say all nesting and
9 infestation by all animals? I mean, it's obvious that there's some kind of limitation on there
10 and the limitation is other animals of a like kind to birds, insects and rodents and I've been
11 saying this for two years and no one will give me a ruling on this application of the ejusdem
12 generis doctrine to that exclusion. Exclusions are supposed to be construed in favor of the
13 insurer, not the insurance company.

14 THE COURT: Are you relying on Marks versus Trinity to say that it has to be
15 ambiguous before we have to consider inclusion?

16 MR. CANTWELL: Um, your Honor, I'm not sure if I've cited that in - - in my
17 memo or not. Um, but there is authority out there - - -

18 THE COURT: Uh-huh.

19 MR. CANTWELL: - - - which states that before that even becomes an issue then it
20 has to be ambiguous language.

21 THE COURT: Where - - can you - - -

22 MR. HOFFMAN: In Marks versus Trinity, which is a Louisiana case, said that
23 raccoons are not vermin. They're not covered by this kind of exclusion and there was
24 another case from New York - - -

25 THE COURT: Yeah, and that was back, though, when there was a word vermin in

1 insurance policies and that changed.

2 MR. CANTWELL: That's correct, your Honor.

3 THE COURT: So my question to you, Mr. Cantwell, is what case law can you give
4 me now that says, first, that it must be ambiguous before we can . . .

5 MR. CANTWELL: I don't have a case on point with me today, your Honor, but I'm
6 happy to do a supplemental memo and send it to your Honor for your review. And in
7 addition to that - - -

8 THE COURT: Uh-huh.

9 MR. CANTWELL: - - - Plaintiff has asked for a declaratory judgment and he got
10 one from Judge Dukes, which said that that specific provision was not ambiguous.

11 THE COURT: Okay. Who got that?

12 MR. CANTWELL: Plaintiff. Judge Dukes found that the policy language was not
13 ambiguous.

14 THE COURT: Okay.

15 MR. CANTWELL: In response to Plaintiff's claim for a declaratory judgment.

16 THE COURT: And that's what I'm asking is I almost feel like my hands have
17 gotten tied by Judge Dukes has already - - not tied, but, you know, I'm bound by what he
18 has found and ruled and - - and appropriately so.

19 MR. HOFFMAN: But he said that the exclusion - - it's not ambiguous. That it
20 includes animals. He didn't rule on what kind of animals, okay. That's the difference. He
21 didn't rule on that issue. That's the issue that's before us today. Raccoons are not one of
22 the animals that is included in the exclusion. I mean, I keep saying ejusdem generis and,
23 like, no one responds.

24 THE COURT: Just so I understand, the insurance company's position is that all
25 animals, any damage by any animals excluded, correct?

1 MR. CANTWELL: That's correct.

2 THE COURT: That's what I - - okay.

3 MR. HOFFMAN: Well, it's a triable issue, then, whether ejusdem generis said - -
4 doesn't - - doesn't say that and it doesn't.

5 THE COURT: Alright, Mr. Cantwell, you're gonna supply me with case law that
6 says that it's got to be ambiguous before . . .

7 MR. CANTWELL: Yes, your Honor.

8 THE COURT: Okay.

9 MR. HOFFMAN: And then beyond that, even if the exclusion did apply, there is an
10 ensuing loss exception to the exclusion. In discovery they provided me documentation from
11 the PLRB that says that even if an exclusion applies there's coverage for ensuing losses.

12 THE COURT: Can we also talk about the bad faith refusal to pay? Did you cover
13 that? Because I didn't - - -

14 MR. CANTWELL: Um, yes, your Honor, I did. There's - - there's absolutely no
15 basis, at all, for bad faith on their part.

16 They went out. They sent an independent adjuster five days later. He saw that there
17 was animal damage, took pictures of it. Um, took it back to Seneca. They reviewed the
18 policy and said that there's an animal exclusion in the policy.

19 As far as this ensuing loss and anything happened that - - that's all after the date of
20 the denial.

21 THE COURT: Okay.

22 MR. CANTWELL: That's all a year and two because he hasn't repaired the
23 property. Now, he's gonna throw in ensuing losses that stem from it.

24 MR. HOFFMAN: I've been saying that for months and that's not true. It's ensuing
25 losses that resulted at the time of the incident and besides that they did - - they lied, just like

1 everyone else in this case lied.

2 It's like the -- the -- they got the adjuster the, quote/unquote, independent adjuster
3 to write a report that raccoons are rodents. At the same time they provided me with
4 something from the PLRB that raccoons are not rodents, that they're often mistaken for
5 rodents.

6 I mean, they got him to write a letter that he, himself, did not agree with because he
7 wanted to make sure he got paid. Everybody wanted to get paid. Everyone was protecting
8 themselves by lying.

9 So, yes, there was bad faith and I -- I've said these things a hundred times. It's like,
10 it's amazing how they can stand there and say I didn't say things and I've never said things
11 when I've said all of them.

12 THE COURT: Okay. Alright, so are you comfortable, Mr. Cantwell, that you've
13 fully argued your motion?

14 MR. CANTWELL: Yes, your Honor.

15 THE COURT: Okay.

16 MR. HOFFMAN: And you just said, your Honor, that your hands are tied by what
17 Judge Dukes did. Why aren't your hands tied by what Judge Dukes did as far as Aydlette's
18 concerned? He denied their motion for summary judgment. They're making a motion for
19 summary judgment on the same exact grounds. Why aren't your hands tied in that instance
20 if your hands are tied as far as Seneca's concerned?

21 THE COURT: Well, I'm reading exactly what he wrote and what he said was it's
22 denied without prejudice for more discovery because there was a question of fact. Again, I
23 look at this and we go back to you, again, it's your -- what's your damage?

24 If -- if the other Harleysville policy wouldn't have covered it either -- that's all
25 presuming, that's all presuming that, in fact, it is correct that it's -- it's an exclusion for

1 raccoons. Let's just pretend. Again, you have to allege damages other than the raccoon
2 damage and I understand you're standing here saying you're time but, again, what are
3 services in time? It either needs to be by statute or by contract and that's why I'm asking
4 you, where is it?

5 MR. HOFFMAN: Third party beneficiary under the contract. All of them
6 that got commissions. I said they're all liable under the contract. They're all third party
7 beneficiaries under the contract and I've said that before in deposition and in motions in this
8 court.

9 THE COURT: Okay.

10 MR. HOFFMAN: And if your hands are tied on something that Judge Dukes said
11 for them, why aren't your hands tied on something Judge Dukes said for me involving
12 Aydlette?

13 THE COURT: Okay, what is your motion? You now have another motion for
14 summary judgment that -- on any new grounds? Is there -- on any new grounds? I -- I've
15 heard his last motion for summary judgment --

16 MR. CANTWELL: You did, your Honor.

17 THE COURT: --- so, okay.

18 MR. HOFFMAN: And you said that you wanted discovery to be done and that's
19 been done.

20 THE COURT: Okay, so ---

21 MR. HOFFMAN: And why are you -- if you ---

22 THE COURT: So what are your new grounds?

23 MR. HOFFMAN: If you would be so kind ---

24 THE COURT: You've done discovery.

25 MR. HOFFMAN: If you'd be so kind, does ejusdem generis apply in this case or

1 not?

2 THE COURT: Mr. Hoffman, it depends on whether or not it's ambiguous or not and
3 that's what I'm saying is part of the problem we have is that Judge Dukes has already said
4 that it's not ambiguous. So I don't need to go to look to see whether or not it needs to be
5 included. I understand your argument. I understand what you're trying to say, but he's
6 already made the decision and other animals.

7 I think what we're getting tied up in is we're talking about case law from a long time
8 ago that dealt with and the fight over rodents versus vermin and that was - - I mean, we went
9 through that for years and years and years.

10 I'm guessing that the insurance company went ahead and put in, other animals, in
11 there to be all sweeping and to be able to cover everything. Um, because, of course, what
12 they want to do is exclude having to pay for it. I understand that.

13 MR. HOFFMAN: But he said it was ambiguous, but he didn't say it applied. He did
14 not say the exclusion applied. I mean, that's the - - yeah. It - - whether - - whether he said it
15 was not ambiguous or not's irrelevant. He didn't say the exclusion applies in this case.

16 MR. CANTWELL: And, your Honor, the question there was whether damage was
17 really caused by animals. We've done discovery. We've looked into all the facts and it
18 shows that animals were, in fact, the cause of all these damages.

19 We took Plaintiff's deposition. He attested to that fact. We've got invoices from all
20 the different repair contractors that say, animals created this problem and so they're, in
21 saying that, then the exclusion does apply because it's in the policy and animals caused the
22 damage.

23 MR. HOFFMAN: And I'm saying - - -

24 THE COURT: Does this - - let me just ask you. Does this policy cover any damage
25 by any type of animal?

1 MR. CANTWELL: Your Honor, I - - I - -

2 THE COURT: I mean, do you know?

3 MR. CANTWELL: I don't know that.

4 MR. HOFFMAN: The word raccoons is nowhere in the policy. It's not in there
5 anywhere. Why would they say birds, insects, rodents and other animals unless they - - it
6 was limited in some way. Why don't just say all - - damage by all animals is excluded. It
7 doesn't say that.

8 MR. CANTWELL: Your Honor, the substantive issues aside, procedurally, he
9 didn't respond to our request to admit, so he's admitted everything that we requested - -

10 MR. HOFFMAN: That's absolutely untrue, totally untrue.

11 MR. CANTWELL: - - - which states that the damage was caused by an animal.

12 MR. HOFFMAN: And there's no motion pending on that. Where's his - - assuming
13 he thought that that - - that even though I wrote that letter and put that in there, assuming he
14 thinks that they should be deemed admitted, where's his motion to have them deemed
15 admitted? There's no motion pending, so he can't be bringing that up.

16 THE COURT: Let's go ahead and hear your motion right now on, uh, for summary
17 judgment, Mr. Hoffman.

18 MR. HOFFMAN: It's the same arguments that I've been making, ejusdem generis,
19 on the coverage issue that and I - - I just - - I don't understand why I can't get an answer.
20 It's like it's a rule of law. It says that specific controls the general, so if a raccoons not like a
21 bird, insect and rodent there should be coverage especially when those are supposed to be
22 construed against the insurance company and in favor of the insured. Other than that, I
23 mean, I have submitted myriad papers over the years.

24 The bad faith is that they lied to me about, you know, they lied about - - they got
25 Daugs to issue a report that they, themselves, knew wasn't true.

1 Um, I mean, as far as Aydlette's concerned, you know, besides all this stuff I said
2 earlier, I mean, they sold me a policy. They know where my office is. If Aydlette sold me a
3 policy that excludes raccoons and I'm in the woods and everyone knows there's lots of
4 raccoons out there, that's a pretty bad policy to sell me.

5 THE COURT: So we're back to talking about Aydlette, right?

6 MR. HOFFMAN: I'm just bringing it up. I mean, but the point is, there's triable
7 issues here. It's like that's all I have to show as far as their motions are concerned. I don't
8 understand why you don't think I've shown any.

9 THE COURT: I mean, do I have the entire policy from one of y'all attached?

10 MR. CANTWELL: Um, your Honor, I didn't attach the entire policy. The - - the
11 whole exclusion is listed, um, in the memo.

12 THE COURT: Okay.

13 MR. CANTWELL: Um, but I can also provide you with that if you'd like that as
14 well.

15 THE COURT: Okay. Anything else, y'all?

16 MR. JORDAN: Your Honor, I don't know to the extent I need to respond to his
17 motion for summary judgment, but, um, you know, he - - he just said that he thinks there's
18 triable issues, so I think that kicks out his motion for summary judgment and - - and I'd also
19 just point out that it's interesting to me that Mr. Hoffman is, on the one hand, absolutely
20 adamant that the policy exclusion does not apply and yet also incredulous that we sold him a
21 policy that contains this exclusion. So, you know, it's a little - - he wants us to have this
22 absolute knowledge about how the insurance company is gonna react to a certain exclusion.

23 Um, again, he hasn't plead negligence or fraud or anything along those lines, so any
24 kind of claim that we knew where his office was located and had some sort of duty to make
25 sure that he had appropriate coverage, um, I don't think has any basis in law or in the facts

1 of this case. Um, that's all I have, your Honor.

2 MR. HOFFMAN: Metts versus Mims does not apply to this case. It's talking about
3 a contempt order.

4 MR. CANTWELL: Your Honor, that's the appellant issue. Then there's an appeal
5 in whether it stays with the . . .

6 THE COURT: Aright - - -

7 MR. HOFFMAN: That's based on unusual circumstances.

8 THE COURT: Mr. Hoffman, will you go, um, look through the Court's file and
9 see where you can find that you made a motion to amend the complaint that was denied by
10 either myself or Judge Dukes?

11 MR. HOFFMAN: Okay, one other thing.

12 THE COURT: Yeah.

13 MR. HOFFMAN: Okay, um, like when we were here on May 6th and we were in
14 Judge Kinard's chambers, Judge Kinard made a really odd statement. He said that no judges
15 here like you, okay.

16 MR. CANTWELL: Your Honor - - -

17 MR. HOFFMAN: And they heard - - they heard him say that, okay, and I think
18 you're biased against me and I think Dukes is biased against me - - -

19 MR. CANTWELL: That's really inappropriate, your Honor.

20 MR. HOFFMAN: - - - and if you are I'd like you to recuse yourself. Absolutely
21 said that.

22 THE COURT: Mr. Hoffman, I have no bias against you.

23 MR. HOFFMAN: Okay, fine.

24 THE COURT: I think you've maybe appeared in my court a couple of times. I think
25 you've had a couple of cases, um . . .

1 MR. HOFFMAN: That's the point. I'm not an insurance lawyer. He's talking about
2 I should have known about the way insurance policies are handled. I went to them. They're
3 supposed to be the experts. I'm a tax lawyer. I don't know anything about insurance
4 policies. I relied that they were selling me a suitable policy for where my office was and
5 they obviously didn't.

6 THE COURT: Alright, we're back to the motion. If you want me - - do you want to
7 formally make a motion for me to recuse myself?

8 MR. HOFFMAN: Yes.

9 THE COURT: I can tell you that I don't have any bias against you. Um, it is what it
10 is.

11 MR. JORDAN: Judge, may I - - -

12 THE COURT: Yes.

13 MR. JORDAN: - - - just put one thing on the record. I mean, this is nothing more
14 than a desperate attempt to do something at this last hour.

15 Prior to the trial of - - the date for trial of this, Mr. Cantwell and I came to your
16 Honor with a request for a continuance because we wanted to push the trial back and Mr.
17 Hoffman was adamantly opposed to moving this trial back at all and - - and you instructed
18 us to go ahead and do discovery and you set it for a fast trial.

19 Well, we came in here May 6th ready for trial and Mr. Hoffman runs in with the first
20 notice to us, we had our boxes of documents, he comes in with his first notice to us that he's
21 appealed it and that the Court doesn't have jurisdiction.

22 So this is nothing new where he gets pushed back to a fence he throws some
23 allegation out there to try and get this stopped.

24 So Aydlette strongly objects to any motion for you to be recused or for you to recuse
25 yourself or any other judge in this, um, court. There's no evidence to support such a motion.

1 MR. HOFFMAN: They don't deny that Kinard said that? They were there, both of
2 them. If they want to deny he said that, go ahead and do it.

3 THE COURT: I know, but Judge Kinard can't impute anything to any other judge. I
4 mean - - -

5 MR. HOFFMAN: He said it.

6 MR. CANTWELL: It's totally inappropriate for the Plaintiff to make that motion
7 based on another judge's comment that may or may not have happened in - - -

8 MR. HOFFMAN: It did happen. They heard it. They're not denying it.

9 THE COURT: They're not denying it, but, again, I - - you know, Judge Kinard
10 can't speak for me.

11 MR. HOFFMAN: Fine, he said it. It must have been based on conversations with
12 you and Judge Dukes.

13 THE COURT: That's a great, great assumption and I've always learned to never
14 assume anything. Alright, um, I will take your motion to recuse under advisement, um,
15 along with the other motions and then we will, um, I'll let you know.

16 MR. HOFFMAN: If you could ask Judge Kinard, if you're gonna speak to him,
17 what he said to me that day in front of all the other attorneys, I would appreciate it. Because
18 they seem to be implying I'm making it up.

19 MR. JORDAN: Your Honor, do you want any proposed orders?

20 THE COURT: No, not any proposed orders. Um, Mr. Hoffman, I just want you to
21 sit down and see what you can find as far as motions to amend, uh, your summons and
22 complaint.

23 MR. HOFFMAN: And if he submits any additional paperwork on this ambiguity
24 issue I'd like an opportunity to respond.

25 THE COURT: I haven't asked anyone for anything. If he submits anything to me,

1 he's going to copy you. Just like you both sides are required to do so.

2 MR. HOFFMAN: I misunderstood - - -

3 THE COURT: I haven't asked anyone for anything.

4 MR. HOFFMAN: I could have sworn you asked - - -

5 MR. CANTWELL: Your Honor - - -

6 MR. HOFFMAN: - - - for something on the ambiguity issue.

7 MR. CANTWELL: Your Honor, just to clarify, you had asked for a case regarding
8 the - - -

9 THE COURT: Then give him a copy of it.

10 MR. CANTWELL: Okay, and then would you like a copy of the full policy as well?

11 THE COURT: Yeah, I would like a copy of the full policy.

12 MR. CANTWELL: Okay.

13 (Whereupon, the Court took a break.)

14 THE COURT: Let's go back on the record. This is Hoffman versus Seneca. Um,
15 we were on a break and I had asked Mr. Hoffman, who, uh, on the record during the case
16 had alleged that Judge Dukes and I did not allow him to amend his complaint. So I asked
17 him to find a copy of his motion to amend in the file. Of course, there should have been a
18 proposed amended summons and complaint in the file along with it, if there was one, and
19 apparently, while I just took a break before I was getting ready to handle my next case, uh,
20 he told Jamie Thompson, who is the civil clerk, uh, here in Beaufort County, that, uh, he
21 made that motion orally. That it would be in the transcript, which we don't know that he
22 has. Uh, again, I just wanted to put all that on the record. I noticed that my two lawyers,
23 um, for Seneca and Capstone and Aydlette are still here in the courtroom. I don't need to
24 hear from you all anyway. I'm just putting all that on the record, okay. Thank you.

25 MR. JORDAN: Thank you, your Honor.

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MR. CANTWELL: Thank you, your Honor.

END OF TRANSCRIPT OF RECORD - - -

1 I, the undersigned, Deborah A. Anderson, Official Court Reporter for the Fourteenth
2 Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true,
3 accurate and complete transcript of record of all the proceedings had and evidence
4 introduced in the trial of the captioned case, relative to appeal, in the Court of Common
5 Pleas for Beaufort County, South Carolina, on the 24th day of June, 2013.

6 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

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10 July 6, 2014

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13 Deborah A. Anderson
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STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
Bruce R. Hoffman,	)	CASE NO. 2012-CP-07-01352
	)	
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
Seneca Specialty Insurance	)	
Company, et al,	)	
	)	
DEFENDANTS.	)	

October 2, 2013

Charleston, South Carolina

B E F O R E:

The Honorable D. Craig Brown

A P P E A R A N C E S:

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for the Plaintiff

Joshua P. Cantwell, Esquire
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I N D E XHEARING

-- 3

NO SWORN TESTIMONYEXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

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1 THE COURT: My next case Bruce Hoffman versus Seneca
2 Specialty.

3 MR. HOFFMAN: Good morning, Your Honor. Bruce Hoffman
4 for myself.

5 THE COURT: Good morning, sir. How are you?

6 MR. HOFFMAN: I'm fine. How are you?

7 THE COURT: Very well, thank you.

8 MR. HOFFMAN: Judge, I -- I had some dialogue with your
9 clerk yesterday and there was an issue about the hard copies
10 in some of the past pleadings in the case. And I sent PDF's
11 and don't -- were they received?

12 THE COURT: They were, yes, sir.

13 MR. HOFFMAN: Okay. So you don't need these hard copies
14 then? Or if you do, I can approach.

15 THE COURT: They are in the file here, Mr. Hoffman.

16 MR. HOFFMAN: I mean the case is kind of a simple case.
17 You know, I ---

18 THE COURT: From the looks of this it doesn't look too
19 simple.

20 MR. HOFFMAN: Look, can I tell you what -- why it looks
21 like that. Actually I would like to explain that in one --
22 two words.

23 THE COURT: Just -- hold on just a minute, okay. I
24 mean when I'm given a file that's about four or five inches
25 thick. But anyway.

1 MR. HOFFMAN: Probably five/sixth's of that is
2 superfluous. But I have a law office building in a wooded
3 area ---

4 THE COURT: Hold on a minute I said.

5 MR. HOFFMAN: Oh, I'm sorry. I'm sorry, Your Honor.

6 THE COURT: That's all right.

7 (Pause for Court's consideration.)

8 THE COURT: All right. We are here on Defendant Seneca
9 Specialty Insurance Company and Capstone's motion for
10 summary judgment; is that right?

11 MR. CANTWELL: That's correct, Your Honor.

12 MR. HOFFMAN: I -- and the plaintiff also has a motion
13 for summary judgment.

14 THE COURT: I am getting to you.

15 MR. HOFFMAN: Oh, okay. I'm sorry.

16 THE COURT: Also has this motion in limine been heard?

17 MR. CANTWELL: No, Your Honor, that has not. This case
18 was actually set to go to trial. And on the eve of trial we
19 were sitting here getting ready to pick a jury. The
20 plaintiff filed notice of appeal of the dismissal of another
21 defendant that was in the case. And so that effectively ---

22 THE COURT: Tell me your name for the record, please.

23 MR. CANTWELL: Josh Cantwell for Defendant Seneca and
24 Capstone.

25 THE COURT: And your name, sir?

1 MR. JORDAN: Good morning, Your Honor. Will Jordan. I
2 represent Defendant Adylett Services of LowCountry. And we
3 also have a motion for summary judgment pending.

4 THE COURT: All right. I'm going to hear first
5 Seneca's motion for summary judgment. And then I will hear
6 your response, Mr. Hoffman. And then I will here Adylett
7 Services from Mr. Jordan his motion for summary judgment
8 followed by your response, Mr. Hoffman. And finally, I will
9 hear Mr. Hoffman's motion for summary judgment followed by
10 each of your responses.

11 All right. Mr. Cantwell I will hear from you first.

12 MR. CANTWELL: Thank you, Your Honor. May it please
13 the court. Josh Cantwell here for Seneca Insurance Company
14 and Capstone ISG.

15 This case arises out of an insurance claim that was
16 filed by the plaintiff. He is an attorney that practices on
17 Saint Helena Island. It arises out the insurance claim that
18 he filed and the denial of that claim due to an animal
19 exclusion in the Seneca policy and lack of maintenance on
20 the property.

21 All of the evidence in this case has established that
22 the defendant's investigation of the claim was appropriate
23 and there was a reasonable basis for the denial.

24 I would like to take you through just a brief timeline
25 of events leading up to this case. On February 3rd, 2012,

1 the plaintiff filed the claim with the insurance company.
2 In response to that, five days later the insurance company,
3 Seneca, hired Capstone ISG, the independent adjuster, to go
4 out and investigate the loss. They sent Robert Dodd from
5 their office to go and investigate the claim. Does Your
6 Honor have the memo that we filed for this motion?

7 THE COURT: Yes.

8 MR. CANTWELL: Attached to our memo as Exhibit A is an
9 affidavit from Robert Dodd of Capstone which indicates that
10 on February 3rd the loss was reported. Five days later on
11 February 8th he personally inspected the office of Mr.
12 Hoffman where the damage was reportedly caused by animals.
13 Through the discussions with Mr. Hoffman, his own
14 observations of the condition of the property, and through
15 his investigation, he determined that the actual loss was
16 caused by animal infestation. He reported that information
17 to Seneca. And included with that were several photos that
18 we've included with our memo which showed the exterior of
19 the property with animal tracks all around it.

20 There's interior photos which depict animal feces
21 observed coming out of the air vents on the property, torn
22 insulation that was throughout the property on the interior
23 of the property as well.

24 Upon receiving that information Seneca Insurance
25 reviewed that information and issued a denial letter of

1 coverage on March 15th, 2012. That's Exhibit B to our
2 memorandum.

3 In that they state that the exclusion in this policy,
4 the animal exclusion, states that they will not pay for loss
5 or damage caused by or resulting from any of the following.
6 And it indicates nesting or infestation or discharge or
7 release of waste products or secretions by insects, birds,
8 rodents or other animals.

9 It also indicates that they will not pay for loss or
10 damage caused by, and then it states: faulty, inadequate or
11 defective maintenance on the property. Therefore, Seneca
12 denied the plaintiff's claim.

13 On April 3rd, just a few weeks later, the plaintiff
14 filed his complaint against the insurance company for breach
15 of contract, bad faith, a declaratory judgment action, and a
16 violation of the South Carolina Unfair Trade Practices Act.

17 Subsequent to filing that complaint the plaintiff filed
18 for his motion for summary judgment on the issue of bad
19 faith and declaratory judgment as to coverage.

20 Judge Dukes heard that motion; and on May 30th, 2012,
21 he denied the plaintiff's motion for summary judgment of
22 those issues and specifically indicated that the exclusion
23 at issue in this case was not ambiguous.

24 The plaintiff filed for a reconsideration of that
25 motion which was again denied by Judge Dukes on January 7th

1 of 2013.

2 Judge Dukes's order is Exhibit C to our memo. And his
3 second order denying the reconsideration of the motion is
4 included in the materials that we have provided to the court
5 as well. And the date of that again is January 7th, 2013.

6 Since that time the plaintiff also has filed summary
7 judgment previously, and that was heard by Judge Mullin and
8 denied.

9 THE COURT: Hold on a minute. Say the last statement
10 you just made. Say that again, Mr. Cantwell.

11 MR. CANTWELL: After -- after Judge Dukes denied the
12 motion the plaintiff renewed his motion for summary judgment
13 which was heard by Judge Mullin and it was denied.

14 And we have included a copy of that motion -- excuse
15 me, the order which was April 24th, 2013, as well in the
16 materials that we provided to the court.

17 As far as the cause of actions in this case the
18 plaintiff has pled cause of action for a breach of contract,
19 bad faith, declaratory judgment, and a violation of the
20 Unfair Trade Practices Act.

21 The first issue, the bad faith and the breach of
22 contract, essentially it is failure to pay benefits. If
23 there's -- the case of Crossley v. State Farm specifically
24 indicates that if there's a reasonable basis for denial of
25 the insurance claim there can be no bad faith. And there

1 certainly isn't any evidence of bad faith on the part of
2 insurer in this case.

3 If you look at the report from Robert Dodds of Capstone
4 it clearly indicates that there were animals in the
5 plaintiff's attic, that they had caused the damage to the
6 property.

7 In addition to the report of Robert Dodds the plaintiff
8 hired Critter Management to come out and investigate the
9 loss. The people from Critter Management indicated that
10 there were animals in the ceilings and odors throughout the
11 building, that animal infestation was going -- was the cause
12 of the problem and advised that they needed to complete
13 repairs.

14 In addition to that, during plaintiff's own deposition
15 he indicated that he did know that there were animals in his
16 attic and that that was reported to both Seneca and
17 Capstone. In addition to those, other subcontractors were
18 hired by the plaintiff as proposals for bids on the repair
19 work.

20 Pender Brothers Incorporated, which we have attached an
21 invoice from them in our memo, it indicates raccoons,
22 snakes, rats, etcetera, have gotten into the ductwork and
23 ruined it to the point where pieces of the inside of the
24 duct are coming through the grills into the office space.

25 The Critter Management also did a bid for repair. And

1 all of their invoices that we've also provided to the court
2 there are numerous indications of raccoon infestation and
3 related damage.

4 Taking all of that information, the report from Robert
5 Dodd, his discussions with the plaintiff, the plaintiff's
6 own hiring of other subcontractors to come out and do bids,
7 and the information that they've provided, and taking that
8 information and reviewing it with the animal exclusion in
9 the policy the denial of the claim was based on a reasonable
10 basis.

11 As far as the declaratory judgment action, that issue
12 has already been decided by Judge Dukes in his previous
13 order. He found that the specific exclusion in this policy
14 not to be ambiguous.

15 As far as the violation of the South Carolina Unfair
16 Trade Practices Act, the insurance industry in practices are
17 specifically excluded from applications under that act. The
18 insurance is one of the most regulated industries in our
19 state and there are statutory provisions that provide for
20 venue to address any issues with claims handling practices
21 or anything of that nature.

22 Plaintiff has not filed any claims for violations of
23 those statutes in this case. In addition to that, if the
24 plaintiff were even able to prove a breach of contract in
25 this case, that is not sufficient enough to satisfy a

1 violation of the Unfair Trade Practices Act. As well, he
2 has not proved any evidence that this somehow has an impact
3 on public interest, also a requirement to establish a
4 violation of the Unfair Trade Practices Act.

5 Going -- going aside, just talking about defendant
6 Capstone, all of these causes of action fail as a matter of
7 law because the plaintiff never had any sort of contract
8 with Capstone ISG. They are an independent adjuster that
9 were hired on behalf of Seneca. The case of Charleston Dry
10 Cleaners v. Zurich specifically indicated that independent
11 adjustors cannot be held liable for breach of contract or
12 bad faith. And we have cited that case in our brief. I
13 will also give you a site if necessary.

14 In addition to those reasons, on April 12th, 2013, we
15 send a request to admit to the plaintiff. As of the date of
16 this hearing we have still not received a proper response to
17 these requests from the plaintiff.

18 Specifically the requests were directed to the
19 plaintiff asking him to admit that a raccoon is an animal,
20 that raccoons or other animals caused damage to subject
21 property, that on February 3rd, 2012, the plaintiff made a
22 claim for damages to the property to Seneca, that on
23 February 8th Robert Dodd of Capstone personally inspected
24 the property on behalf of Seneca, that the -- and in
25 addition we attached Robert Dodd's report with all the

1 photographs of the damage and the animal tracks and the
2 animal droppings, if you will, admit that the attached
3 photos of the subject property were taken during the
4 inspection of February 8th, 2012; admit that the photographs
5 depict damage to the subject property caused by animals,
6 admit that the photographs depict damage to the property
7 caused by an animal infestation, and admit that the
8 photographs depict damage to the subject property caused by
9 animal waste products and/or secretions.

10 The only response that plaintiff ever attempted to be
11 made was a letter on May 16th, 2013, that was addressed to
12 Ms. Young, the court reporter who had done the previous
13 summary judgment hearing of Defendant CRC's motion for
14 summary judgment and a BPS at the bottom of the page - if I
15 can hand this up to Your Honor - indicates as to the request
16 to admit served by Seneca and Capstone on 4/12/2013 they are
17 all denied given the present circumstances of the case.

18 This letter is not signed by Mr. Hoffman but was in
19 fact signed by one of his assistants or someone from his
20 office. So we don't think that that adequately applies --
21 conforms with the rules in response to a request to admit.

22 For that matter, we requested the court deem those
23 requests admitted. And by that we include that as a basis
24 for our grounds that summary judgment should be granted to
25 Defendant Seneca and Capstone for all causes of action in

1 this case.

2 For these reasons and for those contained in our brief
3 we ask that the court grant summary judgment in favor of
4 both Seneca and Capstone.

5 THE COURT: All right.

6 MR. CANTWELL: I would be happy to answer any question
7 you may have.

8 THE COURT: I don't have any questions right now.

9 MR. CANTWELL: Thank you.

10 THE COURT: Mr. Hoffman, be happy to hear from you.

11 MR. HOFFMAN: Thank you, Your Honor. Three things that
12 opposing counsel said, are deceptive or not entirely
13 truthful. I mean this case is about raccoons. Any other
14 animals that got in there were because of the damage that
15 raccoons did.

16 So he said the word animals without saying raccoons
17 until the very end. This is a raccoon case. The second
18 thing is, Judge Mullin did not deny the summary judgment.
19 She recused herself for bias. Any judgment that she may
20 have made in this case would be void because of that. But I
21 don't remember her even ruling on their motion. She recused
22 herself.

23 And like you said, I did respond to the discovery. In
24 my opinion under the circumstances with the appeal pending I
25 think the appeal stays the proceedings today, frankly. But

1 I don't know what your feelings are about that.

2 But I did respond. If he didn't like my response he
3 could have addressed that in a different way. But to say I
4 didn't respond is not true.

5 Now getting back to some of the specific points that he
6 made. And keep in mind I'm a tax attorney. I'm not really
7 a litigation attorney, ---

8 THE COURT: Let me ask you ---

9 MR. HOFFMAN: --- so indulge me to a certain extent.

10 THE COURT: What issue have you appealed, Mr. Hoffman?

11 MR. HOFFMAN: Judge Mullins before she recused herself
12 had granted summary judgment to the underwriter. And to my
13 understanding of the law if she recused herself later in the
14 case for bias then any judgment she made before that date is
15 void. That's my understanding of the law. I haven't found
16 any South Carolina cases. But I've certainly found other
17 states. And if there's no South Carolina cases, you can
18 apply the laws of other states. So I mean that judgment is
19 void.

20 Beyond that CRC the case -- the defendant whose
21 judgment is on appeal I am suing them for the same reasons
22 I'm suing the defendants that are here today. So to me the
23 appeal does affect -- the ruling of appellate court will
24 affect the motions that they are bringing. So you have the
25 danger of inconsistent rulings which is why I had said to

1 Judge Mullins and I think I said in my papers that you've --
2 seem that to me the appeal should stay anything else in the
3 case.

4 THE COURT: Let me hear a response from them, Mr.
5 Hoffman, before you go any further on that.

6 MR. CANTWELL: Your Honor, Appellate Rule 205. And I
7 have a case on point, Metts v. Mims specifically indicates
8 that matters not affected by the issues on appeal are fine
9 to proceed for this matter. If Your Honor would like I can
10 hand up this case.

11 THE COURT: Mr. Hoffman says it's a potential for
12 inconsistent rulings. How do you not believe that would
13 possible affect this case?

14 MR. CANTWELL: We are completely different defendants.
15 And then the claims aren't essentially because there's --
16 they might be the same causes of action ---

17 THE COURT: Situated differently though?

18 MR. CANTWELL: Situated differently. Because he can't
19 sue them for breach of contract. He didn't have a contract
20 with them. He can't sue them for bad faith. They weren't
21 involved in the coverage analysis or anything like -- or the
22 claims practice at all. It is not similar at all.

23 THE COURT: Okay. Go ahead, Mr. Hoffman.

24 MR. HOFFMAN: I don't agree it's not similar at all. I
25 sued all of the defendants for the same things because they

1 all acted together and did the same things together. And
2 certainly CRC was a third-party beneficiary of anything
3 that -- any contract that I had with Seneca. But they all
4 acted in concert with each other, which I've said many times
5 in this case.

6 So to me a ruling by the appellate court will have an
7 effect on the other defendants. And as I said previously to
8 Judge Mullins, any proceeding with this would be
9 inappropriate given the pending appeal. And that's my
10 feeling about it. I can address the specific points he
11 made. But I don't even think this should be proceeding
12 today.

13 THE COURT: Have you filed a motion to stay the
14 proceedings?

15 MR. HOFFMAN: Yeah, well, I mean I asked that it be
16 stayed.

17 THE COURT: That's not what I asked. My question ---

18 MR. HOFFMAN: I moved to orally that it be stayed.

19 THE COURT: My question is have you filed a motion for
20 it to be stayed. Has a motion been filed -- I understand
21 you are making an oral request here today. My question is
22 have you filed a motion for it to be stayed.

23 MR. HOFFMAN: I would have to go through -- I'm sure in
24 one of these papers I said that. In fact I remember ---

25 THE COURT: Well, while you look for that I'm going to

1 step off the bench.

2 MR. HOFFMAN: Okay.

3 THE COURT: Stand down for just a minute.

4 (WHEREUPON, break 11:32 a.m.)

5 (WHEREUPON, resumed hearing 11:42 a.m.)

6 THE COURT: All right. Mr. Hoffman.

7 MR. HOFFMAN: Your Honor, October -- on June 24th I
8 filed an opposition to the motions for summary judgment of
9 Seneca, Capstone and Adylett. I think I sent that to you.
10 But I have it here. And I believe the very first paragraph
11 constitutes a motion. I can either hand it to you or I can
12 read it to you. But I believe that's a motion to stay.

13 THE COURT: Let me see it, Mr. Hoffman.

14 MR. HOFFMAN: Okay.

15 (WHEREUPON, document presented to the court.)

16 THE COURT: Mr. Cantwell, Mr. Jordan, I assume ya'll
17 have seen this?

18 MR. CANTWELL: Your Honor, I believe we did get that at
19 the hearing for his opposition to our previous motions with
20 Judge Mullins. If I could, Your Honor, I've got the case v.
21 Mims which is directly on point in this issue in this case.
22 A contempt order was appealed to the Court of Appeals and
23 the -- they tried to say that it stayed the case while that
24 was pending on appeal, and the ---

25 THE COURT: That was a contempt order?

1 MR. CANTWELL: That was a Supreme Court -- that was due
2 to discovery issues in the contempt order. And the Supreme
3 Court said that had no effect on the actual underlying case
4 and the lower court case could proceed with it.

5 In this case no matter what happens on appeal with CRC
6 that has no effect on the allegations against my client and
7 there is no basis for inconsistent rulings for what is going
8 to happen with this case.

9 THE COURT: Let me see that. Mr. Jordan, anything that
10 you want to add?

11 MR. JORDAN: Yes, Your Honor. If I may add, I haven't
12 argued my motion for summary judgment yet, but I would
13 represent to the court that the issue that is keeping
14 Adylett in this case is a very very narrow issue about
15 whether or not Adylett should have informed or advised Mr.
16 Hoffman to retain a different insurance policy. It has
17 nothing to do with the coverage. It has nothing to do with
18 the inspection or the investigation of the claim.

19 I think that Metts v Mims is directly on point
20 especially with my motion in terms of nothing on appeal is
21 going to affect Adylett in this case.

22 I would also add that when all of us filed motions for
23 summary judgment Mr. Hoffman filed a response that he's now
24 handed up to you. We came to Judge Mullins to argue those
25 motions, and we argued them. All three of us argued our

1 motions. And it wasn't until the very end of that hearing
2 that Mr. Hoffman suggested that Judge Mullin should recuse
3 herself.

4 And Judge Mullin considered this exact issue at the
5 last hearing and said go forward with your summary judgment
6 motion. And so -- and Mr. Hoffman argued his. So I -- you
7 know, I don't think it affects anything that is going on in
8 the appeal and I don't see any reason to further delay the
9 motions that are here.

10 If anything the summary judgment motions that are
11 pending if they are granted could be joined on the appellate
12 issues that are now before the appellate court with CRC.
13 That's all I have, Your Honor.

14 MR. CANTWELL: And at the same time, Your Honor, if our
15 motions were denied at this point then we would just wait
16 until that issue was resolved on appeal.

17 And whether CRC came back down and we had the trial of
18 the case with them or without them that is the only issue
19 that we are currently waiting on for appeal that would have
20 an effect on the defendants down here.

21 So if our motions are granted then everything can go up
22 on appeal all together. If they're denied then yeah we just
23 have to wait to have a trial so that the plaintiff doesn't
24 have to do multiple trials.

25 MR. HOFFMAN: Your Honor, you cannot possibly say

1 legitimately that what is going on in the Court of Appeal
2 completely unaffected the causes of action here. I sued
3 everybody for the same thing. As I said before, that my
4 contention is that they all acted in concert with each
5 other. So I mean there's no way you can say that -- the
6 standard is completely unaffected.

7 THE COURT: Well, that's what I'm going to do. I'm
8 going to hear your motions. I'm going to hear your
9 arguments right now. And I will make a determination -- I
10 mean ---

11 MR. HOFFMAN: Can I proceed in response to his ---

12 THE COURT: Yes, sir.

13 MR. HOFFMAN: Thank you. I'll try to go point by point
14 that he made. He talked about the Capstone adjustor. And
15 there's all sorts of affidavits in the file about what
16 happened.

17 I mean basically he told me that the claim would be
18 covered when he came out there and at the same time was
19 writing a letter that the claim should not be covered.

20 And I relied on his assertion that the claim would be
21 covered as far as moving to -- I have another office in
22 Bluffton. And I started to make preparations to go to that
23 office.

24 And in the original complaint that was filed I did talk
25 about those issues, that that was another basis on which

1 Capstone was being sued.

2 I now have here a supplement to the complaint that I
3 prepared to make that more clear that it is the tort nature
4 of the claims against Capstone and also the tort nature of
5 claims against Adylett and against CRC.

6 And I assumed I needed to leave the court to file this.
7 But if I get -- can get leave of court I can file this and
8 serve this now.

9 But I mean that was the whole issue. Every time we've
10 come in here they've said that, you know, that those are
11 sound in tort. And I now have a supplement sitting here
12 that I've prepared that would -- you know, would elaborate
13 on the tort nature of the issues with CRC, with Adylett and
14 with Capstone. But Capstone, which is his client, was
15 mentioned in the original complaint that that was why I was
16 suing them on top of the fact that they were all working
17 together, as I said earlier.

18 THE COURT: Well, that motion is not current and proper
19 before the court at this time. You are outside of the
20 timeframe for purposes of filing an amended complaint. If
21 you so desire to file an amended complaint, you need to file
22 it. If they don't consent, you need to file a motion and
23 get that before the court.

24 MR. HOFFMAN: Okay, it was the supplement. Does it
25 matter, same ---

1 THE COURT: Same thing. As far as the court is
2 concerned I mean if you're changing it, it is an amended.
3 It's an amended complaint.

4 MR. HOFFMAN: Okay. All right. So I will move on.
5 All right. As I said, the proximate cause here of the
6 damage to my office, to the HVA system and the ducts and
7 otherwise was raccoons.

8 That's what their adjuster said. That's what everybody
9 that looked at this said. I mean there were raccoon tracks
10 outside the office. So that's where -- how that conclusion
11 was drawn. And any other animals that may have come in
12 after that were as a result of what the raccoons did. So we
13 need to remember that this is about raccoons and is damage
14 caused by raccoons excluded under this policy. Okay. And
15 that's key to the case as far as Seneca. And to me all of
16 them because they all acted together. But especially Seneca
17 and Capstone.

18 The exclusion which I think Mr. Cantwell stated, but it
19 says -- I am paraphrasing on the word damage. It says
20 damage from insects, birds, rodents or other animals. That
21 is what the exclusion says that they are relying on for
22 denying the claims for the raccoon damage.

23 It doesn't say all animals. It could have said that.
24 Instead it specifically delineates certain animals or other
25 animals. Now there is this doctrine in the law ejusdem

1 generis, you know, a doctrine for the construction of
2 insurance policies and exclusions in insurance policies
3 which are disfavored anyway and are supposed to be resolved
4 against the insurance company anyway. And what that says
5 ejusdem generis is that specific words in an exclusion
6 restrict the meaning of the general words in the exclusion.

7 So what that means -- and in the course of the case
8 I've attached pages from Couchon (ph) Insurance and some law
9 review article from Boston College. I mean I've -- there's
10 a lot of stuff in the file where I talked about ejusdem
11 generis and why it applies here specifically to this
12 exclusion.

13 So my argument is that the other animals in this
14 exclusions would be other animals like birds, rodents, and
15 insects; not all other animals, but other animals like those
16 three types of animals.

17 And I think objectively raccoons which don't nest, they
18 den; they are fur bearing. They are protected by the State
19 of South Carolina. They are descendant from bears. They
20 are not like those other three types of animals that are
21 specifically enumerated. And that specific enumeration
22 limits the scope of the phrase other animals. Raccoons are
23 not like the other animals, so damage from raccoons is not
24 excluded.

25 And I think that is objective, that is what that

1 doctrine says. And the exclusion in the scope thereof is
2 supposed to be construed against the insurance company.

3 Now beyond that -- and there was a page from the PLRB
4 which was produced in discovery by the insurance company.
5 Even if the exclusion did apply, which I absolutely don't
6 think it does as to the raccoons and anything that happened
7 because of the raccoons based on ejusdem generis ensuing
8 losses from what the raccoons did would be covered. So to
9 me the HVAC and duct damage would be covered under those
10 circumstances, not necessarily the holes that were made but
11 the ensuing damage that resulted.

12 Now anything that Judge Dukes may or may not have said
13 about the -- that this is an ambiguous phrase, this
14 exclusion that I just read to you, I mean that interloc --
15 that's not even an order. That wasn't -- that was dicted in
16 the ruling that he made that would be interlocutory at best
17 and would certainly not be something that would bar another
18 judge from finding the situation to be different.

19 But I'm not necessarily saying that the phrase is
20 ambiguous. I'm saying it just -- just that raccoons are
21 just not included in that exclusion because they are not
22 like those other three types of animals. They could have
23 said all animals. They didn't say it. They could have even
24 said all other animals. They didn't say that either. They
25 listed three specific types of animals, which limits the

1 scope of the phrase other animals in the balance of the
2 exclusion. Raccoons are absolutely objectively not like
3 those other animals.

4 And we already talked about that Judge Mullin recused
5 herself. He didn't -- anything she denied if she denied
6 anything. Which I don't remember that that -- my motion
7 being denied. But even if it was, it would be void because
8 she recused herself later for bias.

9 But the whole point I am making is that -- and the very
10 first thing I said that when I stood up this morning is that
11 this is a simple case, does ejusdem generis mean that the
12 raccoon damage is not covered by that exclusion or does it
13 not mean that. And I think it absolutely means raccoon
14 damage is not part of that exclusion.

15 Because they -- you know, you have to construe this
16 against the insurance company. And the exclusions are
17 disfavored anyway. It doesn't say all animals. It doesn't
18 say all other animals. Birds, rodents, insects and other
19 animals. Other animals is limited in scope to ones like
20 birds, insects and rodents. Objectively, raccoons are not
21 that. And any other animals that may have done damage after
22 the raccoons did the initial damage the proximate cause
23 would be the raccoons.

24 He talked about the unfair trade practices. I mean
25 they denied my claim wrongly in my opinion in bad faith.

1 And I think there is a likelihood they would deny other
2 claims in the future for bad faith. He told me -- he has
3 told me previously that he considers this case to be a
4 precedent-setting case.

5 So certainly if it is a precedent-setting case then
6 like there's the likelihood that what happened here would
7 affect other claims made by other insurance policyholders in
8 the future. So I don't necessarily agree that there is not
9 a public interest in this. I think there is one.

10 But again, ejusdem generis does it apply here or does
11 it not apply here. If it does apply here, raccoon damage is
12 covered and this case should be short circuited. I mean I
13 have been sitting here for two years with no central air and
14 no central heating, and I would sure like that now.

15 And that's -- I have been trying for two years to get a
16 judge to just make a decision to still it down to that
17 simple thing.

18 THE COURT: Let me ask this question.

19 MR. HOFFMAN: Yes, Your Honor.

20 THE COURT: This order that Judge Dukes signed
21 addressing the very issue that is before this court.

22 MR. HOFFMAN: He addressed whether it was ambiguous. I
23 am saying raccoons are not even in that. I'm not saying it
24 is ambiguous. I'm saying that raccoons are just not part of
25 that exclusion.

1 THE COURT: Okay.

2 MR. HOFFMAN: And that was ---

3 THE COURT: Anything else, Mr. Hoffman?

4 MR. HOFFMAN: I'm sorry, Your Honor.

5 THE COURT: I said anything else, sir?

6 MR. HOFFMAN: Not for now, no.

7 THE COURT: Okay.

8 MR. CANTWELL: Your Honor, may I address ---

9 THE COURT: Quickly, yes, sir ---

10 MR. CANTWELL: --- the ejusdem generis position? In
11 order to apply the document ejusdem generis there must be an
12 ambiguity first and then the court is able to determine what
13 the terms mean.

14 Judge Dukes found that it was not -- it was clear and
15 unambiguous in the May 30th, 2012, order. He simply
16 determined that the word animal while broad is clearly
17 defined, commonly used, and well understood. And he also
18 made specific references that these are common animal
19 exclusions in insurance policies. He further stated that
20 the words other animals contained in the policy were not
21 ambiguous and therefore denied the plaintiff's motion on
22 that issue.

23 I'd be happy to answer any other questions that the
24 court may have.

25 MR. HOFFMAN: Your Honor, I see nothing that says that

1 there has to be an ambiguity found first. And beyond that,
2 whatever Judge Dukes said in dicta is -- at the worst it is
3 an interlocutory statement. It's not the law of the case.

4 THE COURT: It's not dicta. I mean he says it right in
5 his last -- in the last paragraph of his order dated May
6 30th, I find the reference language in the policy exclusion
7 unambiguous.

8 MR. HOFFMAN: But today I'm saying that raccoons are
9 just not even covered by that exclusion. That it is not a
10 question of ambiguity. It's a question of raccoons are not
11 even covered.

12 THE COURT: Okay. Anything else, Mr. Cantwell?

13 MR. CANTWELL: No, Your Honor. That's all.

14 THE COURT: All right. Now I will hear from you, Mr.
15 Jordan on your motions, sir.

16 MR. JORDAN: Thank you, Your Honor. May it please the
17 court.

18 THE COURT: Yes, sir.

19 MR. JORDAN: Will Jordan on behalf of Adylett Services
20 of Lowcountry Incorporated. Your Honor, Mr. Cantwell and
21 Mr. Hoffman have gone over most of the facts. But with
22 respect to Adylett, Adylett is an insurance agency here in
23 Beaufort and assisted Mr. Hoffman in acquiring the policy
24 that Seneca provided. That policy was in place from the
25 summer of 2011 through the summer of 2012 which is when the

1 loss that is at issue in this case occurred.

2 Of course Mr. Cantwell has already read the exclusion
3 that is at issue. And in April of 2012 Mr. Hoffman sued all
4 the companies that we've talked about today alleging four
5 causes of action including breach of insurance contract, bad
6 faith refusal to pay, declaratory judgment and unfair trade
7 practices.

8 We have talked about some of the prior motions and
9 orders in this case. And I want to bring up one more. In
10 July -- let's see, July 19th of 2012 Adylett filed a motion
11 for summary judgment as to all four causes of action. Judge
12 Dukes heard that motion as well.

13 And on it was January of 2013 that Judge Dukes granted
14 Adylett summary judgment on all of the causes of action
15 except for the breach of insurance contract. So that is the
16 only cause of action remaining against Adylett.

17 I have a copy of that order if Your Honor needs it.
18 I'm sure it's in your file. But this is what Judge Dukes
19 explained about why he was denying summary judgment as to
20 the breach of insurance contracts cause of action.

21 As to the breach of contract cause of action plaintiff
22 produced an affidavit stating that he contacted Adylett
23 Services about a second insurance policy through
24 Harleysville that plaintiff has indicated would have covered
25 the loss in question.

1 He alleges that Adylett Services induced him to stay
2 with the current policy when the Harleysville policy would
3 have covered the loss in question. The Court finds at this
4 time that there is question of fact on a breach of a
5 contract between Adylett Services and Hoffman regarding
6 procurement of coverage.

7 And on that basis Judge Dukes denied the summary
8 judgment motion for the breach of contract cause of action.
9 And that came as a result of what Mr. Hoffman has said
10 throughout the duration of this case including in his
11 opposition to the summary judgment which is that he took a
12 proposal from Harleysville to Adylett and said should I
13 switch to this policy instead. And according to Mr. Hoffman
14 they said no you should not. And Mr. Hoffman claims that if
15 they had told him yes you should then the loss in question
16 would have been -- would have been covered because the
17 exclusion that is in the Seneca policy was not in the
18 Harleysville policy.

19 So Judge Dukes found that there is a question of facts
20 about whether this Harleysville policy would have excluded
21 the same thing that the Seneca policy excluded. And that's
22 the only fact question we had remaining. We conducted
23 discovery. We took Mr. Hoffman's deposition. We reviewed
24 his documents. And we now have the answer to that fact
25 question, and it is undisputed.

1 Your Honor, if you -- do you have a copy of my
2 memorandum in support of summary judgment?

3 THE COURT: I do.

4 MR. JORDAN: Okay. If you look at Tab A to our
5 memorandum there is a Harleysville document called
6 commercial insurance proposal. And on or around June 15th
7 of 2011, shortly after Mr. Hoffman renewed the policy with
8 Seneca that he is now seeking covered under, Mr. Hoffman
9 received a commercial proposal from Harleysville.

10 And he testified in his deposition that this is the
11 document that he provided to Adylett when he asked them
12 whether he should switch to the Harleysville policy.

13 If you flip to the second page of that proposal you
14 will see in the top, right corner it says Harleysville; and
15 below that it has a policy number which is BOP0000012097L.

16 And in opposing our motion Mr. Hoffman has said Adylett
17 should have advised him to switch to this policy. Well, it
18 turns out through discovery that following the time that he
19 had the Seneca policy Mr. Hoffman actually got this
20 Harleysville policy, the one that he says we should have
21 told him to get in the first place.

22 And if you flip to Tab C of our memorandum in support,
23 this is a copy of the Harleysville policy that Mr. Hoffman
24 had in place from June 15th of 2012 to June 15th of 2013.

25 And this is a large document; so I apologize for it

1 being cumbersome, Your Honor. But if you flip about ten
2 pages in there is a document that says business owner's
3 policy declarations. If I may approach, Your Honor, I can
4 hand you a copy that has ---

5 THE COURT: Yeah, I mean I don't have tabs on this.

6 MR. JORDAN: Okay.

7 THE COURT: You refer to tabs. Mine is a copy that
8 does not have tabs.

9 (WHEREUPON, document presented to the court.)

10 MR. JORDAN: Your Honor, the page you are looking at is
11 a part of the Harleysville policy that Mr. Hoffman claims we
12 should have advised him to obtain. And in the top, right
13 corner it has a policy number BOP00000012097L, the exact
14 same policy matching the proposal that he took to Adylett
15 and asked if he should switch.

16 Now remember, this is a policy that Mr. Hoffman said I
17 should have gotten this one, you should have told me to get
18 it, I would have been covered.

19 Well, I have another page dog eared a little bit
20 further on in that document, Your Honor. And if you look at
21 that, it contains the exclusion that are in the Harleysville
22 policy which includes we will not pay for loss or damage
23 caused by or resulting from - and Section L5 - nesting or
24 infestation or discharge or release of waste product or
25 secretion by insects, birds, rodents or other animals.

1 Your Honor, the policy that he says we should have
2 advised him to switch to contains a word-for-word exclusion,
3 the same one that he is objecting to in the Seneca policy.

4 That was the only question of fact that Judge Dukes
5 found in denying the cause of the summary judgment on the
6 breach of contract cause of action. There is no question of
7 fact on that anymore, Your Honor. And we would ask the
8 court to enter a summary judgment in favor of Adylett.

9 THE COURT: Thank you, Mr. Jordan. Mr. Hoffman.

10 MR. HOFFMAN: Your Honor, that is argument of counsel.
11 It's like -- I don't see any affidavits there. I don't see
12 anything authenticating anything that's attached to that
13 memorandum. That is purely argument of counsel and is not
14 evidence of anything and doesn't mean anything. That is
15 just his argument.

16 Beyond that -- again, yeah, that excludes -- that same
17 exclusion may or may not be in there. But that doesn't mean
18 that Harleysville was going to deny it for raccoon damage.

19 Again, like I said earlier, raccoons are outside the
20 scope of that exclusion. That doesn't prove that raccoon
21 damage would not have been covered by Harleysville. So at
22 the very worst it is a disputed issue, question of fact,
23 just like Judge Dukes said, and go to trial on it then if
24 necessary.

25 THE COURT: Well, if this -- is it your -- you said it

1 is a question of fact. Why is it not a question of law for
2 the court to make a determination as to whether or not other
3 animals contained -- or included raccoons?

4 MR. HOFFMAN: No, no, no, no, no. No. No.

5 THE COURT: I mean if it has got the same exclusions.

6 MR. HOFFMAN: Right, question of fact what Harleysville
7 would have done. I mean it is speculative. But I have
8 asked people. I mean I'm not testi- -- I don't want to
9 testify. But I mean I've asked around about what
10 Harleysville would have done. And the result was
11 Harleysville probably would have been different. Because
12 raccoons are not included in that exclusion.

13 But again, there is nothing from Adylett that is under
14 oath about this issue. So I would say that that shouldn't
15 sway you one way or the other. Beyond that, I mean this is
16 a Turner versus Milliman -- Milliman case. Which I have
17 that -- I have that case if you want to look at it.

18 THE COURT: What is the site -- give me -- give me the
19 case number. Hand this back to him. That was his copy.
20 (WHEREUPON, documents previously presented to the court were
21 returned.)

22 THE COURT: All right.

23 MR. HOFFMAN: Well, what that case stands for is the
24 proposition that where an insurance agent undertakes a duty
25 to do something that they don't necessarily need to

1 undertake like for example to advise me as to whether I
2 should switch policies. And it wasn't just about the
3 exclusion. The Harleysville policy provided more coverage
4 for less cost. And I said to them should I switch, this
5 looks like a better policy to me.

6 In fact, at the time I had that conversation with them
7 I didn't have a raccoon damage claim. So I mean that would
8 have not have ever been something we would have been
9 thinking about. What we were thinking about is look gees
10 this policy looks like it is less expensive but provides
11 more coverage, what do you think.

12 They undertook the duty to advise me on that and they
13 advised me in their own interest. Because I found out that
14 they don't do business with Harleysville. If I would have
15 switched to Harleysville they would have lost their
16 commission. So therefore they didn't really even look into
17 the situation like they said they were going to do.

18 And then the following year they said we will look for
19 a better policy at lower cost to you next year. They didn't
20 do that either.

21 So I mean they promised to do things that they didn't
22 do, including assist me when this claim was denied. Again,
23 they said we will -- we will look into why this claim was
24 denied and update you on that. And they didn't do that
25 either. I might lose on those claims at trial, but they are

1 certainly triable claims of fact.

2 THE COURT: Thank you, Mr. Hoffman. Anything else, Mr.
3 Jordan?

4 MR. JORDAN: Very briefly, Your Honor. I would just
5 point out that the only cause of action remaining is with
6 the contract. There is no negligent misrepresentation cause
7 of action pending or pled. We certainly would object to any
8 amending of the complaint at this late date.

9 Your Honor, on the issue of whether Harleysville would
10 have done the same thing that Seneca has done, Mr. Hoffman I
11 guess is speculating that Harleysville would have
12 interpreted the policy differently.

13 But here's the fact. If Seneca is correct and is
14 entitled to summary judgment then the exclusion applies. As
15 a matter of law the exclusion applies to the facts of this
16 case. If Seneca is not entitled to summary judgment then
17 potentially Mr. Hoffman has coverage and there is no damage.

18 So I don't see how he can say that another company
19 would have interpreted it differently. But the exclusion is
20 what it is. He claims he didn't have it. But if he had had
21 the other policy he would have had the exact same exclusion.

22 Your Honor, the facts are what they are. Mr. Hoffman
23 said this is only argument of counsel. We have cited it in
24 our memorandum. The documents that Mr. Hoffman testified to
25 in his deposition I can file his sealed deposition if you

1 need me to. But he has testified that these are the
2 documents. It is not argument of counsel. It is the facts
3 of this case as established through deposition testimony.

4 Thank you, Your Honor.

5 MR. HOFFMAN: Your Honor, those documents have never
6 been authenticated. I mean I -- that's great that he
7 attached all sorts of documents. But without anything that
8 authenticates these are anything, I don't know what these
9 are. I don't know whether they apply to me or not, whether
10 these are the policies I was shopping for or not.

11 And the other thing is it's interesting. Seneca and
12 Capstone are saying well what Judge Dukes said is
13 controlling in this case. Okay, well, Judge Dukes said that
14 Adylett doesn't get a summary judgment here. So like why
15 wouldn't that also be controlling in this case.

16 It's like they can't have it both ways. Either -- I
17 think what Judge Dukes said is interlocutory. And I don't
18 know if it controls either way. But if they're taking the
19 position that what Judge Dukes said regarding the exclusion
20 has any kind of impact here today then what Judge Dukes said
21 about their motion for summary judgment has impact here
22 today and requires you to deny the motion. Okay, same
23 concept.

24 THE COURT: All right. If each of you will submit
25 proposed orders to me within ten days I will take it under

1 advisement and let you now.

2 MR. HOFFMAN: Yes, Your Honor.

3 MR. CANTWELL: Thank you, Judge.

4 MR. HOFFMAN: Thank you, Your Honor.

5 MR. JORDAN: Thank you, Judge.

6 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Beaufort County, South Carolina, on October 2, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: January 22, 2014

Certified Transcript Provided For: Mr. Blakmar
Certification Reference # 012214 2716



State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

Carmen Tevis Mullen
Judge

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August 14, 2013

Law Office of Bruce R. Hoffman, LLC
Attn: Bruce R. Hoffman
574 Sea Island Parkway
St. Helena Island, SC 2990

Re: *Bruce R. Hoffman v. Seneca Specialty Insurance Company, et al*, Case No. 12-CP-07-1352

Dear Mr. Hoffman:

Please be advised that Judge Mullen has recused herself from this case and will not rule on any outstanding motions. These motions may be heard by another Judge.

Best regards,

Caroline M. Scrantom
Law Clerk to the Honorable Carmen T. Mullen

CC: William H. Jordan, Esq. by email: wjordan@sowellgray.com
Joshua P. Cantwell, Esq. by email: jcantwell@yclaw.com
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BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H. – Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;

- (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. Your Business Personal Property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 2.a. through 2.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in 1.a. through 1.d. do not limit the coverage otherwise provided under this Causes of Loss Form for the causes of loss listed in 2.a., 2.d. and 2.e.

3. With respect to the following property:
- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
 - b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;
- if the collapse is caused by a cause of loss listed in 2.b. through 2.f., we will pay for loss or damage to that property only if:
- a. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
 - b. The property is Covered Property under this Coverage Form.
4. If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse was caused by a Cause of Loss listed in 2.a. through 2.f. above;
 - b. The personal property which collapses is inside a building; and
 - c. The property which collapses is not of a kind listed in 3. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 4. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

5. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
- a. A "specified cause of loss" other than fire or lightning; or
 - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
 - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
 - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.
3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F. – Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations; that follow.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead, the Special Exclusion in Paragraph B.4.a.(1) applies to these coverages.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.

But if Water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.

- d.(1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

(1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

(1) Acting alone or in collusion with others; or

(2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

- (2) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (3) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (4) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

- (5) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (6) Any other consequential loss.

b. Leasehold Interest Coverage Form

- (1) Paragraph B.1.a. Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
 - (a) Your cancelling the lease;
 - (b) The suspension, lapse or cancellation of any license; or
 - (c) Any other consequential loss.

c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:
 - (a) Paragraph B.1.a., Ordinance Or Law;
 - (b) Paragraph B.1.c., Governmental Action;
 - (c) Paragraph B.1.d., Nuclear Hazard;
 - (d) Paragraph B.1.e., Utility Services; and
 - (e) Paragraph B.1.f., War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
 - (2) Business Income coverage or Extra Expense coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

- a. Animals, and then only if they are killed or their destruction is made necessary.
- b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.

c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income coverage or to Extra Expense coverage.
3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income coverage or to Extra Expense coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- a. Results in discharge of any substance from an automatic fire protection system; or
 - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income coverage or to Extra Expense coverage.

D. Additional Coverage – Collapse

The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in D.1. through D.5. below.

1. With respect to buildings:

- a. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- b. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- c. A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
- d. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

2. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the collapse is caused by one or more of the following:

- a. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
- b. Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- c. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof.

- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 2.a. through 2.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in 1.a. through 1.d. do not limit the coverage otherwise provided under this Causes of Loss Form for the causes of loss listed in 2.a., 2.d. and 2.e.

3. With respect to the following property:
 - a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
 - b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;
 if the collapse is caused by a cause of loss listed in 2.b. through 2.f., we will pay for loss or damage to that property only if:
 - a. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
 - b. The property is Covered Property under this Coverage Form.
4. If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
 - a. The collapse was caused by a Cause of Loss listed in 2.a. through 2.f. above;
 - b. The personal property which collapses is inside a building; and
 - c. The property which collapses is not of a kind listed in 3. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 4. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

5. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.

E. Additional Coverage²— Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
 - a. A "specified cause of loss" other than fire or lightning; or
 - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
 - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
 - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
 - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.
3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage - Collapse.

6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense coverage form.

a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.

b. Loss or damage must be caused by or result from one of the following causes of loss:

(1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.

(2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.

(3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, F.3., does not increase the Limit of Insurance.

G. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
 - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- (1) The cost of filling sinkholes; or

- (2) Sinking or collapse of land into man-made underground cavities.
- b. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Court of Appeals Case No. 2013-002578
Circuit Court Case No. 2012-CP-07-1352

BRUCE R. HOFFMAN, Appellant,

v.

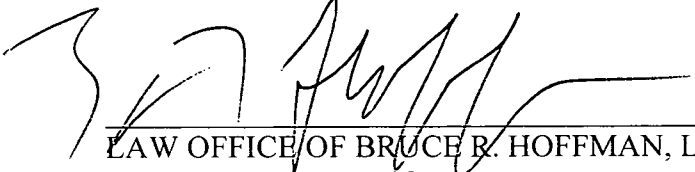
Seneca Specialty Insurance Company; CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of
Sumter; Aydlette Services of Lowcountry, Inc., and Capstone ISG, Inc., Defendants,

of whom SENECA SPECIALTY INSURANCE COMPANY is Respondent.

CERTIFICATE OF COUNSEL

I, Bruce R. Hoffman, hereby certify that this Record on Appeal contains all material proposed to be included by
both parties and no other material.

February 26, 2015



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