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March 8, 2017

SEC
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VIA FEDEX
Ms. Carol McGee
Assistant Director, Derivatives Policy
Mailstop 8030
U.S. Securities & Exchange Commission
100 F Street N.E.
Washington DC 20549-7010

Re: Request For Interpretation of a Particular Agreement, Contract or Transaction Pursuant to 17 C.F.R. §1.8

Dear Ms. McGee:

On February 2, 2017, we sent the enclosed letter with attachments to both the Commodity Futures Trading Commission and the Securities and Exchange Commission requesting a joint interpretation as to whether a contract stylized as a Reinsurance Participation Agreement is a swap, security-based swap or mixed swap related to an insurance linked security.

We have just been informed that the letter was misaddressed to the incorrect division of the Securities and Exchange Commission and were advised to forward the letter with attachments to you. Thank you in advance for your attention to the enclosed.

Respectfully yours,

Raymond J. Dowd

Encl.

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February 2, 2017

VIA MAIL
Commodity Futures Trading Commission
Division of Swap Dealer and Intermediary Oversight
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Securities and Exchange Commission
Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281-1022

Re: Request For Interpretation of a Particular Agreement, Contract or Transaction Pursuant to 17 C.F.R. § 1.8

To Whom It May Concern:

We represent Breakaway Courier Corporation ("Breakaway"), a New York entity. This request is made for the purposes of clarifying issues that have arisen in a New York litigation known as *Breakaway Courier Corporation v. Berkshire Hathaway, Applied Underwriters, Inc. et al.*, (N.Y. Co. Index No. 654806/2016)("*Breakaway v. Applied*"). The *Breakaway v. Applied* complaint ("Complaint") is annexed hereto as **Exhibit 1**.

In accordance with 17 C.F.R. § 1.8, Breakaway requests a joint interpretation from the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission ("SEC") (together, the "Commissions") as to whether a contract stylized as a Reinsurance Participation Agreement ("RPA") that was sold to Breakaway as a way of participating in "profits" is a swap, security-based swap or mixed swap related to an insurance-linked security. *See* 17 C.F.R. § 1.8(a). Two versions of the RPA, one issued in 2009 and the other issued in 2012, are annexed to the Complaint as Exhibit B and Exhibit L (referred to herein as **Exhibit 1-B** and **Exhibit 1-L** respectively).

Section I
Material Information Regarding The Terms Of The RPA

The RPA is issued by a company known as Applied Underwriters Captive Risk Assurance Company ("AUCRA"), a subsidiary of Applied Underwriters, Inc. ("AUI"). AUI is owned by Berkshire Hathaway Inc. ("Berkshire"). AUI's subsidiaries tout their A+ Rating from A.M. Best, the leading provider of ratings and financial data in the insurance industry. However, that rating is dependent on the financial strength of Berkshire, upon whom the subsidiaries rely for credibility and support.[1] Non-insurers like AUI do not receive ratings from A.M. Best. However, AUCRA, despite its status as an insurer, is "not rated" by A.M. Best and is therefore not subject to their due diligence. AUI and Berkshire market the RPA to small to medium-sized companies seeking to purchase workers compensation insurance at a discount from publicly filed-rates. Despite being entitled a "Reinsurance Participation Agreement," the RPA states on its face that it is "for purposes of investment only." *See* **Exhibits 1-B and 1-L**. The function of the RPA is for small to medium-sized companies to exchange fixed workers compensation payments in favor of risky, variable returns on investment in the manner of a total return swap.

Generally, companies wishing to purchase workers compensation insurance from AUI receive a "Workers Compensation Program Proposal & Rate Quotation." *See* **Exhibit 2**. AUI ties the offering of any insurance benefits to mandatory participation in the RPA by way of a "Request To Bind Coverages & Services." *See* **Exhibit 1-A**. We have also enclosed a United States Patent (Patent No. 7,908,157) acquired by AUI in 2011 for a "reinsurance participation plan." *See* **Exhibit 3** (the "Patent"). A promissory note executed by Breakaway in favor of AUI is annexed to the Complaint as **Exhibit 1-K**.

The legality of the RPA is currently being litigated by other companies and insurance regulators in various proceedings throughout the United States. In one such proceeding, *In the Matter of Shasta Linen v. California Insurance Company*, AHB-WCA-14-13 ("*Shasta Linen*"), the Insurance Commissioner of the State of California determined that the RPA was illegal and void as a matter of law and concluded that the RPA scheme was devised with the express goal of avoiding regulators, such as the Commissions. *See* **Exhibit 1-E**. Shortly thereafter, AUI's subsidiaries sought judicial review of the *Shasta Linen* decision. In that filing, AUI's subsidiaries stated as follows: "The RPA is not an insurance policy. It provides no insurance coverage[.]" *See* Verified Petition for a Peremptory Writ of Mandate and Complaint, Case No. BS163243 (July 1, 2016) at ¶ 72.

Section II
The Economic Characteristics and Purpose of the Agreement

The allegations of the Complaint, decision in *Shasta Linen* and the other available evidence clearly demonstrate that the RPA is a complex derivative that was purposely designed to evade regulation and which allows AUI and its affiliates to deceive consumers by promising rates below the publicly-filed workers compensation rates.

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[1] http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=1&refnum=24532

For over 20 years, AUI has marketed its programs directly to regular individuals at small to medium-sized businesses through a distribution network system of independent insurance brokers and agents across the country.[2] *See also* **Exhibit 1, ¶ 45.** AUI has become a sizeable company. By 2003, it had premium volume of over a billion dollars.[3] AUI was purchased by Berkshire in or around 2006.[4]

Neither Berkshire or AUI are licensed to do the business of insurance in any jurisdiction within the United States. *See* **Exhibit 1, ¶¶ 52, 113, 151.** In a 2016 media report in response to the nationwide litigation, general counsel for AUI stated that it "is not an insurance company.[5]" In another report he boasted about his "innovative product," observing that "sometimes when you have an innovative product, regulators take a while to catch up to it.[6]"

The RPA is presented to consumers with a bold-faced title of "Reinsurance Participation Agreement." *See* **Exhibits 1-B and 1-L.** Consumers are led to believe that it is a "profit-sharing" "reinsurance" arrangement. *See* **Exhibit 1, ¶¶ 44-47.** To insurance regulators, the RPA is represented as being "for purposes of investment only." *See* **Exhibits 1-B and 1-L, ¶ 3.** When AUI is in Court, the RPA is characterized both as reinsurance *and* an investment depending on what argument is being made. During oral argument in *Breakaway v. Applied*, counsel for AUI stated as follows:

> "Because, and I am looking now at Exhibit B, the RPA, if you look at paragraph 3 of it, specifically says, "participant", that's Breakaway, "is participating in this agreement for purposes of investment only." It's not an insurance policy. What it actually is, is a captive reinsurance arrangement, and it allows Breakaway, in this instance, to put money into, capitalize a cell, its owned individual, its own individual cell in this reinsurance agreement, and then, if it turns out that the losses are lower, they are going to get, in the end, lower costs on their insurance."
>
> *See* **Exhibit 4** (Tr. Oral Arg., November 1, 2016, 36:22-37:7)

Counsel for AUI has made similar representations in other sworn filings as well. *See* Brief For Defendant-Appellant Applied Underwriters, *South Jersey Sanitation Co. v. Applied Underwriters*, No. 13-cv-06717 (Doc. No. 003112015681, July 13, 2015)(*"South Jersey"*). In *South Jersey*, counsel for AUI represented as follows to the Court of Appeals for the Third Circuit:

> "South Jersey mischaracterizes the RPA as an agreement concerning an insurance policy and thus unenforceable under Nebraska law. To the contrary, the RPA is not an agreement concerning an insurance policy. Rather, the RPA is a contract whereby South Jersey, for 'investment' purposes would 'share in the underwriting results of the Workers'

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[2] www.auw.com
[3] www.roughnotes.com/rnmagazine/2003/june03/06p82.htm
[4] www.businesswire.com/news/home/20060208005272/en/Berkshire-Hathaway-Acquire-Applied-Underwriters
[5] www.insurancejournal.com/news/national/2016/10/03/428268.htm
[6] www.bloomberg.com/news/articles/2016-11-04/buffett-backed-insurer-keeps-getting-sued-over-complex-products

> Compensation policies of insurance issued' to where AUCRA, through a series of reinsurance contracts, had financial exposure on a number of workers' compensation policies, including the South Jersey policy. The RPA offered absolutely no insurance coverage to South Jersey for workers' compensation insurance. There was no named insured, no coverage identified and no premium set forth."

Id. at p. 28-29.

The Patent for the "reinsurance participation plan" owned by AUI is perhaps the clearest demonstration of the actual purpose and effect of the RPA. *See* **Exhibit 3**. Although the Patent purports to be a "reinsurance participation plan" that is "generally in the field of insurance," the Summary of the Invention demonstrates that the RPA is an investment that purposely shifts nearly unlimited risk back on the insured. *Id.* at p. 5. The Patent's stated intention is to provide insurance for a small to medium-sized company's "perceived risk" while at the same time allowing the insurance carrier to "collect enough premium to cover all expended losses." Far from being a "profit-sharing plan," the Patent reveals that the RPA is, in fact, a "risk sharing plan," whereby the reinsurance company will "in turn, provide[] a risk sharing participation program to the insured." *Id.*

Section III
The Requesting Person's Determination

In *Breakaway v. Applied*, Breakaway asserts that the RPA is a fraud on unsophisticated small business owners who think they are getting insurance with a profit upside. Instead, companies like Breakaway are receiving what is characterized as an "investment" into an insurance-linked security. *See* **Exhibits 1 and 1-B**. Evidence submitted by AUI supports this characterization. *See* **Exhibits 3 and 4**. By entering into the RPA, insureds swap fixed payments (fixed workers compensation insurance payments) for payments based on the return of an underlying asset, in this case the gains and losses of the protected cell. *See* **Exhibit 1-K**. The RPA is sold as a private placement, and purports on its face to be an investment. *See* **Exhibits 1-B and 1-L**. It is therefore Breakaway's belief that the RPA should be characterized as a swap and/or a mixed swap based on an insurance linked security.

New York Insurance Law Section forbids unlicensed insurers from doing the business of insurance or collecting any funds in New York. New York State has a strong interest in ensuring that New York insureds have sufficient funds to pay out losses for injured workers and that the funds are available to protect workers. Upon information and belief, none of the funds collected by AUI were ever deposited into licensed insurers. State regulators and rating agencies are misled regarding the financial health of the insurers because they are shown documents which purport to show that the licensed entities have sufficient reserves, but which in actuality are nothing more than mere bookkeeping entries. The risk of financial collapse where entities owned by the same entity insure each other, thereby concentrating risk is grave -- particularly where, as here, there appears to be no parental guarantee from Berkshire Hathaway. *See* New York Department of Financial Services, *Shining a Light on Shadow Insurance: A Little-known*

Loophole That Puts Insurance Policyholders and Taxpayers at Greater Risk (June 2013);[7] *see also* A.M. Best, *A.M. Best Revises Outlooks to Negative For California Insurance Company and Its Affiliates* (October 19, 2016) ("negative rating actions could result if operating performance performs markedly short of A.M. Best's expectations, if there is a considerable deterioration in the group's risk-adjusted capitalization, the group's business profile suffers as a result of reputation damage or if A.M. Best determines that the group's strategic importance to its ultimate parent (Berkshire Hathaway Inc.) no longer warrants rating enhancement.")[8]

The McCarran-Ferguson Act (the "Act") provides that state law shall govern the regulation of insurance and that no act of Congress shall invalidate any state law unless the federal law specifically relates to insurance. *See* 15 U.S.C.A. § 1011, *et seq.* The Act thus mandates that a federal law that does not specifically regulate the business of insurance will not preempt a state law enacted for that purpose. A state law has the purpose of regulating the insurance industry if it has the "end, intention or aim of adjusting, managing, or controlling the business of insurance." *U.S. Dept. of Treasury v. Fabe*, 508 U.S. 491, 113 S. Ct. 2202 (1993).

Accordingly, a lack of federal regulatory guidance has permitted AUI to conceal risk from state regulators, thus warranting a determination of whether the RPA constitutes a swap. AUI's RPA instrument satisfies the elements of 7 U.S.C.A. § 1a(47)(A), which defines a "swap", and 7 U.S.C.A. § 1a(47)(D), which defines a "mixed swap". AUI is a self-proclaimed financial services company that, in the RPA, sells an investment vehicle whose value is based on the "commodities, securities, instruments of indebtedness, indices, quantitative measures or other financial or economic interests or property of any kind." 7 U.S.C.A. § 1a(47)(A)(i). The RPA provides that payment or delivery is dependent on "the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C.A. § 1a(47)(A)(ii). The RPA provides that financial risk is transferred without conveying a current or future direct ownership interest in an asset. 7 U.S.C.A. § 1a(47)(A)(iii). The RPA also meets the definition of a mixed swap pursuant to 7 U.S.C.A. § 1a(47)(D) in that the swap is based on a security or loan – the profits or losses of the protected cell. *See also* 15 U.S.C.A. § 78c(68)(A) and (D).

These statutory requirements are met via the text of the RPA as well as the practical purpose and effect of the RPA in conjunction with the other agreements. The RPA provides, in pertinent part as follows:

> "Participant is participating in this Agreement for purposes of investment only. The Participation has not been registered under the United States Securities Act of 1933, as amended or any state securities laws."
>
> *See* **Exhibit 1-B**, ¶ 3.

This type of arrangement has been identified by A.M. Best, but only where the derivative is being sold to a capital market participant (such as a bank). In an August 16, 2016 report

[7] http://www.dfs.ny.gov/reportpub/shadow_insurance_report_2013.pdf
[8] http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=1&refnum=24532

entitled "Rating Reinsurance/Insurance Transformer Vehicles," A.M. Best provides a diagram explaining how reinsurance special purpose vehicles are used as "transformers" for insurance linked securities.[9] However, unlike in the arrangement described by A.M. Best, the RPA is targeted directly at small to medium-sized businesses unaware of the risks placed on them rather than sophisticated capital market participants.

The value of the investment into the RPA is based upon insured loss events, making the RPA an "insurance linked security". *See* 15 U.S.C.A. § 78c(68)(A). The investor swaps a fixed insurance payment (*see* **Exhibits 1-K and 2**) for the variable returns on that underlying insurance linked security. The initial cash flows on the swap induce buyers to purchase because those cash flows are promised to be a discount in comparison to state-filed rates. However, when losses occur, payments due on the swap balloon because all of the credit risk for payment of the underlying insurance claims is shifted back to the buyers. The delivery of funds are dependent on underlying occurrences *and* the financial risk is transferred without the conveyance of a current or future ownership interest in an asset. *See* 7 U.S.C.A. §1(47)(A)(ii)-(iii). The practical effect of the foregoing is that the RPA functions as either a swap or a mixed swap based upon an insurance linked security. *See* 7 U.S.C.A. §1(47)(A).

Section IV
Such Other Information As May Be Necessary

Due to the numerous litigations regarding the illegality of the RPA under state insurance laws (e.g. *Breakaway v. Applied, South Jersey* and *Shasta Linen*) there is a multitude of additional publicly-available documentation which may be helpful to the CFTC and SEC's determination of the character and purpose of the RPA pursuant to 17 C.F.R. § 1.8. To the extent the Commissions require any additional documentation, Dunnington, Bartholow & Miller will provide it upon request.

Thank you for your attention to this letter.

Respectfully yours,

Raymond J. Dowd

Encl.

[9] http://www3.ambest.com/ambv/ratingmethodology/OpenPDF.aspx?rc=227390

EXHIBITS

SEC
Mail Processing
Section
MAR 0 9 2017
Washington DC
409

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

BREAKAWAY COURIER CORPORATION, d/b/a BREAKAWAY COURIER SYSTEMS

Index No.

Plaintiff,

VERIFIED COMPLAINT

-against -

BERKSHIRE HATHAWAY INC., CALIFORNIA INSURANCE COMPANY, COMMERCIAL GENERAL INDEMNITY INC., APPLIED UNDERWRITERS, INC., A NEBRASKA CORPORATION, APPLIED RISK SERVICES, INC., A NEBRASKA CORPORATION, APPLIED RISK SERVICES OF NEW YORK, INC., A NEW YORK CORPORATION, ARS INSURANCE AGENCY, INC., NORTH AMERICAN CASUALTY COMPANY, A NEBRASKA CORPORATION, CONTINENTAL INDEMNITY COMPANY, AN IOWA CORPORATION and APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., AN IOWA CORPORATION

Defendants.

----------X

Plaintiff, Breakaway Courier Corporation d/b/a Breakaway Courier Systems ("Breakaway") by and through its undersigned counsel, Dunnington Bartholow & Miller LLP, as and for its Verified Complaint against Defendants, alleges as follows:

PRELIMINARY STATEMENT

Breakaway is a New York City based company founded in 1988 with roughly three hundred employees that attempted to purchase legally-required workers' compensation insurance

from Defendants. Instead, Breakaway became the victim of Defendants' illegal and fraudulent scheme to steal insurance premiums and to expose Breakaway and its injured workers to unlimited risk.

In violation of multiple provisions of New York Insurance Law, Defendants developed a complex scheme, targeted at New York consumers, to cause an unlicensed foreign insurance company to divert insurance premiums to yet another entity unlicensed by New York State and to unlawfully enrich themselves by siphoning those premiums off to defendant Berkshire Hathaway, its principals and its affiliates through a web of under-collateralized shell companies described in relevant part below (the "Berkshire Hathaway Group"). On June 20, 2016, the scheme was declared illegal and void by the California Department of Insurance in *Matter of Shasta Linen Supply, Inc.* (AHB-WCA-14-31) ("Shasta").[1]

Defendants' fraudulent scheme is essentially a reverse Ponzi scheme. Defendants promise New York insureds such as Breakaway (1) discounted workers' compensation insurance; (2) a share in underwriting profits from workers' compensation insurance policies; (3) rewards for low incurred losses. Instead, the unsuspecting victims have signed a "Reinsurance Participation Agreement" ("RPA") - a complex derivative instrument that shifts all risk of losses from worker injuries back onto the insureds. Unlike the publicly-filed, facially-valid workers' compensation insurance policies, the RPAs are strictly-prohibited side agreements that materially alter the terms of the workers' compensation insurance policy. Unlike a Ponzi scheme where early victims are paid with the investments of others, Berkshire Hathaway's reverse Ponzi scheme requires insureds to cover each other's losses. During this time, victims are led to believe that their "capital" is being paid into "protected cells" which will eventually be returned

[1] Attached hereto as Exhibit "E".

to them. Instead, Berkshire Hathaway illegally siphons off premiums through an unlicensed, unregistered and undercollateralized Hawaiian entity, leaving New York employers and injured workers without the funds that New York State requires to be available to cover losses due to worker injuries.

Workers' compensation insurance in New York is highly regulated. New York law requires that insurers acquire "guaranteed-cost insurance" to protect injured workers. Over the last 100 years, actuaries have developed standards to predict how many injuries will be suffered by each type of worker with reasonable certainty. Actuaries generally calculate overall losses due to workplace injuries at 70% of each premium dollar collected. New York regulators require that licensed New York insurers collect and preserve enough premiums to cover anticipated losses. As explained below, because Defendants' illegal premium rates are calculated based on a lowball loss ratio, New York insureds will shortly be hit with crippling claims for losses and have no collateral reserved to protect injured workers.

By side-stepping New York regulations, Defendants have violated New York law and placed New York employers, injured workers and ultimately New York taxpayers at risk by causing employers such as Breakaway to enter into the RPA - an illegal, complex derivative instrument analogous to what is known on Wall Street as a "total return swap". As injured New York workers make claims, Defendants use the RPA to hit New York insureds with huge, illegal premium bills – the functional equivalent of a "margin call". As *Shasta* explains, this illegal scheme was concocted with the express goal of avoiding insurance licensing laws of the various states, including New York. Defendants' scheme relies on withholding information from state regulators. The scheme has indeed put all of New York's taxpayers at risk. Regulators in California, Vermont and Wisconsin have all condemned this scheme as illegal.

Defendants have also concentrated risk by having affiliated entities cede risk to each other in a collusive manner, known as "shadow insurance". In 2013, New York's Department of Financial Services issued a scathing report attacking similar "shadow insurance" schemes and describing how such schemes put New York taxpayers at massive risk.

Plaintiff Breakaway is a victim of this illegal nationwide scheme. Breakaway is a bicycle courier service operating mainly in Manhattan. Breakaway was induced, to sign a "Profit Sharing" "Reinsurance Participation Agreement" ("RPA") pursuant to which Defendants promised that Breakaway's premiums would be held in a "protected cell" and that Breakaway would participate in the "underwriting results" of its workers' compensation insurance. Unless Breakaway signed the RPA, it would not receive a workers compensation insurance policy.

The RPA and the proposal that accompanied it promised Breakaway that its rates for workers' compensation insurance would initially be lower than those rates required by New York's regulators for guaranteed cost workers' compensation insurance policies pursuant to rates filed by each licensed insurer. Under New York law, charging lower rates than the rates filed by a licensed insurance company with New York State is illegal. Breakaway did not know and had no reason to believe that the RPA was illegal. Under the pressure of boiler-room type tactics described in *Shasta*, Breakaway signed the RPA. As explained in *Shasta*, in violation of New York law, the RPA contained an illegal and severe penalty for termination or non-renewal. Instead of a one-year guaranteed cost policy authorized by New York law, the RPA illegally required Breakaway to make a three-year commitment to purchase workers compensation insurance through Berkshire Hathaway.

Rather than collecting Breakaway premiums through a New York-licensed entity, the

Berkshire Hathaway Group caused an unlicensed Nebraska Corporation to collect Breakaway's premiums, ostensibly for deposit into another unlicensed Berkshire Hathaway-owned British Virgin Islands "protected cell". The money literally disappeared—illegally swept into an unlicensed Hawaiian entity—and has not been accounted for, despite due demand.

Not only is it illegal to sell reinsurance to an insured in New York, it is also illegal to rebate underwriting proceeds to an insured or to make misleading statements in connection with the sale of insurance in New York. The Donnelly Act provides treble damages and forbids persons with market power in the reinsurance market such as the Berkshire Hathaway Group to tie illegal investment products such as the RPA (the tied product) or payroll processing services (another tied product) to statutorily-mandated insurance (the tying product). Because Breakaway was damaged by Berkshire Hathaway's illegal tying scheme which is an unlawful restraint of trade, treble damages are warranted.

But according to actuarial calculations, Breakaway's damages are just beginning and thus Breakaway seeks urgent relief from the Court. In New York, injured workers file claims long after the coverage period has ended. Despite its misleading and contradictory language promising "profits" and "insurance" and a "protected cell" – the RPA has been interpreted by Berkshire Hathaway as placing ALL of the risk of loss from claims back onto the insured. The RPA's terms (as interpreted by Berkshire Hathaway) provide that insureds such as Breakaway will be—and indeed have been—billed by the Berkshire Hathaway Group for every single loss their injured employees suffer, compounded by a multiplier.

As explained below, this scheme is a fraudulent broadside attack on the safety and solvency of New York's workers compensation insurance scheme. Because the RPA, through

misleading, contradictory and opaque language, shifts *all* of the risk of loss back onto the insured employer, usually targeting small businesses like Breakaway lacking in commercial sophistication, it creates a massive systemic risk of undercollateralization that threatens all New Yorkers.

Breakaway urgently requires this Court's protection from the risk to which it has been exposed. New York Insurance Law Sec. 1213(c) requires that unlicensed insurers operating in New York or collecting premiums from New York insureds post a bond prior to being permitted to assert defenses or claims in a New York State Court. Breakaway requests such a bond. In determining the reasonable amount of a bond to protect Breakaway's interests, a bond in the amount of value at risk ("VaR") which Berkshire Hathaway's RPA seeks to impose upon Breakaway is a fair measure of the required bond. As detailed below, this Court should set a bond of not less than $6,061,659.02 as a condition of the various members of the Berkshire Hathaway Group appearing in or defending this action.

A. Background

Workers Compensation Insurance – New York Law and Public Policy

1. The Triangle Shirtwaist Factory fire in Manhattan, New York City on March 25, 1911 was the deadliest industrial disaster in the history of the city, and one of the deadliest in US history. It was the greatest workplace disaster in New York until the attack on the World Trade Center on September 11.

2. The fire galvanized labor and led to many reforms in safety, health, and labor laws. It helped lead to the workers' compensation insurance system here in New York and across the country. New York enacted a no–fault workers' compensation system for nearly a century.

Before enactment of the Workers' Compensation Law, when a worker was injured, the only remedy was to sue in the courts. When that happened, the employer could always raise an objection that the worker had assumed the risk of employment, or the injury was caused by the worker's negligence or that of another worker. The "no fault" system eliminated such employer defenses.

3. Today, New York's Workers' Compensation Law guarantees both medical care and weekly cash benefits to workers who are injured on the job. Weekly cash benefits and medical care are paid by the employer's insurance carrier, as directed by the Workers' Compensation Board. Employers pay for this insurance, and may not require the employee to contribute to the cost of compensation.

4. Importantly, there is no "cap" on liability for New York employers. If a worker reports an injury even a decade after employment, the employer is liable.

5. The paramount interest of New York in worker and workplace safety and in ensuring funds to pay for injuries has led New York to enact and maintain one of the toughest insurance laws in the nation to ensure that insurance companies operating in New York are well-collateralized.

6. When insurance companies fail, the taxpayers of New York are liable for any shortfalls by and through the New York State Insurance Fund.

7. Thus the protections of the Insurance Law of the State of New York embody a fundamental public policy choice of the people of the State of New York to adequately protect workers and closely monitor the activities of insurers.

B. <u>Parties And Jurisdiction</u>

8. Breakaway is a domestic corporation with a principal place of business at 444 West 36th Street, New York.

9. Breakaway is a New York City-based company that has been in business for more than twenty (20) years and provides courier and delivery services as well as warehousing, logistics and temporary office support services.

10. Upon information and belief, Berkshire Hathaway Inc. is a Delaware corporation with a primary place of business located at 3555 Farnam Street, Omaha, NE 68131.

11. Upon information and belief, Defendant Applied Underwriters, Inc. (herein referred to as "Applied Underwriters") is a Nebraska corporation located at 10805 Old Mill Road, Omaha, NE 68154, doing business in New York as an underwriter, issuer, reinsurer, claims handler and administrator of workers' compensation insurance policies.

12. Upon information and belief, Defendant Applied Risk Services, Inc. (herein referred to as "ARS") is a Nebraska corporation located at 10805 Old Mill Road, Omaha, NE 68154.

13. Upon information and belief, ARS is a member of Berkshire Hathaway Group, and is an affiliate and/or parent company to Co-Defendants' Applied Underwriters Captive Risk Assurance Company, Inc. ("AUCRA"), North American Casualty Company, Applied Risk Services of New York, Inc., Applied Underwriters, Inc. and Continental Indemnity Company (collectively "Berkshire Hathaway Group").

14. ARS INSURANCE AGENCY, INC. is a Nebraska Corporation registered with the New York State Department of Financial Services License Number 937411 with a business

address of 10805 Old Mill Road, Omaha, NB 68154 as the property and casualty agent of Continental Indemnity Company and California Insurance Company.

15. Upon information and belief, defendant Applied Risk Services of New York, Inc. ("ARSNY") is a domestic business corporation with an authorized agent located at 340 Broadway, Saratoga Springs, New York 12866, and at all times referenced herein was, and is, AUCRA's agent in New York serving as AUCRA's billing and auditing agent. Accordingly, ARSNY is responsible for paying any sums due to AUCRA's participants in New York State. According to New York Department of State records, ARSNY's Chief Executive Officer, Steven Menzies, and its principal executive office are located at 10805 Old Mill Road, Omaha, NE, 68154.

16. Upon information and belief, ARSNY is a third party administrator licensed by the New York State Workers' Compensation Board with offices located at 470 Park Avenue South, 12th Floor, New York, New York 10016. www.wcb.ny.gov/content/main/reps/tpalisting-sec50_3bd.pdf

17. Upon information and belief, Defendant California Insurance Company is a California-domiciled corporation with its principal place of business located at 10805 Old Mill Road, Omaha, Nebraska 68154.

18. Upon information and belief, Defendant Applied Underwriters Captive Risk Assurance Company, Inc. (AUCRA, as defined above) is a company organized under the laws of Iowa, with a principal place of business and headquarters located at 10805 Old Mill Road, Omaha, NE 68154, and at all times referenced herein was, and is, doing business in the State of New York as a reinsurer which issues illegal reinsurance policies of insurance and/or reinsurance

agreements, including those which pertain to workers' compensation.

19. According to a December 2013 California Insurance Department Examiner's Report, AUCRA is owned by a series of holding companies that are ultimately owned by Berkshire Hathaway Inc. (owned 34.41% by Warren Buffett). Commercial General Indemnity, Inc. ("CGI") and Applied Group Insurance Holdings, Inc. are Hawaii captives owned by AU Holding Company Inc. (Delaware) which is in turn owned by Sid Ferenc (holding a 7.5% interest), Steven Menzies (holding a 11.5% interest) and Berkshire Hathaway (holding an 81% interest), which in turn owns AUCRA and Continental. These holding companies receive portions of premiums paid by New York insureds, such as Breakaway.

20. Commercial General Indemnity, Inc. ("CGI") is an unlicensed, unrated Hawaii captive insurance entity located at c/o AON Insurance Managers (USA) Inc., 201 Merchant Street, Honolulu, Hawaii 96813 registration number 113368D1.

21. Upon information and belief, Marc Tract, a partner in Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 serves on the Board of Directors of AUCRA and in that role participates in AUCRA's governance and directs AUCRA's activities from his office located in the State, County and City of New York.

22. Upon information and belief, Defendant Continental Indemnity Company ("Continental") is a company organized under the laws of Iowa, with a principal place of business and headquarters located at 10805 Old Mill Road, Omaha, NE 68154, and at all times referenced herein was doing business in the State of New York as an insurance carrier issuing policies of insurance including workers' compensation.

23. Upon information and belief, defendant North American Casualty Co. d/b/a North

American Casualty Agency ("NAC") is a Nebraska corporation licensed to do business in the State of New York. Upon information and belief, its executive office is located at 10805 Old Mill Road, Omaha, NE 68154.

24. According to a September 11, 2012 report of the Insurance Commissioner of Pennsylvania, Warren Buffet is the sole ultimate controlling person of NACC, which is 100% owned by Applied Underwriters, Inc.

25. At all times herein mentioned, Defendants were and are "doing business" in the State of New York as defined in N.Y. Ins. Law § 1101(b).

26. At all times herein mentioned, Defendants were engaged in the business of insurance in the State of New York and/or transacted business in the State of New York and/or committed tortious acts directed at and having an effect in the State of New York and are thus subject to general and specific jurisdiction in the State of New York.

27. At all times herein mentioned, Defendants were coconspirators in an illegal scheme to defraud Breakaway of insurance premiums and insurance coverage and were the agents, servants, and employees of the other named Defendants, and were acting within the scope of their agency and employment, and with the knowledge and consent of their principal and employer. As described in *Shasta* at 10-11, the corporate officers of the various Berkshire Hathaway entities are almost identical in each of the affiliated entities, with Warren Buffet having ultimate control.[2]

C. Relevant Provisions Of The New York State Insurance Law

[2] Exhibit "E" In Re Application of North American Casualty Co. in Support of the Request for Approval to Acquire Control of Pennsylvania General Insurance Company dated September 11, 2012.

28. New York Insurance Law §2102 requires insurance producers, adjusters, brokers and reinsurance intermediaries to be licensed and forbids unlicensed actors to collect fees for certain insurance-related activities.

29. New York Insurance law §2117 forbids any person, firm, association or corporation to act as agent for, to assist in any way in effectuating an insurance contract or to act as a broker for an unlicensed insurer.

30. New York Insurance Law §1101 defines "insurance contract" as "any agreement or other transaction whereby one party, the "insurer", is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary", dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event.

31. New York Insurance Law §1101 defines doing business in New York State as "making, or proposing to make, as insurer, any insurance contract, including either issuance or delivery of a policy or contract of insurance to a resident of this state or to any firm, association, or corporation authorized to do business herein, or solicitation of applications for any such policies or contracts."

32. New York Insurance Law §2101(k) states that an "insurance producer" means an insurance agent, title insurance agent, insurance broker, reinsurance intermediary, excess lines broker, or any other person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

33. On January 1, 2011 an Emergency Regulation came into effect in New York State requiring insurance producers to disclose compensation. 11NYCRR 30.3 ("Section 30.3"):

EMERGENCY REGULATION

(a) [...] an insurance producer selling an insurance contract shall disclose the following information to the purchaser orally or in a prominent writing at or prior to the time of application for the insurance contract:

(1) a description of the role of the insurance producer in the sale;
(2) whether the insurance producer will receive compensation from the selling insurer or other third party based in whole or in part on the insurance contract the producer sells;
(3) that the compensation paid to the insurance producer may vary depending on a number of factors, including (if applicable) the insurance contract and the insurer that the purchaser selects, the volume of business the producer provides to the insurer or the profitability of the insurance contracts that the producer provides to the insurer; and
(4) that the purchaser may obtain information about the compensation expected to be received by the producer based in whole or in part on the sale, and the compensation expected to be received based in whole or in part on any alternative quotes presented by the producer, by requesting such information from the producer.

(b) If the purchaser requests more information about the producer's compensation prior to the issuance of the insurance contract, the producer shall disclose the following information to the purchaser in a prominent writing at or prior to the issuance of the insurance contract, except that if time is of the essence to issue the insurance contract, then within five business days:

(1) a description of the nature, amount and source of any compensation to be received by the producer or any parent, subsidiary or affiliate based in whole or in part on the sale;

(2) a description of any alternative quotes presented by the producer, including the coverage, premium and compensation that the insurance producer or any parent, subsidiary or affiliate would have received based in whole or in part on the sale of any such alternative coverage;
(3) a description of any material ownership interest the insurance producer or any parent, subsidiary or affiliate has in the insurer issuing the insurance contract or any parent, subsidiary or affiliate;
(4) a description of any material ownership interest the insurer issuing the insurance contract or any parent, subsidiary or affiliates has in the insurance producer or any parent, subsidiary or affiliate; and
(5) a statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale.

(c) If the purchaser requests more information about the producer's compensation after issuance of the insurance contract but less than 30 days after issuance, then the insurance producer shall disclose to the purchaser in a prominent writing the information required by subdivision (b) of this section within five business days.

(d) If the nature, amount or value of any compensation to be disclosed by the insurance producer is not known at the time of the disclosure required by subdivision (b) or (c) of this section, then the insurance producer shall include in the disclosure:

(1) a description of the circumstances that may determine the receipt and amount or value of such compensation; and
(2) a reasonable estimate of the amount or value, which may be stated as a range of amounts or values.

(e) If the disclosure required by subdivision (a) of this section is provided orally, then the insurance producer shall also disclose the information required by subdivision (a) of this section to the purchaser in a prominent writing no later than the issuance of the insurance contract.

(f) An insurance producer shall not make statements to a purchaser contradicting the disclosures required by this section or any other misleading or knowingly inaccurate statements about the role of the insurance producer in the sale or compensation.

34. New York Insurance Law §2324 forbids an insurer to rebate premiums to an insured or to offer any valuable consideration or benefit as an inducement to enter into an insurance contract. The relevant provisions read as follows:

> 2324 (a) No authorized insurer, no licensed insurance agent, no licensed insurance broker, and no employee or other representative of any such insurer, agent or broker shall make, procure or negotiate any contract of insurance other than as plainly expressed in the policy or other written contract issued or to be issued as evidence thereof, or shall directly or indirectly, by giving or sharing a commission or in any manner whatsoever, pay or allow or offer to pay or allow to the insured or to any employee of the insured, either as an inducement to the making of insurance or after insurance has been effected, any rebate from the premium which is specified in the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or shall give or offer to give any valuable consideration or inducement of any kind, directly or indirectly, which is not specified in such policy or contract, other than any valuable consideration, including but not limited to merchandise or periodical subscriptions, not exceeding twenty-five dollars in value, or shall give, sell or purchase, or offer to give, sell or purchase, as an inducement to the making of such insurance or in connection therewith, any stock, bond or other securities or any dividends or profits accrued thereon, nor shall the insured, his agent or representative knowingly receive directly or indirectly, any such rebate or special favor or advantage,[…..].
>
> 2324 (b) Within the meaning of subsection (a) hereof, the sharing of a commission with the insured shall be deemed to include any case in which a licensed insurance agent or a licensed insurance broker which is a subsidiary corporation of, or a corporation affiliated with, any corporation insured,

received commissions for the negotiation or procurement of any policy or contract of insurance for the insured.

35. It is unlawful in New York for an insurer to issue a workers' compensation policy that varies from the policy language, endorsements and rates filed with the New York Compensation Insurance Rating Board ("NYCIRB"). New York Insurance Law §§ 2313, 2347; *see also* http://go.nycirb.org/dl/manwcel/wcel_main.cfm (a manual containing NYCIRB rules and procedures for filing forms and rates and penalties for failure to do so).

36. New York Insurance Law § 1213(c) requires that unauthorized foreign or alien insurers obtain a license or post security before appearing in a New York court. Therefore, to the extent any of Defendants are unauthorized, Breakaway requests that the Court set an appropriate bond prior to the filing of any pleading.

37. For the purposes of Insurance Law 1213(c), a Motion to Dismiss is a "pleading". *Levin v. Intercontinental Cas. Ins. Co.*, 268 A.D.2d 205, 206, 700 N.Y.S.2d 683 (1st Dept. 2000) *aff'd* 95 N.Y.2d 523, 742 N.E.2d 109 (2000).

38. Workers' compensation insurance is required in New York pursuant to the Workers' Compensation Act of 1914 codified as a New York Workers' Compensation Law.

39. Workers' compensation insurance may be purchased from New York State via the New York State Insurance Fund or through authorized private insurers.

40. New York State requires approval of workers' compensation insurance rates. Rates are computed based on the loss history for each type of job according to actuarial tables. Policies and endorsements must be filed with the New York Compensation Insurance Rating Board ("NYCIRB"). *See* New York Workers' Compensation and Employers Liability Manual

available at http://go.nycirb.org/dl/manwcel/wcel_main.cfm.

41. New York Insurance Law § 2314 provides that "[n]o authorized insurer shall, and no licensed insurance agent, no title insurance agent, no employee or other representative of an authorized insurer, and no licensed insurance broker shall knowingly, charge or demand a rate or receive a premium that departs from the rates, rating plans, classifications, schedules, rules and standards in effect on behalf of the insurer, or shall issue or make any policy or contract involving a violation thereof."

D. Facts

a. Breakaway Seeks Workers' Compensation Insurance And Enters Into The Fraudulent And Illegal Request To Bind

42. In 2009 Breakaway sought to purchase workers' compensation insurance.

43. In 2009, Breakaway was presented with a recommendation by its broker that it purchase "Premier Exclusive" workers' compensation insurance through Applied.

44. Consistent with Berkshire Hathaway's representations that Applied's services provided risk-reduction and profit sharing services, Breakaway was presented with sales materials describing a profit-sharing plan that would save Breakaway money on workers compensation insurance premiums with "maximum" and "minimum" premiums that would, at the same time, permit Breakaway to participate in underwriting profits.

45. According to the 2013 annual report of Berkshire Hathaway:

> Applied Underwriters, Inc. ("Applied") is a leading provider of payroll and insurance services to small and mid-sized employers. Applied, through its subsidiaries principally markets SolutionOne®, a product that bundles workers' compensation and other employment related insurance coverages and business services into a seamless package that is designed to reduce the risks and remove the burden of administrative and regulatory requirements

> faced by small to mid-sized employers. Applied also markets EquityComp® which is a workers' compensation–only product targeted to medium sized employers with a profit sharing component. (http://www.berkshirehathaway.com/2013ar/201310-K.pdf)

46. However, in order to purchase workers' compensation insurance from Applied Underwriters, Breakaway was required by Berkshire Hathaway Group to first enter into a coercive and illegal "Request to Bind Coverages & Services" that required Breakaway to waive rights guaranteed by New York law, such as the right to choose a deductible for a guaranteed cost workers' compensation plan. The "Request to Bind" also required that Breakaway execute a RPA with AUCRA. Attached hereto as **Exhibit A** is a true copy of the Request to Bind Coverage & Services.

47. Rather than provide the workers' compensation insurance Breakaway requested and reasonably was led to believe it had purchased, Defendants induced Breakaway to enter into an illegal "reinsurance" scheme styled as a "Profit Sharing Plan" under the brand name "Premier Exclusive" to share in "underwriting results."

48. According to the Request to Bind, the Premier Exclusive plan required a minimum commitment to purchase workers' compensation insurance of three (3) years.

49. The Request to Bind required, as a condition of participating in a "Profit Sharing Plan" in which it would be issued workers' compensation insurance, that Breakaway waive its right to select a deductible as guaranteed by New York law in the case of guaranteed cost workers' compensation insurance policies.

50. The Request to Bind's requirement of a three-year commitment is illegal and void under New York law because it purports to modify the conditions of a workers' compensation

policy and, upon information and belief, the terms of the Request to Bind have not been disclosed to NYCIRB.

51. The Request to Bind is fraudulent and misleading because Breakaway was induced to purchase Premier Exclusive based upon the representation that Breakaway would become part of a plan to share underwriting profits related to workers' compensation insurance premiums in violation of the Insurance Law.

52. In fact, by executing the Request to Bind, Breakaway was induced to enter into an illegal "reinsurance" scheme through which insurance premiums were siphoned off through AUCRA, an entity that is unlicensed to engage in the business of insurance in New York, and transferred outside the State of New York to AUCRA affiliates.

53. Breakaway does not know the location of its premium payments and the amounts being held by or under the control of AUCRA or its affiliates have not been accounted for despite demand.

b. Breakaway Is Required To Enter Into The Illegal And Void RPA

54. The aforementioned "reinsurance" scheme was presented in the form of the RPA to Breakaway as an "investment" that would permit Breakaway to pay lower insurance premiums as well as save and recoup money by receiving premium rebates if there was an underwriting profit. A true copy of the 2009 RPA is annexed hereto as **Exhibit B.**

55. As set forth in the July 2009 Plan Analysis, the premium quote estimated, for a three-year period, a "Projected 3-year Plan Maximum Cost" of $403,161 and a "Projected 3-year Plan Minimum Cost" of $105,442 (or $134,387 annual maximum and $35,147 annual minimum). Attached hereto as **Exhibit C** is a true copy of a July 1, 2009 Applied Underwriters

Premier Exclusive "Plan Analysis" issued to Breakaway. Attached hereto as **Exhibit D** is a true copy of a Plan Analysis issued to Breakaway for January 2012 to April 2012.

56. Upon information and belief, Berkshire Hathaway Group knew or should have known that these maximums and minimums were vastly understated and fraudulently used these low figures to lure Breakaway into executing the RPA with the intention of charging a much higher rate that could not be determined by Breakaway based upon the documents it was provided by Defendants.

c. The Berkshire Hathaway Group's Reinsurance Scheme Is Declared To Be Illegal

57. On June 20, 2016, the Insurance Commissioner of the State of California affirmed a decision in *Shasta Linen Supply, Inc. v. California Insurance Company* File AHB-WCA-14-13 concluding that Berkshire Hathaway Group's RPA is an illegal scheme designed to avoid state regulators and directing Applied to return funds to plaintiff Shasta Linen Supply, Inc. A copy of this decision is annexed hereto as **Exhibit E.**

58. Perhaps even more alarming than the California Department of Insurance's *Shasta* decision, a 2013 Iowa Insurance Examiner's report of AUCRA appears to indicate that AUCRA is not putting *any* client insurance premiums into "protected cells". Instead, AUCRA pays one of its affiliates an excessive and highly dubious "reinsurance" fee in excess of $120,000,000 for 2013 alone. Attached hereto as **Exhibit F** is a true and correct copy of the 2013 Iowa Insurance Examiner's Examination Report of Applied Underwriters Captive Risk Assurance Company, Inc. As set forth therein, AUCRA commenced operations in Iowa on 2011 and the 2013 Examination Report is the first report issued concerning AUCRA.

59. The 2013 Iowa report suggests that the Hawaii captive CGI gets the funds through a collusive "excess loss agreement" that siphons off the very funds that Breakaway was induced

to believe would be returned as "profit" to Breakaway.

60. Upon information and belief, in this way CGI "sweeps" all monies left in AUCRA (which should rightfully have been held in Breakaway's "protected cell") out of CGI and upon information and belief pays such monies to the shareholders of Berkshire Hathaway

d. The Berkshire Hathaway Group's Illegal Actions Harm Breakaway

61. Following execution of the RPA, workers' compensation policies were issued to Breakaway by Continental Indemnity Company between 2009 and 2013. A true copy of the 2010-2011 policy is attached hereto as **Exhibit G.** A true copy of the 2011-2012 policy is attached hereto as **Exhibit H.** A true copy of the 2012-2013 policy is attached hereto as **Exhibit I.** A true copy of the 2013-2014 policy is attached hereto as **Exhibit J.**

62. Applied billed Breakaway, and Breakaway paid workers' compensation premiums in the amount of $863,048.74 during the Policy Period.

63. As explained below, the RPA's terms were so obscure as to be unintelligible and AUCRA has interpreted the RPA's in such a manner to shift unlimited liability back onto Breakaway while retaining the funds that Breakaway believed were deposited in a protected cell as an investment. In sum, Breakaway never received the workers' compensation it sought but instead purchased an alleged investment vehicle in the form of reinsurance that reflects all risk and unlimited liability back on to the insured. Moreover, Breakaway paid more in premiums than authorized by law.

64. It is illegal to sell reinsurance to a non-insurer in New York. Despite this, defendant AUCRA—by an illegal reinsurance scheme—impermissibly sells and delivers RPAs within New York that purport to amend the terms of publicly filed and facially valid workers' compensation employment insurance policies to non-insurers, such as Breakaway.

65. At all times, AUCRA represented, and Breakaway reasonably believed that it was paying premiums for workers' compensation insurance.

66. For example, on April 16, 2012, AUCRA demanded, and Breakaway executed a promissory note to AUCRA in the amount of $110,348.40 for amounts due under the RPA. A true copy of the promissory note is annexed hereto as **Exhibit K**.

67. The promissory note states as follows at paragraph 7:

> Cancellation of Workers' Compensation Policy. Maker acknowledges that the amount due under this Note represents unpaid workers' compensation premium. As a result, in the Event of a Default under Paragraph 4(a), Holder may cause any workers' compensation policy issued to Maker to be cancelled in accordance with the insurance laws of the state in which the Maker's principal place of business is located. (**Ex. K** emphasis supplied)

68. As set forth in the Request to Bind Coverage and Services, issuance of the workers' compensation insurance policy from an affiliate of Berkshire Hathaway Group is contingent upon the applicant's execution of a RPA issued by AUCRA. (*See* **Exhibit A**).

69. Breakaway executed an RPA effective as of July 1, 2009. The RPA is also executed by:

> APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., SOLELY FOR AND ON BEHALF OF PROTECTED CELL NO. 816280

(*See* **Exhibit B**).

70. Thus, AUCRA never executed the RPA.

71. Thereafter, AUCRA caused Continental to issue workers' compensation insurance policies to Breakaway for the years 2009-2012 (the "Policies").

72. During the Policy Period, July 1, 2009 to November 6, 2013, Breakaway paid $863,048.74 to Berkshire Hathaway Group for workers compensation premiums.

73. Upon information and belief, Breakaway paid far more in workers' compensation premiums than permitted by New York law.

74. The Premier Exclusive Policies expired on June 30, 2012.

75. In or about early June of 2012, Lloyd Ferenc of Applied Underwriters offered Breakaway two renewal options: a yearly renewal of the existing plan or a three-year renewal called "Solution One."

76. The Solution One option required Breakaway to use Berkshire Hathaway Group's payroll management service as a condition for Applied extending a discount on workers' compensation policy premiums and guaranteeing three years of workers' compensation policy renewals.

77. In New York, requiring an insured to purchase payroll management services in exchange for discounted workers' compensation insurance is illegal and also constitutes "tying" in violation of New York's antitrust laws.

78. Following the expiration of the Premier Exclusive Policies, Breakaway purchased Solution One for a three year period.

79. As a condition of receiving workers' compensation policies under the Solution One plan, however, Breakaway was required to execute another RPA in 2012. The RPA is also signed by:

> APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., SOLELY FOR AND ON BEHALF OF PROTECTED CELL NO. 816280

A true copy of the 2012 RPA is annexed hereto as **Exhibit L.**

80. Continental issued workers compensation policies under Solution One plan for the years 2012-2014 (the "Solution One Policies").

81. The 2012 RPA was executed as of July 1, 2012 with AUCRA BVI.

82. According to a report of the California Department of Insurance, AUCRA BVI ceased to exist on December 9, 2011.

83. Thus, Breakaway signed an agreement with a non-existent entity, rendering the RPA illegal, void and unenforceable as against Breakaway.

84. Breakaway was informed by Ferenc that the maximum rate to be charged as premium would be 11.89%. However, Breakaway was charged premium rates in excess of that amount as high as 17.385%.

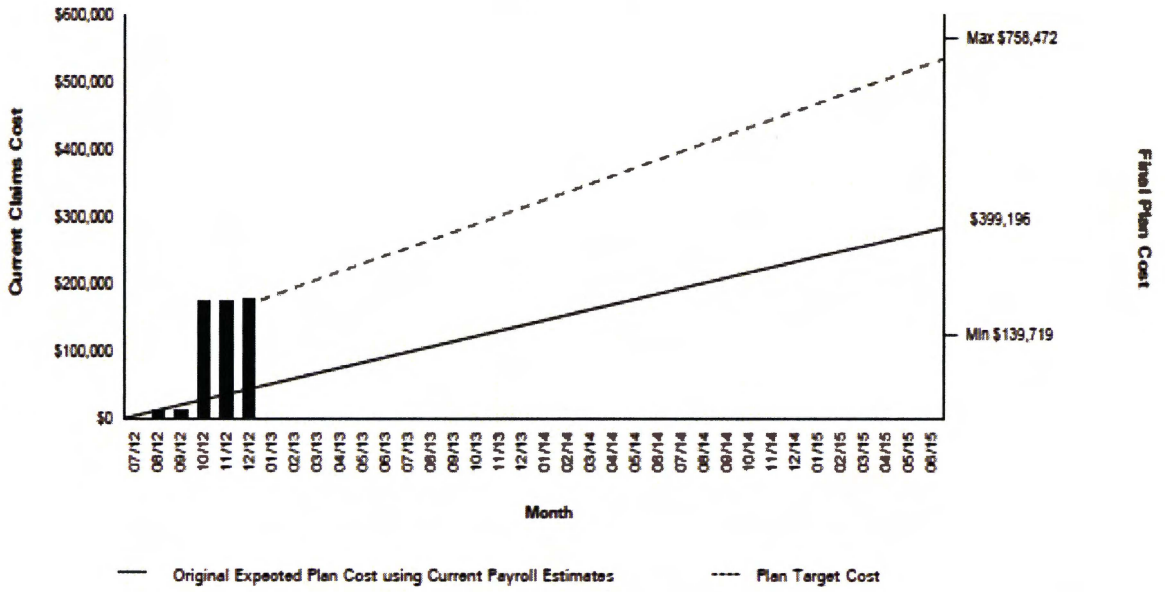
85. As shown in the chart below, Applied's projections of the cost of the plan

APPLIED UNDERWRITERS

Page 2 of 10
Account No. 816280
Plan Term 07/01/12 to 06/30/15
For the Period 01/01/13 to 01/31/13

Plan Overview

Plan Target Cost



You can reasonably aim for your Plan Target Cost if you continue to work to provide a safe working environment and cooperate with us in closing your claims quickly and cost effectively.

skyrocketed in early 2013 from a max of $399,196 for the entire three years to a max of $756,472.

86. Applied claims that it utilizes loss pick containment factors ("LPCF") when a claim is made against a policy in order to calculate reserves to be charged to the insured.

87. These LPCFs are nowhere defined or limited in the Premier Exclusive documents.

88. Upon information and belief, Applied LPCFs are completely arbitrary and not reasonably related to the value of a given claim.

89. Upon information and belief, Applied willfully fails to disclose its basis for calculating LPCFs to extract higher payments from its clients.

90. Thus, the "max" and "min" depicted in the above chart are completely arbitrary and self-serving fictions invented by Applied to enrich itself.

91. Upon information and belief, Applied manipulates LPCFs to artificially inflate premiums based on small claims and losses. In doing so, Berkshire Hathaway Group caused injury to Breakaway and others similarly situated who cannot operate their businesses legally without maintaining workers' compensation policies or risk suffering other damage (e.g. false credit reports) should they not comply with Berkshire Hathaway Group's unfounded demands for inflated premiums.

92. By applying fictional and self-serving LPCFs, Berkshire Hathaway Group enriches itself by rampantly overcharging its clients, including Breakaway.

93. During the first nine (9) months following its entry into the Solution One plan, Breakaway was charged $163,410 in premium even though Breakaway had previously been informed that the maximum premium that could be charged was $104,750. This represents an

overcharge of $58,660.

94. Upon information, despite representations to the contrary in sales materials presented to Breakaway prior to Breakaway executing the RPA, there is no actual fixed maximum premium under the Solution One plan because every time a claim is made, the premium amount, according to Berkshire Hathaway Group's apparent practice, can go up in excess of Breakaway's actual liabilities in the case of a worker being injured in New York State.

95. Breakaway repeatedly sought clarification from Applied concerning the increase in its premium charges. However, Applied was unable to provide a reasonable explanation as to why Breakaway's premium charges exceeded the amount stated in the Plan Analysis' and other documents.

96. Nor, despite repeated demands, has Berkshire Hathaway Group ever accounted for monies paid into the "protected cell" or provided an explanation of its fees.

97. As set forth above, New York law requires that fees and commissions be disclosed to purchasers of insurance upon request.

98. As set forth above, under New York law, reinsurance agreements (or "treaties") are lawful only between insurance companies.

99. At no time did Defendants inform Breakaway that it was illegal for Breakaway to purchase reinsurance.

100. At no time did Defendants inform Breakaway that AUCRA is not licensed to issue insurance or reinsurance in the State of New York.

101. At no time did Defendants inform Breakaway that New York Insurance Law prohibits charging insured parties insurance rates based on forms not approved by NYCIRB.

102. At no time did Defendants inform Breakaway that New York Insurance Law § 2314 prohibits charging insured rates that are not authorized.

103. Upon information and belief, neither the Request to Bind Services nor RPAs have been approved by or filed with New York State.

104. Upon information and belief, the Request to Bind Services and RPAs are not filed in order for Berkshire Hathaway Group to avoid regulation by DFS and New York State generally.

105. Accordingly, because the Request to Bind Services and the RPAs have not been filed with New York State they are illegal, void and unenforceable.

106. The Request to Bind Services and the RPAs are illegal and void because they purport to increase the rates charged to Breakaway and to unlawfully transfer all financial risk from worker injuries back to Breakaway in violation of law and public policy.

107. As a matter of law, "insurance" requires the transfer of risk.

108. Because Defendants do not assume any risk of loss in connection with the "reinsurance" scheme, they have not provided insurance to Breakaway despite collecting hundred of thousands of dollars in alleged premium.

109. At all times, Breakaway believed that it was purchasing "insurance" to reduce risk in the event of a worker's injury.

110. Breakaway is not an insurance company.

111. Defendants purport to have sold reinsurance to Breakaway.

112. Upon information and belief, Continental workers' compensation insurance policies were issued to Breakaway between November of 2009 and December of 2013 and, upon

information and belief, such policies are still facially-valid and in full force and effect.

113. However, Applied Underwriters Inc. and AUCRA were not licensed or authorized to sell reinsurance and thus any attempts—as the RPA does—to alter the facially valid Continental terms and rates are illegal, void and unenforceable.

114. The RPAs described above are therefore null, void, illegal and unenforceable.

115. On June 10, 2015, The Workers' Comp Executive reported that Applied's rates filed with the California Insurance Department were completely unrelated to the rates AUCRA charged insureds under its RPA (the "WCE Article"). A true copy of the WCE Article is annexed as **Exhibit M.**

116. The WCE article describes how Patrick Watson, Applied's sales manager who worked with AUCRA for over a decade "testified under oath that he has never participated in and has never heard of anyone else who has been involved in the return of premium or deposits to a client." (WCE article at 9).

117. Accordingly, in addition to the Request to Bind and the RPA's being illegal under New York law, Watson's testimony provides direct evidence that Berkshire Hathaway Group sold Breakaway the RPA knowingly intending to defraud Breakaway.

118. Breakaway has suffered and continues to suffer actual damages caused by the Berkshire Hathaway Group's illegal conduct as set forth above. Among other damages suffered, Berkshire Hathaway Group's conduct has (i) harmed Breakaway's ability to access credit, specifically, causing Citibank to end its credit relationship with Breakaway (ii) increasing the price and making less favorable the terms on which Breakaway has actually accessed credit, including forcing Breakaway to take out a Small Business Administration loan at an additional cost of $100,000 in expenses; (iii) providing inferior payroll management services requiring

Breakaway to allocate staff to correct constant errors by hand and to spend an inordinate amount of time on administrative issues resulting in both expenses and an actual loss of business and potential business; (iv) placed Breakaway at risk of substantial risk of suffering losses from future claims requiring it to expend additional amounts on insurance and other costs; (v) negatively impacted the overall business market value of Breakaway.

119. In light of the foregoing, Breakaway is entitled to compensatory damages, lost profits, disgorgement of fees, consequential damages, special damages and any other damages as may be available under statutory or common law together with an award of interest, costs and fees including reasonable attorneys' fees.

CAUSES OF ACTION

COUNT I

AGAINST BERKSHIRE HATHAWAY GROUP

FRAUD AND VIOLATIONS OF NEW YORK INSURANCE LAW (REGULATING WORKERS COMPENSATION INSURANCE RATES AND ANTIREBATING PROVISIONS) WARRANTING A DECLARATION THAT THE CONTRACT IS ILLEGAL AND VOID

120. Plaintiffs re-allege the foregoing paragraphs as if fully stated herein.

121. CPLR 3001 authorizes the Court to issue a declaratory judgment in connection with a justiciable controversy.

122. A justiciable controversy exists regarding the insurance products provided by Berkshire Hathaway Group.

123. New York Insurance Law Chapter 23 and regulations promulgated by the New York Compensation Insurance Board require that rates charged for Workers' Compensation

insurance policies be filed with and approved by the New York State Department of Insurance. New York Insurance Law §2347; http://go.nycirb.org/dl/manwcel/wcel_main.cfm (manual containing NYCIRB rules and procedures for filing forms and rates and penalties for failure to do so).

124. The RPAs purport to charge rates to Breakaway in amounts in excess of the rates approved by New York State Department of Insurance.

125. Under New York law, insurance agreements that purport to vary workers' compensation rates are illegal and void. *Public Service Mutual Insurance Co. v. Rosebon Realty Co.,* 39 Misc.2d 663, 664, 241 N.Y.S.2d 555, 557 (Civ. Ct. N.Y. Co. 1963) ("insurers are forbidden to charge or receive rates which deviate from those filed with the Superintendent. The filed rates thus have the force of law and any agreement changing or varying such rates would be invalid."); *American Motorists Insurance Co. v. New York Seven-Up Bottling Co.,* 18 A.D.2d 36, 238 N.Y.S.2d 80 (1st Dep't 1963) (where insurance premium rates were properly filed, insurer cannot deviate from those rates); *Stephen Peabody, Jr. & Co., Inc. v. Travelers Insurance Co.,* 240 N.Y. 511, 148 N.E. 661 (1925) (holding that rates for workers' compensation premiums must be fixed by the Superintendent of Insurance and finding it "impossible for the [insurer] to fix a rate ... which did not have the approval of the State authorities.").

126. Because the RPAs purport to deviate from the rates approved by New York State and transfer risk of loss for injured worker claims back to Breakaway, the RPAs violate numerous provisions of the New York Insurance Law, are illegal, null, void and unenforceable.

127. Accordingly, Plaintiff prays for a declaration that the RPAs violate the New York State Insurance Law, are illegal, against public policy and are therefore void pursuant to CPLR 3001 as well as an order directing that Berkshire Hathaway Group return all premiums paid by

Breakaway, to wit an amount of no less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74), together with a disgorgement of all profits and damages, together with punitive damages, in an amount to be determined by a jury

COUNT II

AGAINST BERKSHIRE HATHAWAY GROUP

VIOLATIONS OF NEW YORK INSURANCE LAW §2324
(FRAUD BASED ON ILLEGAL REBATING)

128. Plaintiffs re-allege the foregoing paragraphs as if fully stated herein.

129. CPLR 3001 authorizes the Court to issue a declaratory judgment in connection with a justiciable controversy.

130. A justiciable controversy exists regarding the insurance and investment products provided by Berkshire Hathaway Group.

131. New York Insurance Law §2324 forbids rebating.

132. In offering a "Profit Sharing Plan" that offers to permit Breakaway to "participate in underwriting proceeds," Berkshire Hathaway Group committed a fraud on Breakaway in two respects. *First*, Berkshire Hathaway Group never informed Breakaway that its scheme was illegal because New York forbids rebating of insurance premiums to customers of insurance. *Second*, the scheme is not a profit-sharing plan.

133. The RPAs purport to promise to Breakaway rebates and cost savings in variance of the amounts of the policies in amounts in excess of the rates approved by New York State Department of Insurance.

134. Accordingly, the RPAs violate New York's anti-rebating provisions expressed in N.Y. Ins. Law §2324. Under New York law, insurance agreements that purport to vary Workers'

Compensation rates are illegal and void.

135. Because the RPAs purport to deviate from the rates approved by New York State and transfer risk of loss for injured worker claims back to Breakaway, the RPAs violate the New York Insurance Law, are illegal, null, void and unenforceable.

136. Accordingly, Plaintiff prays for a declaration that the RPAs violate the New York State Insurance Law, are illegal, against public policy and are therefore void pursuant to CPLR 3001 as well as an order, as authorized by N.Y. Ins. Law 4226 directing that Berkshire Hathaway Group return all premiums paid by Breakaway, to wit an amount of no less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74) together with interest and attorneys fees, together with a disgorgement of all profits and damages in an amount, together with punitive damages, to be determined by a jury.

COUNT III

AGAINST BERKSHIRE HATHAWAY GROUP

VIOLATIONS OF NEW YORK INSURANCE LAW CHAPTER 23 (REGULATING WORKERS COMPENSATION INSURANCE RATES) WARRANTING DECLARATORY AND MONETARY RELIEF FOR ILLEGALITY OF UNAUTHORIZED REINSURANCE POLICIES

137. Plaintiffs re-allege the foregoing paragraphs as if fully stated herein.

138. New York State permits insurance companies to enter into reinsurance contracts with each other.

139. New York State forbids non-insurance companies or individual residents of New York State to enter into reinsurance agreements.

140. The RPAs purport to describe a "reinsurance" between Breakaway, a non-insurer, on the one hand, and AUCRA, an insurance company, on the other hand.

141. Because reinsurance contracts between a non-insurance company such as Breakaway and an insurance company like Applied, specifically AUCRA, are forbidden by New York law, the RPAs are illegal, void and unenforceable and against public policy.

142. Accordingly, Plaintiff prays for a declaration that the RPAs violate the New York State Insurance Law, are illegal, and against public policy and are therefore void, that the Premier Exclusive Policies and Solution One Policies remain effective pursuant to CPLR 3001, as well as an order directing that Berkshire Hathaway Group return all premiums paid by Breakaway, to wit an amount of no less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74) together with interest and attorneys fees,, together with a disgorgement of all profits and damages in an amount, together with punitive damages, to be determined by a jury.

COUNT IV

AGAINST BERKSHIRE HATHAWAY GROUP (IN THE ALTERNATIVE)

RESCISSION OF REINSURANCE PARTICIAPTION AGREEEMENTS AND/OR RESCISSORY DAMAGES AND/OR REFORMATION

143. Breakaway re-alleges the foregoing paragraphs as if fully stated herein.

144. Berkshire Hathaway Group made knowing misrepresentations of fact concerning the alleged workers' compensation insurance it was providing to Breakaway and fraudulently induced Breakaway to enter into the relevant contracts. Specifically, the reinsurance was in fact prohibited by law.

145. Berkshire Hathaway Group made the foregoing misrepresentations with the intent to deceive, to defraud and to profit from Breakaway. In short, Berkshire Hathaway Group improperly transferred all risk back to Breakaway thus failing to provide any consideration to

Breakaway thus defeating the entire purpose of the RPAs.

146. Accordingly, to the extent declaratory, monetary and/or injunctive relief is not available, the Court should rescind the RPAs and order rescissory damages in an amount of no less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74)) and/or reform the RPAs so as to make them lawful, together with a disgorgement of all profits and damages in an amount, together with punitive damages, to be determined by a jury.

COUNT V

AGAINST BERKSHIRE HATHAWAY GROUP

FRAUDULENT BUSINESS PRACTICES UNDER GEN. BUS LAW § 349

147. Breakaway re-alleges the foregoing paragraphs as if fully stated herein.

148. Section 349 of the New York General Business Law provides that "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

149. Subsection (h) of Section 349 of the General Business Law provides Plaintiffs with a private right of action.

150. Upon information and belief, Breakaway is not a licensed reinsurance intermediary.

151. Upon information and belief, Berkshire Hathaway Group is not a licensed reinsurer.

152. Berkshire Hathaway Group engages in business, trade, commerce and the furnishing of services in New York.

153. Berkshire Hathaway Group engages in such conduct even though it is, as explained above, not licensed to do so in certain cases and has failed, willfully, to comply with the New York Insurance State Law.

154. Berkshire Hathaway Group made false and deceptive representations including but not limited to the fact that it was providing legal workers' compensation to Breakaway.

155. Berkshire Hathaway Group never informed Breakaway that unauthorized producers were delivering insurance products to it in New York.

156. As set forth above, the RPAs are illegal and void and Berkshire Hathaway Group's related conduct in New York is in violation of Gen. Bus Law § 349.

157. Breakaway reasonably relied on the false and misleading representations to its detriment.

158. Accordingly, Plaintiffs are entitled to damages in an amount of no less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74)), treble damages up to $1000 and reasonable attorneys' fees per Gen. Bus Law § 349(h).

COUNT VI

AGAINST BERKSHIRE HATHAWAY GROUP

COMMON LAW FRAUD (WITH PARTICULARIZED ALLEGATION PURSUANT TO CPLR 3016)

159. Breakaway re-alleges the foregoing paragraphs as if fully stated herein.

160. A New York common law fraud claim is defined as "a representation of fact, which is untrue and either known by defendant to be untrue or recklessly made, which is offered to deceive and to induce the other party to act upon it, and which causes injury."

161. Upon information and belief, Breakaway is one of the largest distributors of

Berkshire Hathaway Group products in New York.

162. Berkshire Hathaway Group engages in efforts to market and sell Applied products.

163. Under New York law, where a person without authority to act as a reinsurance intermediary brokers such a policy by misrepresenting his authority solely to gain commissions, this is a fraud and the appropriate measure of damages is the full amount of premiums paid. *Anglo-Iberia Underwriting Management Co. v. Lodderhose,* 282 F.Supp.2d 126 (2003).

164. New York Insurance Law §2102 requires reinsurance intermediaries to be licensed.

165. Upon information and belief, Breakaway is not a licensed reinsurance intermediary.

166. Upon information and belief, Berkshire Hathaway Group is not a licensed reinsurer.

167. The RPA was presented by Defendants as a "profit-sharing plan" and legitimate workers' compensation insurance product.

168. Based on the representations of Defendants, Breakaway reasonably believed that it was purchasing workers compensation insurance that would protect against losses, yet permit for repayments if it experienced low claims.

169. A reading of the RPAs as explained more fully above, however, reveals that this "profit-sharing" scheme had no element of insurance, including impossible to understand terms as well as undisclosed or misrepresented factors and fees. Indeed, rather than receiving insurance as it requested, Breakaway actually was signing on to a reverse Ponzi scheme that

exposed it to unlimited losses in a manner guaranteed to dramatically increase the cost of any claim.

170. Because the scheme contained no element of risk transfer to an insurer, the scheme was both a fraud on Breakaway, which thought it had insurance, and on the citizens of New York State whose workers were exposed to catastrophic losses limited to the creditworthiness of Breakaway itself.

171. Because Berkshire Hathaway Group knew that the scheme was a fraud and because Breakaway knew or should have known that the scheme was a fraud, Plaintiff is entitled to a disgorgement of all premiums paid, together with prejudgment interest and punitive damages in an amount to be determined at trial but in no event less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74) , together with a disgorgement of all profits and damages in an amount, together with punitive damages, to be determined by a jury.

COUNT VII

AGAINST BERKSHIRE HATHAWAY GROUP

NEGLIGENT MISREPRESENTATION

172. Breakaway re-alleges the foregoing paragraphs as if fully stated herein.

173. Under New York law, the elements for a negligent misrepresentation claim are that (1) the defendant had a duty, as a result of a special relationship, to give correct information; (2) the defendant made a false representation that he or she should have known was incorrect; (3) the information supplied in the representation was known by the defendant to be desired by the plaintiff for a serious purpose; (4) the plaintiff intended to rely and act upon it; and (5) the

plaintiff reasonably relied on it to his or her detriment.

174. As set forth above, Breakaway requested a workers' compensation insurance policy based on its anticipated needs.

175. Breakaway sought, and received, Berkshire Hathaway Group's advice in determining the correct insurance policy based on its payroll, its loss history, and the type of activities that it engaged in.

176. Rather than selling an insurance product, Berkshire Hathaway Group assured Breakaway that the purported "profit-sharing" scheme would fit.

177. Berkshire Hathaway's tremendous profits were illegal and should be disgorged.

178. Because the RPA scheme effectively exposes Breakaway to unlimited risk from worker injuries and because Berkshire Hathaway Group held itself out as having special expertise in recommending Applied products to Breakaway, Berkshire Hathaway Group is liable to Breakaway for the full amount of premiums paid, together with disgorgement of any profits.

179. Based on the foregoing, Breakaway is entitled to a disgorgement of all premiums paid, together with prejudgment interest and punitive damages in an amount to be determined at trial.

180. Breakaway is therefore entitled to actual and punitive damages in an amount to be determined at trial but in no event less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74), together with a disgorgement of all profits and damages in an amount, together with punitive damages, to be determined by a jury.

COUNT VIII

AGAINST BERKSHIRE HATHAWAY GROUP

BREACH OF FIDUCIARY DUTY/DUTY OF TRUST
(NEGLIGENT MISREPRESENTATION)

181. Plaintiffs re-allege the foregoing paragraphs as if fully stated herein.

182. Berkshire Hathaway Group advised Breakaway that monies paid to Applied would be placed into a "protected cell".

183. Berkshire Hathaway Group advised Breakaway that by entrusting its payroll and workers' compensation planning to Applied, the Premier Exclusive products would reduce Breakaway's risk and administrative costs.

184. Applied represented that its products were appropriate for small and medium businesses to manage risk.

185. Applied represented that its products were an "investment" that would result in "profit sharing".

186. Breakaway entrusted Applied with its premiums under circumstances giving rise to a confidential duty and a duty to speak with care. *Kimmel v. Schaefer*, 89 N.Y.2d 257 (1996).

187. Berkshire Hathaway Group knew or should have known that the Applied products passed the risk of catastrophic loss to Breakaway, would likely result in Breakaway paying excessive premiums for workers' compensation insurance and, given the structure of the Applied plan, had little to no chance of returning any profit.

188. Berkshire Hathaway Group knew or should have known that Applied would apply excessive fees, charges and "reinsurance" fees to Breakaway's premiums, thus eliminating the possibility that Breakaway would receive any profits.

189. Based on the foregoing, Breakaway is entitled to a return of principal, together with together with interest and attorneys fees, together with a disgorgement of all profits and

damages in an amount, together with punitive damages, to be determined by a jury.

COUNT IX

AGAINST BERKSHIRE HATHAWAY GROUP

BREACH OF FIDUCIARY DUTY
(SELF-DEALING/COMMINGLING TRUST ASSETS)

190. Breakaway re-alleges the foregoing paragraphs as if fully stated herein.

191. Berkshire Hathaway Group advised Breakaway that monies paid to Berkshire Hathaway Group would be placed into a "protected cell".

192. Berkshire Hathaway Group advised Breakaway that by entrusting its payroll and workers' compensation planning to Applied, the Premier Exclusive products would reduce Breakaway's risk and administrative costs.

193. Applied represented that its products were appropriate for small and medium businesses to manage risk.

194. Applied represented that its products were an "investment" that would result in "profit sharing".

195. As described above, rather than work in good faith to generate profits that it would share with Breakaway, Berkshire Hathaway Group engaged in a series of illegal and self-dealing transactions that enriched Applied at Breakaway's expense and were never disclosed to Breakaway.

196. Based on the foregoing, Berkshire Hathaway Group should account for and disgorge its profits to Breakaway, together with damages in an amount, together with punitive damages, to be determined by a jury.

COUNT X

AGAINST BERKSHIRE HATHAWAY GROUP

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 340 (DONNELLY ACT – ILLEGAL RESTRAINT OF TRADE, TYING AND BOYCOTTING)

197. Plaintiffs re-allege the foregoing paragraphs as if fully stated herein.

198. The Berkshire Hathaway Group has market power in the reinsurance market relevant to the allegations herein.

199. As acknowledged in Berkshire Hathaway Group's 2013 annual report, BHG engages in the practice of "bundling" investment products (insurance and reinsurance) as described above.

200. This "bundling" practice is illegal and constitutes "tying" under the antitrust laws.

201. Tying is the practice of selling one product or service as a mandatory addition to the purchase of a different product or service.

202. A *tying sale* makes the sale of one good (the *tying good*) to the *de facto* customer (or *de jure* customer) conditional on the purchase of a second distinctive good (the *tied good*).

203. Tying agreements are unlawful restraints of trade violating the Donnelly Act, N.Y. G.B.L. § 340.

204. The Donnelly Act, N.Y.G.B.L. § 340(1) provides:

> Every contract, agreement, arrangement or combination whereby
> A monopoly in the conduct of any business, trade or commerce or in the furnishing of any service in this state, is or may be established or maintained, or whereby
> Competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained or whereby
> For the purpose of establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or

commerce or in the furnishing of any service in this state any business, trade or commerce or the furnishing of any service is or may be restrained, is hereby declared to be against public policy, illegal and void.

205. Insurance products and services are subject to The Donnelly Act, N.Y.G.B.L. §340(3) which provides: "the provisions of this article shall apply to licensed insurers, licensed insurance agents, licensed insurance brokers, licensed independent adjusters and other persons and organizations subject to the provisions of the insurance law, to the extent not regulated by provisions of article twenty-three of the insurance law...."

206. An insurance policy to cover claims resulting from injury to workers in New York desired by Breakaway is the tying product.

207. The RPA is the "tied" product.

208. As set forth above, Breakaway was coerced into purchasing the non-insurance product – the RPA – as a condition of the Berkshire Hathaway Group issuing a valid workers' compensation policy.

209. The RPA is a "debt instrument" not "insurance" because the RPA does not contain a "stop loss" component.

210. Breakaway was forced by Berkshire Hathaway Group to sign a coercive "Request to Bind Coverage" before Breakaway was permitted to see the RPA.

211. Breakaway was then forced by Berkshire Hathaway Group to sign the RPA which contained onerous and illegal terms before the workers compensation policy was issued.

212. As described more fully in *Shasta*, Berkshire Hathaway Group's coercive "boiler room" tactics were part of its tying scheme.

213. Berkshire Hathaway Group had sufficient economic power in the tying product

market to coerce purchaser acceptance.

214. According to the most recent report of the Insurance Information Institute, the 2014 net premiums written by U.S. property and casualty reinsurers was $50,012,241,000 (just over fifty billion dollars). www.iii.org/fact-statistic/reinsurance (last accessed 9/7/16).

215. In the same report, the "2014 Top 10 U.S. Property/Casualty Reinsurers of U.S. Business By Premium Written" lists National Indemnity Company (Berkshire Hathaway) as number one with $26,447,145,000 (just over twenty-six billion dollars). www.iii.org/fact-statistic/reinsurance (last accessed 9/7/16).

216. Upon information and belief, Berkshire Hathaway Group is the largest direct writer of workers' compensation insurance in the United States.

217. Upon information and belief, Berkshire Hathaway Group is the largest primary writer of high hazard workers' compensation policies in New York State, achieving levels of 30% or more in certain categories.

218. According to a 2015 industry report, Berkshire Hathaway Group workers' compensation net written premium grew by 408.5% since 2009.

219. Berkshire Hathaway Group's coercive tying scheme had an anticompetitive effect on Breakaway, on injured workers in New York and on taxpayers.

220. By coercing New York businesses into signing the RPA through a threatened boycott, Berkshire Hathaway Group swindled consumers into agreeing to 70% profit margins for Berkshire Hathaway Group of each premium dollar, where New York's actuarial experience

221. Under The Donnelly Act, New York General Business Law §340 et seq., Breakaway is entitled to treble damages in an amount to be determined, but not less than three

times the value at risk to which it has been exposed.

COUNT XI

AGAINST BERKSHIRE HATHAWAY GROUP

FALSE ADVERTISING AND DECEPTIVE TRADE PRACTICES UNDER INS. LAW §§ 1102(a), 2122(a) AND GENERAL BUSINESS LAW § 350 *et. seq.*

222. Plaintiffs re-allege the foregoing paragraphs as if fully stated herein.

223. The Berkshire Hathaway Group published advertising materials including descriptive literature that represented to customers in New York, including Breakaway, that they were purchasing legally required workers' compensation insurance from entities authorized to provide insurance in the State of New York.

224. The Berkshire Hathaway Group's advertising materials did not disclose material facts about the alleged workers' compensation insurance including, among other things, the facts that (i) unauthorized producers would provide insurance products in New York; (ii) that the receipt of any alleged workers' compensation policies were contingent upon execution of the unfiled and unlawful RPA; (iii) that no insurance was being provided because all risk of loss was being reflected back onto the alleged insured by scheme detailed above; (iv) that it is illegal to require or incentivize an insured to purchase an insurance product by, among other things, offering to rebate or refund premiums or provide unlawfully tied services such as the SolutionOne payroll services to the sale of insurance.

225. New York law prohibits false advertising. *See* Gen. Bus. Law § 350 *et. seq.*

226. Advertising for insurance products is strictly regulated by New York State. *See* Ins. Law § 2122.

227. Among other things, New York law the identity of the "actual insurer" must be

provided. 11 NYCRR § 215.13.

228. In light of the scheme detailed above, it is impossible for the Berkshire Hathaway Group to comply with this mandate because no actual insurance (i.e. risk of loss) is being provided.

229. The Berkshire Hathaway Group's conduct constitutes false advertising and unfair trade practices.

230. Therefore, Breakaway is entitled to damages and equitable relief together with an award of costs and fees including reasonable attorneys' fees, together with a disgorgement of all profits and damages in an amount, together with punitive damages, to be determined by a jury.

RESERVATION OF RIGHTS AND JURY DEMAND

231. Breakaway reserves the right to assert any additional claims as may become evident during discovery or otherwise.

232. Breakaway hereby rejects any pleading filed in this action that fails to comply with Ins. Law § 1213.

233. Breakaway demands a trial by jury on all claims so triable.

WHEREFORE, Breakaway prays for judgment as follows:

A. That the Court declare the Reinsurance Participation Agreements to be in violation of the Insurance Law, illegal, null, void and unenforceable;

B. That the Court declare the Continental policies to be lawful and in full effect;

C. That, pursuant to the authority cited herein, this Court issue a Judgment awarding Breakaway all premiums paid, together with prejudgment interest and punitive damages in an amount to be determined at trial but in no event less than eight hundred sixty-three thousand forty-eight dollars and seventy-four cents ($863,048.74)

D. That Breakaway be awarded damages for Applied Underwriters' intentional and/or fraudulent misrepresentation, negligent misrepresentation and violations of The Donnelly Act] in an amount to be determined at trial but in no event less than eighteen million dollars.

E. That Breakaway be awarded compensatory damages, lost profits, disgorgement of fees, consequential damages, special damages and any other damages as may be available under statutory or common law in an amount to be determined at trial.

F. That Breakaway be awarded treble, exemplary and/or punitive damages for the intentional, fraudulent, negligent and/or malicious conduct of Applied in an amount to be determined at trial;

G. For attorneys' fees, disbursements and costs incurred for this action as available by statute or otherwise; and

H. For any such other or further relief as the Court may deem just, proper and equitable.

DATED: New York, New York
September 9, 2016

DUNNINGTON BARTHOLOW & MILLER LLP
Attorneys for Plaintiff

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EXHIBIT A

REQUEST TO BIND COVERAGES & SERVICES

TO: Applied Underwriters
Attn: New Accounts Processing
P.O. Box 3646, Omaha, NE 68103
Fax: 877-234-4451

RE: Premier Exclusive Quote #217289-1, Proposed Effective Date 07/01/09

KEH

The applicant(s) identified below, whether one or more (collectively the "Applicant"), request that Applied Underwriters, Inc. through its affiliates and/or subsidiaries (collectively "Applied") pursuant to the Workers' Compensation Program Proposal & Rate Quotation (the "Proposal") cause to be issued to Applicant one or more workers' compensation insurance policies and such other insurance coverages identified in the Proposal (collectively the "Policies") subject to Applicant executing the following agreements (collectively the "Agreements"): (1) Reinsurance Participation Agreement; and where available, (2) Premium Finance Agreement.

1) Breakaway Courier Corporation

Applicant represents and warrants that: (1) individuals performing services for hire for Applicant are properly employed only by Applicant when performing such services for hire; (2) all individuals performing services for hire for Applicant will be paid only through payroll reported to Applied; and (3) Applicant, individually, either directly or indirectly, separately or on behalf of or in connection with any other person, persons, partnership, limited liability company, affiliate or subsidiary, as a director, officer, stockholder, partner, limited partner, member, has not submitted an application, or currently has an application pending with Applied or has obtained insurance coverage and/or services from Applied except as listed below on the date indicated. If none, state none.

NONE

Applicant acknowledges that under AL, AR, CO, DE, FL, GA, HI, IL, KY, MA, ME, MN, MT, NE, NH, NM, NY, OK, OR, PA, RI, SC, TX, and VT law, Applicant has the option to choose from various deductible amounts for its guaranteed cost workers' compensation policy, but that opting for a deductible precludes participation in the Profit Sharing Plan. Applicant being fully advised, knowingly waives and gives up its right to choose a deductible under applicable law as further consideration to participate in the Profit Sharing Plan.

The initial term of the Agreements will be for three (3) years, beginning on the Proposed Effective Date. Additional fees apply in the event of early cancellation. Applicant along with Applicant's insurance agent was offered for review a Workers' Compensation Program Summary and Scenarios worksheet (the "Summary") and was offered the opportunity to participate in a conference call with Applied's technical representatives to answer any questions about the Proposal and Summary. Applicant understands the Proposal and has had sufficient time to review all of the terms, conditions and stipulations regarding the Proposal with Applicant's advisers including Applicant's insurance agent. Any and all questions concerning the Proposal have been answered to Applicant's full satisfaction. Applicant accepts the Proposal including all of its terms, conditions and stipulations.

RK
Initial Here

Applicant understands that Applied engages in alternative dispute resolution of conflicts. Applicant further agrees that any claims, disputes and/or controversies between the parties involving the Proposal or any part thereof (including but not limited to the Agreements and Policies) shall be resolved by alternative dispute resolution and submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act in conformity with the Arbitration Act of the State of Nebraska. Arbitration shall be in accordance with JAMS by a single arbitrator, with the arbitration held in Omaha, Nebraska. Each party shall pay one-half of the cost of the arbitration, and the arbitrator is not authorized to award consequential or punitive damages.

This acknowledgment and disclosure is intended to confirm receipt of the Proposal and Applicant's acceptance of the Proposal along with certain additional terms and conditions. Only the Agreements and Policies contain the actual operative provisions. The rates charged to Applicant include one hundred dollars ($100.00) as specific consideration for this alternative dispute resolution process. The agreement to arbitrate, as set forth above, is enforceable independent of any other agreements and/or policies between Applied, its affiliates and the Applicant. Applicant represents and warrants that the individual executing this Request to Bind Coverages and Services has the requisite express authority and is duly authorized to execute this Request to Bind Coverages and Services, in addition to any and all other documents necessary to implement the Proposal. Applicant's representations and warranties set forth herein shall survive and are incorporated by reference into the Agreements and Policies.

The Applicant hereby executes this Request to Bind Coverages and Services.

By _____ Printed Name Robert Kotch

Title President Date 7-9-09

Ver. ppo_3052_3a

Please read this form carefully, and return as soon as possible by fax and mail to:

Applied Underwriters
P.O. Box 3646
Omaha, NE 68103
Fax: 877-234-4431

You have requested that worker's compensation coverage be in force effective 07/01/09 .

You are required to complete and return this form either because (1) you have requested that workers' compensation insurance coverage be in force retroactively, or (2) prior workers' compensation insurance coverage was not in force up to the requested effective date.

You understand and acknowledge that no coverage is currently in force. Workers' compensation coverage will only be in force once this form is received, and all other requirements have been met to our satisfaction. We reserve the right to rescind all workers' compensation coverage should you fail to initiate all services, including payroll processing, within 30 days of the effective date of workers' compensation insurance coverage.

Statement of No Known Losses

I certify that I am an officer or principal and authorized to bind:

Company Breakaway Courier Corporation

Address PO Box 780

New York, NY 10013

I hereby certify that no claims, losses, accidents, or circumstances that might give rise to a Workers' Compensation claim have occurred beginning with the effective date and time of coverage listed above and the date and time to which I have made this certification.

I further hereby state that there are no claims, losses, accidents, or circumstances that might give rise to a Workers' Compensation claim have occurred prior to the effective date and time of coverage listed above that were not otherwise reported and covered by an authorized workers' compensation insurance policy.

In the event a claim is made against us contrary to the preceding certification and which was known or should have been known by your company, you waive any right to submit that claim to us, and further indemnify and hold us harmless from any and all damages, costs or attorneys fees we may incur in connection with that claim.

Signature	Printed Name	Title	Date / Time
	ROBERT KOTCH	President	7-9-09 10:24 AM EDT

Witness Signature	Printed Name	Title	Date / Time

APPLIED UNDERWRITERS

EXHIBIT B

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT

This reinsurance participation agreement (this "Agreement") is made and entered into by and between Applied Underwriters Captive Risk Assurance Company, Inc., a company organized and existing under the laws of the British Virgin Islands ("Company") as of July 1, 2009 and
Breakaway Courier Corporation (collectively, "Participant").

Whereas, Participant is desirous of participating in the Company's segregated protected cell reinsurance program designated Segregated Account No. 816280 ("Participation"); and

Whereas, the Company has entered into a Reinsurance Treaty (hereinafter referred to as the "Treaty") with California Insurance Company (NAIC No. 0031-38865) and, through its pooling arrangement, with other affiliates of Applied Underwriters, Inc., including, but not limited to Continental Indemnity Company (NAIC No. 0031-28258) (collectively the "Issuing Insurers"); and

Whereas, the Participant desires the Company to establish a segregated protected cell whereby the Participant may share in the underwriting results of the Workers' Compensation policies of insurance issued for the benefit of the Participant by the Issuing Insurers (the "Policies"); and

Whereas the Company will allocate a portion of the premium and losses under this Agreement to the Participant's segregated protected cell,

Now, therefore, in consideration of the mutual promises and undertakings set forth herein the parties do hereby agree as follows:

1. Participant agrees to participate in the Company's segregated protected cell reinsurance program in accordance with Schedule 1 attached hereto and incorporated herein by reference.

2. Participant's interest in the Company is solely as a segregated protected "cell" with segregation of the Company's assets and liabilities among the segregated accounts (known as "cells") established by the Company. There is no "joint and several" liability. The cells of the Company are not liable for the debts and obligations and are not bound with respect to contracts entered into by another cell. Participant further acknowledges and agrees that Participant: (1) will look solely to the assets of Participant's cell for satisfaction of the Company's liabilities hereunder; (2) has consulted with legal counsel and other insurance advisers as to the applicability and effect of this Agreement; (3) irrevocably waives any right, substantive or procedural, which Participant may have to challenge the effectiveness and the Company's ability and right to segregate assets among the cells; and (4) covenants not to sue, attach, pursue or make any claim against or with respect to any asset, property or right of the Company which is not an asset, property or right of Participant's segregated protected cell.

3. Participant is participating in this Agreement for purposes of investment only. The Participation has not been registered under the United States Securities Act of 1933, as amended or any state securities laws. The Participation shall not be sold, transferred, hypothecated, pledged or otherwise assigned or encumbered and Participant acknowledges the following:

> "This Participation has not been registered under the Securities Act of 1933, as amended or qualified under any state securities law. This Participation has been acquired for investment and may not be sold, transferred, hypothecated, pledged or otherwise assigned or encumbered in the absence of registration or an exemption therefrom under such act and such laws."

4. This Agreement may not be modified, amended or supplemented in any manner except in writ-

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ing signed by the parties hereto and represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, proposals, letters of intent, correspondence and understandings relating to the subject matter hereof. The initial term of this Agreement (the "Active Term") is for three (3) years. All existing obligations from each party to the other or to third parties shall remain in force as of the expiration of the Active Term until this Agreement is terminated (the "Run-Off Term") as set forth in Schedule 1.

During the Active Term of this Agreement, Workers' Compensation Insurance coverage will be provided to Participant by one or more of the Issuing Insurers. If Participant elects to cancel this Agreement, or if any of the Policies are cancelled or non-renewed prior to the end of the Active Term ("Early Cancellation"), the Participant shall abide by the Early Cancellation terms set forth in Schedule 1.

If the Issuing Insurer is required to provide Workers' Compensation Insurance coverage on behalf of the Participant outside of the Active Term (the "Extension Period"), special extension terms ("Extension Terms") will apply during the Extension Period. The Extension Terms are: (1) Participant through their cell will be liable for all losses occurring during the Extension Period without limitation on any Policies issued by the Issuing Insurers on behalf of Participant; (2) the Company will allocate to Participant's cell an amount equal to 45% of premium earned during the Extension Period under any Policies issued by the Issuing Insurers on behalf of Participant; (3) Participant will immediately pay to the Company a cash deposit equal to 55% of the premium anticipated, as determined exclusively by the Company, during the Extension Period under any Policies issued by the Issuing Insurers on behalf of Participant; (4) Participant will maintain at all times a cash deposit with the Company sufficient to cover outstanding losses occurring during the Extension Period plus incurred but not reserved and/or reported losses (IBNR) as determined exclusively by the Company; and (5) Participant will immediately pay to the Company an Early Cancellation fee equal to 20% of the premium anticipated, as determined exclusively by the Company, during the Extension Period under Policies issued by the Issuing Insurers on behalf of Participant.

5. Participant acknowledges that under the laws of some states, Participant may have the option to choose from various deductible amounts as a part of its Policies, but that opting for a deductible would preclude Participant from entering into this Agreement. Applicant, being fully advised, knowingly waives and relinquishes its right to choose a deductible on the Policies under applicable law as further consideration for this Agreement.

6. Participant may not assign or transfer its rights under this Agreement to any third party without the written consent of the Company which consent may be withheld in the Company's absolute discretion.

7. The parties' obligations under this Agreement shall survive the Active Term of this Agreement, and shall be extinguished only when the Company no longer has any potential or actual liability to the Issuing Insurers with respect to the Policies reinsured by the Company under the Treaty.

8. Applied Risk Services, Inc. (Applied Risk Services of New York, Inc. in New York State) has been appointed the billing agent for the Company and the Issuing Insurers and is authorized by the Company, Issuing Insurers, and Participant to account for offset and true up any and all amounts due each of the parties. Participant will allow the Company to audit Participant's records on reasonable notice and during normal business hours that relate to the Policies. These records include, but are not limited to ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. Information developed by audit will be used to assign worker classifications, determine the compensability of payroll and claims, and determine final premium and cession amounts.

9. In the event the Participant is in default of any obligations to the Company under this Agreement or under any other agreement with any affiliate of the Company (Affiliated Agreements), the Company may take all reasonable steps to protect its and its affiliates' interests. The parties hereto shall have the right to the fullest extent provided by law to offset or recoup any balances due from one to the other under this Agreement or any Affiliated Agreements.

10. In consideration of the mutual benefits arising under this Agreement, Participant hereby grants to Company, effective from and after the date hereof, a lien and security interest in all assets of Participant's

cell to secure payment of any amounts owed by Participant under this Agreement. The provisions of this section shall create a security agreement under the Uniform Commercial Code (the "Code") so that Company shall have and may enforce a security interest on all of Participant's assets in Participant's cell. Participant agrees to execute as debtor any financing statement Company may reasonably request in order that Company's security interest be protected pursuant to the Code, or Company is authorized to file a copy of this Agreement for such purpose.

11. Participant hereby represents and warrants to the Company as follows:

(A) Participant (i) is duly organized, validly existing and in good standing under the laws of its domiciliary jurisdiction, (if a corporation, partnership, or limited liability company), and (ii) has adequate power and authority and full legal right to carry on the businesses in which it is presently engaged and presently proposes to engage.

(B) Participant has adequate power and authority and has full legal right (i) to enter into this Agreement and (ii) to perform all of its agreements and obligations under this Agreement.

(C) The execution and delivery by Participant of this Agreement and the performance by Participant of all of its undertakings and obligations under this Agreement, including any payments required to be made by Participant to the Company under this Agreement, have been duly and properly authorized by all necessary action on the part of Participant, and do not and will not (a) contravene any provision of the charter or by-laws of Participant (if a corporation, partnership or limited liability company) or other constitutional or governing documentation of Participant (each as in effect on the date hereof), (b) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, or (except as otherwise contemplated and required or permitted by this Agreement) result in the creation of any mortgage, lien, pledge, charge, security interest or other encumbrance upon any of the property of Participant under any agreement, trust deed, indenture, mortgage or other instrument to which Participant is a party or by which Participant or its respective property is bound or affected on the date hereof, (c) violate or contravene any provision of any law or published regulation or any published order, ruling or interpretation thereunder or any decree, order or judgment of any court or governmental or regulatory authority, bureau, agency or official (all as in effect on the date hereof and applicable to Participant), (d) require any waivers, consents or approvals by any of the creditors or trustees for creditors of record of Participant, or (e) require any consents or approvals by any Participant (except such as have been duly obtained and are in full force and effect on the date hereof).

(D) This Agreement, when executed and delivered, shall have been duly and properly executed and delivered by Participant.

(E) The agreements and obligations of Participant contained in this Agreement constitute legal, valid and binding obligations of Participant, enforceable against Participant in accordance with their terms.

(F) The information that has been and/or will be supplied to the Company by Participant or on Participant's behalf with respect to this Agreement is accurate and complete, and with respect to financial information, comports with generally accepted accounting principles.

12. Participant acknowledges that the Company has not made, and does not make, any oral, written or other representations, whether explicit, implied or otherwise, upon which Participant may rely concerning any possible tax benefits that may be derived from this Agreement. Participant further acknowledges that any tax liability resulting from this Agreement, including but not limited to any tax assessments or related examinations conducted by the Internal Revenue Service or other taxing authority, will be the sole responsibility of Participant.

13. Nothing in this section shall be deemed to amend or alter the due date of any obligation under this Agreement. Rather, this section is only intended to provide a mechanism for resolving accounting disputes in good faith.

(A) It is the express intention of the parties to resolve any disputes arising under this Agreement without resort to litigation in order to protect the confidentiality of their relationship and their respective businesses and affairs. Any dispute or controversy that is not resolved informally pursuant to sub-paragraph (B) of Paragraph 13 arising out of or related to this Agreement shall be fully determined in the British Virgin

Islands under the provisions of the American Arbitration Association.

(B) All disputes between the parties relating in any way to (1) the execution and delivery, construction or enforceability of this Agreement, (2) the management or operations of the Company, or (3) any other breach or claimed breach of this Agreement or the transactions contemplated herein shall be settled amicably by good faith discussion among all of the parties hereto, and, failing such amicable settlement, finally determined exclusively by binding arbitration in accordance with the procedures provided herein. The reference to this arbitration clause in any specific provision of this Agreement is for emphasis only, and is not intended to limit the scope, extent or intent of this arbitration clause, or to mean that any other provision of this Agreement shall not be fully subject to the terms of this arbitration clause. All disputes arising with respect to any provision of this Agreement shall be fully subject to the terms of this arbitration clause.

(C) Either party may initiate arbitration by serving written demand upon the other party or parties. The demand shall state in summary form the issues in dispute in a manner that reasonably may be expected to apprise the other party of the nature of the controversy and the particular damage or injury claimed. The party receiving the demand shall answer in writing within 30 days and include in such answer a summary of any additional issues known or believed to be in dispute by such party described in a manner that reasonably may be expected to apprise the other party of the nature of the controversy and the particular damage or injury claimed. Failure to answer will be construed as a denial of the issues in demand.

(D) The parties shall select a mutually acceptable arbitrator within 30 days of the demand for arbitration. If the parties are unable to agree on an arbitrator within the 30 days, then each party shall appoint an arbitrator within 30 days thereof. If a party fails to appoint its arbitrator within such 30 day period, the party shall thereby waive its right to do so, and the other party's selected arbitrator shall act as the sole arbitrator. All arbitrators shall be active or retired, disinterested officials of insurance or reinsurance companies not under the control or management of either party to this Agreement and will not have personal or financial interests in the result of the arbitration.

(E) If two party-appointed arbitrators have been selected, the selected arbitrators shall then choose an umpire within 30 days from the date thereof. If the two arbitrators are unable to agree upon an umpire within 30 days after the appointment of the party-appointed arbitrators, the two party-appointed arbitrators shall each exchange a list of three (3) umpire candidates. Within ten (10) days thereafter, each party-appointed arbitrator shall strike two names from the other's list. The umpire shall be selected from the remaining two names by the drawing of lots no later than ten (10) days thereafter.

(F) If more than one arbitrator shall be appointed, the arbitrators shall cooperate to avoid unnecessary expense and to accomplish the speedy, effective and fair disposition of the disputes at issue. The arbitrator or arbitrators shall have the authority to conduct conferences and hearings, hear arguments of the parties and take the testimony of witnesses. All witnesses will be made available for cross-examination by the parties. The arbitrators may order the parties to exchange information or make witnesses available to the opposing party prior to any arbitration hearing.

(G) The arbitrator or arbitrators shall render a written decision (by majority determination if more than one arbitrator) and award within 30 days of the close of the arbitration proceeding. Judgment upon the award rendered by the arbitrator or arbitrators may be entered by any court of competent jurisdiction in Nebraska or application may be made in such court for judicial acceptance of the award and an order of enforcement as the law of Nebraska may require or allow.

(H) The award of the arbitrator or arbitrators shall be binding and conclusive on the parties, and shall be kept confidential by the parties to the greatest extent possible. No disclosure of the award shall be made except as required by the law or as necessary or appropriate to effect the enforcement thereof.

(I) All arbitration proceedings shall be conducted in the English language in accordance with the rules of the American Arbitration Association and shall take place in Tortola, British Virgin Islands or at some other location agreed to by the parties.

(J) The arbitrator or arbitrators shall be advised of all the provisions of this arbitration clause.

(K) This arbitration clause shall survive the termination of this Agreement and be deemed to be an obligation of the parties which is independent of, and without regard to, the validity of this Agreement.

(L) Punitive damages will not be awarded. The arbitrator(s) may, however, in their discretion award such other costs and expenses as they deem appropriate, including, but not limited to, attorneys' fees, the costs of arbitration and arbitrators' fees.

(M) Participant acknowledges and agrees that it will benefit from this Agreement and that a breach of the covenants herein would cause Company irreparable damage that could not adequately be compensated by monetary compensation. Accordingly, it is understood and agreed that in the event of any such breach or threatened breach, Company may apply to a court of competent jurisdiction for, and shall be entitled to, injunctive relief from such court, without the requirement of posting a bond or proof of damages, designed to cure existing breaches and to prevent a future occurrence or threatened future occurrence of like breaches on the part of Participant. It is further understood and agreed that the remedies and recourses herein provided shall be in addition to, and not in lieu of any other remedy or recourse which is available to Company either at law or in equity in the absence of this Paragraph including without limitation the right to damages.

14. Participant hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of Nebraska for the purpose of enforcing any arbitration award rendered hereunder and all other purposes related to this Agreement, and agrees to accept service of process in any case instituted in Nebraska related to this Agreement and further agrees not to challenge venue in Nebraska provided such process is delivered in accordance with the applicable rules for service of process then in effect in Nebraska. To the extent necessary, this consent shall be construed as a limited waiver of sovereign immunity only with respect to this Agreement.

15. All notices, requests, demands or other communications to the Company provided for herein shall be in writing, shall be delivered by hand, by first-class mail, postage prepaid, or by any form of commercial overnight courier, and shall be addressed to the parties hereto at their respective addresses listed below or to such other persons or addresses as the relevant party shall designate as to itself from time to time in a writing delivered in like manner to Applied Underwriters Captive Risk Assurance Company, P.O. Box 3646, Omaha, NE 68103-0646 and to Participant at:

Breakaway Courier Corporation
PO Box 780
New York, NY 10013

Either party may designate a new address for notices by providing written notice to the other party as provided in this paragraph, or in the absence of such notification from Participant, at the address to which Participant's last billing statement was sent.

16. This Agreement shall be exclusively governed by and construed in accordance with the laws of Nebraska and any matter concerning this Agreement that is not subject to the dispute resolution provisions of Paragraph 13 hereof shall be resolved exclusively by the courts of Nebraska without reference to its conflict of laws.

17. All amounts referred to herein are expressed in United States Dollars and all payments shall be made in such dollars.

18. Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of the performance of such provision on any other instance. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver unless expressed in writing and signed by all parties.

19. Participation by Participant in this Agreement is subject to the prior written consent of the Company. Nothing in this Agreement, expressed or implied, is intended to confer upon any party, other than the parties hereto and their affiliates, successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

IN WITNESS WHEREOF, the parties have set their hand.

PARTICIPANT

By: _____

Name: ROBERT KOTCH

Title: President

Date: 7-9-09

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., SOLELY FOR AND ON BEHALF OF PROTECTED CELL NO. 816280

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT
SCHEDULE 1
EFFECTIVE DATE: JULY 1, 2009

This Schedule 1 applies as of the Effective Date to all payroll, premium, and losses occurring under the Policies notwithstanding any Extension Terms which may apply ("Effective Period"). For purposes of this Schedule 1, unless otherwise noted, capitalized terms shall have the meaning set forth in the Agreement.

1. Participant hereby subscribes to

Program No. 565, Enforce Coverage Group Preferred Program, ("Program 565").

All participants subscribing to Program 565 are collectively referred to as "Subscribing Participants." The losses occurring under the policies of the Subscribing Participants are pooled for purposes of all calculations in this Schedule 1.

2. Calculation of Premium and Loss Amounts.

(a) Policy Payroll is defined as compensable payroll occurring during the Effective Period under the Policies subject to all customary limitations and caps. The Loss Pick Containment Amount is defined as the amount equal to the product of Policy Payroll and the respective Loss Pick Containment Rates listed in Table C. These rates are per $100 of Policy Payroll and are fixed for the Effective Period. Changes in experience modifiers and other modification or differential factors of the Policies will not affect these rates. If Policy Payroll occurs under a classification not listed herein, the Company shall, in its sole discretion, determine a rate for that classification commensurate with the rates otherwise listed and with the filed and approved rates of the Issuing Insurers.

(b) The Program Loss Pick Containment Amount is defined as the sum over the Effective Period of the Loss Pick Containment Amounts for all of the Subscribing Participants calculated using the rates agreed to by each of the Subscribing Participants.

(c) The Company will calculate loss development factors ("LDF's") for each loss under the Policies of the Subscribing Participants directly from the loss development factors published by the government rating bureau in the state where the exposure occurred. LDF's are subject to change without notice. The LDF's in effect as of the date of this Schedule 1 are listed in Table A (a composite using Policy Payroll by state is shown). If during the Active Term the Participant: i) is processing payroll with an affiliate of the Company, the LDF's titled "Weekly" will be used; or ii) is not processing payroll with an affiliate of the Company, the LDF's titled "Monthly" will be used. Unless an agreement for renewal is offered by an affiliate of the Company and then accepted by the Participant within six (6) months of the end of the Active Term, the LDF's titled "Run-Off" will be used. In determining the age of a claim, the Company in its sole discretion will use either the date of occurrence or the date the claim was reported.

(d) Participant's Ultimate Loss is defined as aggregate incurred losses under the Policies multiplied by the applicable LDF. The Participant's Loss Ratio equals Participant's Ultimate Loss divided by the Loss Pick Containment Amount.

(e) Program Ultimate Loss is defined as aggregate losses incurred under the Policies of the Subscribing Participants during the Effective Period multiplied by the applicable LDF. The Program Loss Ratio equals Program Ultimate Loss divided by the Program Loss Pick Containment Amount.

(f) The Exposure Group Adjustment Factor is determined from Table B using the Program Loss Ratio with intermediate values to be interpolated. The Exposure Group Adjustment Factor Table has been determined using NCCI Expected Unlimited Loss Group 23 and is subject to change without notice if Policy Payroll for Program 565 varies from estimates made in preparing this Schedule 1 or if NCCI Table M is Revised.

3. Allocation of Premium and Losses.

An amount, equal to the premium earned under the Policies in excess of the Loss Pick Containment Amount multiplied by the applicable Exposure Group Adjustment Factor multiplied by the Allocation Factor listed in Table B, will be allocated to the Participant's cell. Fees for services charged by any affiliate of the Company are not considered premium under the Policies.

The Participant's share of the pooled losses ("Allocated Losses") shall equal the Loss Pick Containment Amount multiplied by the greater of (i) the Program Loss Ratio; or (ii) the Participant's Loss Ratio if it is greater than 0.65. The Participant, through its cell account, will be responsible for Allocated Losses in aggregate up to the Cumulative Aggregate Limit which equals 0.9600 multiplied by the Loss Pick Containment Amount.

4. Capital Deposits. Participant agrees to make and maintain a capital deposit in its cell equal to the Estimated Annual Loss Pick Containment Amount shown in Table C multiplied by 10% during year 1; 10% during year 2; or 10% thereafter. The Estimated Annual Loss Pick Containment Amount and the resulting capital deposit are subject to change in the Company's sole discretion if Policy Payroll varies from estimates made as of the Effective Date of this Schedule 1.

5. Additional Capital Deposits. Participant further agrees to make and maintain in its cell account an additional capital deposit equal to the lesser of Allocated Losses or the Cumulative Aggregate Limit. For the purposes of calculating the additional capital deposit, a Program Loss Ratio of no less than 65% will be used in year 1, 40% in year 2, and 30% thereafter. During the Run-Off Term, capital deposits will be calculated using the LDF's titled "Run-Off" at a schedule determined by the Company but no less frequently than annually beginning nine months after the expiration of all Policies.

6. Notwithstanding anything to the contrary in the Agreement, the Company may terminate the Agreement and liquidate the Participant's cell in its sole discretion if i) the Participant's maximum liability has been reached and three years have elapsed since the expiration of all of the Policies; or ii) the amount of paid losses allocated to the Participant's cell under the Policies has exceeded the Participant's maximum liability; or iii) seven years have elapsed since the expiration of all of the Policies; or iv) the Company deems itself insecure with respect to the Participant's ability or willingness to fulfill its obligations under the Agreement.

7. In the event of Early Cancellation whether by the Participant or by the Company (limited to non-pay or a material change in risk): (a) the Exposure Group Adjustment Factor will be multiplied by 1.25; (b) the Cumulative Aggregate Limit will be determined using Policy Payroll annualized to reflect the full term of the Agreement; and (c) the following amounts will be immediately due and payable to the Company: i) any remaining premium, including short rate penalties, due under the Policies; ii) a capital deposit equal to the Participant's cell's maximum liability; and iii) a Cancellation Fee equal to 8% of the Estimated Annual Loss Pick Containment Amount.

8. Beginning one year after the inception of Program 565, the Company may in its sole discretion transfer the Subscribing Participants to a similar program if at any time triple the current annualized Program Loss Pick Containment Amount does not meet the threshold defined for at least NCCI Expected Unlimited Loss Group 23.

9. In the event of any conflict between the Agreement and this Schedule 1, this Schedule 1 shall control.

PARTICIPANT

By: _____

Name: Robert Kotch

Title: President

Date: 7-9-09

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., SOLELY FOR AND ON BEHALF OF PROTECTED CELL NO. 816280

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT
SCHEDULE 1 TABLES
EFFECTIVE DATE: JULY 1, 2009

TABLE A
Loss Development Factors

Claim Age		Weekly		Monthly		Run-Off	
Month From	Month To	Open Claims	Closed Claims	Open Claims	Closed Claims	Open Claims	Closed Claims
00	06	3.306	1.232	3.372	1.257	5.527	1.201
07	09	3.280	1.151	3.346	1.175	5.527	1.201
10	12	3.264	1.101	3.329	1.123	5.527	1.201
13	15	3.247	1.084	3.312	1.106	4.904	1.111
16	18	3.231	1.078	3.295	1.099	4.904	1.111
19	21	3.112	1.069	3.174	1.090	4.904	1.111
22	24	2.952	1.055	3.011	1.076	4.904	1.111
25	27	2.804	1.046	2.860	1.067	4.033	1.064
28	30	2.667	1.044	2.720	1.065	4.033	1.064
31	33	2.580	1.040	2.632	1.060	4.033	1.064
34	36	2.517	1.032	2.567	1.053	4.033	1.064

TABLE B
Exposure Group Adjustment Factors

Loss Ratio	Adjustment Factor	Loss Ratio	Adjustment Factor
0.00	1.0000	1.00	0.9629
0.10	1.2836	1.10	0.9629
0.20	1.6326	1.20	0.9824
0.30	1.5158	1.30	0.9824
0.40	1.3793	1.40	0.9824
0.50	1.2038	1.50	0.9824
0.60	1.0672	1.60	0.9824
0.70	0.9696	1.70	0.9824
0.80	1.1114	1.80	0.9824
0.90	1.1063	1.90	0.9824

The Allocation Factor is 0.34.

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT
SCHEDULE 1 TABLES
EFFECTIVE DATE: JULY 1, 2009

TABLE C
Loss Pick Containment Rates and Estimated Annual Amounts

Class Code	Loss Pick Containment Rate	Estimated Annual Payroll
NY 7242	8.07	985,000
NY 8810	0.26	790,000
NY 8742	0.44	700,000
NY 7231	6.72	270,000

The Total Estimated Annual Loss Pick Containment Amount is $102,718.

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

BREAKAWAY
COURIER SYSTEMS
335 WEST 35TH STREET, 9th FLOOR
NEW YORK, NY 10001-1726
(212) 947-4455

citibank
CITIBANK, N.A. BR. #300
CHINATOWN FINANCIAL CENTER
164 Canal Street, 2nd Floor, New York, NY 10013

1-8/210

6053

7/9/2009

PAY TO THE ORDER OF **Applied Underwriters** $ **11,433.00

Eleven Thousand Four Hundred Thirty-Three and 00/100******** DOLLARS

Applied Underwriters
PO Box 3646
Ohaha, NE 68103

MEMO **deposit on Q#217289-1**

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈006053⑈ ⑆[redacted]⑆ [redacted]

BREAKAWAY
COURIER SYSTEMS
335 West 35th Street, 9th Floor
New York, NY 10001-1726

New Accounts Processing
Applied Underwriters
PO Box 3646
Omaha, NE 68103

EXHIBIT □

APPLIED UNDERWRITERS

Account No. 816280
Plan Term 07/01/09 to 06/30/12
For the Period 10/01/09 to 12/31/09

Breakaway Courier Systems
PO Box 780
New York, NY 10013

PREMIER EXCLUSIVE

Questions? Changes? Comments?
Your account manager is:
James C. Hofstetter

(877)234-4420

FAX (877)234-4421

P.O. Box 3646
Omaha, NE 68103-0646

Plan Analysis

Table of Contents

Section	Page
Summary of Workers' Compensation Plan Charges	2
Projected Plan Volume	3
Analysis of Program Costs	4
Adjusted Workers' Compensation Pay-In Rates	7
Claims Analysis	7
Claims Listing	9

APPLIED UNDERWRITERS

Summary of Workers' Compensation Plan Charges

Summary of Plan Charges 10/01/09 to 12/31/09

Period	Class Code	Payroll Reported	Rate	Amount
10/01/09 to 12/31/09	NY7231	$76,212	6.05	$4,611
10/01/09 to 12/31/09	NY7242	272,350	7.27	19,800
10/01/09 to 12/31/09	NY8742	168,259	0.40	673
10/01/09 to 12/31/09	NY8810	190,020	0.24	456
Total Charges		**$706,841**		**$25,540**

Summary of Plan Charges to Date

Initial Capital Deposit	$10,272
Total Amount of Charges on Prior Plan Analyses	18,816
Total Amount of Charges for the Period 10/01/09 to 12/31/09	25,540
Total Billed Amounts	**$54,628**

APPLIED UNDERWRITERS

Projected Plan Volume

Plan to Date					Projected for Total Plan		
Class Code	Payroll Reported 07/01/09-12/31/09	Rate per $100	Loss Pick Containment Amount	Payroll Projected 01/01/10-06/30/12	Payroll Projected 07/01/09-06/30/12	Rate per $100	Loss Pick Containment Amount
NY7231	$133,971	6.72	$9,001	$688,692	$822,663	6.72	$55,271
NY7242	470,156	8.07	37,934	2,501,370	2,971,526	8.07	239,755
NY8742	307,825	0.44	1,342	1,761,949	2,069,774	0.44	9,026
NY8810	349,409	0.26	907	1,989,681	2,339,090	0.26	6,072
Total	**$1,261,361**		**$49,184**	**$6,941,692**	**$8,203,053**		**$310,124**

Maximum Cost Factor	1.30		
Minimum Cost Factor	0.34		
Aggregate Retention (Loss Limit) Factor	0.96		
Projected 3-year Plan Maximum Cost	$310,124 x 1.30	=	$403,161
Projected 3-year Plan Minimum Cost	$310,124 x 0.34	=	$105,442
Estimated Annualized Loss Pick Containment Amount	$310,124 / 3	=	$103,375

Analysis of Program Costs

Estimated Plan Cost

Description	As of 12/31/09	
Projected Total 3-year Plan Loss Pick Containment Amount	$310,124	
Percentage of Plan Remaining, 01/01/10 to 06/30/12	84.14%	
Projected Future Loss Ratio	66%	
Projected Future Claims, 01/01/10 to 06/30/12		$172,219
Projected Total 3-year Plan Loss Pick Containment Amount	$310,124	
Adjustment Factor to Program Loss Ratio	0.1085	
Adjusted Current Program Claims		33,648
Projected Total 3-year Plan Claims		205,867
Projected Total 3-year Plan Cost (see table on next page)		309,193
Percentage of Plan Completed as of 12/31/09		15.86%
Estimated Plan Cost To Date		$49,038

Analysis of Program Costs, Continued

Final Plan Cost at Various Claims Cost Levels

Ultimate Claims	Total 3-year Plan Cost
$0	$105,194
35,912	197,642
56,412	229,181
74,895	241,493
93,347	253,805
111,800	261,993
130,252	270,211
148,735	278,398
169,235	288,663
187,687	300,975
206,170	311,240
220,529	321,474
241,028	352,797
263,605	393,268
290,245	397,393
316,915	399,439
347,680	401,486
2,050,228	403,161
As of 12/31/09 $205,867	$309,193

The amounts above are consistent with the Workers' Compensation Program Summary and Scenarios Worksheet you were offered and the procedures described in your Reinsurance Participation Agreement.

APPLIED UNDERWRITERS

Account No. 816280
Plan Term 07/01/09 to 06/30/12
For the Period 10/01/09 to 12/31/09

Analysis of Program Costs, Continued

Total Deposit and Pay-In Requirements

Description	Amounts as of 12/31/09			
Estimated Annualized Loss Pick Containment Amount	$103,375			
Deposit Percentage	10%			
Fixed Portion of Deposit Requirement			$10,338	
Loss Pick Containment Amount to Date	49,184	(a)		
Presumed Loss Ratio for the First Plan Year	65%			
Presumed Losses to Date	31,970	(b)		
Adjusted Current Program Claims	33,648	(c)		
Retained Losses (greater of b and c)			33,648	(d)
Capital Deposit Requirement			**43,986**	
Loss Pick Containment Amount to Date	49,184	(a)		
Minimum Cost Factor	0.34	(e)		
Retained Loss Ratio (d / a)	68%			
Exposure Group Adjustment Factor	0.9697	(f)		
Base Fees (a x e x f)			**16,216**	
Total Pay-In Amount Due Under Your Contract			**60,202**	
Total Pay-In We Are Requiring through 12/31/09			**54,628**	
Less: Amount You Have Paid-In through 12/31/09			54,628	
Pay-In Difference as of 12/31/09 *			$-	

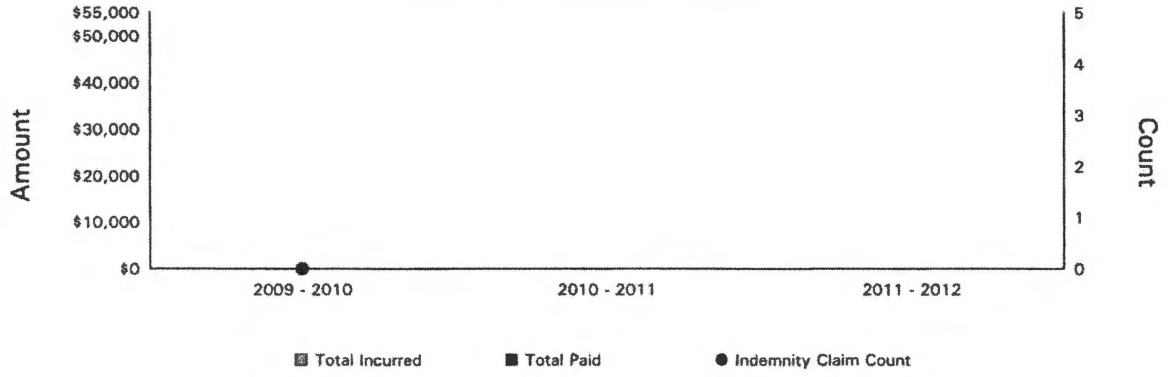
* *Your Pay-In factor will be adjusted to reconcile the total pay-in we are requiring and the amount you have paid in through 12/31/09 .*

Adjusted Workers' Compensation Pay-In Rates

Description	Class Code	Rate Effective Date	Net Pay-In Rate
Trucking-Mail/Package &Driver	NY7231	01/01/10	4.70
Bicycle Delivery	NY7242	01/01/10	5.65
Outside Salesperson	NY8742	01/01/10	0.31
Clerical	NY8810	01/01/10	0.18

Claims Analysis

Summary of Member Claims



Year	Indemnity Claim Count	Total Claim Count	Total Incurred	Total Paid	Total Outstanding
2009 - 2010	-	1	$14	-	$14
2010 - 2011	-	-	-	-	-
2011 - 2012	-	-	-	-	-

Claim Inventory

Activity for 10/01/2009 to 12/31/2009			
	Incident Only	Medical Only	Indemnity
New Claims	-	1	-
New Open Claims	-	-	-
New Closed Claims	-	1	-
New Claim Closures	-	1	-
Reopened Claims	-	-	-
Total Open Claims	-	-	-
Total Closed Claims	-	1	-
Total Claims	-	1	-

Reporting Lag

Date of Injury to Employer Notify Date				
	0-3 days	4-7 days	8+ days	Average Reporting Lag
2009 - 2010	-	-	1	22
2010 - 2011	-	-	-	0
2011 - 2012	-	-	-	0
This period	-	-	1	22

Reporting lag measures the time between the employee being injured and you notifying us of the injury. Statistically, we are able to settle fast-reported claims more quickly and cost effectively than those where there is a delay of more than a few days.

Claims Listing

Insured: Breakaway Courier Systems
Policy Number: 55-816280-01-01
Policy Period: 07/01/09 - 07/01/10

Valuation Date: 12/31/09

IR = Incident Report, MO = Medical Only, LT = Lost Time

Claim # / Claimant	State - Code / Status / Loss Type	Accident Description / Nature of Injury / Part of Body	Date of Injury / Date Reported / Date Closed	Expense Type	Incurred	Paid-to-Date	Outstanding	Recovery	Incurred Less Recovery
43729	NY - NY7242	Injured by Motor Vehicle	10/26/09	IND	-	-	-	-	-
Litzenberg, Jason	Closed	Contusion	11/17/09	MED	14	-	14	-	14
	MO	Hip	12/01/09	EXP	-	-	-	-	-
				TOTAL	14	-	14	-	14
Policy: 55-816280-01-01		**Open Claims: 0**		**Closed Claims: 1**	14	-	14	-	14

Totals for Insured: Breakaway Courier Systems

Open LT Claims:	**0**	**Closed LT Claims:**	**0**	**Lost Time:**	-	-	-	-	-
Open MO & IR Claims:	**0**	**Closed MO & IR Claims:**	**1**	**MO & IR:**	14	-	14	-	14
Total Claims Open:	**0**	**Total Claims Closed:**	**1**	**Total**	14	-	14	-	14

Total Claims : 1

EXHIBIT □

APPLIED® UNDERWRITERS

Account No. 816280
Plan Term 07/01/09 to 06/30/12
For the Period 01/01/12 to 03/31/12

Breakaway Courier Systems
PO Box 780
New York, NY 10013

PREMIER EXCLUSIVE®

Questions? Comments?
Your account manager is:
Trevor Rowell

(877)234-4420

FAX (877)234-4421

P.O. Box 3646
Omaha, NE 68103-0646

Plan Analysis

Table of Contents

Section	Page
Summary of Workers' Compensation Plan Charges	2
Projected Plan Volume	3
Analysis of Program Costs	4
Adjusted Workers' Compensation Pay-In Rates	7
Claims Analysis	7
Claims Listing	11

Summary of Workers' Compensation Plan Charges

Summary of Plan Charges 01/01/12 to 03/31/12

Period	Class Code	Payroll Reported	Rate	Amount
01/01/12 to 03/31/12	NY7231	60,398	8.20	4,953
01/01/12 to 03/31/12	NY7242	276,670	9.84	27,224
01/01/12 to 03/31/12	NY8742	86,589	0.53	459
01/01/12 to 03/31/12	NY8810	203,878	0.32	652
Total Charges		**$627,535**		**$33,288**

Summary of Plan Charges to Date

Initial Capital Deposit	$10,272
Total Amount of Charges on Prior Plan Analyses	253,094
Total Amount of Charges for the Period 01/01/12 to 03/31/12	33,288
Supplemental Plan Charges on 03/31/12	93,997
Total Billed Amounts	**$390,651**

APPLIED® UNDERWRITERS

Account No. 816280
Plan Term 07/01/09 to 06/30/12
For the Period 01/01/12 to 03/31/12

Projected Plan Volume

	Plan to Date				Projected for Total Plan		
Class Code	Payroll Reported 07/01/09-03/31/12	Rate per $100	Loss Pick Containment Amount	Payroll Projected 04/01/12-06/30/12	Payroll Projected 07/01/09-06/30/12	Rate per $100	Loss Pick Containment Amount
NY7231	$699,654	6.72	$47,006	$65,368	$765,022	6.72	$51,398
NY7242	3,072,955	8.07	247,938	287,103	3,360,058	8.07	271,103
NY8742	1,391,107	0.44	6,067	129,970	1,521,077	0.44	6,633
NY8810	2,007,759	0.26	5,212	187,583	2,195,342	0.26	5,699
Total	**$7,171,475**		**$306,223**	**$670,024**	**$7,841,499**		**$334,833**

Maximum Cost Factor	1.30		
Minimum Cost Factor	0.34		
Aggregate Retention (Loss Limit) Factor	0.96		
Projected 3-year Plan Maximum Cost	$334,833 x 1.30	=	$435,283
Projected 3-year Plan Minimum Cost	$334,833 x 0.34	=	$113,843
Estimated Annualized Loss Pick Containment Amount	$334,833 / 3	=	$111,611

Analysis of Program Costs

Estimated Plan Cost

Description	As of 03/31/12	
Projected Total 3-year Plan Loss Pick Containment Amount	$334,833	
Percentage of Plan Remaining, 04/01/12 to 06/30/12	8.54%	
Projected Future Loss Ratio	66%	
Projected Future Claims, 04/01/12 to 06/30/12		$18,873
Projected Total 3-year Plan Loss Pick Containment Amount	$334,833	
Adjustment Factor to Program Loss Ratio	0.9600	
Adjusted Current Program Claims		321,440
Projected Total 3-year Plan Claims		340,313
Projected Total 3-year Plan Cost (see table on next page)		431,265
Percentage of Plan Completed as of 03/31/12		91.46%
Estimated Plan Cost To Date		$394,435

Analysis of Program Costs, Continued

Final Plan Cost at Various Claims Cost Levels

Ultimate Claims	Total 3-year Plan Cost
$0	$113,576
38,774	213,389
60,906	247,442
80,862	260,735
100,785	274,028
120,707	282,867
140,630	291,740
160,586	300,580
182,719	311,663
202,641	324,956
222,597	336,039
238,100	347,088
260,233	380,907
284,608	424,602
313,371	429,056
342,166	431,265
375,382	433,475
2,213,584	435,283

As of 03/31/12	$340,313	$431,265

The amounts above are consistent with the Workers' Compensation Program Summary and Scenarios Worksheet you were offered and the procedures described in your Reinsurance Participation Agreement.

Analysis of Program Costs, Continued

Total Deposit and Pay-In Requirements

Description	Amounts as of 03/31/12		
Estimated Annualized Loss Pick Containment Amount	$111,611		
Deposit Percentage	10%		
Fixed Portion of Deposit Requirement			$11,161
Loss Pick Containment Amount to Date	306,223	(a)	
Presumed Loss Ratio for the Third Plan Year	30%		
Presumed Losses to Date	91,867	(b)	
Adjusted Current Program Claims	321,440	(c)	
Retained Losses (greater of b and c)			321,440 (d)
Capital Deposit Requirement			**332,601**
Loss Pick Containment Amount to Date	306,223	(a)	
Minimum Cost Factor	0.34	(e)	
Retained Loss Ratio (d / a)	105%		
Exposure Group Adjustment Factor	0.9629	(f)	
Base Fees (a x e x f)			**100,253**
Total Pay-In Amount Due Under Your Contract			**432,854**
Total Pay-In We Are Requiring through 03/31/12			**392,915**
Less: Total Pay-In We Required Prior to 03/31/12			390,651
Pay-In Difference as of 03/31/12 *			$2,264

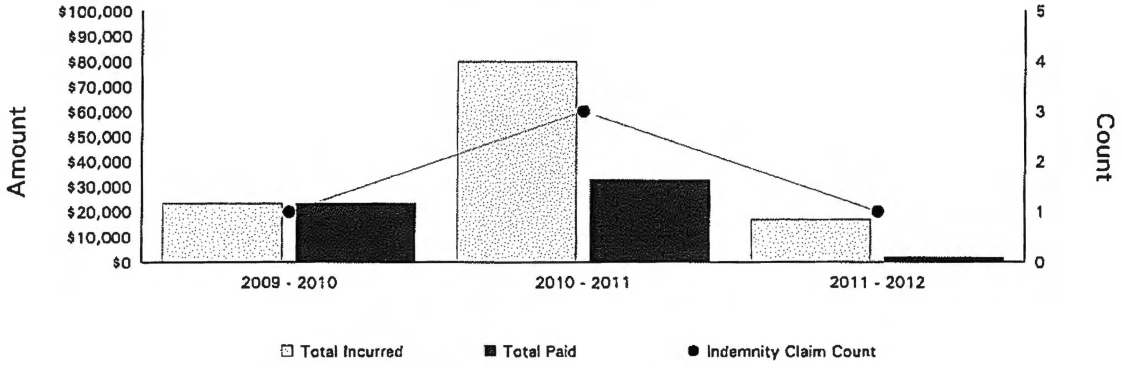
* *This is not a bill. Your Pay-In factor will be adjusted to reconcile the total pay-in we are requiring and the amount you have paid in through 03/31/12 .*

Adjusted Workers' Compensation Pay-In Rates

Description	Class Code	Rate Effective Date	Net Pay-In Rate
Trucking-Mail/Package &Driver	NY7231	04/01/12	8.73
Bicycle Delivery	NY7242	04/01/12	10.49
Outside Salesperson	NY8742	04/01/12	0.57
Clerical	NY8810	04/01/12	0.34

Claims Analysis

Summary of Member Claims



Year	Indemnity Claim Count	Total Claim Count	Total Incurred	Total Paid	Total Outstanding
2009 - 2010	1	3	$23,365	$23,365	-
2010 - 2011	3	5	79,824	32,661	47,163
2011 - 2012	1	2	16,900	1,925	14,975

Claim Inventory

Activity for 01/01/12 to 03/31/12

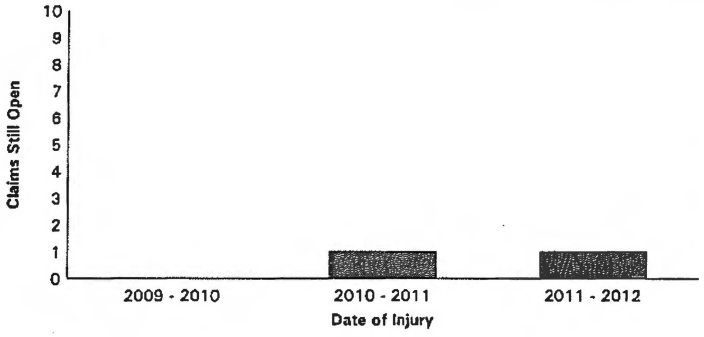
Description	Incident Only	Medical Only	Indemnity
New Claims	-	-	1
New Open Claims	-	-	1
New Closed Claims	-	-	-
New Claim Closures	-	-	1
Reopened Claims	-	-	1
Total Open Claims	-	1	2
Total Closed Claims	-	4	3
Total Claims	-	5	5

Reporting Lag

Date of Injury to Employer Notify Date				
Period	0-3 days	4-7 days	8+ days	Average Reporting Lag
2009 - 2010	1	-	2	126
2010 - 2011	1	2	2	11
2011 - 2012	-	-	2	34
This period	-	-	1	30

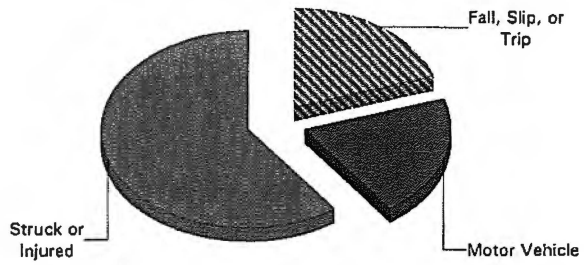
Reporting lag measures the time between the employee being injured and you notifying us of the injury. Statistically, we are able to settle fast-reported claims more quickly and cost effectively than those where there is a delay of more than a few days.

Analysis of Closed Indemnity Claim Counts

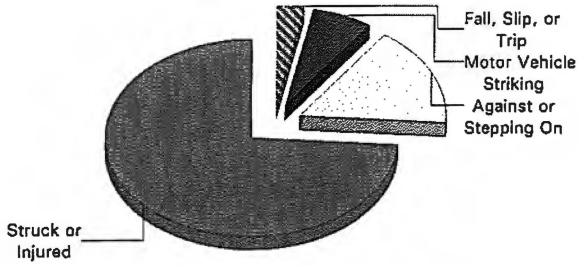


	Status		
Date of Injury	Open	Closed	Total
2009 - 2010	- 0%	1 100%	1
2010 - 2011	1 33%	2 67%	3
2011 - 2012	1 100%	- 0%	1

Claims Summary by Accident Cause



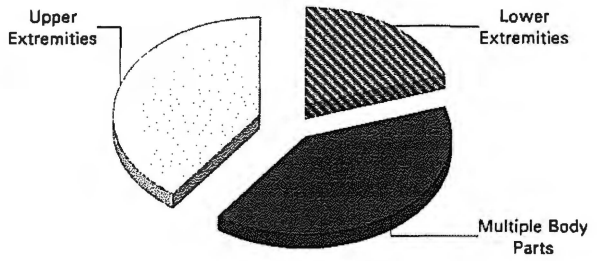
Indemnity Claim Count



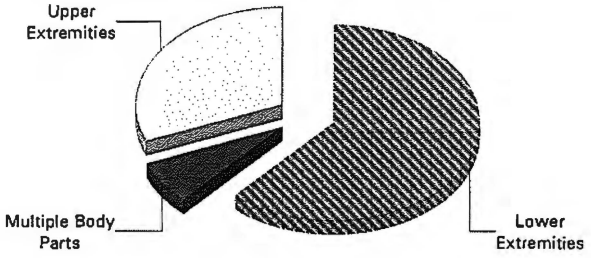
Total Incurred ($)

NCCI Accident Cause Grouping	Claim Count Total	Claim Count Indemnity	Total Incurred	Average Incurred	Largest Loss
Fall, Slip, or Trip	1	1	$3,824	$3,824	$3,824
Motor Vehicle	2	1	8,008	4,004	5,000
Striking Against or Stepping On	1	-	19,547	19,547	19,547
Struck or Injured	6	3	88,710	14,785	70,000
Total	**10**	**5**	**$120,089**	**$12,009**	**$70,000**

Claims Summary by Body Part Injured



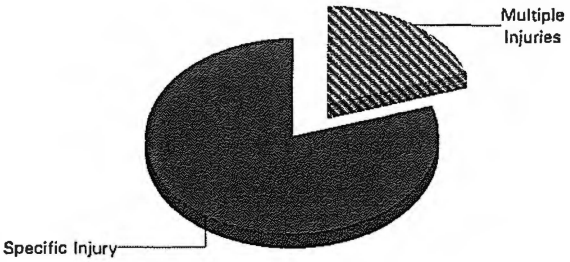
Indemnity Claim Count



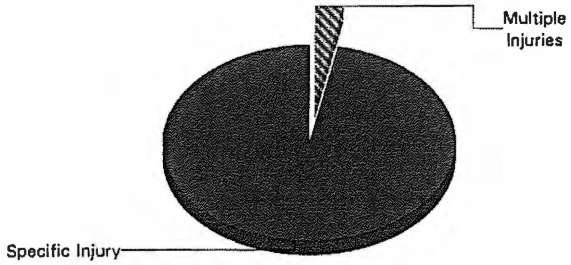
Total Incurred ($)

NCCI Body Part Grouping	Claim Count Total	Claim Count Indemnity	Total Incurred	Average Incurred	Largest Loss
Lower Extremities	4	1	$74,033	$18,508	$70,000
Multiple Body Parts	2	2	8,638	4,319	5,000
Upper Extremities	4	2	37,418	9,355	19,547
Total	**10**	**5**	**$120,089**	**$12,009**	**$70,000**

Claims Summary by Nature of Injury



Indemnity Claim Count



Total Incurred ($)

NCCI Nature of Injury Grouping	Claim Count		Total Incurred	Average Incurred	Largest Loss
	Total	Indemnity			
Multiple Injuries	1	1	$3,638	$3,638	$3,638
Specific Injury	9	4	116,451	12,939	70,000
Total	**10**	**5**	**$120,089**	**$12,009**	**$70,000**

Claims Listing

Insured: Breakaway Courier Systems
Policy Number: 55-816280-01-01
Policy Period: 07/01/09 - 07/01/10

Valuation Date: 03/31/12

IR = Incident Report, MO = Medical Only, LT = Lost Time

Claim # / Claimant	State - Code / Status / Loss Type	Accident Description / Nature of Injury / Part of Body	Date of Injury / Date Reported / Date Closed	Expense Type	Incurred	Paid-to-Date	Outstanding	Recovery	Incurred Less Recovery
43729	NY - NY7242	Injured by Motor Vehicle	10/26/09	IND	-	-	-	-	-
Litzenberg, Jason	Closed	Contusion	11/17/09	MED	162	162	-	-	162
	MO	Hip	12/01/09	EXP	18	18	-	-	18
				TOTAL	180	180	-	-	180
45053	NY - NY7242	Striking Against/Stationary Object	03/22/10	IND	-	-	-	-	-
Giltz, Robert	Closed	Fracture	03/24/10	MED	17,049	17,049	-	-	17,049
	MO	Shoulder(s)	05/23/11	EXP	2,498	2,498	-	-	2,498
				TOTAL	19,547	19,547	-	-	19,547
49213	NY - NY7242	Injured by Motor Vehicle	02/04/10	IND	3,355	3,355	-	-	3,355
Delucas, Mark A	Closed	Multiple Physical Injuries	01/26/11	MED	-	-	-	-	-
	LT	Multiple Body Parts	03/29/12	EXP	283	283	-	-	283
				TOTAL	3,638	3,638	-	-	3,638
Policy: 55-816280-01-01	**Open Claims:**	**0**	**Closed Claims:**	**3**	**23,365**	**23,365**	-	-	**23,365**

Claims Listing, Continued

Insured: Breakaway Courier Systems
Policy Number: 55-816280-01-02
Policy Period: 07/01/10 - 07/01/11

Valuation Date: 03/31/12

IR = Incident Report, MO = Medical Only, LT = Lost Time

Claim # / Claimant	State - Code / Status / Loss Type	Accident Description / Nature of Injury / Part of Body	Date of Injury / Date Reported / Date Closed	Expense Type	Incurred	Paid-to-Date	Outstanding	Recovery	Incurred Less Recovery
47297	NY - NY7242	Injured by Motor Vehicle	09/01/10	IND	270	270	-	-	270
Yockey, Alex	Closed	Fracture	09/08/10	MED	1,854	1,854	-	-	1,854
	LT	Elbow	04/28/11	EXP	23	23	-	-	23
				TOTAL	2,147	2,147	-	-	2,147
48762	NY - NY7242	Motor Vehicle/Collision	12/17/10	IND	-	-	-	-	-
Hall, Jesse	Closed	Fracture	12/21/10	MED	2,726	2,726	-	-	2,726
	MO	Foot	07/29/11	EXP	282	282	-	-	282
				TOTAL	3,008	3,008	-	-	3,008
49564	NY - NY7242	Injured by Motor Vehicle	02/17/11	IND	-	-	-	-	-
Bryant, Asher	Closed	Fracture	02/18/11	MED	845	845	-	-	845
	MO	Great Toe	06/23/11	EXP	-	-	-	-	-
				TOTAL	845	845	-	-	845
50942	NY - NY7242	Fall/Different Elevation	05/11/11	IND	1,093	1,093	-	-	1,093
Hoy, Charles	Closed	Fracture	05/25/11	MED	2,668	2,668	-	-	2,668
	LT	Wrist	11/30/11	EXP	62	62	-	-	62
				TOTAL	3,824	3,824	-	-	3,824
51634	NY - NY7242	Injured by Motor Vehicle	06/08/11	IND	28,000	12,269	15,731	-	28,000
Huggins, Michell	Open	Fracture	07/05/11	MED	33,000	4,599	28,401	-	33,000
	LT	Ankle		EXP	9,000	5,969	3,031	-	9,000
				TOTAL	70,000	22,837	47,163	-	70,000
Policy: 55-816280-01-02		**Open Claims: 1**		**Closed Claims: 4**	**79,824**	**32,661**	**47,163**	-	**79,824**

Claims Listing, Continued

Insured: Breakaway Courier Systems
Policy Number: 55-816280-01-03
Policy Period: 07/01/11 - 07/01/12

Valuation Date: 03/31/12

IR = Incident Report, MO = Medical Only, LT = Lost Time

Claim # / Claimant	State - Code / Status / Loss Type	Accident Description / Nature of Injury / Part of Body	Date of Injury / Date Reported / Date Closed	Expense Type	Incurred	Paid-to-Date	Outstanding	Recovery	Incurred Less Recovery
54156	NY - NY7242	Injured by Motor Vehicle	10/24/11	IND	-	-	-	-	-
Pinkney, Walter	Open	Other Specific Injury	12/02/11	MED	9,750	1,925	7,825	-	9,750
	MO	Upper Arm		EXP	2,150	-	2,150	-	2,150
				TOTAL	11,900	1,925	9,975	-	11,900
55454	NY - NY7242	Motor Vehicle/NOC	02/01/12	IND	1,500	-	1,500	-	1,500
Barrientos, Harry	Open	Other Specific Injury	03/02/12	MED	1,500	-	1,500	-	1,500
	LT	Unclassified		EXP	2,000	-	2,000	-	2,000
				TOTAL	5,000	-	5,000	-	5,000
Policy: 55-816280-01-03		**Open Claims: 2**	**Closed Claims: 0**		**16,900**	**1,925**	**14,975**	-	**16,900**

Totals for Insured: Breakaway Courier Systems

Open LT Claims:	**2**	**Closed LT Claims:**	**3**	**Lost Time:**	**84,609**	**32,446**	**52,163**	-	**84,609**
Open MO & IR Claims:	**1**	**Closed MO & IR Claims:**	**4**	**MO & IR:**	**35,480**	**25,505**	**9,975**	-	**35,480**
Total Claims Open:	**3**	**Total Claims Closed:**	**7**	**Total**	**120,089**	**57,951**	**62,138**	-	**120,089**

Total Claims : 10

EXHIBIT E

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of: SHASTA LINEN SUPPLY, INC. Appellant, From the Decision of the CALIFORNIA INSURANCE COMPANY, Respondent.	File AHB-WCA-14-31

DECISION & ORDER

I. Introduction

Shasta Linen Supply, Inc. (Shasta Linen) appeals California Insurance Company's (CIC) decision rejecting Shasta Linen's claims that CIC failed to adhere to its rate filings and sold an unfiled and unapproved insurance program titled EquityComp.

For the reasons set forth below, the Insurance Commissioner of the State of California ("Insurance Commissioner") finds that CIC's EquityComp program and the accompanying Reinsurance Participation Agreement (RPA) constitute a misapplication of the filed rates of CIC in violation of California Insurance Code section 11737. Further, the Commissioner finds that CIC's EquityComp program and the accompanying RPA constitute a collateral agreement pursuant to California Code of Regulations, title 10, section 2268, and CIC's failure to file and secure approval of EquityComp and the RPA, in violation of Insurance Code section 11658, renders the RPA void as a matter of law.

II. Statement of Issues

1. Does CIC's EquityComp program constitute a misapplication of the filed rates of CIC in violation of California Insurance Code section 11737?

2. Does CIC's EquityComp program's RPA constitute a collateral agreement modifying the rates and obligations of either the insured or insurer, and is it void as a matter of law since the RPA was not filed with the Workers' Compensation Insurance Rating Bureau and the Department of Insurance before its use in the State of California, pursuant to Insurance Code section 11658 and California Code of Regulations, title 10, sections 2268 and 2218?

III. Contentions of the Parties

Shasta Linen contends CIC violated numerous Insurance Code provisions, as well as the California Code of Regulations, by failing to file the EquityComp program and the RPA with the Workers' Compensation Insurance Rating Bureau (WCIRB)[1] and the Insurance Commissioner. Specifically, Shasta Linen asserts the RPA constitutes a collateral agreement pursuant to California Code of Regulations, title 10, sections 2268 and 2218, and as such must be filed and approved by the Insurance Commissioner prior to use.[2] Shasta Linen argues CIC's failure to file the RPA violates Insurance Code sections 11658 and 11735, as well as Part 2, Section V of the Miscellaneous Regulations for the Recording and Reporting of Data.[3] Shasta Linen also contends CIC violated Insurance Code section 381 by failing to specify, in Shasta Linen's workers' compensation insurance policy, the basis and rates upon which the final premium is to

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[1] The WCIRB is a rating organization licensed by the Insurance Commissioner under Insurance Code sections 11750 et seq. to assist the Commissioner in the development and administration of workers' compensation insurance classification and rating systems. The WCIRB serves as the Commissioner's designated statistical agent for the purpose of gathering and compiling experience data developed under California's workers' compensation and employers' liability insurance policies. (Ins. Code § 11751.5).

[2] Appellant's Post-hearing Opening Brief, 4:7-17.

[3] Provisions of the Miscellaneous Regulations for the Recording and Reporting Data are part of the Insurance Commissioner's Regulations, codified in California Code of Regulations, title 10, section 2354.

be determined and paid.[4] Lastly, Shasta Linen asserts CIC violated Insurance Code section 11658.5, by failing to inform Shasta Linen of its right to negotiate the policy's dispute resolution provisions and by failing to secure written receipt of such disclosure prior to issuance of the policy.[5] Shasta Linen urges the Commissioner to bar CIC from enforcing the terms of EquityComp and the RPA, including the mandatory arbitration provisions. Shasta Linen also requests the Commissioner order CIC to return all monies contributed to Shasta Linen's cell account, except for those used to settle workers' compensation claims, as well as all fees collected and disbursed to Applied Underwriters, Inc. and Applied Underwriters Captive Risk Assurance Company.[6]

CIC initially asserts the California Department of Insurance (CDI) lacks jurisdiction over Shasta Linen's appeal. Specifically, CIC argues: (1) appeals filed under Insurance Code section 11737, subdivision (f) may only determine "whether CIC has properly applied its [rate] filings to determine how much premium to charge" and may not address the potential illegality of the rate filing;[7] (2) the RPA is between AUCRA and Shasta Linen, and relief in this forum is not possible;[8] (3) whether the RPA is an unlawful collateral agreement in violation of the Insurance Commissioner's Regulations is beyond the scope of the CDI's jurisdiction;[9] and (4) only the Insurance Commissioner may initiate a hearing to disapprove an unfiled rate.[10]

With regard to the merits of Shasta Linen's claims, CIC argues the RPA is not a collateral agreement because it does not change the cost of insurance under the CIC policy, does not impact insurance rates, and does not modify the terms of the CIC insurance policy issued to

[4] Appellant's Post-hearing Opening Brief, 5:7-13.
[5] Appellant's Post-hearing Opening Brief, 5:15-23.
[6] Appellant's Post-hearing Opening Brief, 6:1-3; 26:3-12.
[7] Respondent's Post-hearing Opening Brief, 21:13-22:7.
[8] Respondent's Post-hearing Opening Brief, 22:8-18.
[9] Respondent's Post-hearing Opening Brief, 23:8-14.
[10] Respondent's Post-hearing Opening Brief, 23:21-24:6.

Shasta Linen.[11] Lastly, with regard to potential remedies, CIC contends the CDI may not void Shasta Linen's RPA. Instead, CIC argues that if the Commissioner finds that the RPA violates the Insurance Code or its applicable Regulations, the Commissioner may issue only a prospective order to cease use of the RPA, and is not permitted to void Shasta Linen's RPA.[12]

IV. Procedural History

On August 29, 2014, Shasta Linen filed an appeal with the Department of Insurance, Administrative Hearing Bureau (AHB) in response to CIC's July 31, 2014 decision rejecting Shasta Linen's Complaint and Request for Action. On September 5, 2014, the Chief Administrative Law Judge issued an Appeal Inception Notice and assigned the matter to Administrative Law Judge (ALJ) Kristin L. Rosi.

On October 31, 2014, the ALJ conducted a telephonic status conference with all parties. During the conference, the parties agreed to a discovery timetable and to the statement of the issue as identified above. The ALJ set the matter for an evidentiary hearing commencing March 9, 2015.

At the hearing, Craig E. Farmer, Esq., of Farmer, Smith & Lane, LLP, appeared on behalf of Shasta Linen. Spencer Y. Kook, Esq. and Richard De La Mora, Esq., of Hinshaw & Culbertson, LLP, appeared on behalf of CIC. The parties submitted documentary evidence and presented witnesses. The evidentiary record includes witness testimony and all exhibits admitted into evidence as identified in the parties' Exhibit Lists.

On March 17, 2015, CIC's General Counsel and co-author of the EquityComp program, Jeffrey Silver, invoked the attorney-client privilege and refused to answer any questions regarding EquityComp's creation or the RPA's terms. In order to create a more complete

[11] Respondent's Post-hearing Opening Brief, 26:1-28:6; 30:15-31:7; 37:19-41:4.
[12] Respondent's Post-hearing Opening Brief, 41:6-42:3.

evidentiary record, on March 23, 2015, the ALJ convened a conference to discuss the presentation of an additional witness. During this conference, CIC agreed to present a witness able to testify about the EquityComp program and the RPA. In response to a joint request by the parties, on March 26, 2015, the ALJ issued an Order continuing the evidentiary hearing to May 21 and May 22, 2015.

On April 30, 2015, the ALJ ordered additional evidence from both parties. Specifically, the ALJ ordered copies of CIC's Annual Statements, the total number of EquityComp participants, the total number of EquityComp participants who received refunds at the conclusion of the program, a list of complaints and grievances filed regarding the program, the percentage of EquityComp participants with open claims at the conclusion of the program, and an EquityComp loss ratio sensitivity analysis for 2013 and 2014. The ALJ also ordered copies of Shasta Linen's corporate tax returns, the total amounts paid in workers' compensation premium and losses for policy years 2013 and 2014, and the most recent experience rating modification.

On May 8, 2015, CIC filed an Objection and Request for a Continuance in response to the ALJ's Order for Additional Evidence. CIC objected to the production of additional evidence arguing: (1) the ALJ lacks authority and jurisdiction to issue such an order; (2) the information is irrelevant; and (3) the information is confidential to third-party participants.

On May 18, 2015, the ALJ overruled CIC's objections and ordered CIC to comply with the April 30, 2015 Order. On May 19, 2015, CIC informed the ALJ it would not comply with the ALJ's Additional Evidence Order. At the hearing on May 21, 2015, CIC called Patrick Watson to testify in response to the ALJ's request for a person most knowledgeable regarding EquityComp and the RPA.

On July 24, 2015, the parties filed concurrent opening briefs and on August 10, 2015, the

parties filed their concurrent reply briefs.

On August 11, 2015, CIC requested the ALJ take official notice of the Summary Denial issued in *Sportsmobile West, Inc.*, AHB-WCA-06-7 and the Notice of Hearing and Order to Show Cause filed by the CDI against Zurich American Insurance Company of Illinois on February 27, 2012. On that same date, CIC also requested permission to file a supplemental declaration by Ellen Gardiner, pursuant to California Code of Regulations, title 10, section 2509.66. On August 24, 2015, Shasta Linen filed objections to CIC's additional evidence and request for official notice. On September 16, 2015, the ALJ rejected CIC's request to file additional evidence. On that same date, the ALJ granted, in part, and rejected, in part, various requests for official notice and ordered the record closed.

On October 29, 2015, the ALJ reopened the record to accept the parties' executed Stipulated Protective Order. By that same Order, the ALJ reclosed the record.

On November 20, 2015, the ALJ submitted her Proposed Decision and Order, which was adopted by Order of the Commissioner on January 21, 2016.

CIC filed its Petition of Reconsideration dated February 5, 2016, and Shasta Linen also filed a Petition for Reconsideration dated February 17, 2016.

On March 22, 2016, the Insurance Commissioner issued an Order Granting Reconsideration and Notice of Non-Adoption of Proposed Decision.

V. Findings of Fact

A review of the record found, by a preponderance of evidence, the following material facts, that are adopted herein.[13]

[13] References to the transcript of the evidentiary hearing are "Tr." followed by the page number(s) and, where line references are used, a ":" followed by the line number(s). Thus, a reference to Tr. 35:14-18 is to page 35, lines 14-18 of the transcript. Exhibits are referred to by the numbers assigned to them in the parties' Exhibit Lists.

A. Shasta Linen

1. Company History

Shasta Linen is a privately-held family-owned California corporation in the linen rental business.[14] Founded in 1948, Shasta Linen originally operated as a laundry and dry cleaning service. In the 1950s, the company ceased operating as a laundry and dry cleaning service and entered into the linen rental business. Shasta Linen's customers include restaurants, hotels, surgery centers and doctor's offices.[15]

Shasta Linen employees pick up soiled linens and garments from their customers and transport them back to Shasta's Sacramento laundry facility. There, the linens are counted, sorted, washed, dried and pressed.[16] Shasta Linen employees then return the cleaned linens to the customers. The laundry facility employs approximately 63 people who work five days a week.[17]

Prior to December 2014, Shasta Linen had two owners; Tom Hammer, President, and Gordon Macauley, Vice-President. Mr. Hammer and Mr. Macauley each owned 50% of the corporation. In December 2014, Mr. Hammer passed away and his 50% share was divided between his daughter, Noel Richardson, the current President of Shasta Linen, and his surviving spouse, Phyllis Hammer. Ms. Richardson received 20% of the corporate stock and Mrs. Hammer received the remaining 30%.[18]

2. 2009 Purchase of EquityComp Program

For decades, Shasta Linen employed Sacramento Valley Insurance Services (SVIS) as its

[14] Tr. 106:23-107:2.
[15] Tr. 107:12-16.
[16] Tr. 108:5-11.
[17] Tr. 108:23-25.
[18] Tr. 100:7-9.

insurance broker.[19] In each of these years, SVIS secured Shasta Linen's workers' compensation insurance through a guaranteed cost policy. From 2002 through 2008, Shasta Linen's experience modification ranged from 66% to 80%, demonstrating that Shasta Linen had a more favorable loss experience than other businesses in its industry.[20]

In 2009, Shasta Linen anticipated an increase in its experience modification factor due to several earlier claims. In late 2009, Shasta Linen's broker presented the EquityComp program as an alternative to the traditional guaranteed cost policy and as a means to counter the effects of an increase in experience modification. At that same time, the broker presented quotes from other insurers offering guaranteed cost policies.[21] The quotes were presented in descending cost order with Zenith Insurance Company quoting an annual premium of $446,541 and Insurance Company of the West (ICW) quoting an annual premium of $301,091. The broker placed EquityComp on the line below ICW, with a note that stated "see attached."[22] Attached to the rate quotes was a Program Proposal and a Rate Quote from Applied Underwriters' ("AU") EquityComp program. The EquityComp rate quote indicated a minimum single-year premium of $107,541 and a maximum premium of $322,623.[23] The broker did not present Shasta Linen with a copy of the Reinsurance Participation Agreement nor had the broker read the RPA at the

[19] SVIS was subsequently acquired by Pan American Underwriters, a wholly-owned subsidiary of Ascension Insurance Services. (Exh. 271-9).

[20] Exh. 65. The WCIRB promulgates experience ratings for each qualified employer pursuant to the rules set forth in the California Workers' Compensation Experience Rating Plan (ERP). Experience rating utilizes a policyholder's past claims experience to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification. (Ins. Code § 11730, subd. (c)). The rules governing the reporting of loss data are found in the California Workers' Compensation Uniform Statistical Reporting Plan (USRP). Provisions of the ERP and USRP, including the Standard Classification System, are part of the Insurance Commissioner's regulations, codified at title 10, California Code of Regulations, section 2352.1.

[21] Exh. 271-14; Exh 272-22.

[22] Exh. 272-22. The Commissioner notes for the record that the broker named Applied Underwriters as the insurance carrier. The broker made no mention of CIC anywhere in his presentation.

[23] Exh. 201-3.

time he presented the program.[24]

After reviewing the premium and claim amount tables in AU's marketing materials, Shasta Linen agreed to enroll in the three-year EquityComp program.[25] In December 2012, the final month of the three-year program, Shasta Linen received a monthly bill for $77,593.66.[26] By that time, Shasta Linen had already paid $934,466.60 in EquityComp costs over the three years and its captive cell held approximately $200,000.[27] In January 2013, one month after the program ended and the workers' compensation insurance policy expired, Shasta Linen received a bill for an additional $166,619.75.[28] Shasta Linen has not paid the additional $244,213.31 arguing that such payments exceed the guaranteed cost policy's quoted amount, were not fully explained and are inconsistent with the guaranteed cost policy.[29] CIC continues to compound interest on these unpaid charges each month. In January 2014, CIC calculated Shasta Linen's final payment at $290,524.58.[30]

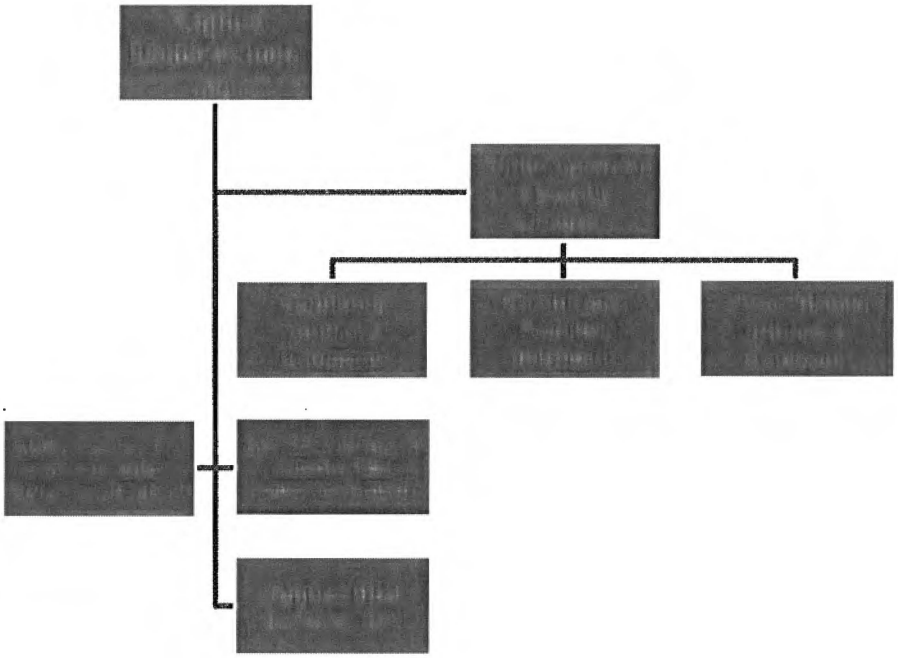
B. CIC and Its Affiliated Entities

1. Organizational Structure

CIC California Insurance Company is a licensed property and casualty insurance company, domiciled in California and licensed to transact business in 26 states. CIC is wholly-owned by North American Casualty Company, a non-insurer, which is in turn wholly-owned by Applied Underwriters, Inc. (AU), a Nebraska corporation.[31] AU is an indirect subsidiary of Berkshire Hathaway Inc. AU is also the parent company for Applied Underwriters Captive Risk

[24] Exh. 271-26. The broker had never enrolled a client in EquityComp prior to enrolling Shasta Linen.
[25] The guaranteed cost policy had an effective date of January 1, 2010. Shasta Linen did not enroll in EquityComp until January 5, 2010.
[26] Exh. 213-23.
[27] Tr. 819:8-11; Tr. 232:3-7; Exh. 31-2.
[28] Exh. 214-1.
[29] $77,593.66 + $166,619.75 = $244,213.31.
[30] Exh. 214-16.
[31] Exh. 234-5; Tr. 1150:6-16.

Assurance Company, BVI (AUCRA) and Applied Risk Services (ARS). The following flow chart provides the organizational structure relevant to this proceeding:



AU is a financial service corporation that provides payroll processing services and underwrites workers' compensation insurance through its affiliated insurance companies to small and medium-sized employers. AU manages all of CIC's underwriting, investment, administrative, actuarial and claim services through a Management Services Agreement.[32] AU also administers the EquityComp program on behalf of CIC. All EquityComp documents presented and signed by Shasta Linen bear the name and logo of Applied Underwriters, Inc. EquityComp is a registered trademark of AU and all AU employees work on CIC issues.[33]

AUCRA is an insurance company organized under the law of the British Virgin Islands and domiciled in Iowa.[34] AUCRA's sole purpose in the Berkshire Hathaway family is to serve

[32] Exh. 274-7.
[33] Exh. 203-1; Tr. 706:23-707:4.
[34] Tr. 620:2-3.

as CIC's reinsurance arm.[35] It does not reinsure any other entities or perform any other functions.

Applied Risk Services (ARS) is the billing agent for EquityComp and serves as CIC's service agent.[36] Under an Agency Agreement, ARS receives premium from policyholders and pays commissions to brokers on behalf of CIC. For this service, CIC reimburses ARS for the paid commissions. ARS and CIC are also parties to a Claims Services Agreement wherein ARS pays losses and loss adjustment expenses on CIC policies.[37] CIC reimburses ARS for all losses and allocated loss adjustment expenses incurred on CIC claims.

The Boards of Directors for CIC, AU, and AUCRA are identical in composition.[38] Mr. Silver, CIC's and AU's General Counsel, serves on each of these Boards, as well as on the Board of ARS. Ms. Gardiner, AU's Chief Actuary, is an officer of all the entities involved in this litigation, namely, AU, CIC and AUCRA.

CIC is also a party to an intercompany pooling agreement[39] with its affiliated Berkshire Hathaway carriers. In 2010, the pooling agreement included CIC and Continental National Indemnity Company (CNI), with CIC assuming an 85% share and CNI assuming the remaining 15%.[40] In 2011, the pooling agreement expanded to include Illinois Insurance Company (IIC). CIC remained the lead company with an 80% share, while CNI assumed 15% and IIC assumed 5%. In 2013, affiliate Pennsylvania Insurance (PIC) was added to the pooling arrangement. As a result, CIC's share reduced to 75%.

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[35] Tr. 1154:3-15.
[36] Tr. 1154:17-23; Exh. 234-6.
[37] Exh. 274-8.
[38] Tr. 1153:2-4; Tr. 863:1-3.
[39] In pooling arrangements, entities share exposures to possible loss. Casualty Actuarial Society, Foundations of Casualty Actuarial Science, (4th ed. 2001), pp. 49-50.
[40] CIC's 2010 Annual Statement, Management Discussion and Analysis. CIC's Annual Statements are available on the California Department of Insurance's website. The Commissioner takes Official Notice of CIC's Annual Statements from 2008 through 2014.

2. CIC's Workers' Compensation Policies

CIC offers workers' compensation insurance through a guaranteed cost policy and a profit-sharing program. Each program is relevant to the underlying issue and described below.

a. Guaranteed Cost Policy

A great majority of California employers receive workers' compensation insurance coverage through guaranteed cost policies.[41] Under a guaranteed cost policy, the insured company pays a fixed annual premium for the policy term, regardless of subsequent loss experience. The fixed premium is the sum of the average losses and the basic fees. Average losses take into account the base rate for each classification assigned to the policy and the employer's experience modification factor. The fees are the estimated costs of providing the insurance; that is sales, underwriting, profit and other fixed costs. Thus, a company with average losses of $500,000, may be charged $750,000 in premium; $500,000 to cover expected loss payments and $250,000 in basic fees.

Every guaranteed cost policy must adhere to the Insurance Code and its applicable Regulations. All rates charged in a guaranteed cost policy must be filed with the WCIRB and approved by the Insurance Commissioner prior to use. In addition, every guaranteed cost policy must contain statutorily-required dispute resolution and cancellation language.[42]

CIC's guaranteed cost policies contain standard language approved by the Insurance Commissioner. For example, each policy states CIC's rates are filed with the Commissioner and open to public inspection. CIC warrants that it adheres to a single uniform experience rating plan and applies such experience rating to each policy.[43] In addition, CIC's guaranteed cost

[41] Tr. 310:4-6.
[42] Ins. Code § 11650 et seq.
[43] Exh. 209-17.

policies notify employers of the dispute resolution process provided under California Insurance Code section 11737, subdivision (f). CIC's Policyholder Notice provides that:

> If you are aggrieved by our decision adopting a change in a classification assignment that results in increased premium, or by the application of our rating system to your workers' compensation insurance, you may dispute these matters with us. If you are dissatisfied with the outcome of the initial dispute with us, you may send us a written Complaint and Request for Action as outlined below.
>
> You may send us a written Complaint and Request for Action requesting that we reconsider a change in a classification assignment that results in an increased premium and/or requesting that we review the manner in which our rating system has been applied in connection with the insurance afforded or offered you. Written Complaints and Requests for Action should be forwarded to: California Insurance Company, P.O. Box 281900, San Francisco, CA 94128-1900, Phone No. (877) 234-4450; Fax No. (415) 508-0374.[44]

Pursuant to California Code of Regulations, title 10, section 2509.44, CIC must acknowledge the complaint within 30 days and indicate whether the complaint will be reviewed. If CIC agrees to review the complaint, it must issue a decision within 60 days of the acknowledgment letter. An insured dissatisfied with CIC's decision may appeal to the Insurance Commissioner. The policy's dispute resolution provision does not provide for binding arbitration or any other alternative dispute methods.

CIC's guaranteed cost policies also include a cancellation provision and a "Short Rate Cancellation" Notice, as required by the Insurance Code.[45] Part 5, subsection E of the CIC policy provides that following cancellation, the final premium will be determined as follows:

> 1. If we cancel, final premium will be calculated pro rata based on the time the policy was in force. Final premium will not be less than the pro rata share of the minimum premium.

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[44] Exh. 208-15.
[45] Exh. 208-93; See also Ins. Code § 481, subd. (c).

> 2. If you cancel, the final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate calculation table and procedure. Final premium will not be less than the minimum premium.[46]

The Short Rate penalty is a percentage of the full-term premium based on the number of days of coverage in the canceled policy.[47] The Short Rate Calculation Table in CIC's guaranteed cost policies quotes subsection E and provides a formula for determining the early cancellation penalty. For example, an employer who pays an annual premium of $300,000 and cancels its policy after 100 days will owe $114,000; $82,192 in actual earned premium and $31,808 in penalties.[48] After expiration of the policy, an employer may change insurance carriers without penalty.

CIC's guaranteed cost policies also set a minimum and estimated annual premium based on an employer's payroll estimates, experience modification factor, and CIC's rates per $100 of payroll for each applicable classification. After estimated taxes and fees, the guaranteed cost policies provide an employer with an annual premium estimate. The final premium due is calculated using actual payroll amounts assigned to a specific classification of the policy and the employer's experience modification factor. The final premium is not impacted by the actual losses incurred during that same policy period.

b. The Guaranteed Cost Policies are the Sole Insurance Agreements

The guaranteed cost policies issued by CIC in this matter all contain the same language that the policies are the sole insuring agreements between CIC and Shasta Linen and go on to state that, "The only agreements relating to this insurance are stated in this policy. The terms of

[46] Exh. 208-87.
[47] The short-rate penalty discourages employers from switching insurers mid-policy year.
[48] Exh. 208-20 to 208-22.

this policy may not be changed or waived except by endorsement issued by us to be part of this policy."[49]

In addition, a standard form Policy Amendatory Endorsement—California is attached to each of the policies and state, "It is further agreed that this policy, including all endorsements forming a part thereof, constitutes the entire contract of insurance. No condition, provision, agreement, or understanding not set forth in this policy or such endorsements shall affect such contract or rights, duties, or privileges arising therefrom."[50] [Emphasis added.] No endorsement is attached, endorsed, or included to the policies adding any provisions or changes relating to the RPA.

Finally, the policies each state on page five, under Part Six—Conditions, C. Transfer of Your Rights and Duties: "Your rights or duties under this policy many not be transferred without our written consent."

c. EquityComp

In conjunction with AU, CIC offers a "profit-sharing" loss sensitive program titled EquityComp. Loss sensitive programs are ones in which the premium for the policy year is impacted by the actual cost of claims incurred during the policy year.[51] By definition, loss sensitive plans are "profit-sharing."[52] Generally, carriers market loss sensitive programs exclusively to large employers.[53] In fact, many jurisdictions restrict the sale of loss sensitive programs to employers whose annual premiums exceed $500,000. Large employers are typically better able to cope with loss and experience modification variations and are in a better position to control claims costs. Also, given the sophistication of larger companies, these employers are

[49] Exhibits 208, 209, and 210.
[50] *Ibid.*
[51] Tr. 595:9-14.
[52] Tr. 604:9-14.
[53] Tr. 310:10-16; see also ALJ Exh. 1.

better able to evaluate the cost effectiveness of the types of insurance policies available.[54] In essence, large employers are more prudent shoppers and can evaluate whether their costs match with an insurer's quote.[55] Loss sensitive programs are issued as endorsements to guaranteed cost policies and require the Insurance Commissioner's approval.[56]

EquityComp's profit-sharing plan is reflected in a Reinsurance Participation Agreement.[57] Neither CIC nor its affiliated entities filed or sought approval for the RPA or the EquityComp program.[58] The EquityComp program, and its accompanying Reinsurance Participation Agreement, is discussed in Section C, *infra*.

3. Financial Statements, Ratios and Market Share

CIC is primarily a workers' compensation insurance carrier. Approximately 98 percent of its book of business is written in California workers' compensation.[59] EquityComp currently generates 80 percent of CIC's policy premium.[60] That percentage has steadily increased since the program's inception in 2008.

- In 2009, CIC's net earned premium totaled $71,512,000 with incurred losses and loss adjustment expenses (LAE) equaling $55,615,000.[61] This resulted in a net loss ratio of 77.7% and a combined ratio of 109.7%.[62] Accordingly, CIC had a negative net income of $4,419,116.[63]

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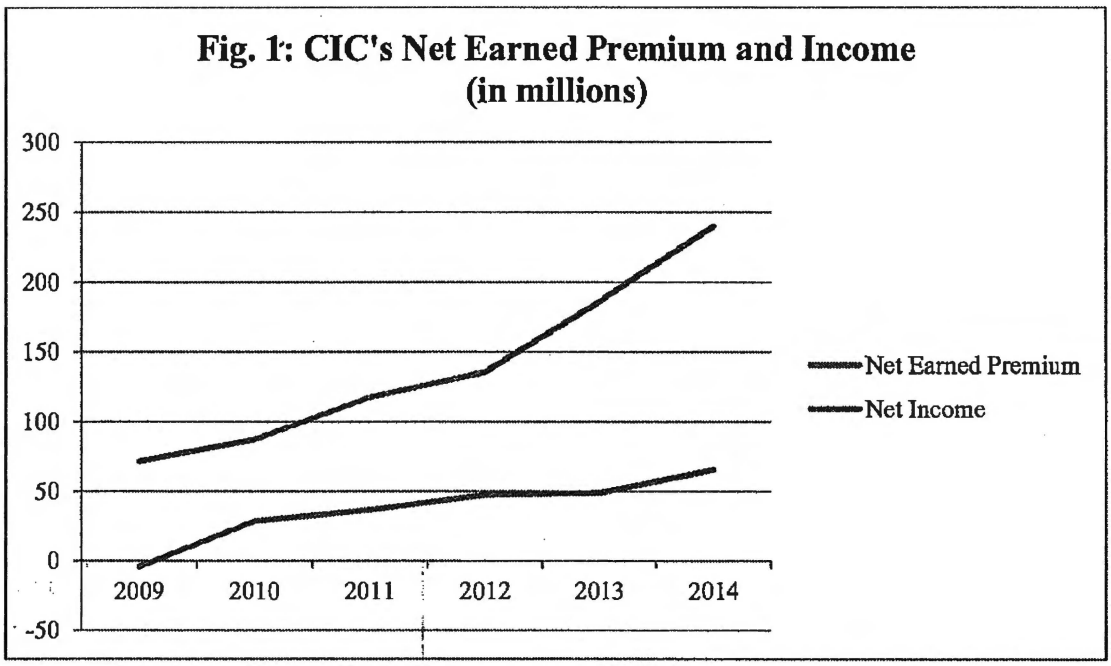
[54] Tr. 310:17-23.
[55] Tr. 311:4-11.
[56] Tr. 875:2-4; An endorsement to an insurance policy "is an amendment to or modification of an existing policy of insurance" that "may alter or vary any term or condition of the policy" and that "may be attached to a policy at its inception or added during the term of the policy." *Adams v. Explorer Ins. Co.* (2003) 107 Cal.App.4th 438.
[57] Tr. 621:2-16.
[58] Tr. 1169:18-20.
[59] Tr. 1155:24-1156:4.
[60] Tr. 865:19-22. Mr. Silver's testimony contradicted that of Ms. Gardiner on this issue. The Commissioner credits Ms. Gardiner's testimony on this issue, as Ms. Gardiner serves as the chief underwriter for AU and CIC.
[61] CIC's 2010 Annual Statement, Statement of Income.
[62] The net loss ratio is the sum of incurred losses and incurred loss adjustment expenses divided by earned premium. These amounts are found on lines 1 through 3 of CIC's Statement of Income.
[63] CIC's 2010 Annual Statement, Five-Year Historical Data.

- In 2010, CIC's net earned premium increased to $87,444,676, while its incurred losses and LAE dramatically decreased to $17,151,456. As a result of the significant decrease in losses, CIC net loss ratio dropped to 19.6% and its combined ratio declined to 54%.[64] This resulted in net income of $28,516,390.
- In 2011, CIC's net earned premium rose 34 percent to $117,505,149 with incurred losses and LAE's of $34,725,831. That year, CIC's net loss ratio equaled 29.5% and its combined loss ratio equaled 55.7%.[65] CIC's net income for 2011 also increased to $36,573,942.[66]
- In 2012, CIC saw a 16 percent earned premium increase with net earned premium totaling $135,598,473. CIC's losses and LAE equaled $17,116,000, for a net loss ratio of 12.6% and a combined ratio of 43.2%.[67] CIC's net income in 2012 equaled $47,582,838.
- In 2013, CIC's net earned premium increased another 37 percent to $186,034,034. CIC's losses and LAE totaled $59,854,816, for a net loss ratio of 32.1%. After underwriting expenses, CIC combined ratio equaled 61.8%.[68] CIC recorded net income of $48,928,910 for 2013.
- In 2014, CIC's net earned premium rose another 29 percent to $240,474,973. CIC's incurred losses and LAE's for that year equaled $72,484,214, for a net loss ratio of 30.1%.[69] CIC's combined ratio for 2014 totaled 60% and CIC reported a net income of $65,540,948.

[64] CIC's 2010 Annual Statement, Statement of Income & Five-Year Historical Data.
[65] CIC's 2011 Annual Statement, Management's Discussion and Analysis, p. 4.
[66] CIC's 2013 Annual Statement, Five-Year Historical Data.
[67] CIC's 2012 Annual Statement, Management's Discussion and Analysis, p. 4.
[68] CIC's 2013 Annual Statement, Management's Discussion and Analysis (Amended), p. 5.
[69] CIC's 2014 Annual Statement, Management's Discussion and Analysis, p. 4.

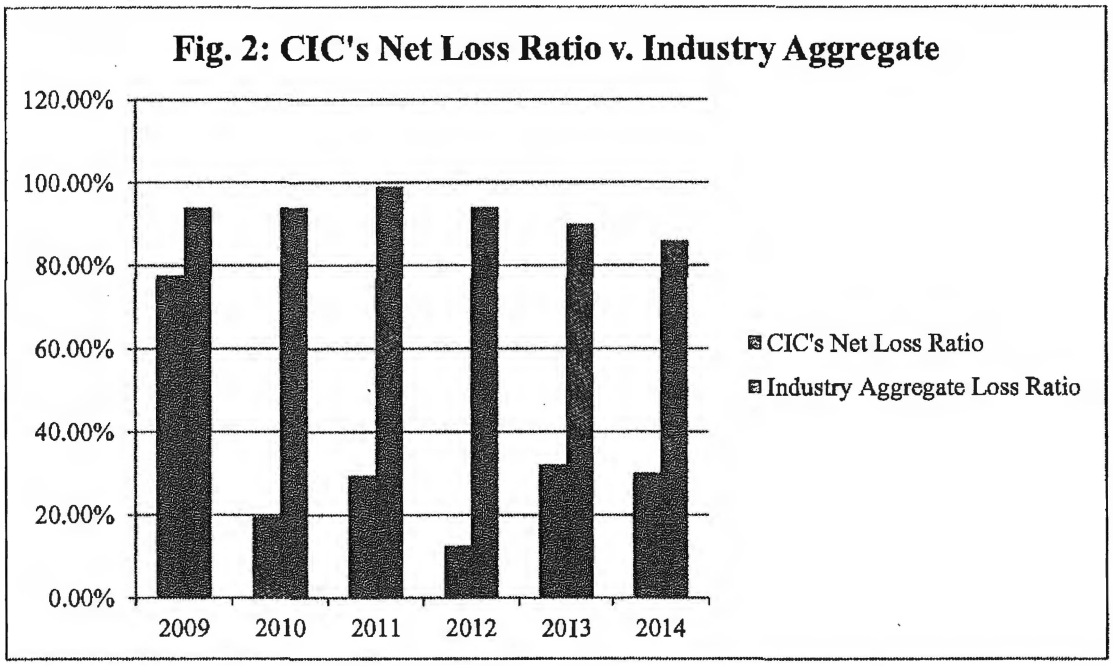
In sum, CIC's profits since EquityComp's 2008 inception equal $227,713,912. The following chart illustrates CIC's increase in net earned premium and net income:

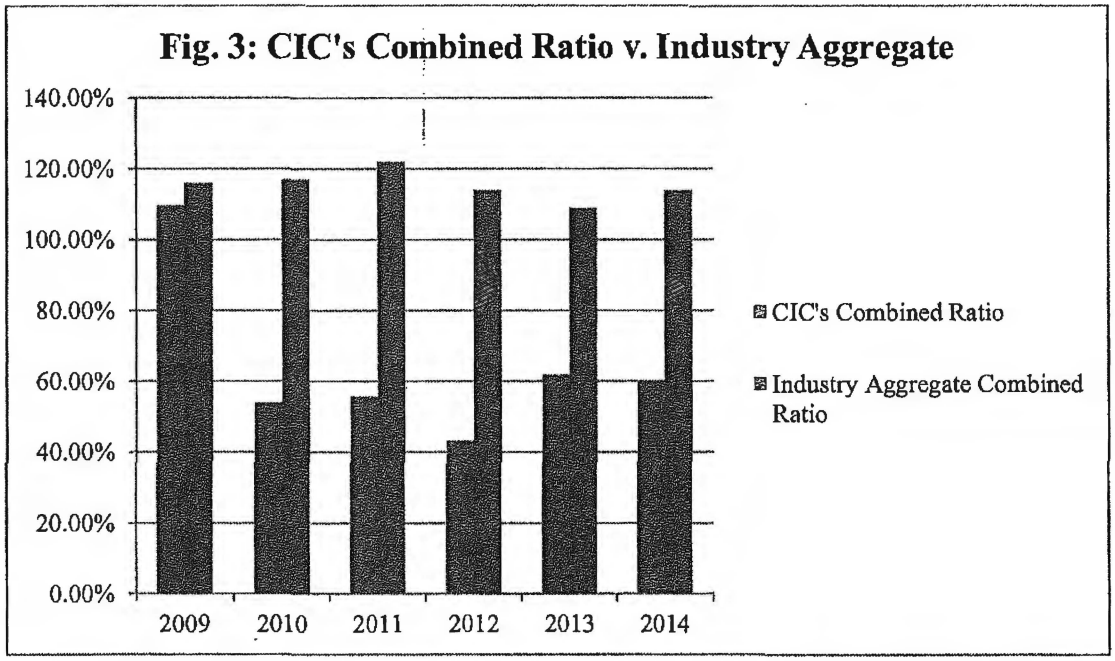


In comparison, CIC's total combined profit for the three years prior to EquityComp's 2008 inception totaled $47,172,997.[70]

From 2009 through 2014, CIC also posted significantly lower loss and combined ratios than other comparable carriers. CIC's calendar year ratios versus those of the industry as a whole are shown below:[71]

[70] CIC's 2010 Annual Statement, Five-Year Historical Data, p. 17.
[71] WCIRB's Insurer Experience Report on December 31, 2014, released April 20, 2015. This Report is available on the WCIRB's website. The Commissioner takes Official Notice of the WCIRB's Insurer Experience Report.





In fact, CIC recorded the lowest loss ratio among the top 30 workers' compensation insurance carriers in 2013, and the lowest loss ratio among the top 15 workers' compensation carriers in

2012.[72]

From 2008 through 2014, CIC also saw its market share increase. In 2008, prior to the inception of the EquityComp program, CIC ranked 37th in total written workers' compensation insurance premium with 0.867 percent of the market.[73] By 2010, CIC ranked 29th in total written premium and its market share increased to 0.963%.[74] In 2013, CIC ranked 10th in total written premium as its market share increased to 2.366%[75], and by 2014, CIC ranked 7th in total written premium with a market share of 2.92%.[76]

In 2006, the CDI conducted a financial examination of CIC's management practices, assets and liabilities from 2002 through 2006.[77] The financial examination noted that CIC offers an EquityComp program to medium-sized businesses.[78] The 2006 examination also noted that EquityComp is similar to an incurred loss retrospective rating plan.[79] The report does not indicate CDI reviewed the RPA or any other EquityComp program documents. The CDI conducted a follow-up financial examination for the period of January 1, 2007 through December 31, 2009.[80] The 2009 financial examination also made a passing reference to CIC's EquityComp program, again noting the program is similar to a retrospective rating plan.[81] In 2013, CDI issued yet another financial examination for CIC. The 2013 exam mentions the EquityComp program and its accompanying "Profit Sharing Plan" sold through CIC's affiliate,

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[72] 2012 & 2013 California P & C Market Share Report, Workers' Compensation Line. The Market Share Report is published by the CDI and available on the CDI's website. The Commissioner takes Official Notice of these Reports.
[73] 2008 California P & C Market Share Report, Workers' Compensation Line.
[74] 2010 California P & C Market Share Report, Workers' Compensation Line.
[75] 2013 California P & C Market Share Report, Workers' Compensation Line.
[76] Ms. Gardiner testified CIC's market share totaled less than 1%. (Tr. 866:15-20.) This testimony lacks credibility given the CDI's published report. In addition, CIC failed to present any documentation contradicting the CDI's calculations.
[77] Exh. 233.
[78] Ms. Gardiner testified the EquityComp program began in 2008. (Tr. 867:1-4). Ms. Gardiner's testimony is apparently inaccurate given the discussion of EquityComp in the 2006 report.
[79] Exh. 233-11.
[80] Exh. 234.
[81] Exh. 234-7.

AUCRA.[82] The 2013 Exam does not explain the "Profit Sharing Plan's" terms nor does the report indicate CDI inspected the RPA. Lastly, in 2014, the CDI issued a Market Conduct Report regarding CIC's operating practices. The scope of the confidential examination included a review of CIC's rates, rating plan, forms and underwriting rules, as well as CIC's marketing materials and active complaints.[83] The Market Conduct Report makes only a passing reference to EquityComp. There is no evidence CDI examiners reviewed the RPA or EquityComp materials for statutory compliance, nor did either party call witnesses to discuss these examinations.

C. The EquityComp Program

AU promotes EquityComp as a loss sensitive, profit-sharing plan appropriate for "middle market" insureds. AU began marketing this product in 2008 and since that date, the number of programs sold has increased exponentially each year. In California alone, AU writes approximately 10 new EquityComp policies per month.[84] As noted above, EquityComp comprises approximately 80 percent of CIC's policy premium.[85]

CIC has not filed the terms or rates of the RPA or EquityComp with the WCIRB or the Insurance Commissioner.

1. Trademark and Patent

On June 24, 2010, AU filed a United States Patent application for a Reinsurance Participation Plan.[86] Authored by Mr. Silver, CIC's Chief Executive Officer Steve Menzies and three other AU employees, the application sought to patent the EquityComp/RPA concept sold to

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[82] Exh. 274-9.
[83] Exh. 235.
[84] Tr. 1331:10-14.
[85] CIC refused to provide the total number of EquityComp participants for each year from 2008 through 2014 despite being ordered to do so on two separate occasions.
[86] ALJ Exh. 1; Tr. 1181:5-9.

Shasta Linen, and other California employers.[87] The federal government granted the RPA patent on March 15, 2011. The "Reinsurance Participation Plan" patent application explains in detail the motivation behind the program and the terms thereof.

Under the traditional guaranteed cost policy, there is frequently a mismatch between what the insurance company feels is a fair premium and what the employer considers a fair premium.[88] This is in part because an insurer considers an employer's average losses to be its expected losses, whereas most employers consider the median losses to be their expected losses. This dichotomy led to the development of linear retrospective rating plans.

Pricing a guaranteed cost policy is straightforward. Under a guaranteed cost policy, the insured company pays a fixed premium regardless of its subsequent loss experience during the policy term. The fixed premium is the sum of the expected average losses and the basic fees. A linear retrospective rating plan varies the premium an employer will pay based on the employer's actual losses during a coverage period. The minimum premium covers the basic fixed fees. The premium then increases linearly with respect to actual losses until it reaches a maximum plateau. The standard equation describing the relationship between premium and actual losses in linear retrospective plans is:

> Premium = Basic Fees + C*Actual Losses, where C is a constant
> Loss Conversion Factor.

But only large companies with expected losses of over $500,000 can qualify for retrospective rating plans in the United States. This rule is meant to protect small and mid-size employers who are presumably less sophisticated insurance consumers and who have less of an ability to predict their future losses.[89] In addition, until the advent of EquityComp and the RPA,

[87] Tr. 1179:10-15.
[88] ALJ Exh. 1, col. 3, lines 38-44.
[89] Tr. 310:10-23.

all retrospective plans were linear retrospective rating plans. This was due in part "to governmental and other regulatory requirements as well as computational difficulties inherent in providing premium quotes for a broad range of companies."[90]

With the invention of EquityComp and the RPA, AU altered this landscape by introducing a "non-linear retrospective premium plan for medium sized companies."[91] The non-linear retrospective premium function comprises an initial relatively steep portion, a breakpoint, a subsequently shallow portion and a plateau. Like the linear retrospective premium plan, the minimum premium covers the basic fixed fees and costs.[92] There is a breakpoint early in the function and then a shallow increase in the curve until the premium plateaus. Because of the early breakpoint in the function, the plateau portion, i.e. the maximum premium due, can be significantly lower than the plateau on a linear retrospective plan.[93] AU achieves this result with the initial steep curve which results in more premium collected at lower loss levels, where most insurers will end up.[94]

AU acknowledges that one of the challenges of a "fundamentally new premium structure" is that "the structure must be approved by the respective insurance departments regulating the sale of insurance."[95] In addition, many states prohibit the sale of retrospective plans to small and medium size companies. AU's response to this regulatory challenge is "a reinsurance based approach to providing non-linear retrospective plans to insureds that may not have the option of such a plan directly."[96]

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[90] ALJ Exh. 1, column 4, lines 47-55.
[91] ALJ Exh. 1, column 4, lines 62-63.
[92] ALJ Exh. 1, column 5, lines 42-43.
[93] ALJ Exh. 1, column 5, lines 44-47.
[94] ALJ Exh. 1, column 5, lines 47-49.
[95] ALJ Exh. 1, column 6, lines 22-26.
[96] ALJ Exh. 1, column 6, lines 39-42.

AU attempts to achieve this compliance by introducing a "reinsurance" company into the mix. The so-called reinsurance company enters into a separate Participation Agreement with the insured whereby a credit or debit is assessed on the insured as a function of the losses it experiences. First, an admitted insurance company seeks approval from a state regulator "by using an industry standard Guaranteed Cost policy and filing premium rate requests with the insurance department."[97] The insurance department, already familiar with such guaranteed cost policies, approves the rates. The insurance carrier then sells these policies, along with the unregulated participation plan, to a targeted group of employers, in this case small to medium sized companies.[98] The participation plan requires the employer to fund a segregated cell from which all the insured's losses are paid. According to the Patent for the RPA, the result is the following:

> The reinsurance company can now provide funds to implement a non-linear retrospective rating plan as a "participation plan." The reinsurance company does this by entering into a separate contractual arrangement with the insured. If the insured has lower than average losses in the next year, then the reinsurance company can provide a premium reduction according to the participation plan. If the insurance has higher than average losses in a given year, then the reinsurance company will assess additional premium accordingly. The insured can now, in effect, have a retrospective rating plan because of the arrangement among the insurance carrier, the reinsurance company and the insured even though, in fact, the insured has Guaranteed Cost insurance coverage with the insurance carrier.[99]

In essence, CIC sells employers a guaranteed cost workers' compensation policy that is then superseded by the terms of a participation plan. Premium owed under the guaranteed cost policies is replaced by premium paid for EquityComp under the RPA. The participation plans have a three-year term, in contrast to the one-year term of the guaranteed cost policies.

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[97] ALJ Exh. 1, column 6, lines 53-56.
[98] ALJ Exh. 1, column 6, lines 60-63.
[99] ALJ Exh. 1, column 7, lines 42-54 (emphasis added).

Although titled a "Reinsurance Participation Agreement," the RPA is not "reinsurance" as defined by Insurance Code section 620, but instead a separate contract entered into as part of the EquityComp program. Reinsurance is the process by which an insurance company buys insurance on its own risks. Respondent stipulated that the RPA is not a reinsurance contract. [100]

2. Sales and Marketing

AU employs approximately 40 salespersons dedicated solely to selling EquityComp nationwide.[101] Of those 40, four salespersons specifically service California brokers.[102] Every salesperson is a licensed insurance broker and all work out of AU's home office in Omaha, Nebraska.[103] Sales professionals receive two and one-half weeks of EquityComp training. Salespersons do not receive any follow-up EquityComp training.[104] AU's training department performs all required training.[105]

As part of the sale and marketing of EquityComp, AU issues a five-page Program Proposal and Rate Quotation (Program Proposal) to each potential insured.[106] AU's underwriting staff generates the Program Proposals and forwards them to the Sales department for dissemination.[107] Potential participants do not generally receive a copy of the RPA until they have agreed in principle to the EquityComp terms. In fact, AU's Sales division does not disseminate the RPAs, requests for service or officer exclusion forms.[108] AU's New Business

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[100] Tr. 614:24-615:10.
[101] Tr. 1271:20-21.
[102] Tr. 1274:8-9.
[103] Tr. 1276:1-17.
[104] Tr. 1275:13-22; Tr. 1278:10-18.
[105] Tr. 1277:2-17.
[106] Exh. 201.
[107] Tr. 1337:12-21.
[108] Tr. 1299:8-17.

department presents the RPA to potential participants on the day participants sign all EquityComp documents.[109]

The Program Proposal introduces potential participants to the "Profit Sharing Plan" central to EquityComp. The Program Proposal notes the reinsurance plan is separate from the guaranteed cost plan and that an insured's "risk retention is created by your participation in, and cessation of allocated premiums and losses to our facultative reinsurance facility, Applied Underwriters Captive Risk Assurance Company." The Program Proposal further states that the profit sharing plan "is not a filed retrospective rating plan or a dividend plan" and that a minimum three-year commitment is required. Taking into account a participant's estimated payroll, AU provides the participant with a projected one-year and three-year minimum premium and maximum premium. The Program Proposal also notes that AU determines the final net cost of the program using the participant's ultimate claims costs, along with the factors and tables set forth in the RPA.[110] Those "factors and tables" are not provided within the Proposal. Instead, AU informs participants they must maintain capital deposits in their cell accounts equal to: (1) the estimated annual loss pick containment amount multiplied by 10% during the first year, 10% during the second year, or 10% thereafter; and (2) outstanding reserves limited so not to exceed the maximum permissible cost. AU also informs participants that loss development factors, outlined in the RPA, will be applied to all claims to estimate their ultimate cost.

Under EquityComp, an employer is charged rates per $100 of compensable payroll.[111] These rates do not match those provided in the guaranteed cost policy sold to the employer.[112] A participant's "loss pick containment rate" (per $100 of payroll) is multiplied by a "pay-in factor"

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[109] Tr. 1297:13-19.
[110] Exh. 201-3.
[111] Exh. 201-4.
[112] Tr. 1292:13-17.

based on the participant's expected losses. This results in the participant's "net pay-in rate." The net pay-in rate is then multiplied by the amount of payroll in that classification to calculate the estimated annual pay-in amount.[113] The estimated annual pay-in amount differs from amounts quoted in the guaranteed cost policy and supersedes those terms. Experience modifiers and other guaranteed cost policy modification factors are not part of the profit sharing plan. Any changes to those factors does not impact the rates charged under EquityComp.[114] Lastly, the net pay-in amounts do not include applicable assessments and taxes.

AU's Sales department distributes a Program Summary & Scenario to brokers and their clients.[115] The Scenarios demonstrate the minimum and maximum three-year program costs and estimate the final program costs based on ultimate claims costs. The Scenarios chart the single-year prorated amounts a participant could expect to pay. For example, if an employer has no losses during the first year, the employer can expect to pay $100,000 in program costs for that year. But this chart is misleading. EquityComp is sold as a three-year program and not three one-year programs.[116] Accordingly, the single-year table does not represent the one-year cost of the program. In fact, it is the employer's three-year loss history that ultimately guides the cost of the program.

The Sales division also distributes a Request to Bind Coverages & Services. The Request to Bind must be executed along with the Reinsurance Participation Agreement. Each potential client may participate in a conference call with an AU "technical representative" to answer any questions about the Proposal and Summary. Lastly, the Request to Bind requires employers to arbitrate all claims, disputes or controversies involving EquityComp or the underlying

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[113] Exh. 201-4.
[114] *Ibid.*
[115] Tr. 1305:14-8.
[116] Tr. 1364:8-22.

policies.[117] The Request to Bind's dispute resolution provision differs from the provision of guaranteed cost policy sold to employers and supersedes the guaranteed cost policy.[118]

After disseminating all the relevant marketing materials to a broker, AU's salespersons initiate a conference call with the broker to further discuss the program.[119] But only 10 percent of brokers actually participate in a conference call.[120] AU does not initiate a conference call with the employer itself; AU offers only the insurance broker a chance to discuss the program mechanics.[121] The conference calls last anywhere from 30 minutes to one hour and are not recorded by AU.[122] Salespersons do not work off a script and are permitted to answer questions about the program themselves. A majority of the questions asked by brokers and potential clients pertain to claims handling or the proposed scenarios.[123] If a salesperson cannot answer a broker's question, the salesperson seeks a response from a Sales Manager. Salespersons are not trained to answer questions about the RPA itself, but are able to answer questions about Schedule 1 of the RPA, which contains the loss development and run-off loss development factors.[124] Questions regarding the meaning of terms in the RPA are forwarded by the Sales department to Mr. Silver for a response.[125]

Potential EquityComp participants interested in enrolling are directed to the New Business department. The New Business department distributes the RPA, as well as the Request for Service. These documents, along with the Request to Bind Coverages and Services, must be signed by the participant before any coverage takes effect. Insureds that refuse to sign the RPA

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[117] Exh. 205-1.
[118] Tr. 1329:9-18.
[119] Tr. 1299:24-1300:9.
[120] Tr. 1300:22-1301:9.
[121] Tr. 1301:10-16.
[122] Tr. 1281:6-13.
[123] Tr. 1283:9-23.
[124] Tr. 1314:23-1315:1; Tr. 1316:13-24.
[125] Tr. 1315:2-8.

lose their guaranteed cost insurance policy coverage with CIC.[126] Insurance coverage does not revert back to the terms of the guaranteed cost policy and insureds are left without insurance coverage from CIC.[127] In addition, nothing in the Program Proposal, Request to Bind or Summary and Scenarios names CIC as the insurer.[128]

3. Program Mechanics

Taking the components and provisions of EquityComp by themselves does not necessarily present a working understanding of the program's mechanics. Indeed, the parties presented no less than six witnesses in an effort to explain EquityComp's operation. While most rating plans use a straightforward formula to calculate the overall policy costs, EquityComp uses only a narrative.[129]

EquityComp pricing involves three separate components. The first is similar to the standard premium in a guaranteed cost policy. EquityComp calls this the loss pick containment rate and like the standard premium in a guaranteed cost policy, that amount is multiplied by $100 of payroll to generate what is effectively the base policy premium.[130] The second component is a loss cost component. The loss cost component, or ultimate cost of claims, is calculated using paid claim amounts, reserved amounts and an estimate of future additional costs, multiplied by the loss developments factors set forth by AU.[131] The third component of the program is fees. Fees under EquityComp are calculated as a percentage of an employer's loss pick containment amount. Specifically, an employer's loss pick containment amount is multiplied by an allocation factor (or minimum cost factor) and by an exposure group allocation factor.[132] As AU calculates

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[126] Tr. 1362:21-25.
[127] Tr. 1362:11-25.
[128] See Exhs. 201, 203 and 205.
[129] Tr. 352:24-353:4.
[130] Tr. 322:11-19.
[131] Tr. 323:5-10.
[132] Tr. 342:12-21.

fees based on the loss pick containment amount, participants will pay significant program expenses even when there are no claims filed.[133] For example, using the Scenarios presented to Shasta Linen, an employer with no claims during EquityComp's three-year term would pay $322,623.[134] The entire amount would constitute EquityComp "fees" since no claims were filed. But if during that three-year period, an employer has one claim for $30,000, the program cost more than doubles to $672,627; $642,627 of which are program fees received by CIC.[135]

Participants receive a monthly EquityComp bill from ARS. The bill provides an overall EquityComp program cost but does not delineate between premium or program costs.[136] In addition, AU distributes a quarterly Plan Analysis that outlines the program fees and summarizes all claim costs.[137] Each open and closed claim is listed separately as are the amounts paid to injured employees. Participants remit their monthly payments to ARS, who then forwards the payment to CIC. CIC then allocates the monies to AUCRA in accordance with the agreement between AUCRA and CIC.[138] Monies ceded to AUCRA fund the participant's captive cell and are held in that cell until called upon by CIC.

When an employee files a workers' compensation claim, CIC pays the claim and then cedes that liability to AUCRA. AUCRA, in turn, cedes the liability to the participant's cell.[139] In essence, participants pay all of their own claim costs and continue to do so until they reach 93 percent of the maximum program costs. Participants can expect an increase in their bill in the month following any claim payments as the RPA calls for specific cell funding levels.[140]

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[133] Tr. 344:13-19.
[134] Exh. 46-6.
[135] *Id.* $672,627 - $30,000 = $642,627.
[136] Tr. 774:17-22.
[137] See Exh. 216.
[138] Tr. 816:9-15; Tr. 893:18-894:23.
[139] Tr. 895:16-896:2.
[140] Tr. 897:3-8.

D. Reinsurance Participation Agreement

The RPA is a 10-page contract between AUCRA and the insured. The RPA's first six pages state the participant's monetary obligations, the length of the program, the dispute resolution mechanism for the program and a choice of law provision. Pages seven through ten, subtitled Schedule 1, set forth the calculation and allocation of premium and loss amounts, define the required capital deposit amounts and the penalty for early termination of the program, outline the applicable loss development and exposure group factors, and set the loss pick containment rate for each applicable classification.

1. Policy Term & Extensions

The RPA's initial "active term" is three years. During the RPA's active term, a participant's guaranteed cost workers' compensation insurance policy must be provided by a Berkshire Hathaway insurance carrier; i.e. California Insurance Company or Continental Insurance Company.[141] If the insurer provides workers' compensation coverage outside of the RPA's active term, special "extension" terms apply. These extension terms require the participant to immediately pay a cash deposit equal to 55% of the premium anticipated, to maintain a cash deposit sufficient to cover outstanding losses plus incurred but not reported losses, and to pay an early cancellation fee equal to 20% of the premium anticipated, all of which are determined exclusively by AUCRA.[142]

In addition to the three-year active term language, RPA paragraph 7 provides that the parties' RPA obligations extinguish "only where the Company no longer has any potential or actual liability to the issuing insurers with respect to the Policies reinsured by" AUCRA. Accordingly, while the RPA is active for three years, the parties' obligations continue until the

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[141] Exh. 207-2.
[142] *Id.*

RPA is terminated in accordance with the terms set forth in Schedule 1, discussed below.[143]

2. Choice of Laws and Dispute Resolution Procedure

The RPA provides that all disputes be exclusively governed by and construed in accordance with the laws of Nebraska.[144] The RPA also contains a two-page dispute resolution provision subjecting all disputes to binding arbitration in the British Virgin Islands.[145] All arbitration awards must be enforced in Nebraska courts.[146] According to CIC, this dispute resolution provision supersedes the language provided in the guaranteed cost policy.[147] In addition, nothing in the RPA or other EquityComp documents inform participants of their right to negotiate choice of law and dispute resolution provisions.

3. Early Cancellation Provision

The RPA sets forth its own early cancellation terms and penalties, different from those in the guaranteed cost policy. Any participant who cancels the RPA, or cancels the underlying guaranteed cost insurance policy, prior to the end of the active term is subject to the penalties set forth in Schedule 1 of the RPA.[148]

In the event of early cancellation either by the participant or AUCRA:

> (a) the Exposure Group Adjustment Factor will be multiplied by 1.25; (b) the Cumulative Aggregate Limit will be determined using Policy Payroll annualized to reflect the full term of the Agreement; and (c) the following amounts will be immediately due and payable to the Company; i) any remaining premium, including short rate penalties, due under the Policies; ii) capital deposit equal

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[143] Exh. 207-2.
[144] Exh. 207-5. In addition, any matter concerning the RPA "that is not subject to the dispute resolution provisions of Paragraph 13," shall be resolved exclusively by the courts of Nebraska without reference to its conflict of laws.
[145] Exh. 207-3 to 207-4, paragraph 13(A). Paragraph 13(I) further provides that all arbitrations shall be conducted in accordance with the rules of the American Arbitration Association and shall take place in Tortola, British Virgin Islands.
[146] Exh. 207-5, paragraph 14.
[147] Tr. 1329:9-18. Mr. Watson testified that once a participant enrolls in EquityComp, "the guaranteed cost policy . . . has no effect." Similarly, Ms. Gardiner could not provide an example where the guaranteed cost policy's dispute resolution provision would be applicable. (Tr. 887:7-12.)
[148] Tr. 1329:9-18.

to the cell's maximum liability; and iii) a Cancellation Fee equal to 8% of the Estimated Annual Loss Pick Containment Amount.[149]

The RPA does not explain these cancellation terms in monetary figures nor does AU provide the participant with a sample calculation based on early termination figures. But Ms. Gardiner provided uncontroverted testimony that had Shasta Linen chosen not to renew its guaranteed cost policy at the end of the policy's one year term in December 2011, AUCRA would have levied a $1.1 million cancellation penalty against Shasta Linen.[150]

4. Premiums, Capital Deposits and Applicable Rates

AU calculates EquityComp premium based on policy payroll and the loss pick containment amount. The loss pick containment amount is an amount equal to the product of policy payroll and the respective Loss Pick Containment Rates listed in Table C of Schedule 1.[151] These rates are per $100 of policy payroll and are fixed for the effective period. They do not mirror the rates provided for in the guaranteed cost policy and do not change even if the stated rates on the guaranteed cost policy decrease.[152] In addition, changes in experience modifiers and other modification factors do not affect these rates. Thus, if an employer's experience modification factor decreases during the active term of the RPA, this reduced experience modification would have no impact on the EquityComp premium or costs.[153]

The RPA also calculates loss development factors (LDFs) for each loss under the policies. These LDFs are generated by AU's underwriting department and are extrapolated from valuations provided by the WCIRB.[154] During the active term of the program, AU applies the weekly or monthly LDFs to each claim. If, at the end of the three-year active term, a participant

[149] Exh. 207-8.
[150] Tr. 885:1-5.
[151] Exh. 207-7.
[152] Tr. 1291:16-20; Tr. 899:1-9.
[153] Tr. 318:12-21; Tr. 897-898:14-7; Exh. 207-7; Exh. 44-4.
[154] Tr. 795:8-12.

refuses to renew the EquityComp program or AU refuses to offer renewal, the RPA applies "run-off LDFs" to each open and closed claim.[155] AU coined the term "run-off LDF" for purposes of the RPA. It is not a term used in the insurance industry or a valuation method used by other carriers.[156] For open claims, the run-off LDFs are 50 percent higher than LDFs applied during the active term.[157] In practical terms, a claim reserved at $75,000 one month prior to the end of the program's active term could be reserved at $293,000 the next month, resulting in a $218,000 bill from AU after expiration of the program.[158] Run-off LDFs are also generated by AU's underwriting department and are non-negotiable.[159]

All losses under the policies are ultimately paid from the participant's cell account and a participant is solely responsible for paying its losses up to 93 percent of its three-year loss pick containment amount.[160] Participants fund their own cell account through the premiums and capital deposits. Participants agree to make and maintain a capital deposit equal to the estimated annual loss pick containment amount multiplied by 10 percent during the first year, 10 percent the second year and 10% thereafter.[161] In addition, participants must make an additional capital deposit equal to the lesser of the ultimate loss or the cumulative aggregate limit.[162]

5. Cell Liquidation

At the end of the RPA's 3-year active term, AUCRA may, at its sole discretion, liquidate the participant's cell and return any excess premium and fees to the participants. That said, liquidation of the cell cannot occur unless:

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[155] Exh. 207-7; Tr: 886:11-19; Tr. 1318:12-21.
[156] Tr. 891:12-892:3; Tr. 350:2-7.
[157] Tr. 799:1-19.
[158] Tr. 802:4-9.
[159] Tr. 795:8-17; Tr. 1319:15-18.
[160] Tr. 1321:5-14.
[161] Exh. 207-7.
[162] Exh. 207-8.

> i) all claims under the Policies are closed and three years have elapsed since the expiration of all of the Policies; or
>
> ii) the Participant's maximum liability has been reached and three years have elapsed since the expiration of all of the Policies; or
>
> iii) the amount of paid losses allocated to the cell under the policies has exceeded the Participant's maximum liability; or
>
> iv) seven years have elapsed since the expiration of all of the Policies; or
>
> v) the Company deems itself insecure with respect to Participant's ability or willingness to fulfill its obligations under this Agreement.[163]

In essence, a program participant must wait, at a minimum, an additional three years after expiration of the RPA in order to receive a return of excess funds paid to CIC and AU.[164] There is no provision to accelerate this process and, indeed, AUCRA may withhold these funds for up to seven years after expiration of the policy.[165] To date, AUCRA has not made any profit-sharing distributions.[166]

E. Dispute Between Shasta Linen and CIC

In January 2013, AU billed Shasta Linen for $244,213.31. Shasta Linen challenges this bill. Understanding this dispute requires analysis of Shasta Linen's guaranteed cost policies, the terms of its RPA and AU's claims processing.

1. Guaranteed Cost Policy

CIC issued Shasta Linen three, one-year guaranteed cost policies, the first of which incepted on January 1, 2010 and expired on January 1, 2011. Subsequent policies incepted on

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[163] Exh. 207-8.
[164] Tr. 1325:4-15; Tr. 813:20-814:3.
[165] Tr. 441:15-20.
[166] In order to secure a complete and accurate record, the ALJ twice ordered Respondent to provide the number of participants who received a profit-sharing distribution, the date upon which their program ended and the date upon which they received a distribution. Respondent refused to comply with the ALJ's Order. Pursuant to Evidence Code sections 412 and 413, the Commissioner infers from Respondent's failure to produce this readily available evidence that AUCRA has not made any profit-sharing distributions.

January 1, 2011 and January 1, 2012, and expired on January 1, 2012 and January 1, 2013, respectively. Each policy contained the statutory language regarding dispute resolution, premium calculation and early termination, outlined in Section B, subdivision (2)(a), *infra*.

Each of Shasta Linen's guaranteed cost policies included an information page and an extension of information page. The information page estimated Shasta Linen's annual premium, while the extension page listed Shasta Linen's rates per $100 of payroll and experience modification factor.[167] As is customary under a guaranteed cost policy, CIC multiplied Shasta Linen's expected payroll in each classification by the rate quoted, factored in Shasta Linen's experience modification and added applicable taxes and fees in order to estimate Shasta Linen's annual premium.

For policy year 2010, CIC quoted the following rates per $100 of payroll: $17.77 for classification code 2585; $1.00 for classification code 8743; and $0.84 for classification code 8810. Based on Shasta Linen's estimated payroll and experience modification factor of 1.68, CIC approximated Shasta Linen's annual premium at $339,800.[168]

In policy year 2011, CIC increased Shasta Linen's rates per $100 of payroll as follows: $19.59 for classification code 2585; $1.02 for classification code 8742; and $0.83 for classification code 8810. The increase in rates, higher payroll amounts and a larger experience modification factor of 1.94 resulted in an estimated annual premium of $407,920.[169]

CIC did not alter Shasta Linen's rates per $100 of payroll in 2012. But Shasta Linen's experience modification factor dropped from 1.94 to 1.01. As a result, Shasta Linen's estimated annual premium for the 2012 policy year equaled $285,368.[170]

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[167] Exh. 208-1; Exh. 208-3.
[168] Exh. 208-20.
[169] Exh. 209-23.
[170] Exh. 210-26.

Shasta Linen's estimated premium and rate charges under the guaranteed cost policy are summarized as follows:

	2585 (per $100)	8742 (per $100)	8810 (per $100)	Ex. Mod. Factor	Annual Premium
2010	$17.77	$1.00	$0.84	1.68	$339,800
2011	$19.59	$1.02	$0.83	1.94	$407,920
2012	$19.59	$1.02	$0.83	1.01	$285,368

2. EquityComp/RPA Program

In December 2009, AU quoted Shasta Linen a minimum single-year premium of $107,541, a maximum premium of $322,623 and an annual loss pick containment amount of $283,450.[171] The EquityComp rates per $100 of payroll differed from those quoted in Shasta Linen's guaranteed cost policy and constitute the actual rates charged to Shasta Linen:[172]

	Loss Pick Containment Rate	Estimated Annual Payroll	Annual Pay-In Amount
2585 (per $100)	$18.68	$1,500,000	$280,200.00
8742 (per $100)	$1.05	$155,000	$1,627.50
8810 (per $100)	$.88	$188,319	$1,657.20
			$283,484.00

The EquityComp rates remained the same for the three-year duration of the program and did not change when Shasta Linen saw a reduction in its experience modification factor. For example, Shasta Linen's 2012 experience modification factor dropped from 1.94 to 1.01. This decrease had no impact on Shasta Linen's costs or premium under EquityComp.

Shasta Linen paid AU an initial set-up fee of $3,203 and a capital deposit of $28,345.[173] From January 2010 through June 2011, Shasta Linen's monthly payments ranged from $12,903

[171] Exh. 201-3.
[172] See also Exh. 207-10.
[173] Exh. 202-2; Exh. 211-1.

to $36,513.[174] In July 2011, AU sent Shasta Linen a bill for $83,612.49.[175] The significant increase in charges caused Shasta Linen to take a closer look at the EquityComp program.[176] The substantial bill also forced Shasta Linen into a promissory note with AU to spread out the payments over a four month period.[177]

In addition to monthly billing concerns, Shasta Linen became concerned that neither CIC nor AU possessed incentive to investigate workers' compensation claims. As evidence of this concern, Ms. Richardson recounted the case of employee Mr. M.[178] After failing to turn over customer payments, Mr. M went out on disability and indicated he was unable to fulfill his duties as a driver. Shortly thereafter, Ms. Richardson witnessed Mr. M driving a truck on the highway. Ms. Richardson informed AU of this fact but AU took no action. Mr. M's workers' compensation claim ultimately cost Shasta Linen $111,679.[179]

In November 2012, Shasta Linen changed insurance brokers and informed SVIS of this change.[180] On December 19, 2012, Shasta Linen's SVIS broker informed Ms. Richardson that AU wished to offer Shasta Linen a one-year extension on the EquityComp program.[181] Ms. Richardson declined this offer and reminded SVIS that it no longer represented Shasta Linen.

By December 2012, Shasta Linen had paid AU program costs totaling $934,466 despite suffering three-year cumulative losses of only $268,000.[182] In addition, nearly $200,000 remained in Shasta Linen's captive cell. Nonetheless, in January 2013, AU requested an

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[174] Exh. 212-9; Exh. 211-23.
[175] Exh. 212-11. Ms. Richardson testified "we never knew what we were going to be billed" and this made budgeting for workers' compensation insurance extremely difficult. (Tr. 123:21-124:3) It was ultimately determined that the $83,000 bill for July 2011 was due to a calculation error by AU and ARS. (Tr. 127:20-128:4.)
[176] Tr. 123:21-124:3.
[177] Exh. 2.
[178] The Commissioner intentionally omits the full name of the employee at issue.
[179] Tr. 134:21-25.
[180] Tr. 149:17-22; Exh. 33.
[181] Tr. 150:23-151:6. Exh. 4-6.
[182] Exh. 218-157.

additional $244,213.31 in program costs based entirely on the application of run-off LDFs to Shasta Linen's two remaining open claims. Shasta Linen has refused to pay these additional costs.

3. Subsequent Workers' Compensation Insurance Premiums

In January 2013, Shasta Linen's secured a guaranteed cost workers' compensation insurance policy from Pacific Compensation with an annual premium of $315,283. In January 2014, Shasta Linen secured a guaranteed cost insurance policy from Insurance Company of the West with an annual premium of $261,499.[183] In each of these guaranteed cost policies, Shasta Linen benefitted from a reduced experience modification factor, which was the result of their more favorable loss history while insured by CIC.[184]

F. Reinsurance Treaty and Addendums

CIC filed with the Department the reinsurance treaty and addendums.[185] The reinsurance treaties and addendums were signed by Steven Menzies for both CIC and AUCRA, first as Executive Vice President and Vice Presidents for each company, respectively, and then as President for both entities. The Department acknowledged the filings by letter dated June 25, 2008, and noted its review of the Treaty and Addendums was limited to those provisions related reinsurance agreements.[186]

The parties stipulated in this proceeding that the RPA is not actually reinsurance.[187] This stipulation by CIC is in direct conflict to the representations made to the Commissioner by CIC when the reinsurance treaty and addendums were filed and acknowledged by the Commissioner

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[183] Exh. 83.
[184] An employer's experience modification factors reflects a three year period, commencing four years and nine months prior and terminating one year and nine months prior to the date for which an experience modification is to be established. (California Workers' Compensation Experience Rating Plan (ERP), Section III, Rule 3.)
[185] Exh. 232
[186] *Ibid.*
[187] Tr: 614:24 - 615:2

and the testimony offered at hearing.

The RPA itself is based upon and results from the reinsurance treaties filed by CIC. As noted in the testimony of Jeffrey Silver, General Counsel of CIC, Shasta Linen was a "party" to the reinsurance agreement between CIC and AUCRA by virtue of the RPA, and the RPA becomes part of and is based upon the reinsurance agreement between CIC and AUCRA.[188] CIC was the party initiating and filing the reinsurance with AUCRA.

VI. Applicable Law

In California, the Legislature is granted plenary power through our State Constitution to create and enforce a complete system of workers' compensation.[189] This includes "full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating insurance coverage in all its aspects...."[190] Therefore, workers' compensation insurance programs are closely scrutinized and highly regulated based upon the provisions of the California Insurance Code, and the Legislature has created a comprehensive scheme mandating employer coverage and regulatory oversight. In order to execute this broad regulatory structure, the Legislature charged the Insurance Commissioner with the authority to oversee the form and substance of all workers' compensation insurance plans; everything from the scope of required coverage provided to employees to the amount employers pay insurers for premiums.

The Insurance Code sets forth both comprehensive workers' compensation policy form and rate requirements for all insurers. Article 2 of Chapter 3, which is set forth in Insurance Code Sections 11651 through 11664, and Article 2 of Chapter 3, which is set forth in Insurance Code Sections 11730 to 11742, delineate these provisions. For instance, every policy must contain a clause providing that the insurer is directly and primarily liable for payment of any

[188] Tr: 1210:12-20; 1212:2-4.
[189] California Constitution, Art. XIV, Section 4.
[190] *Ibid.*

compensation for which the employer is liable.[191] Policies must also state that the insurer is not relieved from payment "if the employer becomes insolvent or is discharged in bankruptcy" during the policy period.[192] The insurer will "be bound by and subject to the orders, findings, decisions, [and] awards rendered against the employer subject to the terms of the policy."[193] Section 11654 also specifies that the "insurance contract shall govern as between the employer and the insurer as to payments by either in discharge of the employer's liability for compensation."

A. Statutory Authority for Pre-Filing of Workers' Compensation Forms

Under both the Insurance Code and its applicable Regulations, insurers must adhere to a two-step process before using any policy or endorsement in California. First the policy form or endorsement must be filed with a licensed rating organization, and the licensed rating organization is to confirm those policy forms and endorsements comply with law. The policy forms and endorsements are then filed with the Insurance Commissioner and cannot be used until after 30 days or, in some instances, authorized by the Insurance Commissioner. The clearest recitation of this requirement is found in Insurance Code section 11658:

> (a) A workers' compensation insurance policy or endorsement shall not be issued by an insurer to any person in this state unless the insurer files a copy of the form or endorsement with the rating organization pursuant to subdivision (c) of Section 11760 and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or endorsement prior to that time.

An endorsement may concern matters unrelated to the description of the insurer's indemnity and

[191] Ins. Code § 11651.
[192] Ins. Code § 11655.
[193] Ins. Code § 11654.

insurance obligations.[194]

Section 11750.3 provides the WCIRB, the only licensed rating organization, with authority to examine all policies, endorsements and other forms for the purpose of determining whether such policies, endorsements and forms comply with California law. In addition, California Code of Regulations, title 10, section 2218 requires "all workers' compensation forms be submitted in duplicate" to the WCIRB for inspection and then to the Insurance Commissioner for final action.

The Insurance Commissioner has consistently stated these requirements. For example, in 2011, the CDI reminded the WCIRB to inform its insurer members that agreements that affect the obligations of a workers' compensation insurer or insured must be filed with the WCIRB and the Insurance Commissioner prior to use. The letter noted that the Insurance Commissioner was particularly concerned with arbitration provisions contained in unattached collateral agreements and considered such terms unenforceable unless the insurer demonstrated that the arbitration agreement was expressly agreed to by the insured at the time the policy was issued.[195]

In sum, insurers who offer and issue workers' compensation insurance policies, endorsements and forms in California must submit such policies, endorsements and forms, however titled by the insurer, for review. Such materials must be filed with the WCIRB, which reviews them and forwards them to the Insurance Commissioner for final review before use in California.[196] Rate information is submitted directly to the Insurance Commissioner pursuant to section 11735. An insurer may begin offering filed policies, endorsements or other materials 30

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[194] See *Donahue Constr. Co. v. Transport Indem. Co.*, 7 Cal.App.3d 291, 303 [insurance policies may include the duty to defend an insured]; *Genuser v. Ocean Accident & Guarantee Corp.*, 57 Cal.App.2d 979, 983 [insurance policy may limit the time within which a lawsuit may be brought under the policy].

[195] Notice of Hearing and Order to Show Cause, in *The Matter of Zurich American Insurance Company*, DISP-2011-00811 at p. 6. The ALJ took Official Notice of this filing.

[196] Ins. Code § 11658

days after the Insurance Commissioner receives the materials, if the Insurance Commissioner has not already advised the insurer that the materials do not comply with California law.[197] If the Insurance Commissioner advises the insurer at any time that the filed materials do not comply with California law, the insurer may not issue any policy, endorsement or other form that includes such material.[198]

B. Statutory Authority Prohibiting Unfiled Collateral Agreements

California Code of Regulations, title 10, section 2268 states that no collateral agreement to a workers' compensation insurance policy may be made that modifies the obligation of the parties unless the agreement is made part of the policy's terms. Specifically, section 2268 states:

> No collateral agreements modifying the obligation of either the insured or the insurer shall be made unless attached to and made a part of the policy, provided, however, that if such agreements are attached and in any way restrict or limit the coverage of the policy, they shall conform in all respects with these rules.

This regulation is clear on its face that any obligation of either the insurer or the insured concerning the workers' compensation insurance that is not contained in the insurance policy is required to be made part of the policy and unendorsed side agreements are prohibited. This regulation therefore requires the filing of any agreement that modifies or alters the insured's: (1) obligation to reimburse or otherwise pay the insurer for loss adjustment expenses and/or other claims or policy related expenses; (2) indemnity or loss obligation; (3) payment or reimbursement obligation; (4) allocation of loss adjustment expenses or other fees and expenses; (5) timing of reimbursements or payments to the insurer; (6) collateral; (7) circumstances that constitute a default; (8) choice of law; (9) arbitration obligation; and (10) other material

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[197] *Ibid.*
[198] *Ibid.*

obligations under any workers' compensation insurance program, plan or policy.[199]

C. Statutory Authority for Pre-Filing of Workers' Compensation Rates

The regulatory obligation for insurers to file their workers' compensation rates before use in this state is set forth in Insurance Code sections 11735 and 11750.3 and in the California Code of Regulations. Section 11735 requires every insurer to file with the Insurance Commissioner "all rates and supplementary rate information that are to be used in this state." The rates and supplementary rate information must be filed no later than 30 days prior to use. A filed rate may be disapproved by the Insurance Commissioner pursuant to the applicable subdivisions of Section 11737.

D. Statutory Appeal Language

The Insurance Code also permits policyholders harmed by the application of a rate or rating plan to file an appeal with the Insurance Commissioner. Specifically, Insurance Code section 11737, subdivision (f) states:

> (f) Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. If the insurer or rating organization fails to grant or reject the request within 30 days, the applicant may proceed in the same manner as if the application had been rejected.

Any party affected by the insurer or rating organization's response may appeal to the Insurance Commissioner within 30 days after written notice of the action. The Commissioner, after conducting an evidentiary hearing, may affirm, modify, or reverse that action.

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[199] *American Zurich Ins. Co. v. Country Villa Serv. Corp.* (2015) 80 Cal. Comp. Cases 687, 703-704; Notice of Hearing and Order to Show Cause, in *The Matter of Zurich American Insurance* Company, *supra*, DISP-2011-00811 at pp. 4-5.

The authority to hear grievances of employers for misapplication of rates, noted above, is separate from the Commissioner's authority to disapprove rates. Subdivisions (a) through (e) and (g) of Section 11737 deal with rate disapproval by the Commissioner. Subdivision (h) of Section 11737 deals with the rate that will be in effect if there is no applicable rate.

E. Reinsurance

Section 620 of the Insurance code defines reinsurance as: "A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance." The original insured has no interest in the reinsurance as a matter of law.[200] Reinsurance is "'a special form of insurance obtained by insurance companies to help spread the burden of indemnification. A reinsurance company typically contracts with an insurance company to cover a specified portion of the insurance company's obligation to indemnify a policyholder.,.. The reinsurance contract is not with the insured/policyholder.' " *Catholic Mut. Relief Soc. v. Superior Court* (2007) 42 Cal. 4th 358, 368, quoting *Ascherman v. General Reinsurance Corp.* (1986) 183 Cal.App.3d 307, 311, fn. 5.

A reinsurance policy may not be used to change the underlying insurance policy. "An essential feature of reinsurance is that it does not alter the terms, conditions or provisions of the contract of liability insurance between the direct liability insurer and its insured..." *Catholic Mut. Relief Soc., supra,* 42 Cal. 4th at 369. Thus, by definition, a reinsurance contract may not involve the original insured/policyholder's contract of insurance.

This is not to say reinsurers may not contract with the original insured at all. In fact, the Insurance Code clearly indicates that a reinsurer may contract separately with a policyholder but only as to rights of policyholders against the reinsurer: "The original insured or policyholder shall not have any rights against the reinsurer which are not specifically set forth in the contract

[200] Ins. Code § 623.

of reinsurance, or in a specific agreement between the reinsurer and the original insured or policyholder."[201] Since the Insurance Code defines reinsurance as only between an insurer and a reinsurer, a reinsurer cannot directly insure an insurer's policyholder, including changes in rates, premium, claims handling, etc., so as to modify the underlying contract between the insurer and it's insured. For a reinsurer to do otherwise effectively results in it becoming an insurer.

VII. Discussion

Shasta Linen contends the EquityComp program, with its required RPA, modifies the guaranteed cost policy's rates, dispute resolution provision, and cancellation terms, and as such must be filed and approved by the Insurance Commissioner prior to use. CIC argues the CDI lacks jurisdiction over this appeal, that the RPA does not alter the terms of the guaranteed cost policy, and that mention of the EquityComp program in CDI market examinations constitutes approval of the program. CIC also argues the CDI may not void the RPA's terms.

After examining the facts and applicable law, the Insurance Commissioner concludes he has jurisdiction over this appeal; EquityComp and its accompanying RPA constitute a collateral agreement pursuant to California Code of Regulations, title 10, section 2268, which is void as a matter of law; CIC was the primary party instituting an illegal program to modify its rates with its insureds and ultimately the premium charged to Shasta Linen through the collateral agreement; and CIC made misrepresentations to the Commissioner concerning its workers' compensation insurance programs and reinsurance.

A. The Insurance Commissioner's Exclusive Jurisdiction over this Appeal

CIC initially contended that the Commissioner lacks jurisdiction to consider this case. Specifically, CIC argues (1) appeals filed under Insurance Code section 11737, subdivision (f) may only determine "whether CIC has properly applied its [rate] filings to determine how much

[201] Ins. Code § 922.2, subd. (c).

premium to charge" and may not address the potential illegality of the rate filing;[202] (2) the RPA is between AUCRA and Shasta Linen and relief in this forum is not possible;[203] (3) whether the RPA is an unlawful collateral agreement in violation of the Insurance Commissioner's Regulations is beyond the scope of the CDI's jurisdiction;[204] and (4) only the Insurance Commissioner may initiate a hearing to disapprove a rate on the ground that it is unfiled.[205] Each of these arguments lack merit as discussed below.

1. Section 11737(f) Appeals Address Insurer Filings

CIC contends this appeal may only consider whether CIC assessed Shasta Linen's premium in accordance with its approved rate filings.[206] But CIC misinterprets the statute and inserts language that is not included.

Insurance Code section 11737 provides the Insurance Commissioner the authority to take various actions regarding rates, including disapproval of rates that fail to comply with filing requirements, result in inadequate or discriminatory premiums or threaten an insurer's solvency. Subdivision (f) provides employers with a similar right to challenge filed rates as they apply to that particular employer and authorizes the Insurance Commissioner to determine the proper application of the filed rate.

> Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered.[207]

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[202] Respondent's Post-hearing Opening Brief, 21:13-22:7.
[203] Respondent's Post-hearing Opening Brief, 22:8-18.
[204] Respondent's Post-hearing Opening Brief, 23:8-14.
[205] Respondent's Post-hearing Opening Brief, 23:21-24:6.
[206] Respondent's Post-hearing Opening Brief, 22:4-7.
[207] Ins. Code § 11737, subd. (f).

If the employer disagrees with the carrier's response, it may appeal to the Insurance Commissioner. Appeals presented to the Insurance Commissioner are heard by the Administrative Hearing Bureau pursuant to California Code of Regulations, title 10, section 2509.40 et seq.

Nothing in section 11737, subdivision (f) limits review to premiums charged under the rating system. Contrary to CIC's argument, an insurer's rating plan and rates are not synonymous with "premium." Section 11730, subdivision (g) defines rates as "the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expenses considerations and does not include minimum premiums." Section 11737, subdivision (f) provides an employer aggrieved by an insurer's application of is rates to that employer with a forum for such disputes. Shasta Linen complains CIC did not adhere to its filed rating plan and rates in assessing workers' compensation premium and costs under EquityComp. Certainly such a dispute falls under section 11737, subdivision (f).

Even assuming section 11737, subdivision (f) pertains only to premiums charged, the underlying complaint satisfies such a requirement. Shasta Linen argues the EquityComp premium and rates per $100 of payroll differ from those filed and approved by the Commissioner. CIC counters this argument by stating the RPA charges program fees, not premiums.[208] While CIC is careful to call EquityComp costs "program costs" and not premiums, this is a distinction without a difference. Indeed, Mr. Watson used the terms interchangeably during his testimony and the patent application itself calls the costs under the RPA "premiums."[209] Moreover, money paid by an insured to an insurer for coverage constitutes

[208] Respondent's Post-hearing Opening Brief, 25:1-20.
[209] ALJ Exh. 1, col. 1, lines 44-48: "The risk sharing participation program is structured such that the insured's net premium payment will vary in a non-linear manner with respect to their actual losses. In particular, there will be accelerated savings in premiums for particularly low losses over a given period of time." See also, Tr. 1292:22-15.

premium regardless of the name. This, of course, is consistent with the structure of the program. Accordingly, even under CIC's limited reading of the statute, the dispute is properly before the Commissioner.

Shasta Linen was aggrieved by the modification of the guaranteed cost rate and resulting premium which was inconsistent with that which was supposed to be charged under CIC's rate filing and the terms of the guaranteed cost policy that was actually issued. No other rate is applicable except for those filed by CIC, and the RPA cannot be used as either the rate or to calculate the premium of Shasta Linen since it had not been filed with the Commissioner.[210]

2. AUCRA is Not a Necessary Party to this Appeal

CIC asserts the RPA is a contract between AUCRA and Shasta Linen and as the appeal names only CIC, the Insurance Commissioner cannot rule on the agreement's legality. More specifically, CIC argues that AUCRA is not an insurer, and therefore not subject to the appeal procedures under section 11737. This argument is without merit.

While it is true that the RPA is a contract between AUCRA and an employer, AUCRA is not an independent third party or unrepresented at this hearing. AUCRA is a wholly-owned subsidiary of Applied Underwriters, Inc.; the same corporation that owns CIC. The Boards of Directors for CIC, AU, and AUCRA are identical in composition and officers and directors of all three entities testified during the hearing.[211] In addition, AUCRA's sole purpose is to serve as a supposed reinsurer to CIC. As such, it is inextricably intertwined with CIC and AU. Indeed, the affiliated entities are so enmeshed that each of CIC's financial examinations discusses EquityComp as a CIC product, and there is no evidence CIC sought to distinguish itself from

[210] See Ins. Code §§ 11735 and 11737.
[211] Tr. 1153:2-4; Tr. 863:1-3.

EquityComp[212]

It is also true that the EquityComp program requires CIC or another licensed insurance carrier participate in the program. And while CIC may not be a signatory to the RPA, CIC represented that the rates filed and approved by the Commissioner would be the rates charged to California consumers. That CIC contracted with an affiliated corporation to alter or modify those rates does not absolve the carrier from liability in this proceeding, nor does it protect the RPA from analysis. This is especially true given that AU structured EquityComp and the RPA to circumvent state regulators.[213]

It is most important to note that CIC is the party that, through its Executive Vice President, and then President, Steven Menzies[214] created and entered into the reinsurance treaty and addendums that transferred its EquityComp insured policyholders to AUCRA. The treaty specifically notes the ceding of EquityComp business to AUCRA by CIC. CIC now stipulates that the arrangement between it and AUCRA is not actually reinsurance. However, a party merely stipulating at hearing does not alter or eliminate the facts in this record that CIC did enter into reinsurance treaties with a reinsurer related to it through its corporate parent, with common executives facilitating the transaction, and utilized that reinsurance to perpetuate its scheme to change its filed rates and insurance contracts with its insureds. CIC, through this stipulation, is merely trying to wash its hands of responsibility as the primary party responsible for this arrangement.

Lastly, the Commissioner must determine whether the rates and rating plan sold to Shasta Linen adhere to the Insurance Code and the approved rating plan. If Shasta Linen's rates differ

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[212] Exh. 233-11.
[213] ALJ Exh. 1, column 7, lines 42-54.
[214] Steven Menzies was at the time of the signing of the reinsurance treaties the Vice President and then President of AUCRA. See Exh. 232.

from those quoted by CIC and approved by the Commissioner, Shasta Linen may challenge those rates under section 11737, subdivision (f), regardless of whether CIC or AUCRA sold Shasta Linen the RPA.

3. Conclusions Regarding RPA are Not Beyond Scope of Appeal

CIC argues that analysis and conclusions regarding the RPA are beyond the scope of a section 11737, subdivision (f) hearing. CIC argues the RPA does not impact the "rating system" and thus it is irrelevant whether the RPA is an unlawful collateral agreement under the Insurance Code and its Regulations. This argument is also without merit.

Whether the RPA impacts rates or the rating system is a question of law to be determined by the Insurance Commissioner.[215] CIC's argument relies upon the legal conclusion that the RPA does not impact rates and thus is outside the Insurance Commissioner's jurisdiction. This appeal requires the Insurance Commissioner to consider the impact of the RPA. As stated in CIC's parent company's own patent, the RPA, set up through CIC's reinsurance agreement with ACURA, was intended to modify the guaranteed cost policy and change it into a retrospective rating plan.[216] Permitting the RPA to be beyond the scope of this appeal will impose upon Shasta Linen improper rates and premium in this state, which harms both this employer and the workers' compensation system established by the Legislature.

4. Section 11737 Hearings May Be Initiated by Insurance Commissioner or Insured

CIC argues that only the Insurance Commissioner may initiate a hearing to disapprove an unfiled rate. In support of this contention, CIC cites section 11737, subdivision (a) arguing the Insurance Commissioner has discretion to approve unfiled rates and *Bristol Hotels & Resorts v.*

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[215] *Conestoga Servs. Corp. v. Executive Risk Indem., Inc.* (9th Cir. 2002) 312 F.3d 976, 981; *Fragomeno v. Ins. Co. of the West, Inc.* (1989) 207 Cal.App.3d 822, 827.
[216] ALJ Exh. 1.

National Council on Compensation Ins. Inc. (2002) 2002 WL 387266. Neither argument is persuasive.

Pursuant to Insurance Code section 11735 an insurer *shall* file all rates and supplementary rate information that are to be used in this state no later than 30 days prior to their effective date.[217] Pursuant to Insurance Code section 11658, an insurer *shall* not issue a policy unless it has been approved in form and substance by the Insurance Commissioner and the WCIRB.[218] Similarly, California Code of Regulations, title 10, section 2218 requires insurers submit all workers' compensation insurance forms to the WCIRB and the Insurance Commissioner for approval prior to use. The statute and regulations are clear. An unfiled rate or policy form or endorsement is unlawful.[219] And as discussed above, under section 11737, subdivision (f) a consumer may challenge the use of an unfiled rate.

CIC also cites *Bristol Hotels & Resorts, supra*, arguing that an unfiled rate is not an unlawful one. *Bristol Hotel & Resorts* is an unpublished California case. The California Rules of Court however, prohibit citation to an unpublished decision for this purpose.[220] The rules authorize reference to unpublished opinions only in a narrow set of circumstances, none of which apply here.[221] Accordingly, the ALJ disregards the citation to *Bristol Hotels & Resorts* and CIC's argument thereunder.[222]

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[217] Ins. Code § 11735, subd. (a).
[218] Ins. Code § 11658, subd. (a).
[219] See also, *American Zurich Ins. Co., supra,* 80 Cal. Comp. Cases 687, 709-710.
[220] Cal. Rules of Court, rule 8.115(a).
[221] Cal. Rules of Court, rule 8.115(b).
[222] *Humane Soc'y of the United States v. Superior Court of Yolo County* (2013) 214 Cal.App.4th 1233, 1266.

5. Subdivision (f) of Insurance Code Section 11737 Permits the Insurance Commissioner to Apply the Applicable Filed Rate to the Aggrieved Insured.

The Insurance Commissioner has authority to hear any dispute concerning a policyholder aggrieved by an insurer's application or misapplication of the insurer's filed rates pursuant to subdivision (f) of Insurance Code section 11737. Subdivision (f) has no time limitations for a grievance to be filed and only requires that the policyholder be aggrieved by the application of an insurer's rate. In this matter, CIC utilized an unfiled side agreement through its reinsurer to apply an unfiled rating plan. Subdivision (f) states nothing in its provisions that requires it to be applied prospectively. By the subdivisions own terms, it may be applied retroactively since the provision uses the past-tense term "aggrieved" and requires the Commissioner to review the "manner in which the rating system has been applied in connection with the insurance afforded...."[223]

If one were to apply subdivision (f) only prospectively, any insured that obtained a policy would have no recourse to an insurer's improper rating. The remedy afforded to the policyholder under subdivision (f) is not the discontinuance of an unfiled rate, but the Commissioner applying the proper filed rate applicable to the policyholder through this administrative process.[224]

B. EquityComp and RPA are Collateral Agreements

Having rejected CIC's jurisdictional arguments, the analysis turns to the agreed-upon issue in this appeal: whether EquityComp and its accompanying RPA modify or alter the terms and rates of the underlying guaranteed cost policy. CIC initially contends the RPA is not a collateral agreement since it does not modify CIC's indemnity obligations. CIC also argues the RPA does not alter the rates charged to Shasta Linen or modify any other terms of the guaranteed

[223] Ins. Code § 11737, subd. (f).
[224] *Ibid.*

cost policy. But CIC's contentions ignore the statutory language and relevant case law on this issue, and disregard witness testimony and the terms of the RPA.

1. Modifications Not Limited to Indemnity Obligations

CIC argues the RPA does not constitute a collateral agreement since it does not limit or restrict CIC's obligation to pay claims.[225] This narrow interpretation is not supported by the statute or relevant case law.

The legislatively-created, comprehensive regulatory scheme requires all workers' compensation insurance policies and forms be filed and approved by the Insurance Commissioner. Section 11658 clearly states that all policies, as well as endorsements to an insurance policy, must be approved prior to use. Similarly, Insurance Code section 11750.3 instructs the WCIRB to review for legal compliance all "policies, daily reports, endorsements or other evidence of insurance." An endorsement is an amendment or modification of an existing policy that alters or varies *any term or condition* of the policy.[226] While some endorsements make minor changes to a policy, other endorsements add or delete insureds or substantially change the premium charged.[227] In light of such a comprehensive regulatory scheme, it is unreasonable to limit the filing requirements of section 11658 to endorsements that modify an insurer's indemnity obligations for loss or liability. Nothing in the language of section 11658, or the language of any other related statute or regulation, requires such a limited interpretation.

In addition, the Insurance Commissioner and the federal courts have rejected this narrow reading of section 11658. In *Zurich American Ins.*, the Insurance Commissioner explained that agreements that modify an insurer's choice of law, dispute resolution options, cancellation and default penalties or payment obligations constitute collateral agreements that must be filed and

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[225] Respondent's Post-hearing Opening Brief, pp. 38-39.
[226] *Adams v. Explorer Ins. Co., supra*, 107 Cal.App.4th at 450-451;
[227] Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2002) ¶ 3:188, p. 3–50.

approved.[228] The Insurance Commissioner's interpretation of section 11658 is clear and entitled to great weight.[229] Similarly, in *American Zurich Insurance Co. v. Country Villa Serv. Corp.* (*Country Villa*), a California federal district court rejected the notion that filing requirements pertain only to agreements that modify indemnity obligations. Relying on the Insurance Commissioner's interpretation and previous case law, the federal court held that it was unreasonable to limit section 11658 to "the narrow sliver of an insurance agreement regarding only the insurers 'indemnity obligation for loss or liability."[230]

Accordingly, CIC's contention is without merit.

2. RPA Modifies the Terms of the Guaranteed Cost Policy

Contrary to CIC's assertion, the RPA modifies a number of guaranteed cost policy provisions, namely, the rates charged, the choice of law and dispute resolution requirements, non-renewal penalties and early cancellation fees. In fact, where the RPA and the guaranteed cost policy differ, the RPA terms supplant those of the guaranteed cost policy.[231]

There is no question that the guaranteed cost policy rates charged per $100 of payroll differ from those charged under the EquityComp program. In policy year 2010, the guaranteed cost policy quoted $17.77 per $100 of payroll for classification 2585, while the RPA quoted $18.68 for that same policy year. This same discrepancy can be seen in policy years 2011 and 2012. And there is no question that the rates Shasta Linen paid to CIC were not those quoted under the guaranteed cost policy and approved by the Commissioner. First, the EquityComp Proposal itself notes that the applicable rates are the "loss pick containment rates" charged under

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[228] *In the Matter of Zurich American Insurance Company, supra*, DISP-2011-0081 at pp. 10-12.
[229] *Ass'n for Retarded Citizens v. Dep't of Developmental Serv.* (1985) 38 Cal.3d 384, 391.
[230] *American Zurich Ins. Co. v. Country Villa Serv. Corp., supra*, 80 Cal. Comp. Cases 687, 703.
[231] Tr. 1329:9-18.

the RPA and not those quoted in the guaranteed cost policy.[232] Second, all witnesses agree that the RPA terms governed Shasta Linen's payments under the policy and plan. Both Dr. Levine and Ms. Gardiner detailed Shasta Linen's costs under EquityComp. Those calculations incorporated the RPA's loss pick containment rates and not the rates quoted under the guaranteed cost policy.[233] In addition, the EquityComp Sales Manager testified that the terms of EquityComp and the RPA supplant those of the guaranteed cost policy.[234] In fact, the policy terms are irrelevant in determining the premium and fees under the RPA.[235] Third, while the guaranteed cost policy applies an employer's experience modification factor in calculating premium, EquityComp specifically excludes this mandatory factor.[236] The effect is yet another change in an employer's rate and overall premium. Although CIC asserts RPA costs and fees do not constitute "rates" or "premium," this argument is simply erroneous.

The RPA also presents a dispute resolution and choice of law provision intended to supersede those of the guaranteed cost policy. Disputes under the guaranteed cost policy are exclusively governed by section 11735, subdivision (f), which provide for an evidentiary hearing by the CDI. Language outlining this right is mandated by the Insurance Code and must be included in each workers' compensation policy. No provision is made for binding arbitration, and disputes are governed by California law. But the RPA modifies these rights. The RPA and the Request to Bind provide for binding arbitration of disputes. And such disputes are exclusively heard in the British Virgin Islands using Nebraska law. This modification is extremely disconcerting since the Insurance Code prohibits the use of arbitration provisions

[232] Exh. 201-4.
[233] Exh. 75; Exh. 279.
[234] Tr. 1350:2-12.
[235] Tr. 318:23-25.
[236] The Commissioner notes for the record that a failure to apply an employer's experience rating factor in calculating premium constitutes a violation of Insurance Code section 11734, subdivision (c).

without written notice to the policyholder that such a provision is negotiable.[237] In addition, it is clear the RPA's dispute resolution and choice of law provisions are meant to replace those of the guaranteed cost policy. In fact, CIC's witnesses could not conceive of a dispute that would fall under the guaranteed cost policy.[238]

Enrollment in EquityComp also significantly alters the guaranteed cost policy's early cancellation terms. While the guaranteed cost policy must include statutory early cancellation provisions, the RPA specifies its own, unapproved, early cancellation penalty. The difference between these two contractual provisions can be illustrated monetarily. An employer with $300,000 in premium, who cancels their guaranteed cost policy after 100 days, is liable for $114,000. That same employer, if enrolled in EquityComp, would be liable for more than $1.1 million if they chose to cancel their EquityComp enrollment or the underlying CIC guaranteed cost policy after only 100 days.

Lastly, the RPA applies a non-renewal penalty disfavored by the Insurance Code. After a guaranteed cost policy expires, an employer is free to select a new insurer without penalty or restriction. That is not the case for those who enroll in EquityComp. The RPA's terms and obligations continue long after the end of the three-year program term. After EquityComp expires, all of a participant's open and closed claims are subjected to run-off LDFs which

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[237] Ins. Code § 11658.5 states as follows:
(a)(1) An insurer that intends to use a dispute resolution or arbitration agreement to resolve disputes arising in California out of a workers' compensation insurance policy or endorsement issued to a California employer shall disclose to the employer, contemporaneously with any written quote that offers to provide insurance coverage, that choice of law and choice of venue or forum may be a jurisdiction other than California and that these terms are negotiable between the insurer and the employer. The disclosure shall be signed by the employer as evidence of receipt where the employer accepts the offer of coverage from that insurer.
(2) After compliance with paragraph (1), a dispute resolution or arbitration agreement may be negotiated by the insurer and the employer before any dispute arises.
(b) Nothing in this section is intended to interfere with any authority granted to the Insurance Commissioner under current law.
(c) Failure by the insurer to observe the requirements of subdivision (a) shall result in a default to California as the choice of law and forum for resolution of disputes arising in California.

[238] Tr. 875:7-11; Tr. 1329:9-18.

significantly increase a participant's financial obligations. After the expiration of a guaranteed cost policy, a participant owes nothing to the carrier. For Shasta Linen, this difference was significant. At the expiration of the EquityComp program, Shasta Linen received a bill for nearly $250,000. If only the terms of the guaranteed cost policy applied, Shasta Linen would owe nothing. This provision also serves to penalize California employers who choose to switch insurance carriers. Run-off LDFs apply only to those employers who choose not to renew their EquityComp enrollment. Essentially, CIC penalizes those employers who are dissatisfied for whatever reason. Such a penalty is also contrary to public policy. As an analogy, the ALJ considers the rules regarding dividend distribution. Under California Code of Regulations, title 10, section 2507.2, an insurer may not restrict the payment of a policyholder's dividend due to the policyholder's failure to accept renewal of the policy or subsequent policies offered by the same insurer. Such a practice is coercive and illegal and constitutes an unfair practice.[239]

In sum, the RPA alters the underlying rates, costs and fees of an insurance policy, as well as the choice of law, dispute resolution and cancellation terms. As such, it is by definition a collateral agreement pursuant to California Code of Regulations, title 10, section 2268.

3. Case Law Requires Filing of the RPA

Case law also supports a finding that the RPA constitutes a collateral agreement under the Insurance Code.

A California federal court reiterated the Insurance Commissioner's directive regarding collateral agreements. In *Country Villa*, Zurich and Country Villa were parties to seven consecutive workers' compensation insurance policies. Each of the policies contained a standard-form provision that stated: "The terms of this policy may not be changed or waived

[239] *Ibid.*

except by endorsement issued by us to be part of the policy."[240] Zurich and Country Villa then entered into a 20-page Incurred Deductible Agreement (IDA) which by its own terms "supersedes any Deductible endorsements to the Policy(ies), prior communications, negotiations, participating plans or letters of election." The IDA defined policy terms related to Country Villa's cost obligations, created a new aggregate deductible and further stated that policy and "all endorsements, extensions, renewals and/or rewrites" are subject to the terms of the IDA.[241] Zurich did not file the IDA with the WCIRB nor did it seek approval from the Insurance Commissioner. Country Villa sought a judicial declaration that the IDA was void and unenforceable under California law as it was not filed pursuant to Insurance Code section 11658 and Regulation 2268. Zurich argued the IDAs were mere financial agreements with the "primary purpose" of securing Country Villa's deductible obligations under the Large Deductible agreements attached to the insurance policies.[242]

The federal court held that the IDAs could not be understood as a financial agreement separate from the underlying insurance policy but instead as an agreement that changes the policy's terms.[243] The court further noted that the policy language and the IDAs establish that the IDAs are part of the insurance program created by the policies. Specifically, the policies state that a later issued endorsement may change or waive the terms of the policy, and the IDAs state that the "Policy(ies) ... including all endorsements, extensions, renewals and/or rewrites" are "subject to" the IDA.[244] Accordingly, Zurich's failure to file the IDA constituted a violation of the Insurance Code.

The facts herein are similar to those in *Country Villa*. CIC initially sold Shasta Linen a

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[240] *American Zurich Ins. Co. v. Country Villa Service Corp., supra*, 80 Cal. Comp. Cases 687, 689.
[241] *Id.* at 690.
[242] *Id.* at 700.
[243] *Id.* at 708.
[244] *Ibid.*

guaranteed cost policy approved by the Insurance Commissioner. Immediately after entering into this insurance contract, CIC required that Shasta Linen execute the 10-page RPA – a separate side agreement that modified the payment obligations, dispute resolution mechanism, choice of law and underlying rates. CIC did not file this separate agreement with the WCIRB or seek approval from the Insurance Commissioner. Instead, CIC argues the RPA merely outlines the profit-sharing mechanism and does not affect policy rates. But like the unlawful side agreements in *Country Villa*, the terms of the side agreement supersede those of the policy and as such must be, but were not, approved by the Commissioner.

4. CIC's Policy Terms Required the RPA to be Endorsed

By the terms of CIC's own policy with Shasta Linen, CIC was required to endorse the RPA to the policy. CIC engaged AUCRA through the reinsurance treaty to provide to CIC's policyholders the EquityComp program and ceded these policyholders to AUCRA by means of the treaty.[245] However, CIC stated in both its policy and in the attached Policy Amendatory Endorsement—California, that the insurance policy with Shasta Linen was the sole insurance agreement, the terms could not be changed or waived except by endorsement issued by CIC, and that no other agreement not set forth in the policy or by endorsement shall affect the insurance contract or any rights, duties, or privileges arising from it.[246]

CIC participated in setting up an arrangement by reinsurance treaty, filed with the Department, to move its EquityComp policyholders to the arrangements handled by AUCRA, which circumvented the insurance rates and policy terms without abiding by its own insurance contract. By CIC's own policy terms, such an arrangement, despite initially characterizing it as reinsurance to the Department and then characterizing it as profit-sharing, should have been

[245] Exh. 232
[246] Exhs 208, 209, and 210

endorsed to its policies. Based upon the patent filed for the EquityComp program, by Applied Underwriter, Inc., the parent company of both CIC and AUCRA, CIC had no intention of endorsing the arrangement to its policies, since the sole purpose of its EquityComp program and arrangements with AUCRA was to circumvent the necessary regulatory checks-and-balances needed in a comprehensive state workers' compensation system to protect insurers, employers, and injured workers and assure financial accountability, fairness, and non-discriminatory treatment of insureds.[247]

C. EquityComp and the RPA Create a Non-Linear Retrospective Rating Plan

Any lingering questions regarding the operation of EquityComp and the RPA are answered by AU's patent application and witness testimony.

1. AU's Patent Calls the RPA a Non-Linear Retrospective Rating Plan

AU's patent application puts to rest any remaining doubt about the nature of the EquityComp program. Although CIC distinguishes the RPA from other loss-sensitive programs, AU's patent application clearly states, on more than one occasion, that EquityComp and the RPA create a non-linear, retrospective rating plan.[248] For example, AU states the RPA is "a reinsurance based approach to providing non-linear retrospective plans to insureds that may not have the option of such a plan directly."[249] Under the RPA, "the insured can now, in effect, have a retrospective rating plan because of the arrangement among the insurance carrier, the reinsurance company and the insured even though, in fact, the insured has Guaranteed Cost insurance coverage with the insurance carrier."[250] AU's own admissions lead to only one conclusion; EquityComp and the RPA create a non-linear, retrospective rating plan.

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[247] ALJ Exh. 1
[248] ALJ Exh. 1, column 4, lines 62-63:
[249] ALJ Exh. 1, column 6, lines 39-42.
[250] ALJ Exh. 1, column 7, lines 42-54.

In addition, AU clearly states its objective in creating the RPA was to circumvent governmental regulators who restrict the sale of retrospective rating plans and who scrutinize carefully any new rating plans. But, to the extent that any participation plan modifies the terms of a guaranteed cost policy, it must be filed with WCIRB and approved by the Insurance Commissioner. And since AU defines the RPA as a retrospective rating plan, it follows that it must be filed with WCIRB and approved by the Insurance Commissioner.

CIC acknowledges that loss sensitive plans, including retrospective rating plans, must be filed with the WCIRB, approved by the Insurance Commissioner and attached as endorsements to a guaranteed cost policy.[251] Failure to do so renders the plans unlawful. The Insurance Commissioner finds no reason to ignore AU's own description of the RPA. As the RPA creates a non-linear retrospective rating plan, it must be filed and approved by the Commissioner pursuant to 11735 before use in this State.

2. EquityComp is Not a Fronting Arrangement

Contrary to the statements made in the patent application, CIC now argues EquityComp is merely a captive fronting agreement and as such, need not be filed and approved by the two regulatory agencies.[252] This argument both ignores the patent and mischaracterizes witness testimony.

A "fronting" policy is a policy which does not indemnify or defend the insured but which is issued to satisfy financial responsibility laws of various jurisdictions "by guaranteeing to third persons who are injured that their claims against" the insured will be paid.[253] For example, in the area of reinsurance, an admitted insurer may agree to issue a primary policy with the

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[251] Tr. 875:2-4.
[252] Respondent's Post-hearing Opening Brief, 28:7-30:11.
[253] *Aerojet-Gen. Corp. v. Transp. Indem. Co.* (1997) 17 Cal. 4th 38, 50; *Columbia Casualty Co. v. Northwestern Nat. Ins. Co.* (1991) 231 Cal.App.3d 457, 471.

understanding that a non-admitted insurer will reinsure the entire risk. The admitted insurer typically receives a fee or a small percentage of the premium for serving as a "front" for the non-admitted insurer.

Nothing in the facts presented indicates EquityComp is a captive fronting arrangement. While CIC points to the testimony of Dr. Levine and Mr. Avagliano as evidence of a fronting arrangement, it is telling that neither Ms. Gardiner, AU's Chief Actuary, Mr. Watson, the EquityComp Sales Manager, or Mr. Silver, CIC's General Counsel described EquityComp as a fronting arrangement. In making this argument, CIC also mischaracterizes Dr. Levine's testimony. First, Dr. Levine indicated that participants to a fronting arrangement are attempting to functionally create self-insurance in situations where the employer would not qualify as a licensed self-insurer.[254] Rather than portraying EquityComp as a fronting arrangement, Dr. Levine testified that EquityComp and the RPA substantially alter the terms of the guaranteed cost policy such that the CIC policy is meaningless. Dr. Levine further testified that in his opinion the RPA constituted a collateral agreement and as such must be filed and approved by the Insurance Commissioner.[255]

In addition, the EquityComp program does not merely cede the risk under the guaranteed cost policy to a captive reinsurer, as is typical in a fronting arrangement. Instead, the RPA modifies the rates charged and premium paid, reallocates risk to the insured, alters the cancellation terms, forces binding arbitration of disputes and implements non-renewal penalties. These modifications do not describe a fronting arrangement, but rather a collateral agreement that modifies the guaranteed cost insurance policy.

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[254] Tr. 457:7-23. Tr. 459:13-14.
[255] Tr. 450:15-452:4.

D. CDI's Financial Audits Do Not Constitute Approval of Unfiled Agreement

CIC also contends that prior CDI financial examinations reviewed the EquityComp program and the RPA, and constitute approval under the Insurance Code.[256] CIC's argument can be summarized as follows; since the examinations were silent with regard to EquityComp and the RPA, the CDI tacitly approved the RPA and EquityComp. This argument again ignores the clear mandate of Insurance Code section 11658 and mischaracterizes CDI's financial and market conduct reports.

Insurance Code section 11658 sets a clear mandate for insurers. All policy, forms and endorsements must be filed with the WCIRB and approved by the Insurance Commissioner prior to use. The Insurance Code does not permit insurers to sell unfiled and unapproved policies nor is the regulatory scheme furthered by implicit approval. Unapproved policies and forms do not become lawful over time, regardless of the number of examinations conducted.

In addition, CIC mischaracterizes the CDI's reports. All three financial examinations reviewed CIC's assets and liabilities, and evaluated CIC's prospective risks. Financial examiners did not review the RPA or confirm compliance with section 11658. The financial examinations make only passing references to EquityComp, and evaluation of EquityComp was well beyond the exam's scope. The Market Conduct report's silence is equally unpersuasive. The purpose of a market conduct audit is to evaluate an insurance carrier's general operating procedures.[257] The audit does not require the review and approval of side agreements, such as the RPA. Indeed, CIC's legal conclusions are based entirely on conjecture and silence. CIC provided no evidence to support its contention that the CDI reviewed the RPA and found that it complied with the Insurance Code. CDI examiners did not testify during the evidentiary hearing

[256] Respondent's Post-hearing Opening Brief, 30:12-37:18.
[257] Cal. Code of Regs., tit. 10, § 2591.

nor did CIC make an evidentiary showing regarding the examination process. Accordingly, this argument is unsupported and without merit.

E. The RPA is an Illegal Contract and Void as a Matter of Law

Having determined the RPA to be an unfiled collateral agreement, CIC lastly contends the Insurance Commissioner lacks authority to void the RPA's application to Shasta Linen. CIC contends the Commissioner may only issue a prospective order to stop the use of an unfiled rate after a separate hearing on the merits of the RPA. This argument ignores the fact that the RPA is void as a matter of law, as indicated by the legislature's comprehensive regulatory scheme and relevant case law.

1. Statutory Scheme Supports RPA is Void as a Matter of Law

As detailed above, the RPA modifies the rates and rating plan sold to Shasta Linen by CIC. Nothing in section 11737, subdivision (f) limits the Insurance Commissioner's authority to remedy such violation where a policyholder is aggrieved or to make conclusions regarding items that are as a matter of law. Insurance Code section 11658 states that a workers' compensation insurance policy or endorsement *"shall* not be issued by an insurer" unless it is filed with the WCIRB and in one way or another approved by the Insurance Commissioner, and subsection (b) states that issuing an unapproved policy or endorsement "is unlawful." Section 11658 is clear: the unfiled and unapproved RPA is illegal under section 11658 and therefore void as a matter of law.[258]

Subdivision (a) of Insurance Code section 11735 requires all rates and supplementary rating information to be filed in this state before use and 30 days transpire before their effective date. The modifications of the Shasta Linen's rates or rating plan as a result of the RPA's re-

[258] *Kremer v. Earl* (1891) 91 Cal. 112 (stating that "[i]t is not necessary that the act itself ... declare in express words" that a contract in violation of the act is "void"); see also *American Zurich Ins. Co. v. Country Villa Serv. Corp., supra,* 80 Cal. Comp. Cases 687, 709.

rating process also support the conclusion that the RPA is void as a matter of law.[259]

In addition, if upon a review of the legislative scheme, a contract appears to contravene the design and policy of the laws, a court of equity will not enforce it."[260] By its own admission, AU designed EquityComp and the RPA to circumvent workers' compensation policy. It would defeat the statutory purpose to allow CIC to bypass the governmental review process by simply waiting until after the insurance policy has gone into effect to introduce additional or modified terms to its insurance program. Workers' compensation insurance is mandatory and California employers expect the statute's protection. CIC knew of the review and pre-approval process and deliberately ignored that process with regard to the RPA. It cannot now argue that the Insurance Commissioner should permit the use of an unapproved rate.

As noted above, the legal requirement for modifying any workers' compensation insurance obligation is to endorse the agreement to the insurance policy.[261] This is done by filing the agreement with the WCIRB, which in turn will file it with the Insurance Commissioner, and endorse it to the insurance policy after the requisite time or approval.[262] Unfiled side agreements are prohibited and shall not be used without complying with these requirements; otherwise, they are not permitted in this state and are void as a matter of law.[263]

2. Case Law Supports RPA is Void as a Matter of Law

CIC's argument is also devoid of case law support and ignores case law directly on point.

In *Country Villa*, discussed *ante*, the federal court using California law, determined that Zurich's failure to file the IDA with the WCIRB and the Insurance Commissioner violated Insurance Code section 11658. The court held the proper remedy for such a violation was to find

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[259] Ibid.
[260] *Kremer v. Earl*, *supra*, 91 Cal. 112.
[261] Title 10 CCR § 2268.
[262] See Ins. Code § 11658.
[263] Ins. Code § 11658; *American Zurich Ins. Co. v. Country Villa Serv. Corp*, *supra*, 80 Cal. Comp. Cases 687, 695.

the IDAs void and unenforceable.[264] In so holding, the district court stated that unfiled and unapproved side agreements are illegal and void as a matter of law. As such, the Commissioner's determination that the RPA is void as a matter of law, is amply supported by analogous case law.

3. No Compelling Reason Exists to Enforce RPA

In compelling cases, California courts will enforce illegal contracts "in order to avoid unjust enrichment and a disproportionately harsh penalty upon the plaintiff."[265] The extent of enforceability and the remedy granted depend upon a variety of factors, including the policy of the transgressed law, the type of illegality, and the particular facts. Application of these factors to the RPA supports the conclusion that the RPA should not be enforced.

First, the Insurance Code requires full disclosure, review, and approval for workers' compensation policies in order to safeguard California consumers from discriminatory, unsupported, or exploitative rates and to prevent monopolies. Shasta Linen is exactly the type of California employer the statutory scheme is meant to protect. It would defeat the statute's purpose to permit CIC and its affiliated companies to sell EquityComp and the RPA without regulatory approval and oversight. Indeed, it would be directly contrary to sections 11658 and 11735 to allow an insurance company to bypass the regulatory review process by waiting until after the policy has gone into effect to introduce additional or modified terms to its insurance program.[266]

Second, there is no risk of *unjust* enrichment by Shasta Linen. An insurer's issuance of an illegal contract, even if it results in enrichment to the insured, does not result in *unjust*

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[264] *American Zurich Ins. Co. v. Country Villa Serv. Corp., supra*, 80 Cal. Comp. Cases 687, 695.
[265] *Malek v. Blue Cross of Cal.* (2004) 121 Cal.App.4th 44, 70; *Asdourian v. Araj* (1985) 38 Cal.3d 276, 291.
[266] *American Zurich Ins. Co. v. Country Villa Serv. Corp, supra*, 80 Cal. Comp. Cases 687, 710.

enrichment, since the insured did nothing wrong.[267] And if the RPA is void, Shasta Linen remains liable to CIC under the guaranteed cost policies for the agreed-upon premium and fees based upon the applicable filed rates.

Third, denying enforcement of the void RPA is not unduly harsh. CIC knew California's filing requirements for policies and endorsement and chose not to seek the required regulatory approval. Permitting CIC to enforce the illegal RPA would encourage illegal activity by it and other insurers, run contrary to the workers' compensation insurance system, and would be an abdication of the Commissioner's regulatory oversight.

Finally, CIC is not blameless since it created a product to circumvent California's statutory and regulatory requirement; a product that ultimately enriched CIC at the expense of California employers. It would not be equitable to allow the party who created the illegality to enforce the illegal contact.[268]

Shasta Linen argues it should be liable only for the claims paid during the duration of the three-year program. Shasta Linen provides no support for this contention, nor does Shasta Linen explain why the Insurance Commissioner should bar enforcement of the guaranteed cost policy. Shasta Linen is not legally self-insured, it has a guaranteed cost policy with CIC, and it should pay the appropriate insurance premium based upon the filed rates applicable to Shasta Linen. Any additional remedies to which Shasta Linen is entitled based upon CIC's conduct are outside the scope of this proceeding.

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[267] *Id.* at 709.
[268] *American Zurich Ins. Co. v. Country Villa Serv. Corp, supra, Id.* At 710.

VIII. Conclusion

Pursuant to California Code of Regulations, title 10, section 2509.61, subdivision (a), a "party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he or she is asserting."

Based on the foregoing findings of facts and conclusions of law, the Insurance Commissioner finds by a preponderance of the evidence that Shasta Linen met its burden of proof in demonstrating that it is aggrieved by CIC's misapplication of its filed rates as a result of an unfiled and unapproved collateral agreement that modified the terms and conditions of the guaranteed cost policy, in violation of Insurance Code sections 11737 and 11658 and California Code of Regulations, title 10, section 2268.

Further, CIC's EquityComp program's Reinsurance Participation Agreement constitutes a collateral agreement modifying the rates and obligations of the insured and the insurer, and is void as a matter of law since it was required to be filed with the Workers' Compensation Insurance Rating Bureau and filed with the Department of Insurance before its use in the State of California, pursuant to Insurance Code section 11658 and California Code of Regulations, title 10, sections 2268 and 2218.

ORDER

1. Shasta Linen is responsible only for the premium and costs associated with the three guaranteed cost policies issued on January 1, 2010, January 1, 2011 and January 1, 2012 and the rates applicable to those policies. To the extent that Shasta Linen has remitted to CIC funds in excess of the amounts under the guaranteed cost policy, CIC shall refund that amount, including all amounts held in Shasta Linen's captive cell, within 30 days of the date of this decision;

2. The entirety of this Decision and Order is designated precedential pursuant to Government Code section 11425.60, subdivision (b), and;

3. Pursuant to Government Code section 11519, this Decision shall be effective immediately.

IT IS SO ORDERED.

DATED: June 20, 2016

DAVE JONES
Insurance Commissioner

EXHIBIT □

EXAMINATION REPORT OF

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.

CEDAR RAPIDS, IOWA

AS OF DECEMBER 31, 2013

Omaha, Nebraska
March 23, 2014

Honorable Dave Jones
Insurance Commissioner
California Department of Insurance
300 Capitol Mall Suite 1700
Sacramento, California 95814

Honorable Nick Gerhart
Commissioner of Insurance
Iowa Insurance Division
601 Locust St., 4th Floor
Des Moines, Iowa 50309

Commissioners:

In accordance with your respective authorizations and pursuant to Iowa statutory provisions, an Association Examination has been made of the records, business affairs and financial condition of

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.

CEDAR RAPIDS, IOWA

AS OF DECEMBER 31, 2013

at the Company's administrative office, 10805 Old Mill Road, Omaha, NE.

INTRODUCTION

Applied Underwriters Captive Risk Assurance Company, Inc., hereinafter referred to as the "Company", does not have a prior examination. The Company commenced business on October 21, 2011.

SCOPE OF EXAMINATION

This is the regular comprehensive financial examination of the Company covering the intervening period from October 21, 2011 to the close of business on December 31, 2013, including any material transactions and/or events occurring and noted subsequent to the examination period.

The examination was conducted in accordance with the NAIC Financial Condition Examiners Handbook. The Handbook requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company, including corporate governance, identifying and assessing inherent risks within the organization, and evaluating system controls and procedures used to mitigate those risks. An examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management's compliance with Statutory Accounting Principles and annual statement instructions, when applicable to domestic state regulations.

All accounts and activities of the organization were considered in accordance with the risk-focused examination process. The Company's assets were verified and evaluated and the liabilities determined to reflect herein a statement of its financial condition as of December 31, 2013.

HISTORY

Applied Underwriters Captive Risk Assurance Company, Inc. was incorporated in Iowa on August 29, 2011 and is authorized to write workers' compensation. The Company merged with Applied Underwriters Captive Risk Assurance Company, Inc., a British Virgin Islands company, which ceased to exist after the merger. The Company is wholly owned by North American Casualty Co. an indirect subsidiary of Berkshire Hathaway Inc. The Company assumes workers' compensation premiums and losses through a reinsurance agreement with affiliate California Insurance Company. The Company is licensed in California and Iowa.

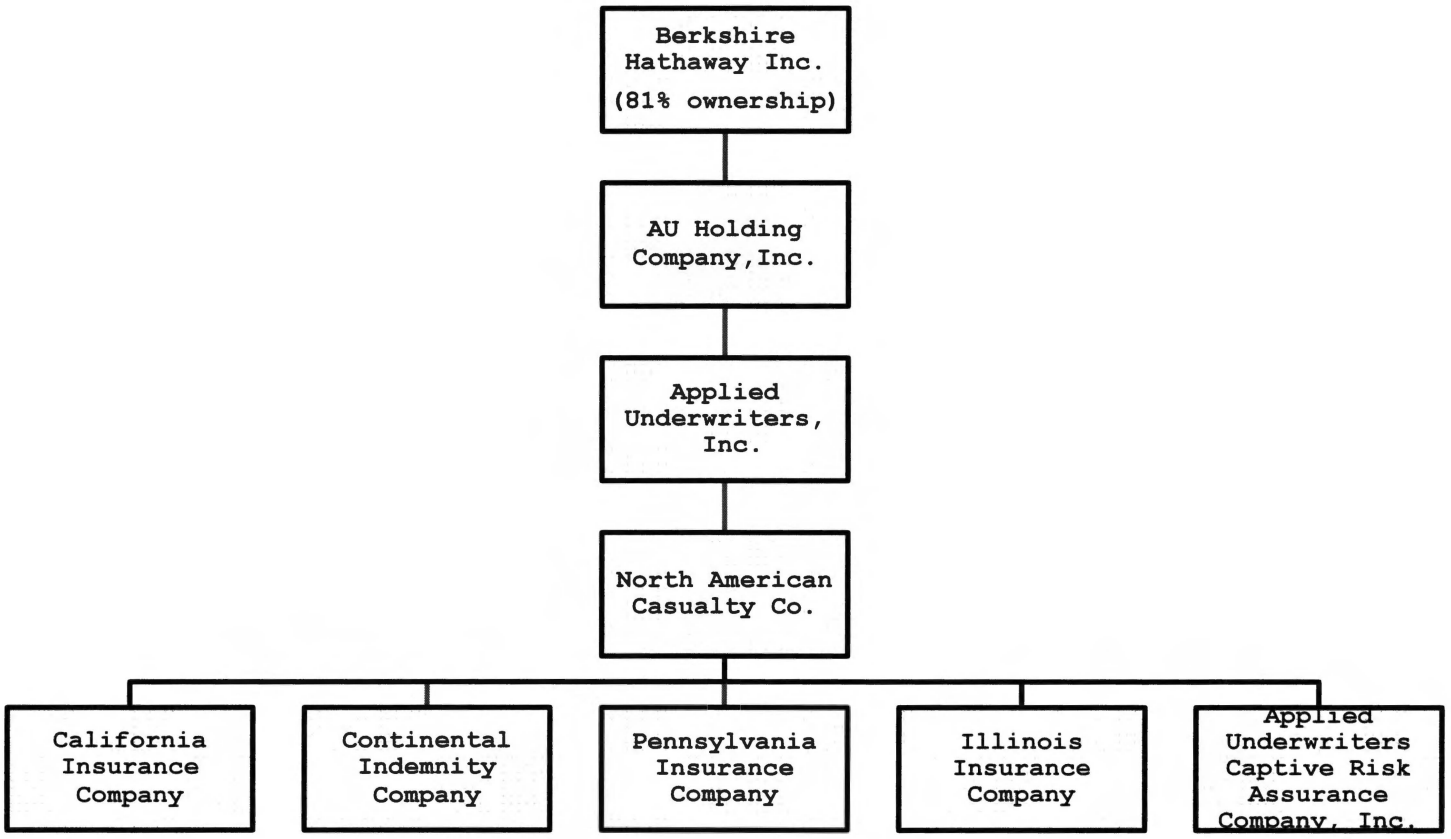
CAPITAL STOCK

The Amended Articles of Incorporation provide that the authorized capital of the Company is $10,000,000 consisting of 10,000,000 shares of common stock at $1 par value each. At December 31, 2013, the Company had 5,700,000 shares of common stock issued and outstanding with a total par value of $5,700,000 and $17,650,000 of gross paid in and contributed surplus. All shares were owned by North American Casualty Co.

The Company did not pay any stock dividends during the examination period.

INSURANCE HOLDING COMPANY SYSTEM

The Company is a member of an insurance holding company system as defined by Chapter 521A, Code of Iowa. A simplified organizational chart as of December 31, 2013, reflecting the ultimate parent and holding company system, is shown below.



MANAGEMENT AND CONTROL

STOCKHOLDERS

The Bylaws and Regulations of the Company state that the annual meeting of the shareholders for the election of directors, for the consideration of reports to be laid before such meeting and for the transaction of such other business as may properly come before such meeting, shall be held each year at a location to be determined on the first Monday in September.

Meetings of the shareholders may be called only by the Chairman of the Board, the President, or in the case of the President's absence, death, or disability, the Vice President authorized to exercise the authority of the President; the Secretary; the directors by action at a meeting, or a majority of the directors acting without a meeting; or the holders of at least 50% of all shares outstanding and entitled to vote thereat.

All meetings of shareholders shall be held at the principal office of the corporation, unless otherwise provided by action of the directors. Meetings of shareholders may be held at any place within or without the State of Iowa.

At any meeting of shareholders, the holders of a majority in amount of the voting shares of the corporation then outstanding and entitled to vote thereat, present in person or by proxy, shall constitute a quorum for such meeting.

BOARD OF DIRECTORS

In accordance with the Articles of Incorporation, the business and affairs of the Company shall be managed by a Board of Directors consisting of not less than five nor more than 21 as may be fixed by the shareholders at each annual meeting or, if no number is so fixed, of five directors, and each of whom shall be elected annually by the shareholders at each annual meeting to serve for a term of one year or until a successor has been elected and qualified.

The annual meeting of the Board of Directors shall be held immediately following the annual shareholders meeting. Special meetings of the Board of Directors may be held as directed by the Chairman or a majority of the Board of Directors.

Qualified directors serving on the Board as of December 31, 2013 were:

Name	Principal Occupation	Term Expires
Sidney R. Ferenc Highland Beach, Florida	Chief Executive Officer Applied Underwriters, Inc. Affiliates	2014
Steven M. Menzies Omaha, Nebraska	Chief Operating Officer Applied Underwriters, Inc.	2014
Jeffrey A. Silver Omaha, Nebraska	Executive Vice President Applied Underwriters, Inc.	2014
Jon M. McCright Cedar Rapids, Iowa	Attorney Lynch Dallas P.C.	2014
Marc M. Tract Nassau, New York	Attorney Katten Muchin Rosenmann LLP	2014

COMMITTEES

The Board of Directors may designate from their own number an executive committee, an investment committee and one or more other committees. Committees designated were as follows:

Audit Committee
Jeffrey A. Silver
Marc M. Tract
Jon M. McCright

Investment Committee
Sidney R. Ferenc
Steven M. Menzies
Jeffrey A. Silver

The full Board of Directors reviews and approves investments at least quarterly.

OFFICERS

The Bylaws and Regulations prescribe that the officers of the corporation to be elected by the directors shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and may, but shall not be required to include, one or more

Assistant Vice Presidents, Assistant Secretaries or Assistant Treasurers, none of whom shall be required to be shareholders or directors. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law, the Articles, the Bylaws and Regulations or the Bylaws to be executed, acknowledged or verified by two or more officers. Each officer shall be elected annually by the Board of Directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified.

Officers elected and serving as of December 31, 2013 were as follows:

Name	Office
Sidney R. Ferenc	Chairman and Chief Executive Officer
Steven M. Menzies	President, Treasurer and Chief Operating Officer
Robert L. Stafford	Vice President of Finance
Ellen M. Gardiner	Vice President and Chief Actuary
Jeffrey A. Silver	Secretary

The Company does not have any salaried officers or employees. Services and costs are shared under an inter-company service agreement.

CONFLICT OF INTEREST

The Company has a Conflict of Interest policy that states, "If an officer or director has an interest in or contemplates entering into a transaction that presents an actual or potential conflict of interest, the same must be disclosed in writing to the Company's Board of Directors and, if necessary, to the stockholder of the Company."

The annual Conflict of Interest questionnaires were reviewed, and it was noted that each of the officers and directors had completed and signed a questionnaire. A copy of the Conflict of Interest policy was attached to each of the signed questionnaires.

CORPORATE RECORDS

The minutes of the stockholders and Board of Directors meetings were read and noted. The minutes appeared to be complete and were properly attested.

INTER-COMPANY SERVICE AGREEMENT

The indirect parent, Applied Underwriters, Inc., has agreed to provide certain management, claims processing, premium processing, and data processing services for the Company at actual cost. The Company entered into a Cost Sharing Arrangement with this affiliate for rent, salaries, and general administrative expense, which has been approved by the Iowa Division of Insurance. All payments due for 2012 and 2013 were waived by the affiliate.

FIDELITY BONDS AND OTHER INSURANCE

The Company's indirect parent, Applied Underwriters, Inc. maintains fidelity bond coverage up to $2,000,000, which adequately covers the suggested minimum amount

of coverage for the Company as recommended by the NAIC. The Company is identified as a named insured on the fidelity bond.

The Company also maintains Property, Crime, General Liability, and Automobile coverages, along with an overall umbrella policy with a limit of $10,000,000.

EMPLOYEE WELFARE

The Company does not have any salaried employees and is provided services from an inter-company service agreement.

REINSURANCE

The Company's current reinsurance program consists of the following:

The Company only assumes from the intercompany agreement with California Insurance Company. The premium assumed is for profit sharing policies written by California Insurance Company and Continental Indemnity Company. The Company cedes Profit Sharing plans ceded premium and losses paid to client cells per contract rates. This is accounted for pursuant to a prescribed practice approved by the Iowa Division of Insurance. The Company also maintains an excess loss agreement with affiliate Commercial General Indemnity, Inc. This agreement covers the policies with losses that exceed the maximum losses covered in the profit sharing contract rates.

STATUTORY DEPOSIT

As of December 31, 2013, the book/adjusted carrying value of securities held in a custodial account and vested in the Insurance Commissioner of California for all other special deposits totaled $36,369,404.

TERRITORY AND PLAN OF OPERATION

The Company is licensed in Iowa and California. The Company does not write any direct business.

GROWTH OF COMPANY

The following significant data, taken from the Company's filed annual statements for the years indicated reflects the growth of the Company:

	2013	2012	2011
Premiums Earned	0	0	0
Net Underwriting Gain/(Loss)	(502,052)	1,361,689	(8,862,983)
Net Income	(1,739,493)	(424,602)	484,446
Total Assets	372,919,928	347,098,936	186,927,352
Total Liabilities	347,422,269	322,084,096	172,331,746
Surplus As Regards Policyholders	25,497,659	25,014,840	14,595,606

ACCOUNTS AND RECORDS

The Company maintains its principal operational offices in Omaha, Nebraska, where this examination was conducted.

McGladrey & Pullen, an independent CPA audited the Company's statutory basis financial statements annually for the years 2011, 2012 and 2013.

The Company's accounting records were maintained on a computerized system. The Company's balance sheet accounts were verified with the line items of the annual statement submitted to the Division of Insurance.

An evaluation of the information technology and computer systems of the Company was completed during the examination.

During the course of the examination, no material statutory compliance issues were noted, nor aggregate surplus differences identified, from the amount reflected in the financial statements, as presented in the annual statement at December 31, 2013.

FINANCIAL STATEMENTS

AND COMMENTS THEREON

NOTE: Except as otherwise stated, the financial statements immediately following reflect only the transactions for the period ending December 31, 2013 and the assets and liabilities as of this date. Schedules may not add or tie precisely due to rounding.

STATEMENT OF ASSETS AND LIABILITIES

ASSETS

	Ledger	Not Admitted	Admitted
Bonds	$ 39,266,917	$	$ 39,266,917
Cash & Short term investments	224,092,009		224,092,009
Investment income due and accrued	74,435		74,435
Premiums and considerations:			
Deferred premium	116,709,679	9,607,145	107,102,534
Reinsurance			
Amounts recoverable	(14,468,033)		(14,468,033)
Net deferred tax asset	13,208,916	4,845,209	8,363,707
Receivables from parent and affiliate	8,488,358		8,488,358
Aggregate write-ins			
Prepaid Expenses	80	80	0
Total assets	$ 387,372,361	$ 14,452,434	$ 372,919,927

Liabilities, Surplus and Other Funds

Losses		$ 6,197,795
Reinsurance payable on paid losses and loss adjustment expenses		(27,425,703)
Loss adjustment expenses	$ 68,388	
Other expenses	43,868	
Taxes, licenses and fees	72,000	
Current federal and foreign income taxes	1,420,926	
Ceded reinsurance premium payable	128,680,998	
Funds held by company under reinsurance treaties	237,841,918	
Payable to parent and affiliates	522,079	
Total liabilities		$ 347,422,269
Common capital stock		$ 5,700,000
Gross paid in and contributed surplus		17,650,000
Unassigned funds (surplus)		2,147,659
Surplus as regards policyholders		$ 25,497,659
Total liabilities, surplus and other funds		$ 372,919,928

STATEMENT OF INCOME

PERIOD ENDING DECEMBER 31, 2013

Underwriting income		
Premium earned		
Deductions		
Losses incurred	$ 119,059	
Loss adjustment expenses incurred	158,057	
Other underwriting expenses incurred	224,936	
Total underwriting deductions		502,052
Net underwriting gain (loss)		$ (502,052)
Investment Income		
Net investment income earned	$ 315,468	
Net investment gain (loss)		315,468
Other Income		
Administrative fee	$ 2,910,386	
Total other income		2,910,386
Net income before Federal income tax		$ 2,723,802
Federal & foreign income taxes		4,463,295
Net income		$ (1,739,493)

Capital and Surplus Account

Surplus as regards policyholders, December 31, 2012	$ 25,014,840
Gains and (Losses) in Surplus	
Net Income	$ (1,739,493)
Change in net deferred income tax	3,547,308
Change in non-admitted assets	(1,324,997)
Change in surplus as regards policyholders for the year	482,818
Surplus as regards policyholders, December 31, 2013	$ 25,014,840

CASH FLOW

Premium collected net of reinsurance	$ 13,784,418
Net investment income	260,727
Miscellaneous income	2,910,386
Total	$ 16,955,531
Benefit and loss related payments	$ 13,768,775
Net transfers to separate, segregated & protected cell accounts	
Commissions, expenses paid and aggregate write-in for deductions	216,108
Dividends paid to policyholders	
Federal and foreign income taxes paid	(25,649,155)
Total	$ (11,664,272)
Net cash from operations	$ 28,619,803
Cost of investments aquired (long-term only):	
Bonds	$ 36,525,000
Total investment acquired	$ 36,525,000
Net increase (decrease) in contract loans and premium notes	
Net cash from investments	$ (36,525,000)
Cash provided (applied):	
Other cash provided (applied)	32,249,454
Net cash from financing and miscellaneous sources	$ 32,249,454
Net change in cash, cash equivalent & short term investments	$ 24,344,257
Cash, cash equivalent & short term investments:	
Beginning of year	199,747,751
End of year	$ 224,092,008

CONCLUSION

The insurance examination practices and procedures as promulgated by the NAIC have been followed in ascertaining the financial condition of Applied Underwriters Captive Risk Assurance Company, Inc. as of December 31, 2013, consistent with the insurance laws of the State of Iowa.

In addition to the undersigned, the following participated in the examination: Ryan Havick, CFE, Senior Manager, Eide Bailly LLP; Emilie Brady, CFE, AIE, Manager, Eide Bailly LLP; James Burch, Associate, Eide Bailly LLP.

Respectfully submitted,

/s/ Emilie Brady
Emilie Brady, CFE
Examiner in Charge
Eide Bailly LLP on behalf of the
Iowa Insurance Division

EXHIBIT □

CONTINENTAL INDEMNITY COMPANY

NAIC No. 28258
10825 Old Mill Road, Omaha, NE 68154
877-234-4420

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE POLICY

INFORMATION PAGE

Policy No. **55-816280-01-02**

1. Insured and Mailing Address: **Breakaway Courier Corporation**
DBA Breakaway Courier Systems
PO Box 780
New York, NY 10013-0676

Producer and Mailing Address: **Enforce Coverage Group**
425 New York Ave Ste 203
Huntington, NY 11743-3436

Entity: **Subchapter Corporation**
FEIN: [redacted]
State No.

Agent No.
Billing: **DIRECT BILL**

Renewal of Policy No. **55-816280-01-01**

See Additional Named Insured Endorsement and Locations Endorsement if attached.

2. The policy period is from **07/01/10** to **07/01/11** 12:01 A.M. Standard Time at the insured's mailing address.

3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here:
NY

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident	**$1,000,000**	each accident
Bodily Injury by Disease	**$1,000,000**	policy limit
Bodily Injury by Disease	**$1,000,000**	each employee

C. Other States Insurance: Part Three of the policy applies to all states except the states listed in item 3.A and the states of North Dakota, Ohio, Washington, and Wyoming.

D. See attached list for endorsements and schedules.

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information listed on the Extension of Information page is subject to verification and change by audit.

See Extension of Information Page for premium rating schedule.

Minimum Premium	$	**875**
Total Estimated Annual Premium	$	**100,136**
Estimated Taxes and Assessments	$	**17,622**

Issuing Office: **OMAHA, NE**

Countersigned by:

Continental Indemnity Compa

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY **WC990401**

LIST OF ENDORSEMENTS AND SCHEDULES

Endorsements on Policy: 55-816280-01-02

Form Number	Endorsement Number	Name
WC000001A_CNIC		Information Page
WC990401_CNIC		List of Endorsements And Schedules
WC000174		Extension of Information Page
A I/L_CNIC		Additional Named Insured and/or Locations
WC310308	1	New York Limit Of Liability Endorsement
WC000419	2	Premium Due Endorsement
WC310319E	3	New York Construction Classification Premium Adjustment Program
WC000422A	4	Terrorism Risk Insurance Program Reauthorization Act Disclosure
WC000421C	5	Catastrophe
WC000406	6	Premium Discount
WC000000A_CNIC	7	Workers Compensation and Employers Liability - Quick Reference
PN000001	100	Short Rate Cancelation Policyholder Notice

WC 174
(Ed. 4-84)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
EXTENSION OF INFORMATION PAGE

Policy Number 55-816280-01-02

4. Premium

Classifications	Code No.	Premium Basis Total Estimated Annual Remuneration	Rate Per $100 of Remuneration	Estimated Annual Premium
Trucking: Mail, Parcel Or Package Delivery- All Employees & Drivers	7231	259,786	8.1000	21,043.00
Bicycle Delivery of Envelopes, Parcels or Packages	7242	965,106	9.7300	93,905.00
Salespersons, Collectors Or Messengers-Outside	8742	582,893	0.3700	2,157.00
Clerical Office Employees NOC.	8810	698,451	0.2400	1,676.00
Experience Modification			0.9300	110,466.00
Premium Discount	0063		10.6000	98,757.00
Terrorism	9740		0.0450	1,128.00
Catastrophe	9741		0.0100	251.00
Estimated Annual Premium - New York				100,136.00
State Assessment	0932		14.2000	15,881.99
New York Workers Compensation Security Fund NY	9749		1.5000	1,740.27
		Total Estimated Annual Premium $		117,758.26

Policy Number: 55-816280-01-02

CONTINENTAL INDEMNITY COMPANY
Additional Named Insured and/or Locations

Item (1) Insured of the Information page is amended to include the following:

Breakaway Courier Corporation
DBA Breakaway Courier Systems
335 W 35th St
New York NY 10001-1726
From: 07/01/10 To: 07/01/11

FEIN: [redacted]

ENTITY: Subchapter Corp.

This endorsement is part of your policy and takes effect on the effective date of your policy, unless another effective date is shown below.

Endorsement Effective
Insured Breakaway Courier Systems

Policy No. 55-816280-01-02

Endorsement No.
Premium

Insurance Company Continental Indemnity Company

Countersigned by _____

All other terms and conditions of this policy remain unchanged.
A I/L 5/90

WC 31 03 08

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK LIMIT OF LIABILITY ENDORSEMENT

This endorsement applies only to the insurance provided by Part Two (Employers Liability Insurance) because New York is shown in Item 3.A. of the Information Page..

We may not limit our liability to pay damages for which we become legally liable to pay because of bodily injury to your employees if the bodily injury arises out of and in the course of employment that is subject to and is compensable under the Workers' Compensation Law of New York.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective 07/01/10
Insured Breakaway Courier Systems

Policy No. 55-816280-01-02

Endorsement No. 1
Premium 0.00

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-00)

WC 00 04 19

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend:

Section D. of Part Five of the policy is replaced by this provision

PART FIVE
PREMIUM

D. **Premium** is amended to read:
You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. **The due date for audit and retrospective premiums is the date of the billing.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective 07/01/10 Policy No. 55-816280-01-02 Endorsement No. 2
Insured Breakaway Courier Systems Premium 0.00

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-01)

WC 31 03 19 E

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK CONSTRUCTION CLASSIFICATION PREMIUM ADJUSTMENT PROGRAM EXPLANATORY ENDORSEMENT

The New York Construction Classification Premium Adjustment Program (NYCCPAP) allows premium credits for some employers in the construction industry. These credits exist to recognize the difference in wage rates between employers within the same construction industries in New York.

The declarations section of this policy will show a credit of 0.00% if you are not eligible for this credit, or if you are eligible for this credit and have not yet applied for a credit. Credits are earned for average wages in excess of $15.50 per hour for each eligible class. If your policy shows one of the following classification codes, and you are experience rated, you are eligible to apply for an NYCCPAP credit:

0042	5057	5193	5429	5491	5606	6003	6229	6325	9526
3365	5059	5213	5443	5506	5610	6005	6233	6400	9527
3724	5069	5221	5445	5507	5645	6017	6235	6701	9534
3726	5102	5222	5462	5508	5648	6018	6251	7536	9539
3737	5160	5223	5473	5536	5651	6045	6252	7538	9545
5000	5183	5348	5474	5538	5701	6204	6260	7601	9549
5022	5184	5402	5479	5545	5703	6216	6306	7855	9553
5037	5188	5403	5480	5547	5709	6217	6319	8227	
5040	5190	5428							

The basis for determining the credit is the limited payroll of each employee for the number of hours worked (excluding overtime premium pay) for each construction classification (other than employees engaged in the construction of one- or two-family residential housing) for the third quarter, as reported to taxing authorities, for the year preceding the policy date. Total payroll is to continue to be reported for employees engaged in the construction of one- or two-family residential housing. For example:

POLICY EFFECTIVE DATE	THIRD QUARTER PAYROLL
4/1/06 thru 3/31/07	2005
4/1/07 thru 3/31/08	2006
4/1/08 thru 3/31/09	2007
4/1/09 thru 3/31/10	2008
4/1/10 thru 3/31/11	2009
4/1/11 thru 3/31/12	2010
4/1/12 thru 3/31/13	2011

If you have any eligible classes on your policy, you should have been notified by your insurance carrier or the New York Compensation Insurance Rating Board approximately nine months prior to the inception date of this policy. If you believe you may be eligible for a credit and have not received an application, you should immediately contact your agent, insurance carrier, or the New York Compensation Insurance Rating Board.

Credits are calculated by the New York Compensation Insurance Rating Board. You must submit a completed application to: Attention: Field Services Department, New York Compensation Insurance Rating Board, 200 East Forty-Second Street, New York, New York 10017.

Applications must be received by the Rating Board six (6) months prior to the policy renewal effective date. The Rating Board will accept and process an application if it is received between the policy effective date and expiration date, however, it must be accompanied by a letter stating the reason for the delay. Under no circumstances will an application be accepted for any policy if it is received after the expiration date of the policy. For short-term policies the application must be received prior to the expiration date of the short-term policy. If it is received after the policy expiration, no credit will be calculated.

The New York Workers Compensation and Employers Liability Insurance Manual, and not this endorsement, govern the implementation and use of the NYCCPAP.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective 07/01/10 Policy No. 55-816280-01-02 Endorsement No. 3
Insured Breakaway Courier Systems Premium 0.00

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 10-08)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT DISCLOSURE ENDORSEMENT

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007. It serves to notify you of certain limitations under the Act, and that your insurance carrier is charging premium for losses that may occur in the event of an Act of Terrorism.

Your policy provides coverage for workers compensation losses caused by Acts of Terrorism, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

Definitions
The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments thereto resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2007.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

a. The act is an act of terrorism.

b. The act is violent or dangerous to human life, property or infrastructure.

c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.

d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured Loss" means any loss resulting from an act of terrorism (and, except for Pennsylvania, including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

"Insurer Deductible" means for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.

"Program Year" refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

Limitation of Liability
The Act limits our liability to you under this policy. If aggregate Insured Losses exceed $100,000,000,000 in a Program Year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds $100,000,000,000; and for aggregate Insured Losses up to $100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses exceeds $100,000,000 in a Program Year, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.

2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceeds $100,000,000,000.

3. The premium charge for the coverage your policy provides for Insured Losses is included in the amount shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.050	1,128.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement 07/01/10 Effective Policy No. 55-816280-01-02 Endorsement No. 4
Insured Breakaway Courier Systems Premium $ 0.00

Insurance Company Continental Indemnity Company Countersigned by _____

WORKERS COMPENSATION AND EMPLOYERS LIABILITY ISURANCE POLICY

CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) PREMIUM ENDORSEMENT

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of a Catastrophe (other than Certified Acts of Terrorism) as that term is defined below. Your policy provides coverage for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism). This premium charge does not provide funding for Certified Acts of Terrorism contemplated under the Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22 A), attached to this policy.

For purposes of this endorsement, the following definitions apply:

Catastrophe (other than Certified Acts of Terrorism): Any single event, resulting from an Earthquake, Noncertified Act of Terrorism, or Catastrophic Industrial Accident, which results in aggregate workers compensation losses in excess of $50 million.

Earthquake: The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.

Noncertified Act of Terrorism: An event that is not certified as an Act of Terrorism by the Secretary of Treasury pursuant to the Terrorism Risk Insurance Act of 2002 (as amended) but that meets all of the following criteria:

a. It is an act that is violent or dangerous to human life, property, or infrastructure;

b. The act results in damage within the United States, or outside of the United States in the case of the premises of United States missions or air carriers or vessels as those terms are defined in the Terrorism Risk Insurance Act of 2002 (as amended); and

c. It is an act that has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Catastrophic Industrial Accident: A chemical release, large explosion, or small blast that is localized in nature and affects workers in a small perimeter the size of a building.

The premium charge for the coverage your policy provides for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism) is shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.01	251.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement 07/01/10 Effective Policy No. 55-816280-01-02 Endorsement No. 5
Insured Breakaway Courier Systems Premium $ 0.00

Insurance Company Continental Indemnity Company Countersigned by _____

(Ed. 09-08)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 06

PREMIUM DISCOUNT ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 07/01/10 (DATE) at 12:01 A.M. standard time, forms a part of

Policy No. 55-816280-01-02 Endorsement No. 6

of the Continental Indemnity Company (NAME OF INSURANCE COMPANY)

issued to Breakaway Courier Systems

Premium (if any) $ 0.00

_____
Authorized Representative

The premium for this policy and the policies, if any, listed in Item 3. of the Schedule may be eligible for a discount. This endorsement shows your estimated discount in Items 1. or 2. of the Schedule. The final calculation of premium discount will be determined by our manuals and your premium basis as determined by audit. Premium subject to retrospective rating is not subject to premium discount.

Schedule

1. **State** **Estimated Eligible Premium**

First $10,000	Next $190,000	Next $1,550,000	Balance

2. Average percentage discount:_____%

3. Other policies:

4. If there are no entries in Items 1., 2. and 3., of the Schedule, see the Premium Discount Endorsement attached to your policy number:
   55-816280-01-02

Continental Indemnity Company

10825 Old Mill Road
Omaha, Nebraska 68154

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY QUICK REFERENCE

	BEGINNING ON Page
Information Page	I
General Section	1
A. The Policy	1
B. Who Is Insured	1
C. Workers Compensation Law	1
D. State	1
E. Locations	1
PART ONE - WORKERS COMPENSATION INSURANCE	1
A. How This Insurance Applies	1
B. We Will Pay	1
C. We Will Defend	1
D. We Will Also Pay	1
E. Other Insurance	1
F. Payments You Must Make	2
G Recovery From Others	2
H. Statutory Provisions	2
PART TWO - EMPLOYERS LIABILITY INSURANCE	2
A. How This Insurance Applies	2
B. We Will Pay	2
C. Exclusions	3
D. We Will Defend	3
E. We Will Also Pay	3
F Other Insurance	3
G. Limits of Liability	3
H. Recovery From Others	4
I Actions Against Us	4

QUICK REFERENCE - CONTINUED

BEGINNING ON
Page

PART THREE - OTHER STATES INSURANCE 4
A. How This Insurance Applies 4
B. Notice 4

PART FOUR - YOUR DUTIES IF INJURY OCCURS 4

PART FIVE - PREMIUM 4
A. Our Manuals 4
B. Classifications 4
C. Remuneration 4
D. Premium Payments 5
E. Final Premium 5
F. Records 5
G Audit 5

PART SIX - CONDITIONS 5
A. Inspection 5
B. Long Term policy 5
C. Transfer of Your Rights and Duties 5
D. Cancellation 5
E. Sole Representative 5

IMPORTANT: This Quick Reference is **not** part of the Workers Compensation and Employers Liability Policy and does **not** provide coverage. Refer to the Workers Compensation and Employers Liability policy itself for actual contractual provisions.

PLEASE READ THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY CAREFULLY.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follow:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE - WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO - EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law; and
12. damages payable under the Migrant and Seasonal Agricultural Workers Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for the violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

   A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease - policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease - each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.
   Bodily injury by disease does not include disease that results directly form a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE - OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR - YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE - PREMIUM

A. Our Manuals

All premiums for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more that the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancelation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX - CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer Of Your Rights And Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancelation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancelation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancelation notice.
4. Any of these provisions that conflict with a law that controls the cancelation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancelation.

In Witness Whereof, Continental Indemnity Company has caused this policy to be executed and attested, and if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

President

Secretary

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

Subject to individual State Regulations, the cancelation condition in the Standard Policy WC 00 00 00 A-Part Five Premium, E. Final Premium, states that if this policy is canceled by you, the final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancelation table and procedure. Final premium will not be less than the minimum premium.

In applicable States, the final premium will be calculated as follows based on the standard Short Rate Cancelation Table attached to this policyholder notice:

The premium for the canceled policy will be calculated using the Short Rate Cancelation Table. We will use the short-rate percentage as follows:

1. Determine the payroll developed during the period the policy was in effect.
2. Determine the full policy payroll by using the following formula:

$$\frac{\text{number of days for which the policy was written}}{\text{number of days the policy was in effect}} \times \text{Actual Payroll}$$

3. Apply authorized rates to such payroll
4. Calculate the extended number of days by using the following formula. If the policy was written for a one-year period, the extended number of days is the number of days the policy was in effect:

$$\frac{\text{number of days the policy was in effect}}{\text{number of days for which the policy was written}} \times 365$$

5. Based on the extended number of days, apply the short rate percentage shown in the Short Rate Cancelation Table to the full policy premium calculated in step 3. This result is the short-rate portion of the premium.
6. If applicable:
   - Apply any pricing programs
   - Apply any experience rating modification
   - Apply any premium discount based on the final earned total standard premium
   - Add the short rate portion of the expense constant but not less than $15
   - Apply catastrophe provisions based on the earned manual premium
7. The total earned premium for the short-rate canceled policy will not be less than the annual minimum premium applicable to the policy.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
1	5%	46	23%	91	35%	136	48%	181	60%
2	6	47	23	92	36	137	48	182	60
3	7	48	24	93	36	138	48	183	61
4	7	49	24	94	36	139	49	184	61
5	8	50	24	95	37	140	49	185	61
6	8	51	24	96	37	141	49	186	61
7	9	52	25	97	37	142	49	187	61
8	9	53	25	98	37	143	50	188	62
9	10	54	25	99	38	144	50	189	62
10	10	55	26	100	38	145	50	190	62
11	11	56	26	101	38	146	50	191	62
12	11	57	26	102	38	147	51	192	63
13	12	58	26	103	39	148	51	193	63
14	12	59	27	104	39	149	51	194	63
15	13	60	27	105	39	150	52	195	63
16	13	61	27	106	40	151	52	196	63
17	14	62	27	107	40	152	52	197	64
18	14	63	28	108	40	153	52	198	64
19	15	64	28	109	40	154	53	199	64
20	15	65	28	110	41	155	53	200	64
21	16	66	29	111	41	156	53	201	65
22	16	67	29	112	41	157	54	202	65
23	17	68	29	113	41	158	54	203	65
24	17	69	29	114	42	159	54	204	65
25	17	70	30	115	42	160	54	205	65
26	18	71	30	116	42	161	55	206	66
27	18	72	30	117	43	162	55	207	66
28	18	73	30	118	43	163	55	208	66
29	18	74	31	119	43	164	55	209	66
30	19	75	31	120	43	165	56	210	67
31	19	76	31	121	44	166	56	211	67
32	19	77	32	122	44	167	56	212	67
33	20	78	32	123	44	168	57	213	67
34	20	79	32	124	44	169	57	214	67
35	20	80	32	125	45	170	57	215	68
36	20	81	33	126	45	171	57	216	68
37	21	82	33	127	45	172	58	217	68
38	21	83	33	128	46	173	58	218	68
39	21	84	34	129	46	174	58	219	69
40	21	85	34	130	46	175	58	220	69
41	22	86	34	131	46	176	59	221	69
42	22	87	34	132	47	177	59	222	69
43	22	88	35	133	47	178	59	223	69
44	23	89	35	134	47	179	60	224	70
45	23	90	35	135	47	180	60	225	70

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
226	70%	254	76%	282	82%	310	88%	338	95%
227	70	255	76	283	83	311	89	339	95
228	70	256	77	284	83	312	89	340	95
229	71	257	77	285	83	313	89	341	95
230	71	258	77	286	83	314	89	342	95
231	71	259	77	287	83	315	90	343	96
232	71	260	77	288	84	316	90	344	96
233	72	261	78	289	84	317	90	345	96
234	72	262	78	290	84	318	90	346	96
235	72	263	78	291	84	319	90	347	97
236	72	264	78	292	85	320	91	348	97
237	72	265	79	293	85	321	91	349	97
238	73	266	79	294	85	322	91	350	97
239	73	267	79	295	85	323	91	351	97
240	73	268	79	296	85	324	92	352	98
241	73	269	79	297	86	325	92	353	98
242	74	270	80	298	86	326	92	354	98
243	74	271	80	299	86	327	92	355	98
244	74	272	80	300	86	328	92	356	99
245	74	273	80	301	86	329	93	357	99
246	74	274	81	302	87	330	93	358	99
247	75	275	81	303	87	331	93	359	99
248	75	276	81	304	87	332	93	360	99
249	75	277	81	305	87	333	94	361	100
250	75	278	81	306	88	334	94	362	100
251	76	279	82	307	88	335	94	363	100
252	76	280	82	308	88	336	94	364	100
253	76	281	82	309	88	337	94	365	100

Insured **Breakaway Courier Systems**

Policy No. **55-816280-01-02**

Insurance Company **Continental Indemnity Company**

EXHIBIT H

CONTINENTAL INDEMNITY COMPANY

NAIC No. 28258
10825 Old Mill Road, Omaha, NE 68154
877-234-4420

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE POLICY

INFORMATION PAGE

Policy No. **55-816280-01-03**

1. Insured and Mailing Address: **Breakaway Courier Corporation**
DBA Breakaway Courier Systems
PO Box 780
New York, NY 10013-0676

Producer and Mailing Address: **Enforce Coverage Group**
425 New York Ave Ste 203
Huntington, NY 11743-3436

Entity: **Subchapter Corporation**
FEIN: [redacted]
State No.

Agent No.
Billing: **DIRECT BILL**

Renewal of Policy No. **55-816280-01-02**

See Additional Named Insured Endorsement and Locations Endorsement if attached.

2. The policy period is from **07/01/11** to **07/01/12** 12:01 A.M. Standard Time at the insured's mailing address.

3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here:
NY

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident	$**1,000,000**	each accident
Bodily Injury by Disease	$**1,000,000**	policy limit
Bodily Injury by Disease	$**1,000,000**	each employee

C. Other States Insurance: Part Three of the policy applies to all states except the states listed in item 3.A and the states of North Dakota, Ohio, Washington, and Wyoming.

D. See attached list for endorsements and schedules.

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information listed on the Extension of Information page is subject to verification and change by audit.

See Extension of Information Page for premium rating schedule.

Minimum Premium	$	**875**
Total Estimated Annual Premium	$	**172,676**
Estimated Taxes and Assessments	$	**31,254**

Issuing Office: **OMAHA, NE**

Countersigned by:

Continental Indemnity Company

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC990401

LIST OF ENDORSEMENTS AND SCHEDULES

Endorsements on Policy: **55-816280-01-03**

Form Number	Endorsement Number	Name
WC000001A_CNIC		Information Page
WC990401_CNIC		List of Endorsements And Schedules
WC000174		Extension of Information Page
A I/L_CNIC		Additional Named Insured and/or Locations
WC000414	1	Notification Of Change In Ownership Endorsement
WC310308	2	New York Limit Of Liability Endorsement
WC000419	3	Premium Due Endorsement
WC310319F	4	New York Construction Classification Premium Adjustment Program
WC000422A	5	Terrorism Risk Insurance Program Reauthorization Act Disclosure
WC000421C	6	Catastrophe
WC000000A_CNIC	7	Workers Compensation and Employers Liability - Quick Reference
PN000001	100	Short Rate Cancelation Policyholder Notice

WC 174
(Ed. 4-84)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
EXTENSION OF INFORMATION PAGE

Policy Number **55-816280-01-03**

4. Premium

Classifications	Code No.	Premium Basis Total Estimated Annual Remuneration	Rate Per $100 of Remuneration	Estimated Annual Premium
Trucking: Mail, Parcel Or Package Delivery- All Employees & Drivers	**7231**	**252,405**	**9.4300**	**23,802.00**
Bicycle Delivery of Envelopes, Parcels or Packages	**7242**	**1,169,078**	**13.9100**	**162,619.00**
Salespersons, Collectors Or Messengers-Outside	**8742**	**434,319**	**0.4600**	**1,998.00**
Clerical Office Employees NOC.	**8810**	**779,456**	**0.2200**	**1,715.00**
Experience Modification			**0.9000**	**171,121.00**
Terrorism	**9740**		**0.0490**	**1,291.00**
Catastrophe	**9741**		**0.0100**	**264.00**
Estimated Annual Premium - New York				**172,676.00**
State Assessment	**0932**		**18.1000**	**31,254.36**
New York Workers Compensation Security Fund	**9749**		**0.0000**	**0.00**
NY				
		Total Estimated Annual Premium $		**203,930.36**

Policy Number: **55-816280-01-03**

CONTINENTAL INDEMNITY COMPANY
Additional Named Insured and/or Locations

Item (1) Insured of the Information page is amended to include the following:

Breakaway Courier Corporation
DBA Breakaway Courier Systems **FEIN:** [redacted]
335 W 35th St
New York NY 10001-1726 **ENTITY: Subchapter Corp.**
From: 07/01/11 To: 07/01/12

This endorsement is part of your policy and takes effect on the effective date of your policy, unless another effective date is shown below.

Endorsement Effective Policy No. **55-816280-01-03** Endorsement No.
Insured **Breakaway Courier Systems** Premium

Insurance Company **Continental Indemnity Company** Countersigned by _____

All other terms and conditions of this policy remain unchanged.
A I/L 5/90

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/11**
Insured **Breakaway Courier Systems**

Policy No. **55-816280-01-03**

Endorsement No. **1**
Premium **0.00**

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 7-90)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK LIMIT OF LIABILITY ENDORSEMENT

This endorsement applies only to the insurance provided by Part Two (Employers Liability Insurance) because New York is shown in Item 3.A. of the Information Page..

We may not limit our liability to pay damages for which we become legally liable to pay because of bodily injury to your employees if the bodily injury arises out of and in the course of employment that is subject to and is compensable under the Workers' Compensation Law of New York.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/11**
Insured **Breakaway Courier Systems**

Policy No. **55-816280-01-03**

Endorsement No. **2**
Premium **0.00**

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-00)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend:

Section D. of Part Five of the policy is replaced by this provision

PART FIVE
PREMIUM

D. **Premium** is amended to read:
You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. **The due date for audit and retrospective premiums is the date of the billing.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/11**
Insured **Breakaway Courier Systems**

Policy No. **55-816280-01-03**

Endorsement No. **3**
Premium **0.00**

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-01)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK CONSTRUCTION CLASSIFICATION PREMIUM ADJUSTMENT PROGRAM EXPLANATORY ENDORSEMENT

The New York Construction Classification Premium Adjustment Program (NYCCPAP) allows premium credits for some employers in the construction industry. These credits exist to recognize the difference in wage rates between employers within the same construction industries in New York.

The declarations section of this policy will show a credit of 0.00% if you are not eligible for this credit, or if you are eligible for this credit and have not yet applied for a credit. Credits are earned for average wages in excess of $15.50 per hour for each eligible class. If your policy shows one of the following classification codes, and you are experience rated, you are eligible to apply for an NYCCPAP credit:

0042	5057	5193	5429	5491	5606	6003	6229	6325	9526
3365	5059	5213	5443	5506	5610	6005	6233	6400	9527
3724	5069	5221	5445	5507	5645	6017	6235	6701	9534
3726	5102	5222	5462	5508	5648	6018	6251	7536	9539
3737	5160	5223	5473	5536	5651	6045	6252	7538	9545
5000	5183	5348	5474	5538	5701	6204	6260	7601	9549
5022	5184	5402	5479	5545	5703	6216	6306	7855	9553
5037	5188	5403	5480	5547	5709	6217	6319	8227	
5040	5190	5428							

The basis for determining the credit is the limited payroll of each employee for the number of hours worked (excluding overtime premium pay) for each construction classification (other than employees engaged in the construction of one- or two-family residential housing) for the third quarter, as reported to taxing authorities, for the year preceding the policy date. Total payroll is to continue to be reported for employees engaged in the construction of one- or two-family residential housing. For example:

POLICY EFFECTIVE DATE	THIRD QUARTER PAYROLL
4/1/09 thru 3/31/10	2008
4/1/10 thru 3/31/11	2009
4/1/11 thru 3/31/12	2010
4/1/12 thru 3/31/13	2011
4/1/13 thru 3/31/14	2012
4/1/14 thru 3/31/15	2013

If you have any eligible classes on your policy, you should have been notified by your insurance carrier or the New York Compensation Insurance Rating Board approximately nine months prior to the inception date of this policy. If you believe you may be eligible for a credit and have not received an application, you should immediately contact your agent, insurance carrier, or the New York Compensation Insurance Rating Board.

Credits are calculated by the New York Compensation Insurance Rating Board. You must submit a completed application to: Attention: Field Services Department, New York Compensation Insurance Rating Board, 733 Third Avenue, New York, New York 10017.

Applications must be received by the Rating Board three (3) months prior to the policy renewal effective date. The Rating Board will accept and process an application if it is received between the policy effective date and expiration date, however, it must be accompanied by a letter stating the reason for the delay. Under no circumstances will an application be accepted for any policy if it is received after the expiration date of the policy. For short-term policies the application must be received prior to the expiration date of the short-term policy. If it is received after the policy expiration, no credit will be calculated.

The New York Workers Compensation and Employers Liability Insurance Manual, and not this endorsement, govern the implementation and use of the NYCCPAP.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/11** Policy No. **55-816280-01-03** Endorsement No. **4**
Insured **Breakaway Courier Systems** Premium **0.00**

Insurance Company **Continental Indemnity Company** Countersigned by _____

(Ed. 2-11)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT DISCLOSURE ENDORSEMENT

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007. It serves to notify you of certain limitations under the Act, and that your insurance carrier is charging premium for losses that may occur in the event of an Act of Terrorism.

Your policy provides coverage for workers compensation losses caused by Acts of Terrorism, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

Definitions
The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments thereto resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2007.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

a. The act is an act of terrorism.

b. The act is violent or dangerous to human life, property or infrastructure.

c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.

d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured Loss" means any loss resulting from an act of terrorism (and, except for Pennsylvania, including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

"Insurer Deductible" means for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.

"Program Year" refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

Limitation of Liability
The Act limits our liability to you under this policy. If aggregate Insured Losses exceed $100,000,000,000 in a Program Year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds $100,000,000,000; and for aggregate Insured Losses up to $100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses exceeds $100,000,000 in a Program Year, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.

2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceeds $100,000,000,000.

3. The premium charge for the coverage your policy provides for Insured Losses is included in the amount shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.050	1,291.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement 07/01/11 Effective Policy No. 55-816280-01-03 Endorsement No. 5
Insured Breakaway Courier Systems Premium $ 0.00

Insurance Company Continental Indemnity Company Countersigned by _____

WORKERS COMPENSATION AND EMPLOYERS LIABILITY ISURANCE POLICY

CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) PREMIUM ENDORSEMENT

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of a Catastrophe (other than Certified Acts of Terrorism) as that term is defined below. Your policy provides coverage for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism). This premium charge does not provide funding for Certified Acts of Terrorism contemplated under the Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22 A), attached to this policy.

For purposes of this endorsement, the following definitions apply:

Catastrophe (other than Certified Acts of Terrorism): Any single event, resulting from an Earthquake, Noncertified Act of Terrorism, or Catastrophic Industrial Accident, which results in aggregate workers compensation losses in excess of $50 million.

Earthquake: The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.

Noncertified Act of Terrorism: An event that is not certified as an Act of Terrorism by the Secretary of Treasury pursuant to the Terrorism Risk Insurance Act of 2002 (as amended) but that meets all of the following criteria:

a. It is an act that is violent or dangerous to human life, property, or infrastructure;

b. The act results in damage within the United States, or outside of the United States in the case of the premises of United States missions or air carriers or vessels as those terms are defined in the Terrorism Risk Insurance Act of 2002 (as amended); and

c. It is an act that has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Catastrophic Industrial Accident: A chemical release, large explosion, or small blast that is localized in nature and affects workers in a small perimeter the size of a building.

The premium charge for the coverage your policy provides for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism) is shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.01	264.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement **07/01/11** Effective Policy No. **55-816280-01-03** Endorsement No. **6**
Insured **Breakaway Courier Systems** Premium $ **0.00**

Insurance Company **Continental Indemnity Company** Countersigned by _____

(Ed. 09-08)

Continental Indemnity Company

10825 Old Mill Road
Omaha, Nebraska 68154

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
QUICK REFERENCE

	BEGINNING ON Page
Information Page	i
General Section	1
A. The Policy	1
B. Who is Insured	1
C. Workers Compensation Law	1
D. State	1
E. Locations	1
PART ONE - WORKERS COMPENSATION INSURANCE	1
A. How This Insurance Applies	1
B. We Will Pay	1
C. We Will Defend	1
D. We Will Also Pay	1
E. Other Insurance	1
F. Payments You Must Make	2
G Recovery From Others	2
H. Statutory Provisions	2
PART TWO - EMPLOYERS LIABILITY INSURANCE	2
A. How This Insurance Applies	2
B. We Will Pay	2
C. Exclusions	3
D. We Will Defend	3
E. We Will Also Pay	3
F Other Insurance	3
G. Limits of Liability	3
H. Recovery From Others	4
I Actions Against Us	4

QUICK REFERENCE - CONTINUED

BEGINNING ON
Page

PART THREE - OTHER STATES INSURANCE **4**
A. How This Insurance Applies 4
B. Notice 4

PART FOUR - YOUR DUTIES IF INJURY OCCURS **4**

PART FIVE - PREMIUM **4**
A. Our Manuals 4
B. Classifications 4
C. Remuneration 4
D. Premium Payments 5
E. Final Premium 5
F. Records 5
G Audit 5

PART SIX - CONDITIONS **5**
A. Inspection 5
B. Long Term policy 5
C. Transfer of Your Rights and Duties 5
D. Cancellation 5
E. Sole Representative 5

IMPORTANT: This Quick Reference is **not** part of the Workers Compensation and Employers Liability Policy and does **not** provide coverage. Refer to the Workers Compensation and Employers Liability policy itself for actual contractual provisions.

PLEASE READ THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY CAREFULLY.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follow:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE - WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO - EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law; and
12. damages payable under the Migrant and Seasonal Agricultural Workers Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for the violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

   A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease - policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease - each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.
   Bodily injury by disease does not include disease that results directly form a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE - OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR - YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE - PREMIUM

A. Our Manuals

All premiums for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more that the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancelation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX - CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer Of Your Rights And Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

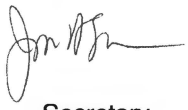
1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancelation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancelation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancelation notice.
4. Any of these provisions that conflict with a law that controls the cancelation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancelation.

In Witness Whereof, Continental Indemnity Company has caused this policy to be executed and attested, and if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

President



Secretary

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

Subject to individual State Regulations, the cancelation condition in the Standard Policy WC 00 00 00 A-Part Five Premium, E. Final Premium, states that if this policy is canceled by you, the final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancelation table and procedure. Final premium will not be less than the minimum premium.

In applicable States, the final premium will be calculated as follows based on the standard Short Rate Cancelation Table attached to this policyholder notice:

The premium for the canceled policy will be calculated using the Short Rate Cancelation Table. We will use the short-rate percentage as follows:

1. Determine the payroll developed during the period the policy was in effect.
2. Determine the full policy payroll by using the following formula:

$$\frac{\text{number of days for which the policy was written}}{\text{number of days the policy was in effect}} \times \text{Actual Payroll}$$

3. Apply authorized rates to such payroll
4. Calculate the extended number of days by using the following formula. If the policy was written for a one-year period, the extended number of days is the number of days the policy was in effect:

$$\frac{\text{number of days the policy was in effect}}{\text{number of days for which the policy was written}} \times 365$$

5. Based on the extended number of days, apply the short rate percentage shown in the Short Rate Cancelation Table to the full policy premium calculated in step 3. This result is the short-rate portion of the premium.
6. If applicable:
   - Apply any pricing programs
   - Apply any experience rating modification
   - Apply any premium discount based on the final earned total standard premium
   - Add the short rate portion of the expense constant but not less than $15
   - Apply catastrophe provisions based on the earned manual premium
7. The total earned premium for the short-rate canceled policy will not be less than the annual minimum premium applicable to the policy.

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
1	5%	46	23%	91	35%	136	48%	181	60%
2	6	47	23	92	36	137	48	182	60
3	7	48	24	93	36	138	48	183	61
4	7	49	24	94	36	139	49	184	61
5	8	50	24	95	37	140	49	185	61
6	8	51	24	96	37	141	49	186	61
7	9	52	25	97	37	142	49	187	61
8	9	53	25	98	37	143	50	188	62
9	10	54	25	99	38	144	50	189	62
10	10	55	26	100	38	145	50	190	62
11	11	56	26	101	38	146	50	191	62
12	11	57	26	102	38	147	51	192	63
13	12	58	26	103	39	148	51	193	63
14	12	59	27	104	39	149	51	194	63
15	13	60	27	105	39	150	52	195	63
16	13	61	27	106	40	151	52	196	63
17	14	62	27	107	40	152	52	197	64
18	14	63	28	108	40	153	52	198	64
19	15	64	28	109	40	154	53	199	64
20	15	65	28	110	41	155	53	200	64
21	16	66	29	111	41	156	53	201	65
22	16	67	29	112	41	157	54	202	65
23	17	68	29	113	41	158	54	203	65
24	17	69	29	114	42	159	54	204	65
25	17	70	30	115	42	160	54	205	65
26	18	71	30	116	42	161	55	206	66
27	18	72	30	117	43	162	55	207	66
28	18	73	30	118	43	163	55	208	66
29	18	74	31	119	43	164	55	209	66
30	19	75	31	120	43	165	56	210	67
31	19	76	31	121	44	166	56	211	67
32	19	77	32	122	44	167	56	212	67
33	20	78	32	123	44	168	57	213	67
34	20	79	32	124	44	169	57	214	67
35	20	80	32	125	45	170	57	215	68
36	20	81	33	126	45	171	57	216	68
37	21	82	33	127	45	172	58	217	68
38	21	83	33	128	46	173	58	218	68
39	21	84	34	129	46	174	58	219	69
40	21	85	34	130	46	175	58	220	69
41	22	86	34	131	46	176	59	221	69
42	22	87	34	132	47	177	59	222	69
43	22	88	35	133	47	178	59	223	69
44	23	89	35	134	47	179	60	224	70
45	23	90	35	135	47	180	60	225	70

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
226	70%	254	76%	282	82%	310	88%	338	95%
227	70	255	76	283	83	311	89	339	95
228	70	256	77	284	83	312	89	340	95
229	71	257	77	285	83	313	89	341	95
230	71	258	77	286	83	314	89	342	95
231	71	259	77	287	83	315	90	343	96
232	71	260	77	288	84	316	90	344	96
233	72	261	78	289	84	317	90	345	96
234	72	262	78	290	84	318	90	346	96
235	72	263	78	291	84	319	90	347	97
236	72	264	78	292	85	320	91	348	97
237	72	265	79	293	85	321	91	349	97
238	73	266	79	294	85	322	91	350	97
239	73	267	79	295	85	323	91	351	97
240	73	268	79	296	85	324	92	352	98
241	73	269	79	297	86	325	92	353	98
242	74	270	80	298	86	326	92	354	98
243	74	271	80	299	86	327	92	355	98
244	74	272	80	300	86	328	92	356	99
245	74	273	80	301	86	329	93	357	99
246	74	274	81	302	87	330	93	358	99
247	75	275	81	303	87	331	93	359	99
248	75	276	81	304	87	332	93	360	99
249	75	277	81	305	87	333	94	361	100
250	75	278	81	306	88	334	94	362	100
251	76	279	82	307	88	335	94	363	100
252	76	280	82	308	88	336	94	364	100
253	76	281	82	309	88	337	94	365	100

Insured **Breakaway Courier Systems**

Policy No. **55-816280-01-03**

Insurance Company **Continental Indemnity Company**

EXHIBIT I

CONTINENTAL INDEMNITY COMPANY

NAIC No. 28258
10825 Old Mill Road, Omaha, NE 68154
877-234-4420

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE POLICY

INFORMATION PAGE

Policy No. **46-816280-01-04**

1. Insured and Mailing Address: **Breakaway Courier Corporation**
DBA Breakaway Courier Systems
PO Box 780
New York, NY 10013-0676

Producer and Mailing Address: **Enforce Coverage Group**
1 Penn Plz Fl 36
New York, NY 10119-3699

Entity: **Subchapter Corporation**
FEIN: [redacted]
State No.

Agent No.
Billing: **DIRECT BILL**

Renewal of Policy No. **55-816280-01-03**

See Additional Named Insured Endorsement and Locations Endorsement if attached.

2. The policy period is from **07/01/12** to **07/01/13** 12:01 A.M. Standard Time at the insured's mailing address.

3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here:
NY

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident	**$1,000,000**	each accident
Bodily Injury by Disease	**$1,000,000**	policy limit
Bodily Injury by Disease	**$1,000,000**	each employee

C. Other States Insurance: Part Three of the policy applies to all states except the states listed in item 3.A and the states of North Dakota, Ohio, Washington, and Wyoming.

D. See attached list for endorsements and schedules.

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information listed on the Extension of Information page is subject to verification and change by audit.

See Extension of Information Page for premium rating schedule.

Minimum Premium	$	**875**
Total Estimated Annual Premium	$	**227,909**
Estimated Taxes and Assessments	$	**46,038**

Issuing Office: **OMAHA, NE**

Countersigned by:

Continental Indemnity Company

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC990401

LIST OF ENDORSEMENTS AND SCHEDULES

Endorsements on Policy: **46-816280-01-04**

Form Number	Endorsement Number	Name
WC000001A_CNIC		Information Page
WC990401_CNIC		List of Endorsements And Schedules
WC000174		Extension of Information Page
A I/L_CNIC		Additional Named Insured and/or Locations
WC000414	1	Notification Of Change In Ownership Endorsement
WC310308	2	New York Limit Of Liability Endorsement
WC000419	3	Premium Due Endorsement
WC310319F	4	New York Construction Classification Premium Adjustment Program
WC000422A	5	Terrorism Risk Insurance Program Reauthorization Act Disclosure
WC000421C	6	Catastrophe
PN000001	100	Short Rate Cancelation Policyholder Notice
WC000000B		Workers Compensation and Employers Liability Insurance Policy

WC 174
(Ed. 4-84)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
EXTENSION OF INFORMATION PAGE

Policy Number **46-816280-01-04**

4. Premium

Classifications	Code No.	Premium Basis Total Estimated Annual Remuneration	Rate Per $100 of Remuneration	Estimated Annual Premium
Trucking: Mail, Parcel Or Package Delivery- All Employees & Drivers	**7231**	**244,881**	**12.8500**	**31,467.00**
Bicycle Delivery of Envelopes, Parcels or Packages	**7242**	**1,235,694**	**18.9400**	**234,040.00**
Salespersons, Collectors Or Messengers-Outside	**8742**	**411,282**	**0.5000**	**2,056.00**
Clerical Office Employees NOC.	**8810**	**808,974**	**0.2300**	**1,861.00**
Experience Modification			**0.8400**	**226,316.00**
Terrorism	**9740**		**0.0490**	**1,323.00**
Catastrophe	**9741**		**0.0100**	**270.00**
Estimated Annual Premium - New York				**227,909.00**
State Assessment	**0932**		**20.2000**	**46,037.62**
New York Workers Compensation Security Fund	**9749**		**0.0000**	**0.00**
NY				
		Total Estimated Annual Premium $		**273,946.62**

Policy Number: **46-816280-01-04**

CONTINENTAL INDEMNITY COMPANY
Additional Named Insured and/or Locations

Item (1) Insured of the Information page is amended to include the following:

Breakaway Courier Corporation
DBA Breakaway Courier Systems **FEIN:** [redacted]
335 W 35th St
New York NY 10001-1726 **ENTITY: Subchapter Corp.**
From: 07/01/12 To: 07/01/13

This endorsement is part of your policy and takes effect on the effective date of your policy, unless another effective date is shown below.

Endorsement Effective Policy No. **46-816280-01-04** Endorsement No.
Insured **Breakaway Courier Systems** Premium

Insurance Company **Continental Indemnity Company** Countersigned by _____

All other terms and conditions of this policy remain unchanged.
A I/L 5/90

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/12**
Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-04**

Endorsement No. **1**
Premium

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 7-90)

WC 31 03 08

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK LIMIT OF LIABILITY ENDORSEMENT

This endorsement applies only to the insurance provided by Part Two (Employers Liability Insurance) because New York is shown in Item 3.A. of the Information Page..

We may not limit our liability to pay damages for which we become legally liable to pay because of bodily injury to your employees if the bodily injury arises out of and in the course of employment that is subject to and is compensable under the Workers' Compensation Law of New York.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/12**
Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-04**

Endorsement No. **2**
Premium

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-00)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend:

Section D. of Part Five of the policy is replaced by this provision

PART FIVE
PREMIUM

D. **Premium** is amended to read:
You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. **The due date for audit and retrospective premiums is the date of the billing.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/12**
Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-04**

Endorsement No. **3**
Premium

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-01)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK CONSTRUCTION CLASSIFICATION PREMIUM ADJUSTMENT PROGRAM EXPLANATORY ENDORSEMENT

The New York Construction Classification Premium Adjustment Program (NYCCPAP) allows premium credits for some employers in the construction industry. These credits exist to recognize the difference in wage rates between employers within the same construction industries in New York.

The declarations section of this policy will show a credit of 0.00% if you are not eligible for this credit, or if you are eligible for this credit and have not yet applied for a credit. Credits are earned for average wages in excess of $15.50 per hour for each eligible class. If your policy shows one of the following classification codes, and you are experience rated, you are eligible to apply for an NYCCPAP credit:

0042	5057	5193	5429	5491	5606	6003	6229	6325	9526
3365	5059	5213	5443	5506	5610	6005	6233	6400	9527
3724	5069	5221	5445	5507	5645	6017	6235	6701	9534
3726	5102	5222	5462	5508	5648	6018	6251	7536	9539
3737	5160	5223	5473	5536	5651	6045	6252	7538	9545
5000	5183	5348	5474	5538	5701	6204	6260	7601	9549
5022	5184	5402	5479	5545	5703	6216	6306	7855	9553
5037	5188	5403	5480	5547	5709	6217	6319	8227	
5040	5190	5428							

The basis for determining the credit is the limited payroll of each employee for the number of hours worked (excluding overtime premium pay) for each construction classification (other than employees engaged in the construction of one- or two-family residential housing) for the third quarter, as reported to taxing authorities, for the year preceding the policy date. Total payroll is to continue to be reported for employees engaged in the construction of one- or two-family residential housing. For example:

POLICY EFFECTIVE DATE	THIRD QUARTER PAYROLL
4/1/09 thru 3/31/10	2008
4/1/10 thru 3/31/11	2009
4/1/11 thru 3/31/12	2010
4/1/12 thru 3/31/13	2011
4/1/13 thru 3/31/14	2012
4/1/14 thru 3/31/15	2013

If you have any eligible classes on your policy, you should have been notified by your insurance carrier or the New York Compensation Insurance Rating Board approximately nine months prior to the inception date of this policy. If you believe you may be eligible for a credit and have not received an application, you should immediately contact your agent, insurance carrier, or the New York Compensation Insurance Rating Board.

Credits are calculated by the New York Compensation Insurance Rating Board. You must submit a completed application to: Attention: Field Services Department, New York Compensation Insurance Rating Board, 733 Third Avenue, New York, New York 10017.

Applications must be received by the Rating Board three (3) months prior to the policy renewal effective date. The Rating Board will accept and process an application if it is received between the policy effective date and expiration date, however, it must be accompanied by a letter stating the reason for the delay. Under no circumstances will an application be accepted for any policy if it is received after the expiration date of the policy. For short-term policies the application must be received prior to the expiration date of the short-term policy. If it is received after the policy expiration, no credit will be calculated.

The New York Workers Compensation and Employers Liability Insurance Manual, and not this endorsement, govern the implementation and use of the NYCCPAP.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/12** Policy No. **46-816280-01-04** Endorsement No. **4**
Insured **Breakaway Courier Systems** Premium

Insurance Company **Continental Indemnity Company** Countersigned by _____

(Ed. 2-11)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT DISCLOSURE ENDORSEMENT

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007. It serves to notify you of certain limitations under the Act, and that your insurance carrier is charging premium for losses that may occur in the event of an Act of Terrorism.

Your policy provides coverage for workers compensation losses caused by Acts of Terrorism, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

Definitions
The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments thereto resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2007.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

a. The act is an act of terrorism.

b. The act is violent or dangerous to human life, property or infrastructure.

c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.

d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured Loss" means any loss resulting from an act of terrorism (and, except for Pennsylvania, including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

"Insurer Deductible" means for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.

"Program Year" refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

Limitation of Liability
The Act limits our liability to you under this policy. If aggregate Insured Losses exceed $100,000,000,000 in a Program Year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds $100,000,000,000; and for aggregate Insured Losses up to $100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses exceeds $100,000,000 in a Program Year, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.

2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceeds $100,000,000,000.

3. The premium charge for the coverage your policy provides for Insured Losses is included in the amount shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.050	1,323.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement 07/01/12 Effective Policy No. 46-816280-01-04 Endorsement No. 5
Insured Breakaway Courier Systems Premium $

Insurance Company Continental Indemnity Company Countersigned by _____

WORKERS COMPENSATION AND EMPLOYERS LIABILITY ISURANCE POLICY

CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) PREMIUM ENDORSEMENT

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of a Catastrophe (other than Certified Acts of Terrorism) as that term is defined below. Your policy provides coverage for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism). This premium charge does not provide funding for Certified Acts of Terrorism contemplated under the Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22 A), attached to this policy.

For purposes of this endorsement, the following definitions apply:

Catastrophe (other than Certified Acts of Terrorism): Any single event, resulting from an Earthquake, Noncertified Act of Terrorism, or Catastrophic Industrial Accident, which results in aggregate workers compensation losses in excess of $50 million.

Earthquake: The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.

Noncertified Act of Terrorism: An event that is not certified as an Act of Terrorism by the Secretary of Treasury pursuant to the Terrorism Risk Insurance Act of 2002 (as amended) but that meets all of the following criteria:

a. It is an act that is violent or dangerous to human life, property, or infrastructure;

b. The act results in damage within the United States, or outside of the United States in the case of the premises of United States missions or air carriers or vessels as those terms are defined in the Terrorism Risk Insurance Act of 2002 (as amended); and

c. It is an act that has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Catastrophic Industrial Accident: A chemical release, large explosion, or small blast that is localized in nature and affects workers in a small perimeter the size of a building.

The premium charge for the coverage your policy provides for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism) is shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.01	270.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement 07/01/12 Effective Policy No. 46-816280-01-04 Endorsement No. 6
Insured Breakaway Courier Systems Premium $

Insurance Company Continental Indemnity Company Countersigned by _____

(Ed. 09-08)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

Subject to individual State Regulations, the cancelation condition in the Standard Policy WC 00 00 00 A-Part Five Premium, E. Final Premium, states that if this policy is canceled by you, the final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancelation table and procedure. Final premium will not be less than the minimum premium.

In applicable States, the final premium will be calculated as follows based on the standard Short Rate Cancelation Table attached to this policyholder notice:

The premium for the canceled policy will be calculated using the Short Rate Cancelation Table. We will use the short-rate percentage as follows:

1. Determine the payroll developed during the period the policy was in effect.
2. Determine the full policy payroll by using the following formula:

$$\frac{\text{number of days for which the policy was written}}{\text{number of days the policy was in effect}} \times \text{Actual Payroll}$$

3. Apply authorized rates to such payroll
4. Calculate the extended number of days by using the following formula. If the policy was written for a one-year period, the extended number of days is the number of days the policy was in effect:

$$\frac{\text{number of days the policy was in effect}}{\text{number of days for which the policy was written}} \times 365$$

5. Based on the extended number of days, apply the short rate percentage shown in the Short Rate Cancelation Table to the full policy premium calculated in step 3. This result is the short-rate portion of the premium.
6. If applicable:
   - Apply any pricing programs
   - Apply any experience rating modification
   - Apply any premium discount based on the final earned total standard premium
   - Add the short rate portion of the expense constant but not less than $15
   - Apply catastrophe provisions based on the earned manual premium
7. The total earned premium for the short-rate canceled policy will not be less than the annual minimum premium applicable to the policy.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
1	5%	46	23%	91	35%	136	48%	181	60%
2	6	47	23	92	36	137	48	182	60
3	7	48	24	93	36	138	48	183	61
4	7	49	24	94	36	139	49	184	61
5	8	50	24	95	37	140	49	185	61
6	8	51	24	96	37	141	49	186	61
7	9	52	25	97	37	142	49	187	61
8	9	53	25	98	37	143	50	188	62
9	10	54	25	99	38	144	50	189	62
10	10	55	26	100	38	145	50	190	62
11	11	56	26	101	38	146	50	191	62
12	11	57	26	102	38	147	51	192	63
13	12	58	26	103	39	148	51	193	63
14	12	59	27	104	39	149	51	194	63
15	13	60	27	105	39	150	52	195	63
16	13	61	27	106	40	151	52	196	63
17	14	62	27	107	40	152	52	197	64
18	14	63	28	108	40	153	52	198	64
19	15	64	28	109	40	154	53	199	64
20	15	65	28	110	41	155	53	200	64
21	16	66	29	111	41	156	53	201	65
22	16	67	29	112	41	157	54	202	65
23	17	68	29	113	41	158	54	203	65
24	17	69	29	114	42	159	54	204	65
25	17	70	30	115	42	160	54	205	65
26	18	71	30	116	42	161	55	206	66
27	18	72	30	117	43	162	55	207	66
28	18	73	30	118	43	163	55	208	66
29	18	74	31	119	43	164	55	209	66
30	19	75	31	120	43	165	56	210	67
31	19	76	31	121	44	166	56	211	67
32	19	77	32	122	44	167	56	212	67
33	20	78	32	123	44	168	57	213	67
34	20	79	32	124	44	169	57	214	67
35	20	80	32	125	45	170	57	215	68
36	20	81	33	126	45	171	57	216	68
37	21	82	33	127	45	172	58	217	68
38	21	83	33	128	46	173	58	218	68
39	21	84	34	129	46	174	58	219	69
40	21	85	34	130	46	175	58	220	69
41	22	86	34	131	46	176	59	221	69
42	22	87	34	132	47	177	59	222	69
43	22	88	35	133	47	178	59	223	69
44	23	89	35	134	47	179	60	224	70
45	23	90	35	135	47	180	60	225	70

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
226	70%	254	76%	282	82%	310	88%	338	95%
227	70	255	76	283	83	311	89	339	95
228	70	256	77	284	83	312	89	340	95
229	71	257	77	285	83	313	89	341	95
230	71	258	77	286	83	314	89	342	95
231	71	259	77	287	83	315	90	343	96
232	71	260	77	288	84	316	90	344	96
233	72	261	78	289	84	317	90	345	96
234	72	262	78	290	84	318	90	346	96
235	72	263	78	291	84	319	90	347	97
236	72	264	78	292	85	320	91	348	97
237	72	265	79	293	85	321	91	349	97
238	73	266	79	294	85	322	91	350	97
239	73	267	79	295	85	323	91	351	97
240	73	268	79	296	85	324	92	352	98
241	73	269	79	297	86	325	92	353	98
242	74	270	80	298	86	326	92	354	98
243	74	271	80	299	86	327	92	355	98
244	74	272	80	300	86	328	92	356	99
245	74	273	80	301	86	329	93	357	99
246	74	274	81	302	87	330	93	358	99
247	75	275	81	303	87	331	93	359	99
248	75	276	81	304	87	332	93	360	99
249	75	277	81	305	87	333	94	361	100
250	75	278	81	306	88	334	94	362	100
251	76	279	82	307	88	335	94	363	100
252	76	280	82	308	88	336	94	364	100
253	76	281	82	309	88	337	94	365	100

Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-04**

Insurance Company **Continental Indemnity Company**

Continental Indemnity Company

10825 Old Mill Road
Omaha, Nebraska 68154

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
QUICK REFERENCE

	BEGINNING ON Page
Information Page	**i**
General Section	**1**
A. The Policy	1
B. Who is Insured	1
C. Workers Compensation Law	1
D. State	1
E. Locations	1
PART ONE - WORKERS COMPENSATION INSURANCE	**1**
A. How This Insurance Applies	1
B. We Will Pay	1
C. We Will Defend	1
D. We Will Also Pay	1
E. Other Insurance	1
F. Payments You Must Make	2
G Recovery From Others	2
H. Statutory Provisions	2
PART TWO - EMPLOYERS LIABILITY INSURANCE	**2**
A. How This Insurance Applies	2
B. We Will Pay	2
C. Exclusions	3
D. We Will Defend	3
E. We Will Also Pay	3
F Other Insurance	3
G. Limits of Liability	3
H. Recovery From Others	4
I Actions Against Us	4

QUICK REFERENCE - CONTINUED

BEGINNING ON
Page

PART THREE - OTHER STATES INSURANCE **4**
A. How This Insurance Applies 4
B. Notice 4

PART FOUR - YOUR DUTIES IF INJURY OCCURS **4**

PART FIVE - PREMIUM **4**
A. Our Manuals 4
B. Classifications 4
C. Remuneration 4
D. Premium Payments 5
E. Final Premium 5
F. Records 5
G Audit 5

PART SIX - CONDITIONS **5**
A. Inspection 5
B. Long Term policy 5
C. Transfer of Your Rights and Duties 5
D. Cancelation 5
E. Sole Representative 5

IMPORTANT: This Quick Reference is **not** part of the Workers Compensation and Employers Liability Policy and does **not** provide coverage. Refer to the Workers Compensation and Employers Liability policy itself for actual contractual provisions.

Policyholders seeking information regarding coverage, or for assistance in resolving complaints can contact the Company by phone at 877-234-4420.

PLEASE READ THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY CAREFULLY.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE - WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

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F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO - EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

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C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356a.), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Safety and Health Act (30 USC Sections 801-945), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued there under, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgement as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

   A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

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2. Bodily Injury by Disease. The limit shown for "bodily injury by disease - policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease - each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.
   Bodily injury by disease does not include disease that results directly from a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE - OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR - YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE - PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

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1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancelation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX - CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancelation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancelation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancelation notice.
4. Any of these provisions that conflict with a law that controls the cancelation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancelation.

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In Witness Whereof, Continental Indemnity Company has caused this policy to be executed and attested, and if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

President

Secretary

EXHIBIT J

CONTINENTAL INDEMNITY COMPANY

NAIC No. 28258
10825 Old Mill Road, Omaha, NE 68154
877-234-4420

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE POLICY

INFORMATION PAGE

Policy No. **46-816280-01-05**

1. Insured and Mailing Address: **Breakaway Courier Corporation**
DBA Breakaway Courier Systems
PO Box 780
New York, NY 10013-0676

Producer and Mailing Address: **Enforce Coverage Group**
1 Penn Plz Fl 36
New York, NY 10119-3699

Entity: **Subchapter Corporation**
FEIN: [redacted]
State No.

Agent No.
Billing: **DIRECT BILL**

Renewal of Policy No. **46-816280-01-04**

See Additional Named Insured Endorsement and Locations Endorsement if attached.

2. The policy period is from **07/01/13** to **07/01/14** 12:01 A.M. Standard Time at the insured's mailing address.

3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here: **NY**

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident	$ **1,000,000**	each accident
Bodily Injury by Disease	$ **1,000,000**	policy limit
Bodily Injury by Disease	$ **1,000,000**	each employee

C. Other States Insurance: Part Three of the policy applies to all states except the states listed in item 3.A and the states of North Dakota, Ohio, Washington, and Wyoming.

D. See attached list for endorsements and schedules.

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information listed on the Extension of Information page is subject to verification and change by audit.

See Extension of Information Page for premium rating schedule.

Minimum Premium	$	**875**
Total Estimated Annual Premium	$	**239,919**
Estimated Taxes and Assessments	$	**45,105**

Issuing Office: **OMAHA, NE**

Countersigned by:

Continental Indemnity Company

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC990401

LIST OF ENDORSEMENTS AND SCHEDULES

Endorsements on Policy: **46-816280-01-05**

Form Number	Endorsement Number	Name
WC000001A_CNIC		Information Page
WC990401_CNIC		List of Endorsements And Schedules
WC000174		Extension of Information Page
A I/L_CNIC		Additional Named Insured and/or Locations
WC000414	1	Notification Of Change In Ownership Endorsement
WC310308	2	New York Limit Of Liability Endorsement
WC000419	3	Premium Due Endorsement
WC310319F	4	New York Construction Classification Premium Adjustment Program
WC000422A	5	Terrorism Risk Insurance Program Reauthorization Act Disclosure
WC000421C	6	Catastrophe
WC310305B	7	New York Executive Officers Exclusion Endorsement
PN000001	100	Short Rate Cancelation Policyholder Notice
WC000000B		Workers Compensation and Employers Liability Insurance Policy

WC 174
(Ed. 4-84)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
EXTENSION OF INFORMATION PAGE

Policy Number **46-816280-01-05**

4. Premium

Classifications	Code No.	Premium Basis Total Estimated Annual Remuneration	Rate Per $100 of Remuneration	Estimated Annual Premium
Trucking: Mail, Parcel Or Package Delivery- All Employees & Drivers	**7231**	**258,922**	**12.8500**	**33,271.00**
Bicycle Delivery of Envelopes, Parcels or Packages	**7242**	**1,217,215**	**18.9400**	**230,541.00**
Salespersons, Collectors Or Messengers-Outside	**8742**	**421,078**	**0.5000**	**2,105.00**
Clerical Office Employees NOC.	**8810**	**808,974**	**0.2300**	**1,861.00**
Experience Modification			**0.8900**	**238,322.00**
Terrorism	**9740**		**0.0490**	**1,326.00**
Catastrophe	**9741**		**0.0100**	**271.00**
Estimated Annual Premium - New York				**239,919.00**
State Assessment	**0932**		**18.8000**	**45,104.77**
New York Workers Compensation Security Fund	**9749**		**0.0000**	**0.00**
NY				
		Total Estimated Annual Premium $		**285,023.77**

Policy Number: **46-816280-01-05**

CONTINENTAL INDEMNITY COMPANY
Additional Named Insured and/or Locations

Item (1) Insured of the Information page is amended to include the following:

Breakaway Courier Corporation
DBA Breakaway Courier Systems **FEIN:** [redacted]
444 W 36th St
New York NY 10018-6344 **ENTITY: Subchapter Corp.**
From: 07/01/13 To: 07/01/14

This endorsement is part of your policy and takes effect on the effective date of your policy, unless another effective date is shown below.

Endorsement Effective Policy No. **46-816280-01-05** Endorsement No.
Insured **Breakaway Courier Systems** Premium

Insurance Company **Continental Indemnity Company** Countersigned by _____

All other terms and conditions of this policy remain unchanged.
A I/L 5/90

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/13**
Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-05**

Endorsement No. **1**
Premium

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 7-90)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK LIMIT OF LIABILITY ENDORSEMENT

This endorsement applies only to the insurance provided by Part Two (Employers Liability Insurance) because New York is shown in Item 3.A. of the Information Page..

We may not limit our liability to pay damages for which we become legally liable to pay because of bodily injury to your employees if the bodily injury arises out of and in the course of employment that is subject to and is compensable under the Workers' Compensation Law of New York.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/13**
Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-05**

Endorsement No. **2**
Premium

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-00)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend:

Section D. of Part Five of the policy is replaced by this provision

PART FIVE
PREMIUM

D. **Premium** is amended to read:
You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. **The due date for audit and retrospective premiums is the date of the billing.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/13**
Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-05**

Endorsement No. **3**
Premium

Insurance Company
Continental Indemnity Company

Countersigned by _____

(Ed. 1-01)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

NEW YORK CONSTRUCTION CLASSIFICATION PREMIUM ADJUSTMENT PROGRAM EXPLANATORY ENDORSEMENT

The New York Construction Classification Premium Adjustment Program (NYCCPAP) allows premium credits for some employers in the construction industry. These credits exist to recognize the difference in wage rates between employers within the same construction industries in New York.

The declarations section of this policy will show a credit of 0.00% if you are not eligible for this credit, or if you are eligible for this credit and have not yet applied for a credit. Credits are earned for average wages in excess of $15.50 per hour for each eligible class. If your policy shows one of the following classification codes, and you are experience rated, you are eligible to apply for an NYCCPAP credit:

0042	5057	5193	5429	5491	5606	6003	6229	6325	9526
3365	5059	5213	5443	5506	5610	6005	6233	6400	9527
3724	5069	5221	5445	5507	5645	6017	6235	6701	9534
3726	5102	5222	5462	5508	5648	6018	6251	7536	9539
3737	5160	5223	5473	5536	5651	6045	6252	7538	9545
5000	5183	5348	5474	5538	5701	6204	6260	7601	9549
5022	5184	5402	5479	5545	5703	6216	6306	7855	9553
5037	5188	5403	5480	5547	5709	6217	6319	8227	
5040	5190	5428							

The basis for determining the credit is the limited payroll of each employee for the number of hours worked (excluding overtime premium pay) for each construction classification (other than employees engaged in the construction of one- or two-family residential housing) for the third quarter, as reported to taxing authorities, for the year preceding the policy date. Total payroll is to continue to be reported for employees engaged in the construction of one- or two-family residential housing. For example:

POLICY EFFECTIVE DATE	THIRD QUARTER PAYROLL
4/1/09 thru 3/31/10	2008
4/1/10 thru 3/31/11	2009
4/1/11 thru 3/31/12	2010
4/1/12 thru 3/31/13	2011
4/1/13 thru 3/31/14	2012
4/1/14 thru 3/31/15	2013

If you have any eligible classes on your policy, you should have been notified by your insurance carrier or the New York Compensation Insurance Rating Board approximately nine months prior to the inception date of this policy. If you believe you may be eligible for a credit and have not received an application, you should immediately contact your agent, insurance carrier, or the New York Compensation Insurance Rating Board.

Credits are calculated by the New York Compensation Insurance Rating Board. You must submit a completed application to: Attention: Field Services Department, New York Compensation Insurance Rating Board, 733 Third Avenue, New York, New York 10017.

Applications must be received by the Rating Board three (3) months prior to the policy renewal effective date. The Rating Board will accept and process an application if it is received between the policy effective date and expiration date, however, it must be accompanied by a letter stating the reason for the delay. Under no circumstances will an application be accepted for any policy if it is received after the expiration date of the policy. For short-term policies the application must be received prior to the expiration date of the short-term policy. If it is received after the policy expiration, no credit will be calculated.

The New York Workers Compensation and Employers Liability Insurance Manual, and not this endorsement, govern the implementation and use of the NYCCPAP.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/13** Policy No. **46-816280-01-05** Endorsement No. **4**
Insured **Breakaway Courier Systems** Premium

Insurance Company **Continental Indemnity Company** Countersigned by _____

(Ed. 2-11)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT DISCLOSURE ENDORSEMENT

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007. It serves to notify you of certain limitations under the Act, and that your insurance carrier is charging premium for losses that may occur in the event of an Act of Terrorism.

Your policy provides coverage for workers compensation losses caused by Acts of Terrorism, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

Definitions
The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments thereto resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2007.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

a. The act is an act of terrorism.

b. The act is violent or dangerous to human life, property or infrastructure.

c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.

d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured Loss" means any loss resulting from an act of terrorism (and, except for Pennsylvania, including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

"Insurer Deductible" means for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.

"Program Year" refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

Limitation of Liability
The Act limits our liability to you under this policy. If aggregate Insured Losses exceed $100,000,000,000 in a Program Year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds $100,000,000,000; and for aggregate Insured Losses up to $100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses exceeds $100,000,000 in a Program Year, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.

2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceeds $100,000,000,000.

3. The premium charge for the coverage your policy provides for Insured Losses is included in the amount shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.050	1,326.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement 07/01/13 Effective Policy No. 46-816280-01-05 Endorsement No. 5
Insured Breakaway Courier Systems Premium $

Insurance Company Continental Indemnity Company Countersigned by _____

WORKERS COMPENSATION AND EMPLOYERS LIABILITY ISURANCE POLICY

CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) PREMIUM ENDORSEMENT

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of a Catastrophe (other than Certified Acts of Terrorism) as that term is defined below. Your policy provides coverage for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism). This premium charge does not provide funding for Certified Acts of Terrorism contemplated under the Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22 A), attached to this policy.

For purposes of this endorsement, the following definitions apply:

Catastrophe (other than Certified Acts of Terrorism): Any single event, resulting from an Earthquake, Noncertified Act of Terrorism, or Catastrophic Industrial Accident, which results in aggregate workers compensation losses in excess of $50 million.

Earthquake: The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.

Noncertified Act of Terrorism: An event that is not certified as an Act of Terrorism by the Secretary of Treasury pursuant to the Terrorism Risk Insurance Act of 2002 (as amended) but that meets all of the following criteria:

a. It is an act that is violent or dangerous to human life, property, or infrastructure;

b. The act results in damage within the United States, or outside of the United States in the case of the premises of United States missions or air carriers or vessels as those terms are defined in the Terrorism Risk Insurance Act of 2002 (as amended); and

c. It is an act that has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Catastrophic Industrial Accident: A chemical release, large explosion, or small blast that is localized in nature and affects workers in a small perimeter the size of a building.

The premium charge for the coverage your policy provides for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism) is shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
NY	0.01	271.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement **07/01/13** Effective Policy No. **46-816280-01-05** Endorsement No. **6**
Insured **Breakaway Courier Systems** Premium $

Insurance Company **Continental Indemnity Company** Countersigned by _____

(Ed. 09-08)

NEW YORK EXCLUSION OF EXECUTIVE OFFICER ENDORSEMENT

The policy does not cover bodily injury to the sole executive officer and only stockholder of the insured corporation, or one or two executive officers who together are the only stockholders of the insured corporation with each officer holding at least one share of stock in the corporation, when such corporation has other employees who are required to be covered by law, and the corporation has elected to exclude from coverage the sole officer or one or both officers of a two-person corporation described in the Schedule.

The premium basis for the policy does not include the remuneration of the excluded executive officer or officers.

You will reimburse us for any payment we must make because of bodily injury to such person.

Schedule

Name of Officer(s)	Title
Robert Kotch	President - 100%

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Endorsement Effective **07/01/13** Policy No. **46-816280-01-05** Endorsement No. **7**
Insured **Breakaway Courier Systems** Premium **0.00**

Insurance Company
Continental Indemnity Company

Countersigned By _____

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

Subject to individual State Regulations, the cancelation condition in the Standard Policy WC 00 00 00 A-Part Five Premium, E. Final Premium, states that if this policy is canceled by you, the final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancelation table and procedure. Final premium will not be less than the minimum premium.

In applicable States, the final premium will be calculated as follows based on the standard Short Rate Cancelation Table attached to this policyholder notice:

The premium for the canceled policy will be calculated using the Short Rate Cancelation Table. We will use the short-rate percentage as follows:

1. Determine the payroll developed during the period the policy was in effect.
2. Determine the full policy payroll by using the following formula:

$$\frac{\text{number of days for which the policy was written}}{\text{number of days the policy was in effect}} \times \text{Actual Payroll}$$

3. Apply authorized rates to such payroll
4. Calculate the extended number of days by using the following formula. If the policy was written for a one-year period, the extended number of days is the number of days the policy was in effect:

$$\frac{\text{number of days the policy was in effect}}{\text{number of days for which the policy was written}} \times 365$$

5. Based on the extended number of days, apply the short rate percentage shown in the Short Rate Cancelation Table to the full policy premium calculated in step 3. This result is the short-rate portion of the premium.
6. If applicable:
   - Apply any pricing programs
   - Apply any experience rating modification
   - Apply any premium discount based on the final earned total standard premium
   - Add the short rate portion of the expense constant but not less than $15
   - Apply catastrophe provisions based on the earned manual premium
7. The total earned premium for the short-rate canceled policy will not be less than the annual minimum premium applicable to the policy.

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
1	5%	46	23%	91	35%	136	48%	181	60%
2	6	47	23	92	36	137	48	182	60
3	7	48	24	93	36	138	48	183	61
4	7	49	24	94	36	139	49	184	61
5	8	50	24	95	37	140	49	185	61
6	8	51	24	96	37	141	49	186	61
7	9	52	25	97	37	142	49	187	61
8	9	53	25	98	37	143	50	188	62
9	10	54	25	99	38	144	50	189	62
10	10	55	26	100	38	145	50	190	62
11	11	56	26	101	38	146	50	191	62
12	11	57	26	102	38	147	51	192	63
13	12	58	26	103	39	148	51	193	63
14	12	59	27	104	39	149	51	194	63
15	13	60	27	105	39	150	52	195	63
16	13	61	27	106	40	151	52	196	63
17	14	62	27	107	40	152	52	197	64
18	14	63	28	108	40	153	52	198	64
19	15	64	28	109	40	154	53	199	64
20	15	65	28	110	41	155	53	200	64
21	16	66	29	111	41	156	53	201	65
22	16	67	29	112	41	157	54	202	65
23	17	68	29	113	41	158	54	203	65
24	17	69	29	114	42	159	54	204	65
25	17	70	30	115	42	160	54	205	65
26	18	71	30	116	42	161	55	206	66
27	18	72	30	117	43	162	55	207	66
28	18	73	30	118	43	163	55	208	66
29	18	74	31	119	43	164	55	209	66
30	19	75	31	120	43	165	56	210	67
31	19	76	31	121	44	166	56	211	67
32	19	77	32	122	44	167	56	212	67
33	20	78	32	123	44	168	57	213	67
34	20	79	32	124	44	169	57	214	67
35	20	80	32	125	45	170	57	215	68
36	20	81	33	126	45	171	57	216	68
37	21	82	33	127	45	172	58	217	68
38	21	83	33	128	46	173	58	218	68
39	21	84	34	129	46	174	58	219	69
40	21	85	34	130	46	175	58	220	69
41	22	86	34	131	46	176	59	221	69
42	22	87	34	132	47	177	59	222	69
43	22	88	35	133	47	178	59	223	69
44	23	89	35	134	47	179	60	224	70
45	23	90	35	135	47	180	60	225	70

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SHORT RATE CANCELATION POLICYHOLDER NOTICE

SHORT RATE CANCELATION TABLE

Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages	Days in Policy Period	Short Rate Percentages
226	70%	254	76%	282	82%	310	88%	338	95%
227	70	255	76	283	83	311	89	339	95
228	70	256	77	284	83	312	89	340	95
229	71	257	77	285	83	313	89	341	95
230	71	258	77	286	83	314	89	342	95
231	71	259	77	287	83	315	90	343	96
232	71	260	77	288	84	316	90	344	96
233	72	261	78	289	84	317	90	345	96
234	72	262	78	290	84	318	90	346	96
235	72	263	78	291	84	319	90	347	97
236	72	264	78	292	85	320	91	348	97
237	72	265	79	293	85	321	91	349	97
238	73	266	79	294	85	322	91	350	97
239	73	267	79	295	85	323	91	351	97
240	73	268	79	296	85	324	92	352	98
241	73	269	79	297	86	325	92	353	98
242	74	270	80	298	86	326	92	354	98
243	74	271	80	299	86	327	92	355	98
244	74	272	80	300	86	328	92	356	99
245	74	273	80	301	86	329	93	357	99
246	74	274	81	302	87	330	93	358	99
247	75	275	81	303	87	331	93	359	99
248	75	276	81	304	87	332	93	360	99
249	75	277	81	305	87	333	94	361	100
250	75	278	81	306	88	334	94	362	100
251	76	279	82	307	88	335	94	363	100
252	76	280	82	308	88	336	94	364	100
253	76	281	82	309	88	337	94	365	100

Insured **Breakaway Courier Systems**

Policy No. **46-816280-01-05**

Insurance Company **Continental Indemnity Company**

Continental Indemnity Company

10825 Old Mill Road
Omaha, Nebraska 68154

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
QUICK REFERENCE

	BEGINNING ON Page
Information Page	**i**
General Section	**1**
A. The Policy	1
B. Who is Insured	1
C. Workers Compensation Law	1
D. State	1
E. Locations	1
PART ONE - WORKERS COMPENSATION INSURANCE	**1**
A. How This Insurance Applies	1
B. We Will Pay	1
C. We Will Defend	1
D. We Will Also Pay	1
E. Other Insurance	1
F. Payments You Must Make	2
G Recovery From Others	2
H. Statutory Provisions	2
PART TWO - EMPLOYERS LIABILITY INSURANCE	**2**
A. How This Insurance Applies	2
B. We Will Pay	2
C. Exclusions	3
D. We Will Defend	3
E. We Will Also Pay	3
F Other Insurance	3
G. Limits of Liability	3
H. Recovery From Others	4
I Actions Against Us	4

QUICK REFERENCE - CONTINUED

BEGINNING ON
Page

PART THREE - OTHER STATES INSURANCE **4**
A. How This Insurance Applies 4
B. Notice 4

PART FOUR - YOUR DUTIES IF INJURY OCCURS **4**

PART FIVE - PREMIUM **4**
A. Our Manuals 4
B. Classifications 4
C. Remuneration 4
D. Premium Payments 5
E. Final Premium 5
F. Records 5
G Audit 5

PART SIX - CONDITIONS **5**
A. Inspection 5
B. Long Term policy 5
C. Transfer of Your Rights and Duties 5
D. Cancelation 5
E. Sole Representative 5

IMPORTANT: This Quick Reference is **not** part of the Workers Compensation and Employers Liability Policy and does **not** provide coverage. Refer to the Workers Compensation and Employers Liability policy itself for actual contractual provisions.

Policyholders seeking information regarding coverage, or for assistance in resolving complaints can contact the Company by phone at 877-234-4420.

PLEASE READ THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY CAREFULLY.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE - WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

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F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO - EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

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C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356a.), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Safety and Health Act (30 USC Sections 801-945), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued there under, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgement as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

   A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

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2. Bodily Injury by Disease. The limit shown for "bodily injury by disease - policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease - each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.
   Bodily injury by disease does not include disease that results directly from a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE - OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR - YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE - PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

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1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancelation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX - CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancelation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancelation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancelation notice.
4. Any of these provisions that conflict with a law that controls the cancelation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancelation.

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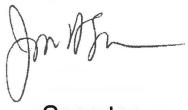
In Witness Whereof, Continental Indemnity Company has caused this policy to be executed and attested, and if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

President



Secretary

EXHIBIT K

PROMISSORY NOTE

$110,348.40

New York, NY
April 16, 2012

FOR VALUE RECEIVED, the undersigned Breakaway Courier Corporation, (the "Maker") with its address at 335 W 35th St, New York, NY 10001, acknowledging its indebtedness (including workers' compensation premiums) to Applied Underwriters, Inc. and its affiliates and subsidiaries (collectively the "Holder") and promises to pay to Holder at such office or at such other place as the Holder shall designate to the Maker in writing, the principal sum of one hundred ten thousand three hundred forty eight and .40 dollars ($110,348.40) together with interest on the unpaid principal amount from time to time outstanding from and including the date hereof until such principal is paid in full in accordance with the provisions of this Promissory Note (the "Note"). The principal of and interest on this Note shall be due and payable at such time as set forth in Section 1.

1. Principal. The principal herein shall be payable in 12 monthly installments of $7,250.00 beginning on May 15, 2012 and on the 15th day of each succeeding month until paid with an initial payment of $23,348.40 due on April 16, 2012.

2. Interest. Interest shall be paid on the outstanding principal amount of this Note at the monthly rate of 0.0000% (the "Interest Rate"). Interest on this Note shall accrue from the date of issuance until repayment of the principal and payment of all accrued interest in full and shall be computed on the basis of a 360-day year of twelve 30-day months.

3. Application of Payments. All payments or prepayments under this Note shall be applied first to any costs, fees and expenses (including legal fees) incurred by the Holder in the exercise of the Holder's rights hereunder, if any, then to payment of default interest, if any, then to payment of accrued interest and then to payment of principal. Allocation of such payment to specific amounts owed by Maker shall be at Holder's sole discretion.

4. Defaults and Remedies.

(a) Events of Default. An "Event of Default" shall occur if:

(i) the Maker shall default in the payment of an installment payment of this Note, when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days following notice thereof from the Holder; or

(ii) the Maker shall default in the payment of the principal of this Note,

when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise; or

(iii) the Maker shall default in the due observance or performance of any covenant, condition, or agreement on the part of Maker to be observed or pursuant to the terms hereof; or

(iv) the Maker commences any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to the Maker, or seeking to adjudicate the Maker bankrupt or insolvent, or seeking reorganization, composition, extension or other such relief with respect to the Maker or the Maker's debts, or seeking appointment of a receiver, trustee, custodian or other similar official for all or any substantial part of the Maker's assets (a "Bankruptcy Action"); or

(v) the Maker becomes the debtor named in any Bankruptcy Action which results in the entry of an order for relief or any such adjudication or appointment remains undismissed or undischarged for a period of sixty (60) days; or

(vi) the Maker makes a general assignment for the benefit of his creditors; or

(vii) the Maker generally fails to, or shall admit in writing his inability to, pay his or her debts as they become due; or

(viii) the Maker fails to pay Holder any amounts due and owing other than that set forth in this Note.

(b) Acceleration. If an Event of Default occurs under clause (a)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) of this Section 4, then the outstanding principal of and all accrued interest on this Note shall automatically become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are expressly waived by the Maker. If any other Event of Default occurs and is continuing, then the Holder, by written notice to the Maker, may declare the principal of and accrued interest on this Note to be due and payable immediately. Upon such declaration, such principal and interest shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which the Maker expressly waives hereby.

(c) Notices. The Maker shall give written notice to the Holder of the occurrence of any Event of Default or any event that, after notice or lapse of time or both, would become an Event of Default.

5. Suits for Enforcement.

(a) Upon the occurrence of any one or more Events of Default, the Holder may proceed to protect and enforce its rights hereunder in equity, at law or by other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Note or in aid of the exercise of any power granted in this Note, or the Holder may proceed to enforce the payment of this Note, or to enforce any other legal or equitable right of the Holder.

(b) In case of any default under this Note, the Maker will pay to the Holder such amounts as shall be sufficient to cover the reasonable costs and expenses of such Holder due to such default.

6. Maker's Right to Prepay. Maker has the right to make prepayments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When Maker makes a prepayment, Maker will notify the Holder in writing that Maker is doing so. Maker may make a full prepayment or partial prepayment without paying any prepayment charge. The Holder will use all of Maker's prepayments to reduce the amount of principal that Maker owes under this Note. If Maker makes a partial prepayment, there will be no changes in the due date or in the amount of Maker's monthly payment unless the Holder agrees in writing to the changes.

7. Cancellation of Workers' Compensation Policy. Maker acknowledges that the amount due under this Note represents unpaid workers' compensation premium. As a result, in the Event of a Default under Paragraph 4(a), Holder may cause any workers' compensation policy issued to Maker to be cancelled in accordance with the insurance laws of the state in which the Maker's principal place of business is located.

8. Remedies Cumulative. No remedy herein conferred upon the Holder is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

9. Remedies Not Waived. No course of dealing between the Maker and the Holder or any delay on the part of the Holder in exercising any rights hereunder shall operate as a waiver of any right.

10. Payments. All payments and prepayments of principal and interest on this Note shall be made in lawful money of the United States of America.

11. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given if delivered personally or sent by facsimile transmission, overnight courier, or certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally or sent by facsimile transmission (provided that a confirmation copy is sent by overnight courier), one day after deposit with an overnight courier,

or if mailed, five (5) days after the date of deposit in the United States mails, to the Maker or to the Holder at such respective addresses, or as may be furnished in writing to the other party hereto.

If to Maker:	Breakaway Courier Corporation 335 W 35th St New York, NY 10001-1726 Facsimile: (212)947-3335
If to Holder:	Applied Underwriters, Inc. 10805 Old Mill Road Omaha, NE 68154 Facsimile: (402)393-8558 Attn: Legal Department

12. Covenants Bind Successors and Assigns. All the covenants, stipulations, promises and agreements in this Note made by or on behalf of the Holder or the Maker shall bind their respective successors and assigns, whether so expressed or not.

13. Severability. Any term or provision of this Note which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Note or affecting the validity or enforceability of any of the terms and provisions of this Note in any other jurisdiction.

14. Lost Documents; Further Assurances.

(a) Upon receipt by the Maker of evidence satisfactory to him of the loss, theft, destruction or mutilation of this Note or any Note exchanged for it, and (in the case of loss, theft or destruction) of indemnity satisfactory to him, and upon surrender and cancellation of such Note, if mutilated, the Maker will make and deliver in lieu of such Note a new Note of like tenor and unpaid principal amount and dated as of the original date of this Note.

(b) The Maker agrees to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Note.

15. GOVERNING LAW. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEBRASKA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF.

16. Headings. The headings in this Note are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

17. Waiver of Trial by Jury and Consent to Jurisdiction. MAKER IRREVOCABLY

WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE. MAKER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN DOUGLAS COUNTY, NEBRASKA, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS WITH REGARD TO ANY ACTION, CLAIM, DISPUTE OR PROCEEDING RELATING TO THIS NOTE.

18. Payment Authorization and Approval. Maker represents and warrants that the individual executing this Note has the requisite express authority and is duly authorized to do so. Holder is provided this supplemental authorization to initiate debit entries for payments due under this Note to the bank account provided to the below named depository ("Depository"). This authority will remain in full force and effect until Holder and Depository have received a written notification of its revocation in such time and in such manner as to afford Holder a reasonable opportunity to collect all amounts due and owing.

Banking Institution Citibank
Bank Routing Number [redacted]
Bank Account Number [redacted]

Breakaway Courier Corporation ("Maker")

BY: _____

PRINTED NAME: Robert Kotch

TITLE: President

816280

EXHIBIT □

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT

This reinsurance participation agreement (this "Agreement") is made and entered into by and between Applied Underwriters Captive Risk Assurance Company, Inc., a company organized and existing under the laws of the British Virgin Islands ("Company") as of July 1, 2012 and
Breakaway Courier Corporation (collectively, "Participant").

Whereas, Participant is desirous of participating in the Company's segregated protected cell reinsurance program designated Segregated Account No. 816280 ("Participation"); and

Whereas, the Company has entered into a Reinsurance Treaty (hereinafter referred to as the "Treaty") with California Insurance Company (NAIC No. 0031-38865) and, through its pooling arrangement, with other affiliates of Applied Underwriters, Inc., including, but not limited to Continental Indemnity Company (NAIC No. 0031-28258) (collectively the "Issuing Insurers"); and

Whereas, the Participant desires the Company to establish a segregated protected cell whereby the Participant may share in the underwriting results of the Workers' Compensation policies of insurance issued for the benefit of the Participant by the Issuing Insurers (the "Policies"); and

Whereas the Company will allocate a portion of the premium and losses under this Agreement to the Participant's segregated protected cell,

Now, therefore, in consideration of the mutual promises and undertakings set forth herein the parties do hereby agree as follows:

1. Participant agrees to participate in the Company's segregated protected cell reinsurance program in accordance with Schedule 1 attached hereto and incorporated herein by reference and additional Schedules as may be executed from time to time on a prospective basis only by the parties ("Additional Schedules").

2. Participant's interest in the Company is solely as a segregated protected "cell" with segregation of the Company's assets and liabilities among the segregated accounts (known as "cells") established by the Company. There is no "joint and several" liability. The cells of the Company are not liable for the debts and obligations and are not bound with respect to contracts entered into by another cell. Participant further acknowledges and agrees that Participant: (1) will look solely to the assets of Participant's cell for satisfaction of the Company's liabilities hereunder; (2) has consulted with legal counsel and other insurance advisers as to the applicability and effect of this Agreement; (3) irrevocably waives any right, substantive or procedural, which Participant may have to challenge the effectiveness and the Company's ability and right to segregate assets among the cells; and (4) covenants not to sue, attach, pursue or make any claim against or with respect to any asset, property or right of the Company which is not an asset, property or right of Participant's segregated protected cell.

3. Participant is participating in this Agreement for purposes of investment only. The Participation has not been registered under the United States Securities Act of 1933, as amended or any state securities laws. The Participation shall not be sold, transferred, hypothecated, pledged or otherwise assigned or encumbered and Participant acknowledges the following:

> "This Participation has not been registered under the Securities Act of 1933, as amended or qualified under any state securities law. This Participation has been acquired for investment and may not be sold, transferred, hypothecated, pledged or otherwise assigned or encumbered in the absence of registration or an exemption therefrom under such act and such laws."

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4. This Agreement and any Schedules hereto may not be modified, amended or supplemented in any manner except in writing signed by the parties hereto and represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, proposals, letters of intent, correspondence and understandings relating to the subject matter hereof. The initial term of this Agreement (the "Active Term") is for three (3) years and may be extended from time to time by the parties. All existing obligations from each party to the other or to third parties shall remain in force as of the expiration of the Active Term until this Agreement is terminated (the "Run-Off Term") as set forth in Schedule 1 or any Additional Schedules.

During the Active Term of this Agreement, Workers' Compensation Insurance coverage will be provided to Participant by one or more of the Issuing Insurers. If Participant elects to cancel this Agreement, or if any of the Policies are cancelled or non-renewed prior to the end of the Active Term ("Early Cancellation"), the Participant shall abide by the Early Cancellation terms set forth in Schedule 1 or any Additional Schedules.

If the Issuing Insurer is required to provide Workers' Compensation Insurance coverage on behalf of the Participant outside of the Active Term (the "Extension Period"), special extension terms ("Extension Terms") will apply during the Extension Period. The Extension Terms are: (1) Participant through their cell will be liable for all losses occurring during the Extension Period without limitation on any Policies issued by the Issuing Insurers on behalf of Participant; (2) the Company will allocate to Participant's cell an amount equal to 45% of premium earned during the Extension Period under any Policies issued by the Issuing Insurers on behalf of Participant; (3) Participant will immediately pay to the Company a cash deposit equal to 55% of the premium anticipated, as determined exclusively by the Company, during the Extension Period under any Policies issued by the Issuing Insurers on behalf of Participant; (4) Participant will maintain at all times a cash deposit with the Company sufficient to cover outstanding losses occurring during the Extension Period plus incurred but not reserved and/or reported losses (IBNR) as determined exclusively by the Company; and (5) Participant will immediately pay to the Company an Early Cancellation fee equal to 20% of the premium anticipated, as determined exclusively by the Company, during the Extension Period under Policies issued by the Issuing Insurers on behalf of Participant.

5. Participant acknowledges that under the laws of some states, Participant may have the option to choose from various deductible amounts as a part of its Policies, but that opting for a deductible would preclude Participant from entering into this Agreement. Applicant, being fully advised, knowingly waives and relinquishes its right to choose a deductible on the Policies under applicable law as further consideration for this Agreement.

6. Participant may not assign or transfer its rights under this Agreement to any third party without the written consent of the Company which consent may be withheld in the Company's absolute discretion.

7. The parties' obligations under this Agreement shall survive the Active Term of this Agreement, and shall be extinguished only when the Company no longer has any potential or actual liability to the Issuing Insurers with respect to the Policies reinsured by the Company under the Treaty.

8. Applied Risk Services, Inc. (Applied Risk Services of New York, Inc. in New York State) has been appointed the billing agent for the Company and the Issuing Insurers and is authorized by the Company, Issuing Insurers, and Participant to account for offset and true up any and all amounts due each of the parties. Participant will allow the Company to audit Participant's records on reasonable notice and during normal business hours that relate to the Policies. These records include, but are not limited to ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. Information developed by audit will be used to assign worker classifications, determine the compensability of payroll and claims, and determine final premium and cession amounts.

9. In the event the Participant is in default of any obligations to the Company under this Agreement or under any other agreement with any affiliate of the Company (Affiliated Agreements), the Company may take all reasonable steps to protect its and its affiliates' interests. The parties hereto shall have the right to the fullest extent provided by law to offset or recoup any balances due from one to the other under this Agreement or any Affiliated Agreements.

10. In consideration of the mutual benefits arising under this Agreement, Participant hereby grants to Company, effective from and after the date hereof, a lien and security interest in all assets of Participant's cell to secure payment of any amounts owed by Participant under this Agreement. The provisions of this section shall create a security agreement under the Uniform Commercial Code (the "Code") in the state of Participant's domiciliary jurisdiction so that Company shall have and may enforce a security interest on all of Participant's assets in Participant's cell. Participant agrees to execute as debtor any financing statement Company may reasonably request in order that Company's security interest be protected pursuant to the Code, or Company is authorized to file a copy of this Agreement for such purpose.

11. Participant hereby represents and warrants to the Company as follows:

(A) Participant (i) is duly organized, validly existing and in good standing under the laws of its domiciliary jurisdiction, (if a corporation, partnership, or limited liability company), and (ii) has adequate power and authority and full legal right to carry on the businesses in which it is presently engaged and presently proposes to engage.

(B) Participant has adequate power and authority and has full legal right (i) to enter into this Agreement and (ii) to perform all of its agreements and obligations under this Agreement.

(C) The execution and delivery by Participant of this Agreement and the performance by Participant of all of its undertakings and obligations under this Agreement, including any payments required to be made by Participant to the Company under this Agreement, have been duly and properly authorized by all necessary action on the part of Participant, and do not and will not (a) contravene any provision of the charter or by-laws of Participant (if a corporation, partnership or limited liability company) or other constitutional or governing documentation of Participant (each as in effect on the date hereof), (b) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, or (except as otherwise contemplated and required or permitted by this Agreement) result in the creation of any mortgage, lien, pledge, charge, security interest or other encumbrance upon any of the property of Participant under any agreement, trust deed, indenture, mortgage or other instrument to which Participant is a party or by which Participant or its respective property is bound or affected on the date hereof, (c) violate or contravene any provision of any law or published regulation or any published order, ruling or interpretation thereunder or any decree, order or judgment of any court or governmental or regulatory authority, bureau, agency or official (all as in effect on the date hereof and applicable to Participant), (d) require any waivers, consents or approvals by any of the creditors or trustees for creditors of record of Participant, or (e) require any consents or approvals by any Participant (except such as have been duly obtained and are in full force and effect on the date hereof).

(D) This Agreement, when executed and delivered, shall have been duly and properly executed and delivered by Participant.

(E) The agreements and obligations of Participant contained in this Agreement constitute legal, valid and binding obligations of Participant, enforceable against Participant in accordance with their terms.

(F) The information that has been and/or will be supplied to the Company by Participant or on Participant's behalf with respect to this Agreement is accurate and complete, and with respect to financial information, comports with generally accepted accounting principles.

12. Participant acknowledges that the Company has not made, and does not make, any oral, written or other representations, whether explicit, implied or otherwise, upon which Participant may rely concerning any possible tax benefits that may be derived from this Agreement. Participant further acknowledges that any tax liability resulting from this Agreement, including but not limited to any tax assessments or related examinations conducted by the Internal Revenue Service or other taxing authority, will be the sole responsibility of Participant.

13. Nothing in this section shall be deemed to amend or alter the due date of any obligation under this Agreement. Rather, this section is only intended to provide a mechanism for resolving accounting disputes in good faith.

(A) It is the express intention of the parties to resolve any disputes arising under this Agreement without resort to litigation in order to protect the confidentiality of their relationship and their respective

businesses and affairs. Any dispute or controversy that is not resolved informally pursuant to sub-paragraph (B) of Paragraph 13 arising out of or related to this Agreement shall be fully determined in the British Virgin Islands under the provisions of the American Arbitration Association.

(B) All disputes between the parties relating in any way to (1) the execution and delivery, construction or enforceability of this Agreement, (2) the management or operations of the Company, or (3) any other breach or claimed breach of this Agreement or the transactions contemplated herein shall be settled amicably by good faith discussion among all of the parties hereto, and, failing such amicable settlement, finally determined exclusively by binding arbitration in accordance with the procedures provided herein. The reference to this arbitration clause in any specific provision of this Agreement is for emphasis only, and is not intended to limit the scope, extent or intent of this arbitration clause, or to mean that any other provision of this Agreement shall not be fully subject to the terms of this arbitration clause. All disputes arising with respect to any provision of this Agreement shall be fully subject to the terms of this arbitration clause.

(C) Either party may initiate arbitration by serving written demand upon the other party or parties. The demand shall state in summary form the issues in dispute in a manner that reasonably may be expected to apprise the other party of the nature of the controversy and the particular damage or injury claimed. The party receiving the demand shall answer in writing within 30 days and include in such answer a summary of any additional issues known or believed to be in dispute by such party described in a manner that reasonably may be expected to apprise the other party of the nature of the controversy and the particular damage or injury claimed. Failure to answer will be construed as a denial of the issues in demand.

(D) The parties shall select a mutually acceptable arbitrator within 30 days of the demand for arbitration. If the parties are unable to agree on an arbitrator within the 30 days, then each party shall appoint an arbitrator within 30 days thereof. If a party fails to appoint its arbitrator within such 30 day period, the party shall thereby waive its right to do so, and the other party's selected arbitrator shall act as the sole arbitrator. All arbitrators shall be active or retired, disinterested officials of insurance or reinsurance companies not under the control or management of either party to this Agreement and will not have personal or financial interests in the result of the arbitration.

(E) If two party-appointed arbitrators have been selected, the selected arbitrators shall then choose an umpire within 30 days from the date thereof. If the two arbitrators are unable to agree upon an umpire within 30 days after the appointment of the party-appointed arbitrators, the two party-appointed arbitrators shall each exchange a list of three (3) umpire candidates. Within ten (10) days thereafter, each party-appointed arbitrator shall strike two names from the other's list. The umpire shall be selected from the remaining two names by the drawing of lots no later than ten (10) days thereafter.

(F) If more than one arbitrator shall be appointed, the arbitrators shall cooperate to avoid unnecessary expense and to accomplish the speedy, effective and fair disposition of the disputes at issue. The arbitrator or arbitrators shall have the authority to conduct conferences and hearings, hear arguments of the parties and take the testimony of witnesses. All witnesses will be made available for cross-examination by the parties. The arbitrators may order the parties to exchange information or make witnesses available to the opposing party prior to any arbitration hearing.

(G) The arbitrator or arbitrators shall render a written decision (by majority determination if more than one arbitrator) and award within 30 days of the close of the arbitration proceeding. Judgment upon the award rendered by the arbitrator or arbitrators may be entered by any court of competent jurisdiction in Nebraska or application may be made in such court for judicial acceptance of the award and an order of enforcement as the law of Nebraska may require or allow.

(H) The award of the arbitrator or arbitrators shall be binding and conclusive on the parties, and shall be kept confidential by the parties to the greatest extent possible. No disclosure of the award shall be made except as required by the law or as necessary or appropriate to effect the enforcement thereof.

(I) All arbitration proceedings shall be conducted in the English language in accordance with the rules of the American Arbitration Association and shall take place in Tortola, British Virgin Islands or at some other location agreed to by the parties.

(J) The arbitrator or arbitrators shall be advised of all the provisions of this arbitration clause.

(K) This arbitration clause shall survive the termination of this Agreement and be deemed to be an obligation of the parties which is independent of, and without regard to, the validity of this Agreement.

(L) Punitive damages will not be awarded. The arbitrator(s) may, however, in their discretion award such other costs and expenses as they deem appropriate, including, but not limited to, attorneys' fees, the costs of arbitration and arbitrators' fees.

(M) Participant acknowledges and agrees that it will benefit from this Agreement and that a breach of the covenants herein would cause Company irreparable damage that could not adequately be compensated by monetary compensation. Accordingly, it is understood and agreed that in the event of any such breach or threatened breach, Company may apply to a court of competent jurisdiction for, and shall be entitled to, injunctive relief from such court, without the requirement of posting a bond or proof of damages, designed to cure existing breaches and to prevent a future occurrence or threatened future occurrence of like breaches on the part of Participant. It is further understood and agreed that the remedies and recourses herein provided shall be in addition to, and not in lieu of any other remedy or recourse which is available to Company either at law or in equity in the absence of this Paragraph including without limitation the right to damages.

14. Participant hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of Nebraska for the purpose of enforcing any arbitration award rendered hereunder and all other purposes related to this Agreement, and agrees to accept service of process in any case instituted in Nebraska related to this Agreement and further agrees not to challenge venue in Nebraska provided such process is delivered in accordance with the applicable rules for service of process then in effect in Nebraska. To the extent necessary, this consent shall be construed as a limited waiver of sovereign immunity only with respect to this Agreement.

15. All notices, requests, demands or other communications to the Company provided for herein shall be in writing, shall be delivered by hand, by first-class mail, postage prepaid, or by any form of commercial overnight courier, and shall be addressed to the parties hereto at their respective addresses listed below or to such other persons or addresses as the relevant party shall designate as to itself from time to time in a writing delivered in like manner to Applied Underwriters Captive Risk Assurance Company, P.O. Box 3646, Omaha, NE 68103-0646 and to Participant at:

Breakaway Courier Corporation
PO Box 780
New York, NY 10013-0676

Either party may designate a new address for notices by providing written notice to the other party as provided in this paragraph, or in the absence of such notification from Participant, at the address to which Participant's last billing statement was sent.

16. This Agreement shall be exclusively governed by and construed in accordance with the laws of Nebraska and any matter concerning this Agreement that is not subject to the dispute resolution provisions of Paragraph 13 hereof shall be resolved exclusively by the courts of Nebraska without reference to its conflict of laws.

17. All amounts referred to herein are expressed in United States Dollars and all payments shall be made in such dollars.

18. Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of the performance of such provision on any other instance. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver unless expressed in writing and signed by all parties.

19. Participation by Participant in this Agreement is subject to the prior written consent of the Company. Nothing in this Agreement, expressed or implied, is intended to confer upon any party, other than the parties hereto and their affiliates, successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

IN WITNESS WHEREOF, the parties have set their hand.

PARTICIPANT

By: _____

Name: ROBERT KOTCH

Title: PRESIDENT

Date: 9/24/12

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., SOLELY FOR AND ON BEHALF OF PROTECTED CELL NO. 816280

Robert Stafford
Vice President

_____

APPROVED
RISK

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT
SCHEDULE 1
EFFECTIVE DATE: JULY 1, 2012

This Schedule 1 applies as of the Effective Date to all payroll, premium, and losses occurring under the Policies notwithstanding any Extension Terms which may apply ("Effective Period"). For purposes of this Schedule 1, unless otherwise noted, capitalized terms shall have the meaning set forth in the Agreement.

1. Calculation of Premium and Loss Amounts.

(a) Policy Payroll is defined as compensable payroll occurring during the Effective Period under the Policies subject to all customary limitations and caps. The Loss Pick Containment Amount is defined as the amount equal to the product of Policy Payroll and the respective Loss Pick Containment Rates listed in Table C. These rates are per $100 of Policy Payroll and are fixed for the Effective Period. Changes in experience modifiers and other modification or differential factors of the Policies will not affect these rates. If Policy Payroll occurs under a classification not listed herein, the Company shall, in its sole discretion, determine a rate for that classification commensurate with the rates otherwise listed and with the filed and approved rates of the Issuing Insurers.

(b) The Company will calculate loss development factors ("LDF's") for each loss under the Policies directly from the loss development factors published by the government rating bureau in the state where the exposure occurred. LDF's are subject to change without notice. The LDF's in effect as of the date of this Schedule 1 are listed in Table A (a composite using Policy Payroll by state is shown). If during the Active Term the Participant: i) is processing payroll with an affiliate of the Company, the LDF's titled "Weekly" will be used; or ii) is not processing payroll with an affiliate of the Company, the LDF's titled "Monthly" will be used. Unless an agreement for renewal is offered by an affiliate of the Company and then accepted by the Participant within six (6) months of the end of the Active Term, the LDF's titled "Run-Off" will be used. In determining the age of a claim, the Company in its sole discretion will use either the date of occurrence or the date the claim was reported. For so long as the Participant provides a claimant with modified duty employment that accommodates medical work restrictions, at a wage sufficient to make the claimant ineligible for workers' compensation disability benefits, the amount of the LDF for that claim in excess of one (1) shall be reduced by the Modified Duty Reduction Factor shown below Table A.

(c) Ultimate Loss is defined as aggregate incurred losses under the Policies multiplied by the applicable LDF. The Loss Ratio equals Ultimate Loss divided by the Loss Pick Containment Amount.

(d) The Exposure Group Adjustment Factor is determined from Table B using the Loss Ratio with intermediate values to be interpolated. The Exposure Group Adjustment Factor has been determined using NCCI Expected Unlimited Loss Group 52 and is subject to change without notice if Policy Payroll varies from estimates made in preparing this Schedule 1 or if NCCI Table M is revised.

2. Allocation of Premium and Losses.

An amount, equal to the premium earned under the Policies in excess of the Loss Pick Containment Amount multiplied by the applicable Exposure Group Adjustment Factor multiplied by the Allocation Factor listed in Table B, will be allocated to the Participant's cell. Fees for services charged by any affiliate of the Company are not considered premium under the Policies.

The Participant, through its cell account, will be responsible for an amount equal to all losses under the Policies in aggregate up to the Cumulative Aggregate Limit which equals 1.5600 multiplied by the Loss Pick Containment Amount. During the Active Term, Participant's liability limits will be estimated quarterly in advance.

3. Capital Deposits. Participant agrees to make and maintain a capital deposit in its cell equal to the Estimated Annual Loss Pick Containment Amount shown in Table C multiplied by 10% during year 1; 10% during year 2; or 10% thereafter. The Estimated Annual Loss Pick Containment Amount and the resulting capital deposit are subject to change in the Company's sole discretion if Policy Payroll varies from estimates made as of the

Effective Date of this Schedule 1.

4. Additional Capital Deposits. Participant further agrees to make and maintain in its cell account an additional capital deposit equal to the lesser of Ultimate Loss or the Cumulative Aggregate Limit. For the purposes of calculating the additional capital deposit, a Loss Ratio of no less than 65% will be used in year 1, 40% in year 2, and 30% thereafter. During the Run-Off Term, capital deposits will be calculated using the LDF's titled "Run-Off" at a schedule determined by the Company but no less frequently than annually beginning nine months after the expiration of all Policies.

5. Notwithstanding anything to the contrary in the Agreement, the Company may terminate the Agreement and liquidate the cell in its sole discretion if i) all claims under the Policies are closed and three years have elapsed since the expiration of all of the Policies; or ii) the Participant's maximum liability has been reached and three years have elapsed since the expiration of all of the Policies; or iii) the amount of paid losses allocated to the cell under the Policies has exceeded the Participant's maximum liability; or iv) seven years have elapsed since the expiration of all of the Policies; or v) the Company deems itself insecure with respect to Participant's ability or willingness to fulfill its obligations under this Agreement.

6. In the event of Early Cancellation whether by the Participant or by the Company (limited to non-pay or a material change in risk): (a) the Exposure Group Adjustment Factor will be multiplied by 1.25; (b) the Cumulative Aggregate Limit will be determined using Policy Payroll annualized to reflect the full term of the Agreement; and (c) the following amounts will be immediately due and payable to the Company: i) any remaining premium, including short rate penalties, due under the Policies; ii) a capital deposit equal to the cell's maximum liability; and iii) a Cancellation Fee equal to 8% of the Estimated Annual Loss Pick Containment Amount.

7. In the event of any conflict between the Agreement and this Schedule 1, this Schedule 1 shall control.

PARTICIPANT

By: _____

Name: ROBERT KOTCH

Title: PRESIDENT

Date: 9/24/12

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., SOLELY FOR AND ON BEHALF OF PROTECTED CELL NO. 816280

APPLIED CAPTIVE RISK ASSURANCE COMPANY

Robert Stafford
Vice President

_____

RISK

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT
SCHEDULE 1 TABLES
EFFECTIVE DATE: JULY 1, 2012

TABLE A
Loss Development Factors

Claim Age		Weekly		Monthly		Run-Off	
Month From	Month To	Open Claims	Closed Claims	Open Claims	Closed Claims	Open Claims	Closed Claims
00	06	3.306	1.232	3.372	1.257	5.527	1.201
07	09	3.280	1.151	3.346	1.175	5.527	1.201
10	12	3.264	1.101	3.329	1.123	5.527	1.201
13	15	3.247	1.084	3.312	1.106	4.904	1.111
16	18	3.231	1.078	3.295	1.099	4.904	1.111
19	21	3.112	1.069	3.174	1.090	4.904	1.111
22	24	2.952	1.055	3.011	1.076	4.904	1.111
25	27	2.804	1.046	2.860	1.067	4.033	1.064
28	30	2.667	1.044	2.721	1.065	4.033	1.064
31	33	2.580	1.040	2.632	1.060	4.033	1.064
34	36	2.517	1.032	2.567	1.053	4.033	1.064

The Modified Duty Reduction Factor is 25%.

TABLE B
Exposure Group Adjustment Factors

Loss Ratio	Adjustment Factor	Loss Ratio	Adjustment Factor
0.00	1.0000	1.00	2.5154
0.10	1.3992	1.10	2.2347
0.20	1.5737	1.20	1.9540
0.30	1.5983	1.30	1.6733
0.40	1.5424	1.40	1.3925
0.50	1.7112	1.50	1.1118
0.60	2.3784	1.60	0.9441
0.70	2.8461	1.70	0.9441
0.80	3.0395	1.80	0.9441
0.90	2.7775	1.90	0.9441

The Allocation Factor is 0.35.

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.
PARTICIPANT NO. 816280
REINSURANCE PARTICIPATION AGREEMENT
SCHEDULE 1 TABLES
EFFECTIVE DATE: JULY 1, 2012

TABLE C
Loss Pick Containment Rates and Estimated Annual Amounts

Class Code	Loss Pick Containment Rate	Estimated Annual Payroll
NY 7242	9.15	1,235,694
NY 8810	0.11	808,974
NY 8742	0.24	411,282
NY 7231	6.21	244,881

The Total Estimated Annual Loss Pick Containment Amount is $130,152.

EXHIBIT □

AWARD WINNING
WORKERS' COMP
EXECUTIVE™
CREDIBLE AUTHORITATIVE TRUSTWORTHY
Vol. 25 No. 11
June 10, 2015

Investigation: Multiple Lawsuits Pending...

APPLIED: Filed Rates Have No Impact On What Client Pays

In what can only be called a stunning admission in a case questioning the legality of the rates and plans used in an Applied Underwriter's workers' comp program, an Omaha-based executive of the company testified that the workers' comp rates in the client's actual California policy have "no impact on the charges the client pays." The rates in the underlying guaranteed cost policy issued by the admitted California Insurance Company (CIC) are the only filed rates related to the Applied Underwriters' EquityComp program.

The shocking revelation astonished those in the hearing room. It came in a case pitting Shasta Linen Supply, a California employer, against Applied Underwriters Captive Risk Assurance Company (AUCRA), California Insurance Company and their parent Berkshire Hathaway (NYSE: BRK).

The stakes are high for the Berkshire unit as the employer is seeking the "return of all consideration paid" under the program, which has reportedly been a popular product for the company in California and elsewhere (for prior coverage see Berkshire...).

The legal question in dispute is whether or not the Reinsurance Participation Agreement (RPA) that Shasta Linen was required to sign to take part in the EquityComp Program and the related documents are an unfiled workers' comp rate plan and, therefore, illegal. Also in question is the validity of the arbitration clauses in the RPA that Shasta is fighting before the Department and before the Nebraska Supreme Court.

It was Patrick Watson, an Applied Underwriters sales manager who, under questioning by Department of Insurance Administrative Law Judge Kristin L. Rosi, made the admission that CIC's filed rates are immaterial as to what the employer pays. Watson testified that he heads one of two teams that deal with California brokers and, by telephone, who work directly with California employers.

Workers' Comp Executive could find no insurance license record for Watson in the CDI database.

"Applied" continued on page 9

Fraud Case Filed Against Applied Underwriters EquityComp

A California employer, Randazzo Enterprizes, Inc., has sued Applied Underwriters' for fraud in connection with Applied's EquityComp program. It is a unit of Berkshire Hathaway (NYSE: BRK).

The complaint alleges inaccurate representations were made by Applied Underwriters to encourage the transaction. At issue are claims of fraud for allegedly misrepresenting the facts about the program and for allegedly increasing premiums more than it was allowed to based on an undisclosed formula. The formula is not filed with the California Department of Insurance. The employer says the unpredictable nature of the workers' comp premiums billed under Applied Underwriters' EquityComp program made it impossible to manage its business and bid on projects.

After nearly two years in the pro-

"Fraud Case" continued on page 10

It is 5,182 days since our last lost-time accident.

INSIDE

Applied's Rates ..... page 1
EquityComp Fraud ..... page 1
Legislation ..... page 1
Free Comp ..... page 2
Market Share ..... page 3
Commentary ..... page 4
Lumbermen's ..... page 5
Late Claims ..... page 5
QME Rules ..... page 6
Leg Counsel ..... page 7
E-Reporting ..... page 12

Workers' Comp Bills: Does It Really Matter?

A proposed bill to create a workers' comp prescription drug formulary cleared the Assembly on all ayes. It is not as if the formulary will save California's employers all that much, but it will provide certain ganders with something to tell their geese. A disproportionate effort was made in the backrooms and crevices of the Building until its author accepted modest amendments delaying the effective date and expanding the panel of experts that will create the formulary. Influence, ahh glorious influence. As currently drafted, the bill, AB 1124 by Assemblyman Henry Perea (D-Fresno), requires the Division of Workers' Compensation to have a formulary adopted and operational by July 1, 2017. We'll all just see about that since DIR is so busy appeasing a lengthy list of special interests. It isn't known for making the legislature's [artificial] deadlines.

Under the rules of the Legislature, bills had to clear their house of origin by June 5 to continue being viable. Two measures that were strongly opposed by employers – SB 563 by Sen. Richard Pan (D-Sacramento) to limit utilization review, and AB 511 by Assemblyman Mike Gipson (D-Compton) to extend

"Bills" continued on page 8

"Applied"

continued from page 1

The admission is of particular importance because the Applied Underwriters deal uses a RPA that written through the Bermuda-based Applied Underwriters Captive Risk Assurance Company, (AUCRA). AUCRA is an admitted carrier in California, but no rate filings have been made. Still it was the terms of its RPA that allegedly determined Shasta's charges.

In case documents, Applied asserts that the agreement doesn't need to be filed in California. The RPA provides the "formula and methodology for how the profit sharing/risk sharing retention component of the EquityComp program worked," according to the documents it filed. "Since the RPA is a reinsurance contract, it does not have to be filed and approved by the CDI and unlike the guaranteed cost policy issued by CIC, does in fact contain a robust broad arbitration agreement."

Applied maintained in a statement to Workers' Comp Executive previously that "all necessary filings and approvals have been made with the California Department of Insurance. In the unlikely event the reinsurance participation agreement needs to be adjusted and/or filed, such a finding, by statute, would apply only going forward and would have no bearing on the current client dispute. If required, we will make any necessary adjustment and/or filing promptly."

The ALJ's decision will be one determinant of this.

Other cases filed against Applied and the EquityComp program allege that the RPA and its attachments do not provide enough information for an insured, or broker, to calculate the unusual combination of premiums, fees, and other charges the program assesses.

Reinsurance? Captive? Retro?

Applied Underwriters, Inc., AUCRA, and its counterparts, California Insurance Company, and Continental Indemnity Company are owned by Berkshire Hathaway and are part of its insurance group. All of the reinsurance we could find remains within the group, which has the possibility of raising a question as to the transfer of risk, a requirement in a reinsurance contract.

Applied and or its affiliates are facing multiple suits and challenges to the EquityComp program in several states including California, New York, Michigan, Maine, and Tennessee.

Applied's documents specifically say that the program isn't an unfiled retro.

In California, the "paper" – the actual insurance policy – is provided by California Insurance Company, which does have filed rates. Those are the rates Watson says are irrelevant. In other states, Applied uses different carriers in the Berkshire Hathaway Group.

The Applied deal is different from more conventional captive arrangements. Conventional captives, in general, have sections or levels in which employers pay the first [some level] of claims in the "A" section, and then participate with others in the captive up to [some level] in the "B" section, after which the fronting carrier who is at risk pays. The employer makes a capital contribution up front and claims are paid up to certain levels at which excess or reinsurance take over.

In the case of Applied's EquityComp program, smaller employer who might not otherwise qualify for a loss sensitive plan, and who may be naive about such plans, are shown a minimum charge and a maximum charge over a three-year period.

According to one "scenario" presented by Applied claims totaling $30,000 would [did] cost the employer some $161,000 in additional deposits. In another scenario for another client $30,000 in claims would [did] cost some $150,000. In still another the same $30,000 in claims would [did] require the employer to pay an additional $350,000.

Workers' Comp Executive has seen and reviewed multiple requests from insureds concerning an explanation of charges. In each case the insured says it has not been able to get a clear answer.

No Profit Payouts in Memory

The EquityComp program is marketed as a profit-sharing program, but to many it appears that equation is not only tilted but bent in Applied's favor. For example, at the end of the three years, if the employer does not renew, a surcharge of 415% is charged to the open claims. Closed claims have a lower loss development factor, but closed claims are still surcharged, and the client is billed accordingly. That can mean the maximum amount is due if it hasn't already been paid.

There's also the question of the actual profit sharing and the return of unused capital. Workers' Comp Executive has reviewed multiple RPAs issued under the EquityComp program and – perhaps we missed it – but we have not found any dates, timeframes or principles upon which capital or "profit sharing" will be returned to the client.

Watson, the Applied sales manager, also testified under oath that he has never participated in and has never heard of anyone else who has been involved in the return of premium or deposits to a client. Watson has worked at Applied for over a decade.

The company's attorneys were less than forthcoming. They refused to comply with a direct and written order from the Judge to produce documents as follows:

- The number of EquityComp participants from 2008 and 2009 that had received a profit sharing distribution as of Jan. 1, 2015.
- How many "grievances, complaints or appeals" were filed by EquityComp participants between 2010 and 2014,
- How many arbitration demands had been filed by CIC, Applied Underwriters, ACURA or the EquityComp participants.

Watson also confirmed in his testimony that the California Insurance Company policy cannot be purchased separately from the Applied "reinsurance" deal and that it does not go into effect without the "reinsurance" contract with Applied.

Watson also stated that Applied uses California Insurance Company's rates after schedule credits to determine what taxes and fees are to be paid to the state of California even though he testified that they have no impact on what the client pays. Similarly, these would be the same rates used as the basis for determining the amount of assessments to be remitted to the Department of Industrial Relations and the California Insurance Guarantee Association. ▲

"Fraud Case"

continued from page 1

gram, Randazzo had one closed claim totaling approximately $30,000. There was a second claim for a broken arm that happened on the last day of the second year and which Applied was not yet aware of for premium calculation purposes. Applied more than tripled the monthly charges to some $94,000. At this point Randazzo canceled. Applied filed for cancelation fees, which provoked the fraud suit.

The employer is seeking a rescission of the policy – a move that would entitle it to "a return of all premiums paid less any amounts paid for claims." Applied Underwriters Captive Risk Assurance Company (AUCRA) fought back. So far, the employer has principally prevailed.

Randazzo filed the complaint in the Northern District of the United States District Court. Applied fought back filing motions for dismissal and to have the case go to Arbitration. The federal court ruled for Randazzo in two key areas: Applied was rebuffed in its effort to have the case dismissed outright; The court, while granting Applied's Motion for arbitration, ruled for Randazzo in holding that a portion of the arbitration clause in Applied's Reinsurance Participation Agreement (RPA) is both procedurally and substantively unconscionable.

The arbitration provisions used in the AUCRA contract allowed AUCRA to seek injunctive relief in the event of a breach or threatened breach of the agreement while the employer could only access the courts after prevailing in arbitration.

In requiring the case to go to Arbitration, it gave a major point to Randazzo: Randazzo succeeded in having the arbitration held in California. Applied's agreement required that arbitration was to take place in Tortola, the British Virgin Islands.

The Arbitration decision clause is relevant because it is Applied's standard deal and contained in principally all of the RPA agreements Applied has in California. It is not, however, a precedent. These arbitration clauses are being challenged around the country.

The case is separate and distinct from the dispute currently pending before a California Department of Insurance administrative law judge, (see the Shasta Linen case on page 1). It alleges a similar pattern of abuse, nondisclosure, and use of non-filed rate plans.

The Fraud

At the root of Randazzo's complaint is how charges and deposits in the event of claims were to be calculated and collected. That leads to what it says is the unpredictability of what it was being charged in any given month for its workers' comp policy.

Randazzo's position is that that the RPA "cannot be read sufficiently to follow the pricing formulas." The charge is consistent with statements and testimony in the Shasta Linen case.

The company maintains that it made numerous requests, but Applied has refused to provide a formula that could be used to recreate the charges it received (see the image of Randazzo's exhibit below). Additionally, it maintains that Applied used a different formula than it was told would be used at the outset of the program to

"Fraud Case" continued on page 11

From: Jeff Silver [redacted]
Subject: Re: Randazzo Enterprises, Inc
Date: May 17, 2014 at 2:52 PM
To: [redacted]

I am not on the witness stand and do not accept your unilateral limitation in responding to your e-mail.

Moreover your inquiry reflects the same fundamental misunderstanding that [redacted] had with respect to the EquityComp program, that is the bulk of the amount owed results from the Reinsurance Participation Agreement in addition to a short rate cancellation penalty from Randazzo Enterprises early cancellation of its workers' compensation policy despite being warned prior to doing so.

In fact you have the requested information since that was provided to Randazzo Enterprises on a monthly basis and also to [redacted]. I suggest you get the requested information from him.

The written word remains.

See you in arbitration and be governed accordingly.

From: Larry Lichtenegger [mailto:[redacted]]
Sent: Friday, May 16, 2014 04:12 PM Central Standard Time
To: Jeff Silver
Subject: Randazzo Enterprises, Inc

Mr. Silver
I have only one question.

Will you provide the formula for calculating the premiums you claim are due for each month the policies were in effect and the numbers used in these formulas.

That requires a yes or no response.
And don't tell me I already have it, as I don't.
Larry J. Lichtenegger

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"Fraud Case"
continued from page 10

calculate charges.

Randazzo claims that it was understood at the beginning that, for the first year of the three-year program, its premiums would be tied to the number of employees and wages paid multiplied by the rate for each class and by a "pay-in factor" of 70%. Additionally, for the first year its monthly premiums were supposed to be fixed using these rates and this pay-in factor and Randazzo's estimated payroll, but it says that changed early in the game.

Four month's into the program a Randazzo employee suffered a broken arm and the claim ultimately cost just over $30,000. In the first month after the accident it says Applied began using a higher pay-in factor than agreed that resulted in an average increase in its monthly bill of over $8,000 or roughly a 43% increase.

Randazzo cried foul noting that the pay-in factor was supposed to be locked in for the first year of the agreement and that Applied was using a higher factor just five months into the program. The parties resolved this disagreement before the first-anniversary date and Randazzo continued for another year, although there continued to be a dispute over how much of a credit Randazzo was due.

During its second year in the program it says it continued pressing for a formula that would allow it to estimate its premiums accurately but never received an adequate response. The company also incurred a second claim – another broken arm – that it says eventually amounted to $40,997.16.

During its time 26 months before it canceled the program Randazzo paid $551,528.51 into what Applied called a protected cell account established by the policy. The company by this time had two [closed] claims totaling just over $80,000.

At the inception of Randazzo's third year in the program, according to the complaint, Applied raised the premium to more than three times the previous monthly premium to approximately $94,000.00. Attorney Larry Lichtenegger says the increase was without "any justification or representation as to its validity." Randazzo refused to pay the increase and canceled the policy and the program.

"Based on the information provided and in spite of Applied Underwriters contention to the contrary, Randazzo has been unable to duplicate the premium calculations made by Applied Underwriters," says the complaint. "It appears that Applied Underwriters, in violation of the initial representations, calculates premium obligations based on estimates of future payroll and future claims, but without any justification for such estimates."

Unfiled Policy or Rates

Randazzo also challenges Applied's assertion that the program was a reinsurance agreement and maintains that it is more akin to a retro policy albeit with its own unique wrinkles. It maintains that this alleged misrepresentation alone is justification for a recession of the policy and the return of premiums totaling nearly $500,000.

"Applied Underwriters, by and through its agents and representatives, intentionally and /or fraudulently misrepresented to Randazzo material facts," says Lichtenegger in the original complaint. "It failed to advise Randazzo that Applied was not registered [at the time] with the California Secretary of State," and that "the policy of insurance it was selling was not approved by the California Department of Insurance as required by Cal. Ins. Code § 11658; the true nature of the Agreement, the excessive fees, surcharges, penalties, and premiums contained in the Agreement, and that, after first representing that this was a standard 'retro' policy with a built-in profit sharing provision. It failed to advise Randazzo that it intended to calculate premiums based on its own estimates of future payroll and claims ..."

Following Randazzo's cancelation of the policy because of the tripling of its monthly premiums, Applied filed an arbitration demand for additional payments of $430,451.01, which include an early cancelation penalty.

It was that demand that prompted Randazzo's complaint, which in addition to rescission of the policy and a return of all premiums is seeking punitive damages as well. "There is clear and convincing evidence that Applied Underwriters' actions were intentional, fraudulent, malicious, or reckless," Lichtenegger maintains.

Randazzo will also be alleging that Applied misrepresented the facts about the program to get it to join and breached the RPA by increasing its premiums.

Workers' Comp Executive attempted to include Applied's side of the story. It tried to obtain comments from both Applied and Berkshire Hathaway, but both companies declined to comment. WCE did receive an email from Attorney Spencer Y. Kook, of Hinshaw & Culbertson, LLP, the law firm representing Applied. It read, "The client has no comment and will not discuss ongoing litigation. Thank you." ■

Classifieds

LCIS Claims Consultant

The Claims Consultant position is an integral part of the sales and service teams at Landscape Contractors Insurance Services. The Claims Consultant is an advocate for our customers and ensures that customers are receiving effective claims services provided by carriers and TPAs. The consultant facilitates communications between customers and claims examiners; provides education and counseling to customers; assists customers with claim reporting, MPN implementation, RTW programs; monitors key claims; and conducts claim reviews with customers. Candidates must have the ability to build relationships and create personal bonds with clients and prospective clients.

The position requires proven expertise in dealing with CA Workers' Compensation claims and Customer Service. Experience with Property & Casualty claims is beneficial.

Preferred location of the successful candidate is in the Fresno area, but candidates from other areas are also welcomed.

Resumes and questions should be directed to Debbie Kirby (dkirby@lcisinc.com)—(559) 490-3555.

Exhibit 2

Prepared for:

Breakaway Courier Corporation
PO Box 780
New York, NY 10013

Presented by:

Pat Ryder
Enforce Coverage Group

PREMIER EXCLUSIVE
FROM APPLIED UNDERWRITERS

Workers' Compensation Program Proposal & Rate Quotation

This proposal expires on 08/07/09 at 12:01AM local time. This proposal supersedes and voids any and all written or oral proposals previously issued.

This quotation does not authorize any business services or bind any insurance coverage. Marketing representatives, agents, and brokers do not have the authority to bind insurance coverage or enter into contracts on our behalf or on behalf of our affiliates. Initiation of business services and insurance coverages is subject to our final review and formal acceptance. Insurance coverage will be bound only after: 1) we issue a written quotation; 2) all conditions precedent have been satisfied; 3) we grant the proposal final approval; 4) we have received payment of the deposit and initial charges; and 5) we issue written notice that insurance coverage is bound.

This proposal was prepared by Applied Risk Services, New York: ARS Insurance Agency, Lic. # PC937411

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KE4 Ver. ppo_2060_2a

Prepared for:	*Presented by:*
Breakaway Courier Corporation PO Box 780 New York, NY 10013	Pat Ryder Enforce Coverage Group

PREMIER EXCLUSIVE
FROM APPLIED UNDERWRITERS

Premier Exclusive™ is a workers' compensation product available solely through select agents of our Company. Premier Exclusive gives agents and insureds direct access to our insurance companies which have excellent financial standing and deliver the highest quality service. Only insureds that are best in class qualify for this elite product.

APPLIED® UNDERWRITERS™
A Berkshire Hathaway Company

Applied Underwriters is a premier financial services group of companies with leading expertise in the casualty insurance, reinsurance, and business services disciplines. We were founded in 1994 with the mission to provide creative insurance and business services solutions for employers countrywide. Applied Underwriters' business philosophy has always been rooted in the needs of the business owner. We think like an owner and deliver solutions to the business owner accordingly.

As a member of Berkshire Hathaway Inc. we have the resources and experience that make us the industry leader in our field. Our insurance companies, The North American Casualty Group, maintain an excellent financial standing as recognized by industry rating organizations. This excellent financial standing is based on delivering best practices in underwriting and claims, including medical management operations, in every geographic trading area.

Our service commitment is built on the concept of high customer touch leading to superior service in all aspects of our business. We achieve one of the highest customer satisfaction and retention rates in both the insurance and business service industries. Applied Underwriters' employees are simply the best in the business. We maintain the highest competency level in every discipline, and these standards make us the best, providing competitive products and unparalleled service to those we serve.

KE4 Ver. ppo_2160_2a

The North American Casualty Group®, California Insurance Company®, Continental Indemnity Company®, and Promesa Health® are registered trademarks of Applied Underwriters, Inc.

Prepared for:

Breakaway Courier Corporation
PO Box 780
New York, NY 10013

Presented by:

Pat Ryder
Enforce Coverage Group

Policy Rating Information

Guaranteed cost workers' compensation insurance policies will be issued by admitted companies in conjunction with this program, and the rating factors for these policies are listed below. All issuing companies are part of the North American Casualty Group, rated A by A.M. Best, and are affiliates of Applied Underwriters Inc. a member of Berkshire Hathaway Inc. A Profit Sharing Plan, effected through a reinsurance transaction that is separate from the guaranteed cost policies and independently rated, also applies.

State	Carrier	Exp Mod	Freq Mod	Sched Rating	Prem Disc	Exp Const	Terrorism Foreign	Terrorism Dom	Other1	Other2	Other3	Other4	Net Factor
NY	A	1.190		1.00	10.60	$ 0	.045	.010					1.080

A = Continental Indemnity Company
E.L. Limits $500K/$500K/$500K

Est. Taxes and Assessments $17,155

Profit Sharing Plan

This Profit Sharing Plan is a reinsurance transaction separate from the guaranteed cost policies. Your risk retention is created by your participation in, and cession of allocated premiums and losses to our facultative reinsurance facility, Applied Underwriters Captive Risk Assurance Company (AUCRA) under a subscription to the Program identified below. AUCRA is a subsidiary of Applied Underwriters Inc., a member of Berkshire Hathaway Inc. Your retention is held in a segregated, protected cell which is not liable for the debts and liabilities of any other AUCRA cell. This Profit Sharing Plan is not a filed retrospective rating plan or dividend plan, and nothing contained herein is to be so construed. This Profit Sharing Plan requires a minimum three year contractual commitment from you with significant penalties for early cancellation.

Based upon the annual payroll by class code information you provided, and depending upon the claims experience of the Program while you are subscribed, your net three-year cost will vary between a minimum possible cost of $104,526 and a maximum possible cost of $400,599.

Program No. 565 - Enforce Coverage Group Preferred Program

	Estimated Net Cost	
	Minimum	Maximum
Single Year	$34,842	$133,533
Three Years	$104,526	$400,599

Your actual, final net cost will be determined using the ultimate pooled cost of claims under the Program along with the factors and tables set forth in your Reinsurance Participation Agreement (Final Agreement) which specifies how a portion of the premiums and losses occurring under the guaranteed cost policies are ceded to AUCRA for further credit to your cell account.

You are required to maintain capital deposits in your cell account equal to the sum of 1) the estimated annual loss pick containment amount multiplied by 10% during the first year, 10% during the second year, or 10% thereafter; and 2) outstanding reserves limited so to not exceed the maximum permissible cost. The estimated annual loss pick containment amount is $102,718, determined using estimated annual payroll and the rates listed under Billing Terms, and is subject to revision if actual payroll varies from estimates made as of the date of this proposal. Since the ultimate cost of claims can not be known in advance with certainty, loss development factors as set forth in the Final Agreement will be applied to all claims to estimate their ultimate cost. Your capital deposits will be calculated and billed each month. At the end of the active term of the Profit Sharing Plan, calculations will continue to be performed annually thereafter in accordance with the Final Agreement.

Ver. ppo_2253_2a

KE4

Prepared for:

Breakaway Courier Corporation
PO Box 780
New York, NY 10013

Presented by:

Pat Ryder
Enforce Coverage Group

Billing Terms

The rates below are per $100 of compensable payroll subject to all customary limitations and caps. The Pay-In Factor listed is based on your expected loss experience and will vary as actual losses occur. A Net Pay-In Amount will be billed with each payroll cycle and will include workers' compensation premium, fees for services, and capital deposits due to your cell account (where applicable, all under a premium finance agreement with Applied Premium Finance, Inc.) Applied Risk Services, Inc. (see attached proposal for the license number in your state) will act as billing agent on behalf of all of the companies involved in this program. You will be provided with a quarterly reconciliation of all amounts collected and disbursed. Experience modifiers and other guaranteed cost policy modification or differential factors are not components of the Profit Sharing Plan, and any subsequent change in such factors will not affect the rates stated. Premium taxes, assessments, certain account fees, waivers of subrogation, and certain surcharges are not included in these composite rates, and will be billed separately. These charges are due as billed subject to adjustment at final audit and include, but are not limited to: NY Security Fund Surcharge 0.0150, NY State Assessment 0.1340

Employee Classification	Code	Loss Pick Containment Rate	x	Est. Pay-In Factor	=	Est. Net Pay-In Rate	x	Estimated Payroll	=	Est. Annual Pay-In Amt.
Bicycle Delivery	NY 7242	8.07		0.90		7.27		$ 985,000		$ 71,610
Clerical	NY 8810	0.26		0.90		0.24		790,000		1,896
Outside Salesperson	NY 8742	0.44		0.90		0.40		700,000		2,800
Trucking-Mail/Package	NY 7231	6.72		0.90		6.05		270,000		16,335
TOTAL						3.37		$ 2,745,000		$ 92,641

KE4 Ver. ppa_2302_2a

Prepared for:

Breakaway Courier Corporation
PO Box 780
New York, NY 10013

Presented by:

Pat Ryder
Enforce Coverage Group

Coverages

The North American Casualty Group is rated A (Excellent) VIII by A. M. Best.

Workers' Compensation and Employer's Liability Insurance

Your coverage is fully integrated into the package: all premium is paid in full each billing cycle, and risk management products are provided to further mitigate risk. Stop Gap coverage is not provided in monopolistic states unless explicitly quoted. See the Policy Rating Information section for terms and carriers affording coverage.

Services

All services are provided exclusively by Applied Underwriters and its affiliates.

Integrated Billing System

We make it easy: each month, you will receive one convenient, integrated statement for all charges for all coverages and services. Even your Profit Sharing Plan will be calculated each month.

Occupational Medical Care

We will provide access to exclusive medical care facilities and a network of physicians dedicated to occupational medicine. Where available, you will be automatically enrolled in our closed medical network; participation is mandatory.

Cell Captive Facility

We will establish an account for you in our segregated, protected cell captive which was designed specifically for our small and mid-sized insureds. You are responsible solely for your own risk retention. Cell accounts are segregated and protected with additional solvency and liability warranties underwritten by Continental Indemnity Company.

KEY Ver. ppo_2470_2a

Exhibit 3

USPTO Patent Full-Text and Image Database

United States Patent **7,908,157**
Menzies , et al. **March 15, 2011**

Reinsurance participation plan

Abstract

A ***reinsurance participation*** plan allows an insurance carrier to provide novel loss participation plans to insureds. The insurance carrier cedes a portion of the risk to a reinsurance company, such as a captive reinsurance company. The captive reinsurance carrier then enters into a contractual agreement with the insured for the participation plan, subject to the appropriate regulations for the primary line of insurance in question. The participation plan may be a non-linear participation plan, such as a curvilinear participation plan, where the non-linearities allow the plan to be offered to smaller companies than would otherwise qualify for more traditional retrospective participation plans, and to provide more advantageous plans to larger companies than they would otherwise be offered. The plans may be offered on a multi-year basis with particular diligence in informed consent for the prospective insured. Plans may be offered to small companies whose loss experience is aggregated and then divided according to relative premium amounts among the small companies such that the aggregate losses have a distribution with skewness comparable to that of a medium sized company.

Inventors: **Menzies; Steven M.** (Omaha, NE), **Silver; Jeffrey A.** (Omaha, NE), **Ferenc; Sidney R.** (Omaha, NE), **Smith; Justin N.** (Woodside, CA), **Hughes; Sean** (Belmont, CA)
Assignee: **Applied Underwriters, Inc.** (Omaha, NE)
Family ID: **43708197**
Appl. No.: **12/822,371**
Filed: **June 24, 2010**

Related U.S. Patent Documents

Application Number	Filing Date	Patent Number	Issue Date
12696256	Jan 29, 2010		
61148560	Jan 30, 2009		

Current U.S. Class: **705/4**
Current CPC Class: G06Q 40/08 (20130101)

Current International Class: G06Q 40/00 (20060101)
Field of Search: ;705/1-45

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Primary Examiner: Khattar; Rajesh
Attorney, Agent or Firm: Nowotarski; Mark

Parent Case Text

CROSS-REFERENCE TO RELATED APPLICATION

This application is a continuation of U.S. nonprovisional patent application "***Reinsurance Participation*** Plan", Ser. No. 12/696,256, filed Jan. 29, 2010. Said application is incorporated in its entirety herein by reference.

Said nonprovisional patent application Ser. No. 12/696,256, in turn, claims the benefit of U.S. provisional patent application "***Reinsurance Participation*** Plan", Ser. No. 61/148,560, filed Jan. 30, 2009. Said application is incorporated in its entirety herein by reference.

Said continuation application hereby claims priority from said nonprovisional patent application Ser. No. 12/696,256 and said provisional patent application Ser. No. 61/148,560.

Claims

The invention claimed is:

1. A computer based system for providing to a prospective insured a set of premium versus loss data for a ***reinsurance participation*** plan for workers compensation insurance coverage, said system comprising: a. an input device for receiving data about said prospective insured, said data being sufficient to categorize said

prospective insured into an Expected Ultimate Loss Group, EULG; b. a first computer configured to calculate said set of premium versus loss data for said EULG, said premium versus loss data being described by the equation: premium=basic+VC(actual_losses)*actual_losses where: i. premium is a premium in said set of premium versus loss data; ii. basic is a Basic; iii. actual losses is an actual loss in said set of premium versus loss data; and iv. VC(actual_losses) is a Variable Loss Conversion Factor Function that increases with increasing actual losses for an intermediate range of said actual losses so that the maximum value of said premiums in said set of premium versus loss data is less than the maximum premium of a linear retrospective premium plan with the same Basic and EULG; and c. an output device for presenting said set of premium versus loss data to said prospective insured; and wherein said computer based system further comprises a second computer configured to calculate said set of premium versus loss data using the equation: premium=p (CDF)*GuaranteedCostpremium or its equivalent, where: p(CDF) is a premium ratio function which is defined as the ratio of premium to GuaranteedCostpremium for a given CDF; CDF is a value of the Cumulative Distribution Function of losses for insureds with said EULG; and GuaranteedCostpremium is a Guaranteed Cost premium for said EULG; and wherein said premium ratio function is approximately described over a first CDF range by the equation: p(CDF)=A*CDF+p.sub.o where: CDF is greater than zero and less than one; A is a non-zero slope of said premium ratio function in said first CDF range; and p.sub.o is the intercept of said premium ratio function in said first CDF range.

2. The computer based system of claim 1 wherein said intermediate range begins at about 1/2 of the expected annual losses that correspond to said EULG.

3. The computer based system of claim 1 wherein: said first CDF range is from about 0.0 to about 0.6; A is about 0.4; and P.sub.o is about 0.8.

4. A computer based system for providing to a prospective insured a set of premium versus loss data for a ***reinsurance participation*** plan for workers compensation insurance coverage, said system comprising: a. an input device for receiving data about said prospective insured, said data being sufficient to categorize said prospective insured into an Expected Ultimate Loss Group, EULG; b. a first computer configured to calculate said set of premium versus loss data for said EULG, said premium versus loss data being described by the equation: premium=basic+VC(actual_losses)*actual_losses where: i. premium is a premium in said set of premium versus loss data; ii. basic is a Basic; iii. actual losses is an actual loss in said set of premium versus loss data; and iv. VC(actual losses) is a Variable Loss Conversion Factor Function that increases with increasing actual losses for an intermediate range of said actual losses so that the maximum value of said premiums in said set of premium versus loss data is less than the maximum premium of a linear retrospective premium plan with the same Basic and EULG; and c. an output device for presenting said set of premium versus loss data to said prospective insured; and wherein said computer based system further comprises a second computer configured to calculate said set of premium versus loss data using the equation: premium=p (CDF)*GuaranteedCostpremium or its equivalent, where: p(CDF) is a premium ratio function which is defined as the ratio of premium to GuaranteedCostpremium for a given CDF; CDF is a value of the Cumulative Distribution Function of losses for insureds with said EULG; and GuaranteedCostpremium is a Guaranteed Cost premium for said EULG: and wherein said premium ratio function is approximately described over a first CDF range by the equation: p(CDF)=(P.sub.1-P.sub.2)*(1-exp(-(CDF-CDF.sub.o)/CDF.sub.*))+P.sub.1 where: P.sub.1 is the value of the premium ratio function at the start of said first CDF range; P.sub.2 is the value of the premium ratio function at the end of said first CDF range; CDF.sub.o is the CDF at the start of said first CDF range; and CDF* is a curvature parameter indicating how quickly the premium ratio function changes from P.sub.1 to P.sub.2 in said first CDF range.

5. The computer based system of claim 4 wherein: said first CDF range is from about 0.6 to about 0.8; P.sub.1 is about 1.0; P.sub.2 is about 1.3; and CDF* is about 0.05.

6. The computer based system of claim 1 wherein said first computer and said second computer are the same computer.

7. The computer based system of claim 4 wherein said first computer and said second computer are the same computer.

8. The computer based system of claim 4 wherein said intermediate range begins at about 1/2 of the expected annual losses that correspond to said EULG.

Description

FIELD OF INVENTION

This disclosure is generally in the field of insurance.

BACKGROUND

There is long felt need for an insurance product that more closely matches an insured's perception of the risk of suffering various levels of aggregate loss and preferences regarding different final cost outcomes.

SUMMARY OF THE INVENTION

The Summary of the Invention is provided as a guide to understanding the invention. It does not necessarily describe the most generic embodiment of the invention or all species of the invention disclosed herein.

A small to medium sized company's perceived risk of incurring a given level of insurance loss can be more closely matched to an insurance carrier's needs to collect enough premium to cover all expected losses from all insureds and comply with state insurance regulations if the insurance carrier cedes a portion of the total risk to a reinsurance company and if the reinsurance company, in turn, provides a risk sharing participation program to the insured.

The risk sharing participation program is structured such that the insured's net premium payment will vary in a non-linear manner with respect to their actual losses. In particular, there will be accelerated savings in premiums for particularly low losses over a given period of time.

The risk sharing participation program is suitable for workers' compensation insurance as well as insurance coverage for other risks, such as general liability and health risks. Coverage may be provided separately or in combination.

BRIEF DESCRIPTION OF DRAWINGS

FIG. 1 is an illustration of a workers' compensation loss distribution for large companies.

FIG. 2 is an illustration of a conventional linear retrospective premium plan for workers' compensation insurance for large companies.

FIG. 3 is an illustration of a workers' compensation loss distribution for medium sized companies.

FIG. 4 illustrates the difficulties inherent in offering conventional linear retrospective premium plans to medium sized companies.

FIG. 5 illustrates the ability of an exemplary non-linear participation plan to overcome the limitations of a

linear plan.

FIG. 6 illustrates an exemplary curvilinear participation plan.

FIG. 7 illustrates an exemplary system for providing a ***reinsurance participation*** plan that is in compliance with insurance regulations.

FIG. 8 is a Lee diagram which illustrates the relationship between loss ratio and cumulative distribution function for medium sized companies.

FIGS. 9A and 9B compare the Lee diagrams for the loss distributions of medium sized companies and large sized companies.

FIG. 10 is a Smith diagram which illustrates the relationship between premium ratio and cumulative distribution function for a non-linear retrospective premium plan.

FIGS. 11A and 11B compare the combined Smith diagrams and Lee diagrams for medium sized and large sized companies.

FIGS. 12A and 12B compare the Smith diagrams for a fixed premium plan and a non-linear premium plan.

FIGS. 13A and 13B compare Smith diagrams for non-linear premium plans with an adjustable maximum premium and minimum premium.

FIGS. 14A and 14B compare Smith diagrams for non-linear premium plans that allow independent adjustment of maximum premium, Basic, Guaranteed Cost premium and minimum premium.

FIG. 15A illustrates how the loss conversion factor varies with actual losses for an exemplary embodiment of the invention.

FIGS. 15B and 15C illustrate a non-linear premium plan graphed on a Smith diagram and graphed relative to loss ratio.

DETAILED DESCRIPTION OF INVENTION

The following detailed description discloses various embodiments and features of the invention. These embodiments and features are meant to be exemplary and not limiting.

Loss Distributions and Linear Retrospective Premium Plans

FIG. 1 illustrates a distribution of actual workers' compensation insurance losses (loss distribution) experienced by large companies. Curve 100 shows the relative number of companies that experience a loss of a given size over a given period of time, such as one year. This is known as a frequency distribution of losses.

By "loss" it is meant the amount that a given insurance carrier pays to settle claims by injured workers employed by a single company covered by the insurance carrier in a given year. This graph takes into account the fact that an injured worker may make claims, such as for medical care reimbursement or lost wages, over a period of many years after an accident occurs.

The curve is based on data collected by various agencies, such as the National Council of Compensation Insurers. These agencies report out loss experience data in table form. "Table M" produced by the National Council of Compensation Insurers is an example of such a table. The current Table M as of the filing date is

incorporated herein by reference.

Table M categorizes companies by their average expected worker's compensation losses. The categories are defined as "Expected Ultimate Loss Groups" or EULGs.

Each group covers a range of losses. As used herein, when a group of companies is described as having expected losses of a particular value, it is meant that their values fall in the range of the corresponding EULG. A company that has expected losses of $160,000, for example would fall in EULG 55. EULG 55 covers companies with expected losses in the range of $159,002.01 to $171,340.00.

Data points 110 illustrate underlying data which the frequency distribution is based on. Data points are only shown for the tail of the curve for clarity purposes. Full data sets would show points along the entire length of the curve. There is a certain amount of scatter in the data due to random fluctuations, as well as systematic differences between the types of workers represented. The circle data points 112 represent relatively low risk occupations, such as office workers. These data points tend not to extend out to the higher losses. The triangle data points 114 represent relatively high risk occupations, such as construction workers. These data points tend to extend out to the higher losses due in part to the higher probability of a worker suffering a long term disabling injury.

The frequency distribution curve illustrates that for companies seeking to purchase workers' compensation insurance, there can be a difference in perception between what the company feels its "expected losses" are and what the insurance company feels its "expected losses" are. This difference can lead to a difference in opinion as to what the appropriate insurance premium should be and can make the sales process difficult.

The curve presented in FIG. 1 is for companies that, on average, experience $4,000,000 in workers' compensation losses. These are large companies with several thousand employees. Insurance for these companies is often bought by a professional risk manager who is very familiar with the nature of their losses.

An important part of the nature of workers' compensation losses, is that the loss distribution has a long tail 102. This means that the losses experienced by most companies are fairly low, but on relatively rare occasions, a catastrophic event can lead to very large losses. These large losses increase the high-end tail of the distribution and pull the overall average 106 up above the median 104.

An insurance company considers the average losses to be the expected losses, since on average, this is what they expect to pay per insured. An insured company, however, may consider the median to be its expected losses, since that is what they normally expect to suffer. Hence there can be a mismatch in what the insurance company feels is a fair premium and what the company feels is a fair premium.

This dichotomy has lead to the development of retrospective premium plans. FIG. 2 illustrates a comparison between a standard Guaranteed Cost insurance plan 210, and a participating linear retrospective premium insurance plan 220. Both of these types of plans are approved by the individual state insurance departments in the U.S. and therefore can be offered by admitted carriers to companies that meet certain criteria. The corresponding frequency distribution of loss 202 is also shown for reference purposes.

Guaranteed Cost plans are quite simple. The insured company pays a fixed premium no matter what its subsequent loss experience is for the term of its insurance coverage. This fixed premium is illustrated by the horizontal line 210.

The fixed premium can be thought of as equaling a Basic 212 plus the average losses 214. The Basic is the estimated cost of providing the insurance, not including claims. It includes sales, underwriting, profit and other fixed costs. The average losses is the expected average claims that will have to be paid. FIG. 2 illustrates that a company with expected average losses of $4 million per year might be charged a premium of

$6 million per year. $4 million is to cover payment of the losses. $2 million is to cover the other costs of providing the insurance.

A participating linear retrospective premium insurance plan 220 varies the premium that a company will pay based on its actual losses during a coverage period. In the illustrated example, the minimum is set at the Basic. The insurance premium then increases linearly along region 222 with respect to actual losses until it reaches a maximum at plateau region 226. Thereafter, the premium is fixed. The maximum is set by the crossover point 224 and the shape of the underlying frequency distribution 202.

The standard equation describing the relationship between premium and actual losses over the linear region 222 is: Premium=Basic+C*Actual Losses where C is known as the Loss Conversion Factor.

An exemplary relationship between premiums and actual losses is illustrated in Table 1.

TABLE-US-00001 TABLE 1 Conventional Retrospective Premium Plan with Constant Loss Conversion Factor Variable C Loss Actual Basic Loss Conversion Losses Expense Expense Taxes Premium Factor $0 $199,806 $0 $7,193 $206,999 $256,868 $199,806 $64,217 $18,752 $539,643 1.295000 $513,736 $199,806 $128,434 $30,311 $872,287 1.295000 $770,603 $199,806 $192,651 $41,870 $1,204,930 1.295000 $1,027,471 $199,806 $256,868 $53,429 $1,537,574 1.295000 $1,284,339 $199,806 $321,085 $64,988 $1,870,218 1.295000 $1,541,207 $199,806 $385,302 $75,547 $2,202,862 1.295000 $1,798,075 $199,806 $449,519 $88,106 $2,535,506 1.295000 $2,054,943 $199,806 $513,736 $99,665 $2,868,150 1.295000 $2,311,811 $199,806 $577,953 $111,225 $3,200,795 1.295000 $2,568,327 $199,806 $642,082 $122,768 $3,532,983 1.295000 >$2,568,327 $199,806 $3,532,983 NA

The Loss Conversion Factor is constant, or at least constant to within the numerical accuracy of the system calculating the premiums. This, in part, is due to the fact that there has been no motivation to modify a Loss Conversion Factor and it is therefore easiest to keep it the same over the linear portion of the retrospective rating plan.

For losses higher than $2,568,327 (last row of table 1), the premium is capped at the maximum, $3,532,983. The loss conversion factor is not applicable in this range (NA).

Only large companies, such as those with expected losses of at least $500,000 per year, can qualify for retrospective plans in the US. Small and medium sized companies are usually limited to Guaranteed Cost insurance. Also, the only retrospective plans that are available are linear ones. This is due in part to governmental and other regulatory requirements as well as the computational difficulties inherent in providing premium quotes for a broad range of companies that vary in a non-linear manner. The computational and practical challenges of providing non-linear plans and the reasons why they have not been available prior to the disclosures provided herein, are described in more detail in Crouse, Charles, "On Non-Linear Retrospective Rating", Proceedings of the Casualty Actuarial Society, Nov. 18, 1949. Said publication is incorporated herein by reference.

Non-Linear Retrospective Premium Plans for Medium Sized Companies

FIG. 3 illustrates the frequency distribution 300 of actual losses for medium sized companies. It is dramatically different than the frequency distribution of actual losses for large companies shown in FIG. 1. The frequency distribution presented is for companies that have average losses of $160,000 per year. These companies might have several hundred employees.

The peak of the frequency distribution has shifted to zero. This means that it is fairly likely that some companies will experience no losses at all in a given year. In this case, the probability that a company will experience no loss is about 10%. On the other hand, the tail 302 has become much longer. This means that

companies that do experience losses are much more likely to experience losses that are much higher than the average. The net effect is that average losses 306 are much higher than median losses 304. The size of the difference between average losses 306 and median losses 304 dramatically reduces the viability of linear retrospective plans for these companies and hence tonly Guaranteed Cost plans are available to them.

FIG. 4 further illustrates why a linear plan 420 is not viable for medium and small sized companies. The corresponding Guaranteed Cost plan 410 and frequency distribution of losses 400 are shown for comparison. If the minimum is set to the Basic 412, and the crossover 424 with the Guaranteed Cost plan 410 is pegged at the average losses, then the linear portion of the curve must extend to a relatively much higher level 426 than a large company in order for there to be enough premium collected to cover the overall cost of claims. The very high maximum means that the policy is no longer effectively insurance for companies that suffer large losses. This is because the cost of the premiums and the amount of the losses themselves are of the same magnitude. Also, there is little or no risk-sharing between the companies that suffer large losses with those companies that do not suffer any losses.

FIG. 5 illustrates a class of non-linear premium functions which address many of the above limitations and allow participating insurance plans to be effectively offered to medium and even small companies.

The non-linear premium function 530 illustrated in FIG. 5 comprises an initial relatively steep portion 532, a breakpoint 538, a subsequent relatively shallow portion 534, and a plateau portion 536. A corresponding linear plan 520, Guaranteed Cost plan 510 and frequency distribution of losses 500, are shown for comparison.

The non-linear plan is set at the Basic 512 for zero actual losses. It is pegged 524 at the level of the Guaranteed Cost plan at the average. Because there is a breakpoint 538 in the function, the plateau portion 536 of the non-linear plan 530 can be much lower than the plateau 526 of the corresponding linear plan 520. The reason is that more premium is collected at lower loss levels where most insured companies will wind up. This extra premium is available to compensate for the higher losses that the smaller fraction of insured companies will experience.

From a customer standpoint, this non-linear plan has an advantage over a linear plan of still providing meaningful savings in premiums for companies with losses somewhat below the average, the possibility of very large savings in premiums for companies with exceptionally low losses, and a much lower cap on maximum premiums for companies with large losses.

From an insurance carrier standpoint the non-linear approach provides an additional parameter (e.g. the breakpoint 538) which can be adjusted during the sales process to better meet the perceived needs of the customer.

Curvilinear Premium Function

FIG. 6 illustrates a non-linear premium function 610 with curvilinear properties. A corresponding linear plan 620 and frequency distribution of losses 600 are shown for comparison.

The curvilinear function 610 comprises an initial feathered portion 612, a dimple 624, and a subsequent feathered portion 614. A plateau (not shown) may also be present at very high actual loss levels.

Similar to the corresponding linear plan 620, the curvilinear function intersects the Y axis at the Basic 622 and has a premium equal to the corresponding guaranteed premium at the average of the actual losses 624. From a company perspective, the curvilinear approach presents a smoother looking curve which shows increasing benefit for exemplary safety performance (lower actual losses).

From an insurance carrier perspective, the accelerated increase in premium shown in feathered portion 614 after the dimple 624 provides more premium dollars to help keep the upper plateau as low as possible. The curvilinear approach also allows small incremental increases 626 in premiums even if actual losses almost triple so that there is always some premium savings incentive for continued safety vigilance even in years when large losses have already occurred.

Reinsurance Participation Plan

One of the challenges of introducing a fundamentally new premium structure into the marketplace is that the structure must be approved by the respective insurance departments regulating the sale of insurance in the states in which the insureds operate.

In the United States, each state has its own insurance department and each insurance department must give its approval to sell insurance with a given premium plan in its respective jurisdiction. Getting approval can be extremely time consuming and expensive, particularly with novel approaches that a department hasn't had experience with before. Also, many states require insurance companies to only offer small sized and medium sized companies a Guaranteed Cost plan, without the option of a retrospective plan. In part, this is because of governmental rules and laws that regulate the insurance industry.

Disclosed herein is a reinsurance based approach to providing non-linear retrospective premium plans to insureds that may not have the option of such a plan directly. It also has the surprising ability to enable non-linear plans while at the same time complying with state regulations.

FIG. 7 illustrates an exemplary physical system and method tied to particular machines which allows for the provision of improved insurance premium plans in compliance with regulatory requirements that do not make specific provision for these plans. It is based on the fact that an insurance carrier can cede a certain portion of an insurance risk to a reinsurance company. Said reinsurance company can, in turn, enter into a separate Participation Agreement with the insured whereby a credit or debit is assessed on the insured as a function of the losses experienced by each insured.

An admitted insurance carrier 730 has a license from a state insurance department 760 to sell Guaranteed Cost workers' compensation insurance in a given state. The insurance carrier obtains approval by using an industry standard Guaranteed Cost policy and filing premium rate requests with the insurance department 735. The insurance department, already familiar with the policy, approves the rates 765.

The insurance carrier then contractually arranges with a broker 750 to sell said standard policies to a targeted class of companies. These targeted classes include small sized 702 and medium sized 704 companies. As used herein, a small company has average losses of $60,000 per year or less. A medium sized company has average losses in the range of $60,000 to $500,000 per year. A large company has average losses of $500,000 per year or more. In this instance, the insurance carrier elects not to offer the policies to large companies 706 for competitive reasons.

As used herein "broker" is used in a broad sense to include independent brokers, captive agents, independent agents, the insurance carrier's own sales force, and other entities licensed to sell insurance.

Insured companies are shown in FIG. 7 as stick figures 710. The width 712 of a stick figure corresponds to the average loss rates for a given company. The height 714 of a stick figure corresponds to the actual losses experienced in a given year. The hat on a stick figure corresponds to the aggregate riskiness of the jobs in the company. A hard hat 718 (e.g. construction) corresponds to relatively high risk jobs. A mortar board 716 (e.g. office) corresponds to relatively low risk jobs.

In order to assist the broker in selling the insurance product, the insurance carrier 730 develops a computer

implemented sales tool 732. This is transferred 731 to the broker 750. The broker makes additional modifications 752 to adapt it to its own needs (e.g. installed broker logos). The broker then uses the tool to illustrate 751 policies to prospective insureds 760. Whereas the policies are Guaranteed Cost policies 754, the broker nonetheless has a certain amount of freedom 756 to adjust the premiums to meet market demands.

If an insurance offering meets a prospective insured's needs, then it may apply 761 for coverage. A portion of the application information may then be transferred 733 to the insurance carrier 730 for underwriting purposes. If approved, the prospective insured then pays a premium and coverage is bound for the next year.

In order to provide a certain amount of loss participation to a prospective insured, the insurance carrier 730 may cede 737 a portion 734 of the insured risk to a reinsurance company 740 and pay a corresponding premium to said reinsurance company. The reinsurance company may be a captive reinsurer. In an exemplary embodiment, the insurance carrier 730 may retain the initial 40% of the risk, cede the next 20% of the risk to the reinsurance company 740 and retain the final 40%. If the insurance carrier 730 as a whole experiences total losses greater than 40% of the expected losses, then the reinsurance company 740 will pay 747 up to the next 20%.

The reinsurance company 740 can now provide funds to implement a non-linear retrospective rating plan as a "participation plan". The reinsurance company does this by entering into a separate contractual arrangement directly with the insured. If the insured has lower than average losses in the next year, then the reinsurance company can provide a premium reduction 744 according to the participation plan. If the insured has higher than average losses in a given year, then the reinsurance company will assess additional premium 746 accordingly. The insured can now, in effect, have a retrospective rating plan because of the arrangement among the insurance carrier 730, the reinsurance company 740 and the insured even though, in fact, the insured has Guaranteed Cost insurance coverage with the insurance carrier 730.

The technology 742 to illustrate the participation plan can be transferred 741 to the broker 750 so that the broker will have the technology 758 to illustrate the plan to a prospective insured. One of the advantages of the participation plans described herein is that the broker 750 has greater freedom 759 to adjust the plan to meet the requirements of a prospective insured than it would have with either a Guaranteed Cost plan or a conventional linear retrospective plan.

Companies eligible for the participation plan might be medium sized companies. The broker would target these companies and would present the combined insurance 755 and participation plans 757 to a given prospective insured 780. If the prospective insured applied 781 for both offerings, then the necessary information 733, 743 would be transferred to the insurance carrier 730 and the reinsurance company 740 such that each could enter into its respective agreements.

The non-linear plans described herein, such as a curvilinear plan, may even be offered 771, 773 to small companies if the loss experience of a multiplicity of small companies is aggregated into a cell 770. The companies within a given aggregation cell may not be aware of who the other companies are. Each one must make separate application 775 for coverage. Enough small companies should be present in a cell so that the collective expected losses are comparable to a medium sized company.

Aggregation may also be over time. A relatively small company, for example, may be able to qualify by itself for a non-linear plan if it is willing to make a firm commitment for three year participation so that it's average losses over three years are comparable to the average annual losses of a medium sized company. The insurance policies themselves are one year policies, but the separate participation plan agreement is for a three year term.

It may be helpful in time-aggregation if prospective insureds are redundantly notified over the course of the sales process and thereafter with very explicit language that the participation agreement is for several years

and not just one. To accomplish this, for, example, multiple signatures by responsible parties in the prospective insureds for said redundant notifications may be required. This reduces the exposure of the insurance carrier, broker and reinsurance company to complaints by the insured company once the participation agreement is in force due to the fact that the insured company "didn't realize" that the agreement was for a term of multiple years. Similar considerations are useful for aggregations over multiple companies.

Smith Premium Ratio Diagrams

Another barrier to providing non-linear retrospective plans has been the inordinate complexity of calculating the appropriate premiums for companies of various sizes and presenting said premiums to prospective insureds. It has been surprisingly discovered, however, that a new method of graphically representing these plans largely overcomes these difficulties. This new form of graphical representation is termed a "Smith Premium Ratio diagram" or simply a Smith diagram. Smith diagrams are used in combination with Lee Loss Ratio diagrams (or simply "Lee diagrams") to substantially simplify the calculation of the appropriate relationship between actual losses and premium for non-linear retrospective plans.

FIG. 8 is a Lee Loss Ratio diagram which illustrates the relationship between loss ratio (r) and cumulative distribution function of actual losses (CDF) for medium sized companies. Lee diagrams are more fully described in Lee, Yoong-Sin, "The Mathematics of Excess Loss Coverages and Retrospective Rating--A Graphical Approach", Section 4, PCAS LXX, 1983. Said publication is incorporated herein by reference.

A loss ratio is the ratio of actual losses to expected average losses. If a company has expected average losses of $160,000 per year, and experiences an actual loss of $80,000 in a given year, it will have a loss ratio r of 0.5 for said given year.

The cumulative distribution function of actual losses (CDF) of a company is the rank of that company's actual losses in a given year relative to the actual losses of all of the other companies with the same expected average losses. If a company has a CDF of 0.5, then half of the other companies with the same expected losses had actual losses greater then said company had.

Curve 808 in FIG. 8 shows the loss ratio versus CDF for companies with expected average losses of $160,000. This curve is calculated from the above referenced Table M. The scatter in the curve is due in part to rounding errors in the data presented in Table M.

The loss ratio curve intersects the x axis 804 at a CDF of 0.1. This means that 10% of the companies in this class will have zero losses in a given year.

The loss ratio has a value of 4 at a CDF of 0.95. This means that 5% of the companies 806 in this class will have losses that are at least four times the average in a given year.

The area under the curve 802 represents the total losses for all companies in this class. Since the y axis has been normalized by dividing the actual losses by the expected average losses, the area under the curve is unity. This is true for all classes of company size. The area under the curve includes the area not shown for values of loss ratio above 4.

FIGS. 9A and 9B compare the Lee diagram for medium sized companies and the Lee diagram for large companies. Relative to the loss ratio curve for medium sized companies 904, the loss ratio curve for large companies 914 is shorter and fatter. The probability that a large company has no losses 914 is very small. Likewise the probability that a large company has losses greater than 4 times the expected average loss 916 is also very small. The area under the curve for large companies 922, however, is still unity.

FIG. 10 illustrates an exemplary Smith diagram for designing a non-linear retrospective premium plans. The

Smith diagram is similar to the Lee diagram in the sense that the x axis is the CDF of the actual losses experienced by the companies in a given size class. The y axis, however, is a designed Premium ratio (p) instead of an experienced Loss ratio (r). A Premium ratio is defined as the ratio of the actual premium charged to a given company divided by the Guaranteed Cost premium. A curve on a Smith diagram is a Premium ratio curve. It indicates what premium an insured company will be charged as a function of the CDF of their actual losses, as opposed to the actual losses themselves. The area 1002 under the premium ratio curve 1010 will be equal to unity for plans which are designed to collect the same amount of premium as if all insureds paid the Guaranteed Cost premium. Premium curves with higher and lower areas may be used depending upon the market requirements.

A designer of a non-linear retrospective premium plan has tremendous freedom using a Smith diagram. In general, plans designed on a Smith diagram will be non-linear when premiums are graphed versus losses, due to the non-linear nature of the loss curves. This will be discussed in more detail below.

FIG. 10 illustrates an exemplary non-linear premium plan 1010 with a variety of design features. The plan may have horizontal portions 1004 when insureds in a certain range of losses should be paying the same premium. This would include insureds in relatively small size classes that are expected to have zero losses at low CDFs.

The plan may have regions that increase linearly with CDF 1006 where it is desired that premiums increase linearly with increasing losses. As indicated above, premiums may increase linearly with CDF, but they will not increase linearly with actual losses due to the non-linear relationship between loss ratios and CDF.

The plan may have dimple sections 1008 where the slope of the premium increases. There can also be curved portions 1012 and step changes 1014.

The premium curve should generally increase or at least stay the same as CDF increases.

The premium curve should also be single valued at a given CDF so that only one premium will be charged for a given CDF.

FIG. 11A shows how a Smith Premium Ratio diagram can be overlaid with a Lee Loss Ratio diagram so that the relationship between the loss ratio (r) and premium ratio (p) can be calculated. This, in turn, can be used to calculate the relationship between actual premium and actual losses. The premium ratio curve is shown as item 1100. The loss ratio curve is shown as item 1108. The CDF scales are matched and the loss ratio and premium ratio scales are also matched.

For a given loss ratio 1102, the corresponding CDF 1104 is read off of the loss ratio curve 1108. The premium ratio 1106 is then read off of the premium ratio curve at the same CDF. In this example, a loss ratio of 1.00 corresponds to a CDF of 0.75. A CDF of 0.75, in turn corresponds to a premium ratio of 1.35. The loss ratio curve 1108 is for medium sized companies with average losses of $160,000 per year. An approved Guaranteed Cost premium for said companies might be $208,000. A company participating in this plan that has a loss ratio of 1.00, therefore, will pay a premium of $280,800 (p=1.35).

FIG. 11b shows that the same premium ratio curve 1110 can be used for substantially larger companies, such as those with average losses of $4,000,000 per year. The premium ratio for a given loss ratio is calculated in the same manner, but using the loss ratio curve for large companies 1118 of this size. At 1112 in FIG. 11b, loss ratio of 1.00, for example, corresponds 1116 to a premium ratio of 1.2 and not the premium ratio of 1.35 as for smaller companies.

The steps for determining the relationship between premium and loss for non-linear plans can be automated using appropriate look up tables for loss ratio and premium ratio curves. Analytic forms can also be used. The

method has the surprising ability to provide accurate and reproducible premiums despite scatter in the underlying data of the loss ratio curves.

FIGS. 12A through 14B present the Smith diagrams for a range of premium plans.

FIG. 12A presents the Smith diagram from a simple Guaranteed Cost plan where the premium that the insured pays is the same no matter what its actual losses (CDF) are.

The premium curve 1204 is a horizontal straight line. The area 1202 under the curve is one (i.e. 1.00.times.1.0).

FIG. 12B presents a Smith diagram for a straight line plan 1214. It is suitable for large companies where the probability of having zero losses is low. It has a premium that is linear with respect to CDF, but is non-linear with respect to actual losses. As discussed above, this is due to the curvature in the loss ratio curve of the corresponding Lee diagram.

The area 1212 under the premium ratio curve is one (i.e. 1/2.times.2.00.times.1.0). This plan charges no premium to an insured if their losses are zero (CDF=0.0). The maximum premium is capped at twice the Guaranteed Cost premium (p=2.00). All insureds, however, have an opportunity to get a discount relative to the maximum premium, no matter how high their losses are. Even if an insured has losses that are in the top 90% (CDF>0.9), it can still have a discount of 10% relative to the maximum.

FIG. 13A presents a Smith diagram for a straight line plan 1304 with a horizontal premium cap 1306. The horizontal premium cap allows the insured to significantly lower the maximum premium 1308 should they experience high losses in exchange for a somewhat higher premium 1302 when they experience lower losses.

FIG. 13B presents a Smith diagram for a straight line plan 1314 that has a positive y intercept 1316. The intercept corresponds to the Basic. This allows insureds to tradeoff a reduction in maximum premium 1318 in exchange for an increase 1312 in minimum premium while at the same time being able to earn a discount relative to the maximum no matter how high their losses are.

FIG. 14A presents a Smith diagram for a straight line plan 1406 that has a horizontal portion 1402 of constant premium ratio at low CDFs. Plans with this feature are suitable for medium sized and even small sized companies where a significant fraction of insureds will not have any losses. In the case illustrated, the plan is suitable for companies that have up to a 20% chance of being loss free in a given year. This design also incorporates a horizontal cap 1408 on the maximum premium.

FIG. 14B presents a Smith diagram for a premium plan that comprises a dimple 1414. The dimple allows the insurance company to anchor a reference premium, such as the Guaranteed Cost premium (p=1.00) at a particular CDF (e.g. 0.5). This plan also anchors the minimum premium 1412 at the Basic. A sales person presenting this plan to a potential insured has the option of independently lowering the maximum 1418 by increasing the intermediate values 1416 of the plan while at the same time keeping minimum pinned at the Basic and the median (CDF=0.5) pegged at the Guaranteed Cost premium. Thus, compared to conventional linear retrospective plans, this plan offers a lower maximum for the same Basic and Guaranteed Cost premium.

Example 1

Company A applies for workers compensation insurance coverage from insurance carrier B. Company A has expected annual losses of $162,513. This places them in Expected Ultimate Loss Group 55. They would normally qualify for a Guaranteed Cost Premium plan but would be too small for any available linear retrospective premium plan.

Reinsurer C, however, offers a ***reinsurance participation*** plan to Company A through Insurance Carrier B's sales force. The ***reinsurance participation*** plan stipulates that Company A will receive a discount if its losses are low but will be liable for a surcharge if its losses are high. The company must also commit to participating in the plan for 3 years.

In order to provide premium versus loss data to Company A (the prospective insured), an insurance agent for Insurance Carrier B inputs Company A's expected annual losses and other necessary information, such as number employees, work type, etc., into an input device, such as a laptop computer. The laptop computer then determines the EULG for Company A.

The laptop computer has been specifically modified to calculate the premium versus loss data by at least appropriate programming and downloading of necessary data, such a Table M. The laptop calculates the premium versus loss data such that the data is described by the equation: premium=basic*VC(actual_losses) *actual_losses Where: premium is a premium; basic is a Basic; actual_losses is an actual loss; and VC (actual_losses) is a Variable Loss Conversion Factor Function that describes the variation of a Loss Conversion Factor with respect to actual losses. VC(actual_losses) may be provided as a look-up table or analytic or other function. If VC(actual_losses) is provided as a look-up table, then interpolation or other smoothing may be used to estimate values between table values.

Premium versus loss data is presented to the prospective insured using an output device (e.g. said laptop). The premium ("Collectible Premium") versus loss data ("Actual Losses") for this example is presented in Table 2 along with the corresponding Loss Conversion Factors.

TABLE-US-00002 TABLE 2 Retrospective Premium Plan with Variable Loss Conversion Factor Loss Actual Collectible Conversion Losses Premium Factors $0 $124,179 $16,370 $142,089 1.09 $24,278 $146,608 0.92 $32,187 $150,005 0.80 $40,095 $153,386 0.73 $49,133 $155,645 0.64 $57,041 $157,904 0.59 $64,989 $160,164 0.55 $72,858 $161,301 0.51 $80,766 $163,561 0.49 $88,674 $165,820 0.47 $102,231 $183,796 0.58 $121,437 $203,107 0.65 $142,902 $212,144 0.62 $167,757 $213,265 0.53 $194,871 $213,265 0.46 $223,114 $214,387 0.40 >$223,114 $214,387 NA

The minimum premium for no actual loses is $124,179. The maximum premium for losses greater than $223,114 is $214,387. The corresponding Guaranteed Cost premium is $162,513.

FIG. 15A illustrates the Variable Loss Conversion Factor Function 1500 versus actual losses for this example. The Loss Conversion Factors range from 0.4 to 1.09. This is a factor of more than 2.5 (1.09/0.4=2.7). The smallest change in Loss Conversion Factor is from 0.49 to 0.47. This corresponds to about a 4% change (0.49/0.47=1.038). Benefits can be achieved even if the change in loss conversion factor is as small as 1%.

The Variable Loss Conversion Factor Function actually increases 1501 with increasing actual losses for an intermediate range of actual losses. This is manifested as a dimple in a plot of premium versus actual losses (item 624, FIG. 6 and item 1546, FIG. 15C). The increase in Variable Loss Conversion Factor over a range of actual losses allows for a lower maximum premium because more premium is collected from said intermediate range than if said Loss Conversion Factors were not allowed to increase. In this example, the intermediate range is set to begin at about the 1/2 of the expected annual losses ($88,674/162,513=0.55), and end at about 0.8 times the expected annual losses ($121,437/$162,513=0.75) that correspond to the EULG. This allows the prospective insured to more readily compare this offering with a standard Guaranteed Cost policy. The intermediate range can also be over different ranges depending upon the needs of the prospective insured.

The premium is constant for losses greater than $223,114. The Loss Conversion Factor is not applicable in

this range.

FIG. 15B presents a Smith diagram for a premium ratio function used to determine at least in part the premium versus loss data of Table 2. The Smith diagram shows the premium ratio versus Cumulative Distribution Function, said Cumulative Distribution Function being with respect to actual losses of insured with a given EULG.

The premium ratio function has a minimum 1502, a first CDF range 1504, a dimple 1506, and a second CDF range 1508, with a horizontal maximum 1512.

The first CDF range is from 0 to about 0.6. A suitable equation for describing the premium ratio over said first range is: p=A*CDF+p.sub.o Where: p is the premium ratio; CDF is the Cumulative Distribution Function; A is the increase in p for a unit increase in CDF; and P.sub.o is the premium ratio at CDF=0

In this example A is about 0.4 and P.sub.o is about 0.8.

The second CDF range of from about 0.6 to about 0.8. A suitable equation for describing the premium ratio function over said second range is: p=(P.sub.1-P.sub.2)*(1-exp(-(CDF-CDF.sub.o)/CDF.sub.*))+P.sub.1 Where: p is the premium ratio; CDF is the Cumulative Distribution Function; P.sub.1 is the premium ratio at the start of the second CDF range; P.sub.2 is the premium ratio at the end of the second CDF range; CDF.sub.o is the CDF at the start of the second CDF range; and CDF* is a curvature parameter indicating how quickly p changes from P.sub.1 to P.sub.2

In this example, P.sub.1 is about 1.0, P.sub.2 is about 1.3, and CDF* is about 0.05.

The salesperson presenting the plan to the company can independently vary the parameters of the height of the dimple, the maximum and the total height 1516 of the premium plan in response the company's requirements even after the insurance carrier has underwritten the company. The software presenting the premium versus loss data to the company can alter the curvature of the premium ratio function over the second CDF range as the sales person adjusts the parameters so that the total area under the curve falls within a desired range.

The sales person presenting the plan also has the option of adjusting the area under the curve to be somewhat larger or smaller than unity by adjusting the total height of the curve 1516. The sales person is subject to the constraint, however, that the sum of the premium weighted areas for his/her total book of business (i.e. the other companies that the sales person has signed up) average to unity plus or minus a small percentage, such as 5%. Thus a sales person can provide discounts in certain competitive situations provided those discounts are matched by more profitable pricing as other competitive situations allow. The insurance carrier will then collect enough premium overall to cover expenses and claims.

The insurance sales person presenting the ***reinsurance participation*** plan to the company uses a particular machine to calculate a set of losses versus premiums in real time. The particular machine comprises a work station located with the sales person and a pricing server which may be located remotely. The communications link between the work station and the pricing server has sufficiently high bandwidth so that the sales person can present data in real time (e.g. lags of less than 10 seconds). The pricing server has the pricing algorithms including the premium ratio curve as well as loss ratio curve. The workstation receives input data from the company and transmits said data to the pricing server. The pricing server selects the appropriate loss distribution 1522, and determines a set of loss ratio 1526 and corresponding premium ratio 1528 pairs wherein the loss ratio and premium ratio in each pair have the same CDF to within a suitable accuracy, such as +/-5 percent. This information is then transmitted to the workstation.

FIG. 15C presents the loss ratio/premium ratio pairs for the data presented in Table 2 above. The Basic 1542,

dimple 1546, and maximum 1552 are positioned where expected.

Company A considers itself safer than its peers and is pleased with the opportunity to save up to 20% in its premium. It elects to purchase the policy and commit to the three year term of the ***reinsurance participation*** plan.

Detect and Correct for Adverse Selection

Allowing the insured to adjust the premium ratio curve to best meet its needs can help an insurance carrier detect and correct for adverse selection. Adverse selection means that the company has better information about its future losses than the insurance carrier has and can therefore select a form of coverage that may not leave the insurance company with enough premium to cover claims and expenses. For example, a company that anticipated higher than normal losses in a given year might select a premium plan that had a very low maximum cap but a high Basic. Companies that anticipated lower than normal losses might select plans with very low Basics but high maximum caps.

In principle, it should not matter what premium plan a company selected if the insurance carrier has done the proper job of underwriting. As a practical matter, however, the company has more information about its future plans and operations than the insurance carrier does, so the carrier's underwriting may have a systematic error.

Adverse selection may be compensated for at least in part by adjusting the overall area under the premium ratio curve in a Smith diagram in response to the choices a prospective insured makes. The area might be increased (i.e. more premium on average) if a company was a bit too concerned about the maximum premium. Conversely, it might be acceptable to decrease the area if the company exhibited very little concern about the maximum premium.

These adjustments can be made by the sales software.

Synergies with Bundled Employee Services

There are surprising synergies when employee services are bundled with the insurance coverages and participation plans described herein. This is particularly true if the employee services are payroll payment services.

It has been discovered that the data available from employer payroll services can be used to assess risk and to reduce fraud in workers' compensation insurance. This fraud might be on the part of the insured company. There are very large differences between required insurance premiums for high risk occupations and low risk occupations. There is a motivation, therefore, for insured companies to incorrectly categorize the occupations of its employees in order to obtain a rate reduction. This, however, can result in an imbalance in payroll. The payroll company can detect this and the insurance carrier, in turn, can insist that the insured company have the correct job classification codes for its employees and thus collect the appropriate amount of premium.

Other Insurance Coverages

The non-linear retrospective premium plans and ***reinsurance participation*** plans can be applied to other insurance coverages, such as general liability, professional liability, auto, health and others as long as appropriate loss ratio data is available or calculable.

CONCLUSION

As used herein, the terms "about", "approximately", and their synonyms mean within plus or minus 10

percent of a given value, unless explicitly indicated otherwise or indicated otherwise by the context in which they are used.

While the disclosure has been described with reference to one or more different exemplary embodiments, it will be understood by those skilled in the art that various changes may be made and equivalents may be substituted for elements thereof without departing from the scope of the disclosure. In addition, many modifications may be made to adapt to a particular situation without departing from the essential scope or teachings thereof. Therefore, it is intended that the disclosure not be limited to the particular embodiment disclosed as the best mode contemplated for carrying out this invention.

* * * * *

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Exhibit 4

COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 60

- X

BREAKAWAY COURIER CORPORATION, d/b/a BREAKAWAY COURIER SYSTEMS,

PLAINTIFF,

- against -

BERKSHIRE HATHAWAY, INC., CALIFORNIA INSURANCE COMPANY, COMMERCIAL GENERAL INDEMNITY INC., APPLIED UNDERWRITERS, INC., A NEBRASKA CORPORATION, APPLIED RISK SERVICES INC., A NEBRASKA CORPORATION, APPLIED RISK SERVICES OF NEW YORK, INC., A NEW YORK CORPORATION, ARS INSURANCE AGENCY, INC., NORTH AMERICAN CASUALTY COMPANY, A NEBRASKA CORPORATION, CONTINENTAL INDEMNITY COMPANY, AN IOWA CORPORATION and APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE Company, INC., an IOWA CORPORATION,

DEFENDANTS.

- X

INDEX NO: 654806/16

60 Centre Street
New York, New York 10007
November 1, 2016

BEFORE: HONORABLE MARCY FRIEDMAN, Justice

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(Appearances continued on next page.)

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OFFICIAL COURT REPORTER

PROCEEDINGS

THE COURT: Good morning. May I have counsel's appearances please.

MR. DOWD: Good morning. My name is Raymond J. Dowd, with the firm of Dunnington Bartholow & Miller.

00:21:37

With me today is Samuel Blaustein and Brian Mangan for Plaintiff, Breakaway Courier.

Also today, in the courtroom, is Mr. Robert Kotch, who is the President of the Plaintiff.

00:21:55

MR. STEPHENS: Shand Stephens. Good morning. My partner, Anthony Coles. We are from DLA Piper.

MS. HANKIN: Claire Hankin, from Wilson Elser.

MR. KNOERZER: My name is Michael Knoerzer from Clyde & Company. I represent Berkshire Hathaway, Inc.

00:22:11

THE COURT: Thank you.

I have several motions, including a motion for a bond, so-called motion to strike, and a motion to dismiss.

I am not going to hear the motion to dismiss today because I understand that another motion to dismiss is in

00:22:37

the process of being briefed by Berkshire Hathaway and, in addition, I believe that there are threshold issues here concerning the bond, and possibly also the issue of whether an arbitration should be stayed.

So, let's hear first on the bond, but I do want to

00:23:05

tell you that these papers are written in what I can only describe as "private language". The experts and the counsel

have not taken care to try to explain these concepts in plain language, and I have some questions, which I will ask along the way, but I am really concerned that I may actually need supplemental papers here.

00:23:40

So, I ask you do the best you can to try to explain these insurance concepts and to elaborate on the claims that the Reinsurance Participation Agreement is undermining the coverage that was purchased by the Plaintiff and why.

00:24:11

Now, also before we get to that, I do want to make a disclosure that a junior law clerk, who I hired a week ago, Morgan Manley, was the President of the Fordham Art Law Society, and she created an alumni board to which she invited Mr. Dowd to join.

00:24:45

She has been his guest at a number of art forums and dinners in connection with those forums. She has not been working with me on this case, but I will hear briefly from counsel whether there is any request, under these circumstances, that I screen her off the case.

00:25:17

Mr. Dowd, do you want to be heard on this?

MR. DOWD: Your Honor, I think it would be appropriate to screen her off the case.

THE COURT: Mr. Stephens?

MR. STEPHENS: I would agree.

00:25:29

MR. KNOERZER: I would as well.

THE COURT: I will do so.

PROCEEDINGS

Is there any further request for relief on the part of any counsel based on this disclosure?

MR. KNOERZER: Not on behalf of Berkshire Hathaway.

00:25:40 MR. STEPHENS: No, your Honor, not on behalf of Applied.

THE COURT: Mr. Dowd?

MR. DOWD: Thank you, your Honor.

THE COURT: So, let's hear about the bond and the

00:25:53 injunction.

MR. DOWD: Thank you, your Honor.

We acknowledge this is very, very, very difficult to follow. In light of that, we prepared a demonstrative that we would like to ask to hand up, particularly because

00:26:11 we think it will aid in following all of the acronyms and concededly this is very difficult language.

THE COURT: Well, I see that this has been provided to defense counsel.

Is there any objection?

00:26:27 MR. STEPHENS: I guess, it's not an objection so much as an observation, which is, this chart is essentially an argument about what they are saying in the complaint. It actually doesn't have an accurate representation of the transaction we are looking at here today.

00:26:49 THE COURT: Well, I ordinarily don't take demonstrative exhibits for precisely this reason. They are

PROCEEDINGS

just about the only thing in this commercial practice that results in the making of objections. So, we will proceed through this without the demonstrative.

00:27:09 MR. DOWD: Your Honor, if I may, it would be solely offered, not as evidence but --

THE COURT: Mr. Dowd, I have made my ruling on that issue, and it is quite consistent with what I have done repeatedly in other cases in this part.

00:27:27 MR. DOWD: Thank you, your Honor. I appreciate that.

We believe the Court issue today is whether or not New York Insurance Law 1213 requires this Court to impose a bond requirement on each of the unlicensed entities that are

00:27:51 Defendants in this action.

To summarize, what we believe the opposition is, we believe it resides in two different things. One is simply, we are not doing the insurance business in New York, therefore, we shouldn't have to put up a bond and the other

00:28:09 argument is, well, since Continental is licensed, the other Defendants don't have to put up a bond.

I hope to persuade the Court that both of those arguments don't work.

If we look at the language of 1213, New York

00:28:31 insurance 1213, it requires that "before any unauthorized foreign or alien insurer files any pleading in any

proceeding against it, it shall either deposit with the Clerk of the Court, in which the proceeding is pending, cash or securities or file with such Clerk, a bond with good and
00:28:57 sufficient sureties to be approved by the Court in an amount to be fixed by the Court sufficient to secure payment of any final judgement, which may be rendered in the proceeding.

Then, it goes on to say, but "the Court may, in its discretion, make an order dispensing with such deposit or
00:29:19 bond, if the Superintendent certificates to it that such insurer maintains within this state funds " -- "in the state, funds or securities in trust or otherwise sufficient and available to satisfy any final judgement which may be entered in the proceeding."

00:29:38 So, right now, we know that the Superintendent, that is the Department of Financial Services, has not certified to this Court that any of these entities have cash or securities sufficient in this state to satisfy any final judgement.

00:29:58 Therefore, we submit, the Court doesn't have discretion --

THE COURT: Excuse me. What evidence, in the record, supports that contention?

MR. DOWD: Well, there is no certification from the
00:30:18 Department of Financial Services that any of these insurers maintains, within the state, funds or securities in trust.

PROCEEDINGS

THE COURT: Is this based on a review of a website or some documentation that has been obtained from the Department?

00:30:39 I am just asking, what the evidence is that you are relying on for that proposition?

MR. DOWD: What the statute says, your Honor -- I am trying to answer.

THE COURT: I just read the statute.

00:30:51 You are saying that these entities are not licensed here.

Is it undisputed?

MR. DOWD: There are two entities that are licensed. One is Continental, one is California. So, we

00:31:06 are, my discussion doesn't address those.

Your Honor's question relates to the language if the Superintendent certificates to it. I read that as the Department of Financial Services must certify to this Court, that such insurer maintains within this state fund or

00:31:30 securities in trust. So, there is no certification in this record, none of the Defendants have given.

THE COURT: Are you taking the position that it is the burden of the Defendants to produce certification to the Court?

00:31:48 MR. DOWD: Yes, your Honor.

THE COURT: Is there case law that supports that?

PROCEEDINGS

MR. DOWD: There is the plain reading of the statute, and also, yes, there is. We have got Travelers' insurance Company versus Underwriting Members of Lloyds. That was Justice Shainswit. We cited it in the papers. It's a one pager.

Would your Honor like me to hand that up?

THE COURT: No, thank you.

MR. DOWD: The citation on that is 240 AD2d, 278, and in that situation, the Appellate Division upheld Justice Beatrice Shainswit's imposition of a bond in similar circumstances.

But here, it's clear that the record is devoid of any certification of any of the non licensed, unauthorized Defendants in this case. So, we believe that a, the fair reading, consistent with the case law that we have cited, is since they haven't either obtained a license or gotten a certification, that they are holding cash and assets in this state, they must post bonds.

Moving to the second part of their argument, as we understand it, they say well, A.M. Best has rated Continental as worth 500 to 700 million. Therefore, the other Defendants don't need to post a bond.

The fallacy in that is evident when we look at Continental itself. Continental, in this scheme, was the licensed insurance company that issued Workers Compensation

PROCEEDINGS

policies. But, a closer look at Continental shows that Continental never directly collected a dime of premium from Breakaway. Breakaway was not in direct privity with Continental.

00:33:50

If we read the pooling agreement that Continental engaged in, Continental immediately cedes all of the premiums and all of its liabilities to California which, in turn, cedes them off. The net result of that is that

00:34:14

Continental is, by definition, by reading this pooling agreement, an empty shell that relies, in turn, on other entities down the road.

So, the securities and funds that this Court should have in this state, pursuant to the bonding requirements,

00:34:32

are simply not there. Continental doesn't have them. So, we have got to look to the other entities to find the money.

So, following the money trail leads us to where the money might be. It's not in Continental and it's not in California. It is perhaps, in AUI, Inc., which is an

00:34:56

unlicensed holding company.

THE COURT: What was that? I am sorry, I didn't catch it.

MR. DOWD: AUI, Inc.

THE COURT: What does that stand for?

00:35:06

MR. DOWD: We believe that's the actual name of the entity.

PROCEEDINGS

THE COURT: Is this a named Defendant?

MR. DOWD: That's, sorry, that's Applied Underwriters, Inc.

00:35:23 THE COURT: Applied Underwriters Inc. is a named Defendant?

MR. DOWD: Correct, your Honor. I am sorry. I said AUI. I misspoke, it's Applied Underwriters, Inc. That was abbreviation.

00:35:35 THE COURT: Let's just clarify something for a moment.

(Pause in the proceedings).

THE COURT: Can you clarify, California Insurance Company is licensed in New York, correct?

00:36:24 MR. DOWD: That is correct, your Honor.

THE COURT: And Continental Indemnity Company, is that also licensed in New York?

MR. DOWD: That's correct, your Honor.

THE COURT: And is there one other Applied entity

00:36:42 that is licensed in New York?

MR. DOWD: ARS, New York. It's called Applied Risk Services of New York, Inc.

THE COURT: That is licensed in New York?

MR. DOWD: It's a licensed insurance claim

00:37:03 adjustor. It's a licensed insurance claim adjustor.

THE COURT: Can you explain why you are suing all

PROCEEDINGS

of these other entities?

Can you just paint the picture for me, and tell me what the allegations are as to the role of each of these Defendants?

00:37:24

MR. DOWD: Yes, your Honor.

Breakaway is a bicycle messenger courier company. They have about 300 employees. They operate mostly in New York City and the boroughs.

00:37:40

They have employees who, they are required by statute, to get Workers Compensation insurance for. The statute is mandatory. It's highly regulated.

So, New York State says what you have to charge, who can charge it, what the legal amounts are, and where the money should be kept.

00:37:59

So, Continental has a license, but Continental is not in privity and could not, could not during, from 2009 through 2014, issue Workers Comp policies to Breakaway, but Continental is not in privity with Breakaway.

00:38:25

What happened was, Mr. Kotch was approached in New York by brokers and representatives of Applied. It's unclear who exactly approached him, because they seem to switch hats and switch letterheads and switch names, but the documents show variously Berkshire Hathaway, Inc., Berkshire Hathaway Group, Applied Underwriters, Applied Underwriters, Inc. There is all kinds of names all over these documents.

00:38:52

PROCEEDINGS

So, we have the initial offering documents that have certain corporate names and then, there is the actual thing that he signed. He signs something called a "request to bind coverage." Then, he signed a Reinsurance Participation Agreement.

00:39:10

Now, the Reinsurance Participation Agreement put him in privity with a company we refer to as AUCRA. That is Applied Underwriters Captive Risk Assurance Company, which, in the first instance, was a British Virgin Islands company. We have since been informed that the BVI ceased to exist.

00:39:50

But, for the first several years of the relationship, the only privity that Breakaway had, in terms of contractual, who they had signed with, was with this BVI entity.

00:40:14

At one point that changed, and the details are in the complaint, and the relationship seemed to emerge that this new Iowa company, which is a Defendant in this action, Applied Underwriters Captive Risk Assurance Company, seemed to have taken over, without asking Mr. Kotch, the role of the initial BVI entity, and some of the papers we have show that Mr. Kotch entered into agreement with the BVI after it had ceased to exist by Iowa records. So, we have got a missing BVI.

00:40:39

Now, what was promised to Mr. Kotch was a number of things. One is that he was entering into a profit-sharing

00:41:05

PROCEEDINGS

plan. First off and foremost, he understood he was getting Workers Comp insurance, and he understood that he was getting some sort of a discount on it. And, it was represented to him that hey, if you manage your claims well and you have fewer losses, you are going to get charged less money.

00:41:25

Beyond that, he didn't understand much more than mechanics, other than hey, I am getting a little bit of a break, and this is being paid into a protected cell where some day, I will get a lot of profits if I am able to keep my losses really low. That sounded like a great deal.

00:41:42

Now, the way the money worked, and we are still trying to figure out a lot of this, it appears, well, from the agreement it says that ARS, Inc. or ARS New York, Applied Risk Services, Inc. or Applied Risk Services New York, is going to be the billing agent.

00:42:05

Well, from the documents we have seen, it doesn't appear that the billing agent ever acted as a billing agent. It seems like all of the money went into a corporation called Applied Underwriters, Inc., which is not admitted and not a licensed insurer in New York. It seems like the funds that came out to pay for claims were all run through that one entity. So, we think that that's where there may be money.

00:42:26

00:42:51

THE COURT: Excuse me. There were documents that

PROCEEDINGS

were signed, correct?

MR. DOWD: Correct.

THE COURT: Was there a policy that was signed between the Plaintiff Breakaway and California Insurance Company?

00:43:01

MR. DOWD: No, your Honor.

THE COURT: Continental?

MR. DOWD: No.

00:43:13

THE COURT: There was no signed policy?

MR. DOWD: No, no. The policies were issued. Nothing was signed. There was no privity.

THE COURT: Was there an application for a policy made by Breakaway with a letterhead or something on it

00:43:35

indicating who would issue the policy?

MR. DOWD: Well, the request to bind coverage and services, the RPA, do refer Continental, but not direct privity.

I am focusing on that word "privity" because under

00:43:55

the New York Insurance Law it's very important, because it's illegal to sell this type of reinsurance to this type of entity in New York.

THE COURT: I just think we have to start with the basics -- who applied for what, from whom, and who issued

00:44:13

what documents or who executed what documents, and I am deliberately referring to those documents in very general

terms.

So, can we just get that? It doesn't have to be this complicated.

00:44:33 MR. DOWD: Your Honor, he signed the request to bind coverage.

THE COURT: Where is that? What exhibit is that?

MR. DOWD: Exhibit A to the verified complaint.

THE COURT: This name is Applied Underwriters?

00:45:01 MR. DOWD: Correct, with no real corporate name, but with a Nebraska address.

THE COURT: What else do we have?

MR. DOWD: So, this doesn't say where, it just later on, it says Applied Underwriters, Inc. in the body of

00:45:18 the language, that they are going to cause a Worker Comp policy to issue. That's basically what that says.

There is also the arbitration clause. If you don't sign up to this -- and there is a second page there.

Now, Exhibit B is the other document that Mr. Kotch

00:45:39 signed, and that's the Reinsurance Participation Agreement.

Now, in the first paragraph, that's Exhibit B of the verified complaint, we see that Applied Underwriters Captive Risk Assurance Company, Inc., a company organized and existing under the laws of British Virgin Islands,

00:46:08 that's between Breakaway and the company we called AUCRA, Applied Underwriters Captive Risk.

PROCEEDINGS

Your Honor, would you like me to summarize the meaning of the document?

THE COURT: What others documents did Mr. Kotch sign for Breakaway?

00:46:44

MR. DOWD: That's it, your Honor.

Sorry, I misspoke. At Exhibit L, he signed one again, and this is the same -- I don't want to misspeak, but it's essentially the same agreement, with essentially the same corporation.

00:47:10

THE COURT: And, where is the policy?

MR. DOWD: If your Honor looks, there is Exhibits G through -- each one of the exhibits is another policy -- G through J, and each one under New York law, a Workers Comp policy, is a one year coverage, so for each of those exhibits is a one year policy. I think the only one we are missing here is 2009, which is supplied by another exhibit.

00:47:52

THE COURT: You said Exhibits G through K?

MR. DOWD: G through J -- sorry, your Honor.

THE COURT: J. What is Exhibit C?

00:48:11

MR. DOWD: This is a document that was provided to Mr. Kotch. The date here -- it's a plan analysis. It sort of describes to him what he should expect in terms of the plan cost and what -- may I back up a second just to -- this is different stuff.

00:48:49

Under the Workers Compensation law, the regulators

PROCEEDINGS

set the annual rates. What this document Exhibit C purports to do, is to give him discounts, but estimating the loss. There is charts in there that estimate what these policies and what this coverage actually costs him.

00:49:12

THE COURT: Can you -- withdrawn.

Do I understand correctly that your position is, that the Reinsurance Participation Agreement is undermining the coverage that he obtained, the Workers Compensation coverage?

00:49:39

MR. DOWD: Absolutely, your Honor.

THE COURT: Can you explain how that happened, what the theory is as to how the Reinsurance Participation Agreement had that effect?

00:49:54

MR. DOWD: Okay.

THE COURT: Excuse me, and also pointing to the evidence in the record that supports that contention, of course.

MR. DOWD: Yes, your Honor.

00:50:05

I think there is two questions there; how it happened, and what the theory is, so I will try to parse my answer to address both of your Honor's questions.

How it happened, he got the plan analysis. He said well, that's great, I will save some money, and according to the Reinsurance Participation Agreement he was going to have monies set aside in what they term a "protected cell".

00:50:21

PROCEEDINGS

So, if he experienced low losses and managed his claims wisely, he was going to get money back at the end. That was what was presented to Mr. Kotch.

00:50:39 Instead, he started getting these bills that he couldn't understand, and he got in big fights and, in fact, there is a promissory note in there that they made him sign to pay back --

THE COURT: Can you be a little more specific

00:50:55 please? Instead of telling a story about bills he couldn't understand, tell me exactly what these bills were for and where they are in the record.

We have to really focus on the legal details here or I am not going to be able to get a handle on this.

00:51:19 MR. DOWD: I agree, your Honor.

Over the course of time, and all the bills in the analysis of -- each bill is not attached to the complaint or fully analyzed yet.

THE COURT: You are asking for a $6 million bond

00:51:37 here. Let me hear something that sounds like a legal argument as to what the wrongdoing was.

MR. DOWD: Yes. According to Mr. Schwartzman, who is our expert, he was the number two in the New York State Department --

00:51:55 THE COURT: Mr. Schwartzman's affidavit is completely conclusory. I have rarely seen an affidavit by

PROCEEDINGS

an expert that casts less light on an issue.

MR. DOWD: Well, Mr. Schwartzman has opined that he has read and analyzed these documents, and that by signing them, in other words, the Reinsurance Participation Agreement, Mr. Kotch actually put the risk back on himself.

00:52:26

THE COURT: How? Can someone explain that to me, how that had that effect?

MR. DOWD: Yes. What the bills show is that, and this is, I refer to the charts appended to Mr. Schwartzman's analysis.

00:52:51

If we look at Exhibit G to his initial affidavit, which is dated August 23rd, you will see that he took something called "loss cost multiples" and he laid out what was approved, and the loss cost multiples and the loss cost development factors that applied, had put in what it gave to Breakaway.

00:53:31

And, if we, if your Honor looks at the charts that Breakaway, sorry, that were given to Breakaway, in the plan analysis there is words like "loss cost multipliers", "loss cost factors", "LDF runoffs" and these are all multiplications that were done to calculate what Breakaway's costs would be.

00:53:59

Mr. Kotch, over time, couldn't figure out how the math was done. It's extremely complicated. In fact, again, in the complaint at the final exhibit, we have an article

00:54:26

from the Workers Compensation executive that there is testimony in Court that actuaries and these experts, no one could figure out how Applied was coming up with these rates. So, they are complicated, and they are mystifying, and I am not sure that the actuarial basis for their calculations is understood by anyone.

00:54:53

But, what Mr. Schwartzman did was, accepted their actuarial calculations and their loss cost multiples at face value, and came up with the long tale, in other words, what, according to Applied, actuaries say his workers will be injured and Mr. Schwartzman did that calculation.

00:55:17

So, according to Applied's own calculations, injured workers in New York, under his policies, need $6 million of reserves to cover those injuries. That's the basis.

00:55:42

So, what happens in a Workers' Comp policy, you have a one year period, and let's say, this is asbestos, you have an injured worker, but they only know it ten years later. That claim is still subject to Workers' Comp insurance.

00:55:59

So, you have an injured worker who, two years later, reports the claim. Those are called incurred, but non reported claims . So, the reason Applied was sending bills to Breakaway was saying well, under your Reinsurance Participation Agreement you have to reserve for those

00:56:15

incurred, but not reported claims, and also, where there are reported claims, you have to pay us in excess of that, so we have a reserve.

00:56:33 So, in essence, only after experiencing losses did he figure out that he didn't have insurance, and only after hiring an expert to go through this and he figured it out, did he realize that all of the risks and the cost had been shifted back onto his company.

00:56:53 He still entertained, until last year, the idea that there was a pot of gold, this protected cell that would somehow be returned to him. But, when the experts pored over this and said no, not only that, you didn't have insurance for that whole time.

00:57:10 So, it's hard to understand, which is why they have gotten away with it for so long. It is difficult. It was difficult for that first Judge to figure out the Enron scandal. It's a difficult scheme that is rendered even more difficult by the language here.

00:57:30 THE COURT: You are comparing this to the Enron scandal?

MR. DOWD: I am, your Honor.

I think there is a very solid basis for that.

THE COURT: Well then, you are going to have to get more sophisticated expert testimony to explain what exactly is happening here. It doesn't have to be opaque.

PROCEEDINGS

Somebody can explain what happened and that hasn't been done in these papers, and I am not hearing it in this argument either.

00:58:08 What is the amount of the claim?

What are the damages that are being claimed?

MR. DOWD: The damages, we have a number of different theories. One is, under New York Insurance Law 4226, says aggrieved party can get back all of the premiums.

00:58:34 Then, there is the profits to call them back out of these protected cells. Then, there is treble damages, which is under 2316 of the New York Insurance Law or under the Donnelly Act.

THE COURT: How much was paid in premiums?

00:58:51 MR. DOWD: $836,000, I believe.

THE COURT: Your claim is that there is no insurance that will be available to protect your client when claims are made down the road?

MR. DOWD: That's correct, your Honor.

00:59:10 THE COURT: No insurance whatsoever?

MR. DOWD: Well, no, I don't think that that's -- no, that's not what we are saying.

There is a policy out there issued by Continental, but if a claim is made, they send him a bill through the

00:59:39 RPA. So, it's not real insurance . It's a sham.

Continental doesn't, I think -- can I take you

PROCEEDINGS

through all of the contracts? It's very confusing stuff.

THE COURT: It shouldn't be confusing. Someone has to unpack it, and that is the lawyer's job to do initially.

01:00:15 Yes, I will sit here while you take me through the contracts. I do not want to have a story about bills that are not understood.

I want to know exactly what the basis is for the claim that there has been a scheme by which the insurance

01:00:37 has been undermined.

MR. DOWD: Yes, your Honor.

New York has a very simple system. That is, it requires employers to have guaranteed Workers' Comp insurance. That is, I pay a certain amount and that's it --

01:00:56 the injuries are covered. So, this is highly regulated.

An employer like Mr. Kotch is not permitted to enter into reinsurance. It's expressly forbidden by statute. So, we say from the outset, that this RPA is completely forbidden by New York law and Mr. Schwartzman

01:01:21 makes that point very simply.

Additionally, the entities --

THE COURT: The RPA, have they been the subject of litigation?

MR. DOWD: Yes .

01:01:33 THE COURT: And what are the courts saying about the legality of RPA?

PROCEEDINGS

MR. DOWD: In California they were held to be illegal because they were not filed.

Basically, the way the system works is, you can't modify a guaranteed cost Workers' Comp policy without showing the modifications to the regulators.

01:01:49

THE COURT: How is this modification working? That is something I think I keep asking you to explain to me, and I just am yet to hear it this morning.

01:02:12

MR. DOWD: Well, if your Honor looks at the face of the Workers' Comp policy, it says Mr. Kotch will pay this amount, and he will have that coverage. The RPA has totally different terms.

THE COURT: What are these different terms? How do they operate to undermine the coverage?

01:02:28

Let's be specific please.

MR. DOWD: They are based on estimated losses and they do something that provide what's called a "retrospective rating plan." That is a plan, rather than guaranteed cost which New York requires, is based on your loss experience.

01:02:43

So, if you have lower losses, you will pay less. If you have higher losses, you will pay more. That, for an employer like Breakaway, is illegal in New York.

01:02:59

So, the RPA terms -- and they are complex -- but the complexity doesn't matter. The simple proposition is

PROCEEDINGS

whatever thing they do to modify guaranteed cost policy is illegal. So, they are charging different rates.

THE COURT: Can you point to any specific language which has modified the guaranteed cost policy?

Can you show me how it works?

MR. DOWD: Yes, your Honor.

If you look at Exhibit C, all right, we see "Summary of Workers' Compensation Plan Charges." All right. That's on page 2. We have 54,628.

On the following page, we have "Projected Plan Volume."

THE COURT: Where are we looking here?

MR. DOWD: We are looking at Exhibit C, the second page.

So, we have a summary for Workers' Compensation Plan charges, and that's $54,000.

On the following page, we see a chart at the bottom. There is an estimated analyzed loss pick containment amount.

Now, what that loss pick containment amount is based on, is various rates per class of worker. Then, they give a loss pick containment amount, they project payroll, and they come up with amounts.

We go to the following page. We see an analysis of program costs. So, they have a projected total three-year

plan loss pick containment amount, projected future loss ratio, projected future claims, and they come up with numbers, and at the bottom, estimated cost plan to date.

01:05:29 All of these projections, whether or not we understand them, are different from a guaranteed cost policy, and they are estimates that are misleading to Breakaway, because whether they are true or not, whether actuaries can figure them out or not, they vary from the

01:05:47 terms of the guaranteed cost policy.

Under a guaranteed cost policy, Continental is the insurer, Breakaway pays Continental the exact amount that the statute requires.

In this case, Breakaway is paying a third-party.

01:06:07 Paying a third-party alone, is completely illegal under New York law.

THE COURT: This is the analysis, this Exhibit C is the analysis of the RPA?

MR. DOWD: Yes. It is a plan that is referred to

01:06:27 in the RPA -- not all of it is disclosed by the RPA -- and that is part of our complaint, is that the RPA is unclear. People can't figure it out. It is misleading. And, under New York law, we have causes of action for misleading documents.

01:06:46 THE COURT: Do these numbers that you have been calling my attention to in Exhibit C differ, in any way,

PROCEEDINGS

from numbers in the Continental insurance policy?

MR. DOWD: Yes, your Honor.

THE COURT: Can you explain how?

01:07:04 MR. DOWD: They are less.

THE COURT: But, what's happening? Breakaway is paying premiums to Continental; is that right?

MR. DOWD: Never happened, no. See, that's the problem. That's a very simple answer.

01:07:22 Breakaway never paid Continental anything. That's totally illegal. Under New York law, if there is an insurance policy, you pay that insurer. End of story. There is no, let's route it through a third-party. They may, a licensed billing agent, in other words Continental

01:07:44 could have had a licensed billing agent that collects or may have a licensed third-party administrator, but none of this let's pass it through BVI or let's go through Nebraska, all of this is completely illegal on the very simple theory you can't offer reinsurance to a New York insured, and you can't

01:08:03 pay premium to anyone other than a licensed insured or their licensed billing agent, who is just turning that money over.

THE COURT: Is there legal authority to that effect?

MR. DOWD: Yes, your Honor.

01:08:18 And Mr. Schwartzman brings it right to the Court's attention in the beginning of his affidavit, and says very

PROCEEDINGS

simply, this is why this is entirely illegal.

THE COURT: What legal authority are you relying on?

01:08:31 MR. DOWD: New York Insurance Law, and in each case, the --

THE COURT: Is there case law?

MR. DOWD: Yes.

THE COURT: What cases are you relying on?

01:08:41 MR. DOWD: Well, there is the, in terms of the bonding, there is the Levin case, there is the Travelers' case.

THE COURT: We are talking now about the alleged illegality of the scheme that you just referred to.

01:08:57 MR. DOWD: Well, in each of these we have cited cases in our briefs discussing each one of these.

THE COURT: Why don't you tell me what your best authority is for this proposition that it was illegal for Breakaway not to have paid premiums to Continental and to

01:09:23 have paid premiums to another entity or paid sums of money to another entity?

MR. DOWD: Well, if we look at the -- what the definition of doing the insurance business in New York is --

THE COURT: Mr. Dowd, I don't want you to just cite

01:09:43 the insurance law again. I am asking about whether there is case law interpreting that law.

PROCEEDINGS

MR. DOWD: Yes, your Honor.

Well, there is two relevant statutes. One is what doing an insurance business is, and then second is the requirement of a license, and then, there is lots of case law that discuss what unlicensed insurers may or may not do depending on --

01:10:01

THE COURT: You are telling me that it was illegal for Breakaway not to pay premiums to Continental and to pay sums of money to other entities.

01:10:19

Tell me what cases I should be looking at for confirmation of that proposition. This is a very straightforward question.

MR. DOWD: I think if your Honor looks at the Shasta Linen case, which is a California case, but the factual analysis is right on point, where they show just like New York, and just like Mr. Schwartzman discusses, that where you have these unfiled agreements that modify guaranteed cost Workers' Compensation policies, they are void under New York law. So, the Shasta case is, I think, the best discussion of the facts.

01:10:34

01:10:59

THE COURT: Is there any New York law on this issue?

MR. DOWD: We don't have cases on that exact proposition with us, your Honor.

01:11:30

THE COURT: Meaning they don't exist?

PROCEEDINGS

MR. DOWD: No, we just don't have them with us.

THE COURT: How could you brief an issue under New York law and not cite New York cases?

01:11:44 MR. DOWD: Well, your Honor --

THE COURT: Don't answer that question. That is a rhetorical question.

Now, we are going to take a five-minute recess.

(Recess taken.)

01:12:06 THE COURT: Now, Mr. Dowd, if you would like to say anything further in support of your bond application or your motion to enjoin the filing of an arbitration, I will hear from you at this time.

MR. DOWD: Thank you, your Honor.

01:20:58 I think, if we look at Insurance Law 1213, there is a, it really places, we believe it's mandatory in the instances that we have shown here, and the evidence that we put forth, that each one of the non licensed Defendants must post a bond, because there is no certification.

01:21:25 And, if we look at the types of behavior, if we look at Insurance Law 1101, it talks about what doing business of insurance is in New York, and that's very important, because at each point, it's a very broad definition, and there is a catchall provision in 1101, which

01:21:56 is, "doing or proposing to do any business in substance equivalent to any of the foregoing, in a manner designed to

evade the provisions of this chapter."

Here, we have shown that they filed a Federal patent saying that the purpose of this scheme is to avoid state regulation. So, right there, we believe that's a smoking gun. That was pointed out to the California Department of insurance. They saw that.

In response to your Honor's earlier questions about the complexity, I am looking at Mr. Schwartzman's affidavit and there is a couple of instances, paragraph 37, where he goes through each of the New York State Insurance Law provisions that are violated by this misconduct, and there is one after another after another, and they are pretty simple propositions that they can't do any of this.

If, I would ask your Honor to take under consideration --

THE COURT: Mr. Dowd, I don't really understand what you mean when you are referring to my feelings about the complexity. This case is no more a complex than the residential mortgage backed securities docket that I have been dealing with for the last three years.

These financial concepts can be complex, but they can be explained in a way that Courts can understand them and sometimes that requires explicit expert testimony.

All I am saying here is not that this is too complex to figure it out. I don't know how many times you

have suggested that I have said that.

I am saying that I need lawyering which will enable me to unpack the problem, and I don't think I have that on these papers.

01:24:07

MR. DOWD: Given the opportunity, your Honor, we believe we can make this much clearer, and also, we would point out that much of the enforcement of these statutes does happen in the regulatory context, so there is not that much case law in many of these areas.

01:24:22

THE COURT: Do you have anything further to say about the bond or the injunction?

MR. DOWD: Yes, your Honor.

Right now, our client is at imminent risk, and we request that, for the reasons set forth in the papers, that the bond be fixed at the amount that we are requesting.

01:24:36

THE COURT: Have you concluded?

MR. DOWD: Yes, your Honor. Thank you.

THE COURT: I will hear from the Defendants.

How will you split up your time? We have taken about one hour, and you will certainly have equal time if you wish it. Just decide how you will divide it.

01:24:50

MR. KNOERZER: I need three minutes.

THE COURT: There is no such thing as three minutes. This will be a lawyer's three minutes.

01:25:10

MR. KNOERZER: You can watch it, your Honor.

PROCEEDINGS

MR. STEPHENS: I think we can probably deal with this in 20 minutes, to be honest with you.

What actually can I do to be of assistance to the Court at this, in this argument?

01:25:27

Would you want me to describe the policies and how they work or, would you rather I just focus on the bonding requirement?

THE COURT: Well, I would like to know what's your position, what your position is on how the policies work and why this is, according to you, a legal arrangement, and then I want to hear the position on the bond, of course.

01:25:39

MR. STEPHENS: All right. So, I think the undisputed fact is that Breakaway had Workers' Compensation insurance through Continental Indemnity Company, a licensed New York insurer since, from the period 2009 to 2013.

01:26:05

There is no dispute that Continental Indemnity issued the policies. In fact, they are attached to the complaint, and I would invite, and so for a period of five years, they were insured by Continental.

01:26:30

The policies themselves are guaranteed cost Workers' Compensation policies, and if I could direct your attention please, your Honor, to Exhibit G, which is one of the policies, you can easily see how it works.

01:27:06

So, the first page is, identifies Continental Indemnity as issuing the Workers' Compensation policy.

PROCEEDINGS

If you take a look at the second page, just flip the page, says WC-174 at the top, and it has this chart classifications of, classifications. It tells you actually what's being charged and for whom, because each one of the employees in their job class has a different rate applied to that class, because they are more likely or less likely frankly, to be injured on the job.

01:27:29

So, you see the first is trucking, mail parcel or package delivery, all employees and drivers. That's a code, and that code number is actually from the State of New York. Every one of these job classifications has a coding, that goes with them.

01:27:47

Then, you can see the premium basis is right next to that, and the rate per hundred, which is how much it is per $100 of payroll that's associated with these trucking delivery employees. It's multiplied, and then you get a number. That's how these policies work. It's very simple. We have got classifications that are approved by the State of New York, and a rate approved by the State of New York. You do a multiplication of the rate, times the class, and then you get the premium at the other end.

01:28:06

01:28:28

What can make this change, if it was going to change, is the fact that the payroll influences the premium. If the payroll goes up, then the premium would go up. If the payroll went down, the premium would actually go down.

01:28:46

PROCEEDINGS

So, that's that simple.

The other contract that's actually at issue here is the Reinsurance Participation Agreement, the RPA. We have in the complaint actually exactly what it was that was presented to Breakaway and what it said.

01:29:10

So, if you look please at Exhibit B to the complaint, it is the Reinsurance Participation Agreement for this particular period of time, through years from '09 to '12, and it is a way for the insured to try to make a hedge essentially against his premiums going up -- actually, the premiums he is paying on a guaranteed cost policy, so very simply, your Honor, the guaranteed cost policy, the premiums are figured out as I just indicated, and the classifications and all of the statistical data from, frankly, decades of experience, go into determining what the cost of the policy is going to be, and the cost of the policy is very simple.

01:29:44

01:30:11

It is those classifications, times the approved rates, and then, there is a fee added on for the insurance company. If you think that you are going to do better as an employer than the statistical data would suggest , then you would consider buying the RPA. Because, and I am looking now at Exhibit B, the RPA, if you look at paragraph 3 of it, specifically says, "participant", that's Breakaway, "is participating in this agreement for purposes of investment only." It's not an insurance policy.

01:30:28

01:30:54

PROCEEDINGS

What it actually is, is a captive reinsurance arrangement, and it allows Breakaway, in this instance, to put money into, capitalize a cell, its owned individual, its own individual cell in this reinsurance agreement, and then, if it turns out that the losses are lower, they are going to get, in the end, lower costs on their insurance.

01:31:17

If it turns out, by the way, that the losses are higher than anticipated, the price on the overall insurance plan could go up, but there is nothing more complicated that is going on than exactly that.

01:31:38

Captive insurance, reinsurance arrangements are common throughout the world. In the case of big employers, your Honor, like United Airlines or IBM, they actually create their own captives in places, usually offshore, because of tax reasons, and then, they don't even buy insurance. They reinsure themselves at some level. They bought some other insurance perhaps, to take care of the risks, but big companies usually actually form a captive, rather than buy something from AIG.

01:32:00

01:32:21

Smaller companies could do the same thing, but the expense actually of forming your own captive is, and then running it, is actually prohibitive.

So, what this offers them the opportunity to do is, instead of having their own captive, they have a captive that has already been set up. It's call a "sponsor

01:32:37

captive". It has a word, and the participant in it, each have their own accounting and cell capitalized to either make money, because they are, their claims are lower or
01:32:56 perhaps have a higher cost. It's that simple.

THE COURT: Why is it called a "captive arrangement"?

MR. STEPHENS: Because it's not available to the public. In other words, it belongs to somebody. It's
01:33:10 not -- AIG is a public company and you can make an application and get insurance no matter who you are if you are approved.

The captive doesn't have to accept risk from any anybody other than the owner or whoever it is the owner says
01:33:26 I will include in my cell.

THE COURT: Isn't the Plaintiff's point that it is illegal to essentially set up an arrangement like this?

MR. STEPHENS: Yes, I think that's what they are saying.

01:33:48 THE COURT: What's the response to that?

MR. STEPHENS: It's not illegal. It's not --

THE COURT: The Insurance Law or the Workers' Compensation laws require employers, under certain circumstances, to procure Workers' Compensation insurance;
01:34:08 correct?

MR. STEPHENS: Yes.

PROCEEDINGS

THE COURT: Isn't this an end run around that requirement?

MR. STEPHENS: No, it's not.

01:34:15 THE COURT: Why not?

MR. STEPHENS: Because the Workers' Compensation, the guaranteed cost, Workers' Compensation policy is in place and available to Breakaway, the insured.

All this is, is an attempt to actually, to perhaps, 01:34:31 benefit from lower claims costs. It has nothing to do with the policy itself.

The policy actually is designed to protect the employees -- not designed to protect the employer. It's to make sure there is enough wherewithal to pay the claims for 01:34:47 injured workers.

THE COURT: Excuse me. I believe I heard during the Plaintiff's argument that no premiums were ever paid to Continental?

MR. STEPHENS: A-hum.

01:34:58 THE COURT: Has Continental paid claims?

MR. STEPHENS: Yes, it has. But, what you heard is not true. They have paid premium of $800,000. So, they did pay premium.

What he is confusing about that is that the bill 01:35:15 came from a, the billing agent, which identifies itself as Applied Underwriters. It's not so -- they did pay a

PROCEEDINGS

premium.

THE COURT: One moment please.

(Pause in the proceedings).

01:35:29 THE COURT: All right. So then, the Plaintiff is claiming that the premiums were not paid to Continental.

You are acknowledging that, but you are saying that they were paid to a billing agent for Continental?

MR. STEPHENS: Right. I mean, if you paid your 01:36:00 broker for your premiums and then the broker sent it to the insurance company, no one could say you didn't pay your premiums. It's just the methodology for it.

THE COURT: And, you are representing that Continental has paid premiums to Breakaway, sorry -- has 01:36:25 paid insurance benefits on account of Workers' Compensation claims for Breakaway?

MR. STEPHENS: Every claim that has been submitted, and they all got submitted to Continental Indemnity, has been paid -- every single one of them.

01:36:41 There is only one of them still outstanding. That's for a car accident. It's reserved at $45,000, and 22,000 of that has already been paid so, yes, they have five years of worth of coverage from Continental Indemnity and all the claims that have been submitted have been paid and 01:37:00 we are still paying, Continental is still paying claims because it has one more outstanding.

PROCEEDINGS

THE COURT: How much has been paid out to date, if there is evidence in the record to that effect.

MR. STEPHENS: I don't know. I mean, well, undoubtedly, hundreds of thousands of dollars. I don't have any evidence of that.

I have been in this business long enough to know that over that period of time, yes, hundreds of thousands of dollars.

So, what they are suggesting is that despite the fact that Continental is licensed in New York, and despite the fact that the RPA is for investment only, and it's with a different party, AUCRA, that somehow, a bond is required even though we have got licensed entities, not just one, but three, there are three licensed entities here in this complaint that are licensed in New York, California Insurance Company as to which they don't make a claim, but California Insurance Company, Continental Indemnity and then, New York Risk Services.

The notion, by the way, that the bond is not subject to the Court's discretion is wrong.

THE COURT: Did you mean Applied Risk Services of New York, Inc?

MR. STEPHENS: Right. That's a registered and licensed entity.

The statute itself says it only applies to

insurers. So, what they are trying to get you to say, even though Continental is the insurer and it's licensed in New York, these other organizations are somehow insurers, they haven't given you a shred of evidence to prove that.

01:39:00

The second thing is, your Honor has discretion as to whether to require a bond or not.

In our brief on page 7, we cited an opinion by the Department of Financial Services on that, and gave you the website. I have it in front of me here in my handy-dandy iPad.

01:39:22

What it says is, there is no absolute right to avoid bond posting under New York Law 1213.

THE COURT: Are you reading from a New York State insurance website?

01:39:39

MR. STEPHENS: It's an opinion of the Superintendent for the Department of Financial Services and it --

THE COURT: Which is posted on their website?

01:39:52

MR. STEPHENS: Yes, it is, your Honor. I gave you the citation in my brief. And, what it says is that the statute clearly allows the Court the discretion as to whether to permit an unauthorized insurer to dispense with filing a bond. Specifically says that.

01:40:15

So, they actually have to prove to you two things, which is one, that these other entities are, in fact,

insurers, insuring here in the State of New York, and they can't do that because the entity that gave the insurance policy to Breakaway is, in fact, licensed.

01:40:31 So, they have to prove -- one thing they can't prove and then the other is, your Honor has discretion as to whether to require a bond.

THE COURT: What is your position as to the role of these other entities in this transaction?

01:40:45 MR. STEPHENS: Well, actually, most of them don't have any role at all. What the Plaintiff is saying, without any support, is that somehow because of the manner in which these companies actually retain the premium they get, that somehow it's disappeared, and that that is a giant, 01:41:18 fraudulent conspiracy, frankly -- and, that's unproven here. There is no evidence of it, and frankly, it's not even pertinent.

What it is that a insurance company does with the premium it gets, whether it reinsures it through another 01:41:34 channel, whether it has a pooling arrangement with other companies, whether they be sister companies or not, is neither here nor there.

The only thing that is important about the insurance company that actually offers the policy and 01:41:48 underwrites the policy is what its rating is and here, Continental Indemnity, New York licensed, is rated by A.M.

PROCEEDINGS

Best, which is the operation that does these things, A+ Superior.

What that means is that it has a superior capacity to meet its financial obligations. If you look at the affidavit of James Corcoran, you will see the A.M. Best rating, Exhibit 2, and you will also see that Continental Indemnity has financial size, it's called, of 500 million to $750 million.

There is no question that this organization is licensed in New York, regulated by New York, examined by New York, and examined, frankly, where it's in its home state. So, everyone that's taken a look at this, has taken a look at finances, they don't have any of the suspicion Mr. Dowd is trying to raise, and perhaps, even most pertinently, there is only $45,000 in claims out. That's the only reserve left.

This policy, last time they had a policy, this organization did, was in 2013. So, we are three years out from that, and it's an occurrence policy, so something happened during the period of the policy a claim could arise, but the only one that's extant now, three years later, is one.

Both the Superintendents -- we gave you declarations from former Superintendants that said these claims develop over a reasonably short period of time, and

PROCEEDINGS

you know, what it is that the claims are going to be after two and a half years or so. So, there is no reason to assume that there is going to be some massive increase in the claims that are being filed against Breakaway, and to which the insurance would have to respond and, in fact, there is not only that, there is no reason to assume Continental Indemnity wouldn't be able to pay the claims if, in fact, they did somehow begin to expand.

01:43:46

01:44:05

So, I mean, the whole purpose of a bond is to protect Breakaway. It doesn't need that protection. It's got protection under its New York licensed insurance policy. So, this whole argument about all these other entities and whether they cede money to one another, it's a distraction and what I would call displacement activity.

01:44:30

Doesn't have anything to do with the transaction, doesn't have anything to do with Breakaway security.

Another curious thing about this case, your Honor, is that Breakaway has at least two operations, one here in New York and one in Boston, and both of them were insured under the Applied program, including RPA, and they still have the one in Boston.

01:44:45

So, they are here in New York telling you the whole thing is a reverse Ponzi scheme, and they are keeping the insurance in Massachusetts. It doesn't make sense at all. I don't often, frankly, write what I would call sort of a

01:45:04

PROCEEDINGS

literary observation in a brief, because I don't think they are very helpful, but here, I know, I was willing to write down that this whole thing is like a publicity stunt. They went out, had a press conference. It got covered by the press.

01:45:25

Berkshire Hathaway sued for fraud and now here we are and they can't explain to you what the fraud is because there isn't any. Though, I don't see, your Honor, honestly, that they have made a case out, that they need a bond or that they are entitled to one under 1213.

01:45:40

And then, the other piece of it is, I have been doing this a long time -- too long.

THE COURT: I have been doing this a long time myself.

01:46:00

MR. STEPHENS: I get tireder every year, I tell you, but what I do get out of that is, you know, you think you have seen it all, and done it all, and then find something new comes up, frankly, every month.

01:46:16

Here, we have somebody to enjoin our arbitration that hasn't even been demanded. I don't know if he will request arbitration.

THE COURT: I just had that last week.

MR. STEPHENS: No demand, and here we are trying to enjoin something that might happen. It's a waste of everyone's, frankly, time and effort and money.

01:46:29

PROCEEDINGS

So, I don't have much more to say about that. They can't possibly prove the standards for preliminary injunctive relief because there isn't even any harm that's being threatened.

01:46:54

What is the irreparable harm? There isn't any, let alone the fact they haven't shown you they have a colorable claim.

So, I really think this is reasonably easy, meaning the bond and arbitration decision. I think it's clear, as opposed to opaque, and I do think that the real meat of this case is actually in the motion to dismiss that we filed and that Berkshire Hathaway filed, and I believe that, as your Honor gets through those papers, you will see that this complaint has a lot of work to do before it belongs in front of you.

01:47:06

01:47:27

MR. KNOERZER: I will try to keep to my promise. Your Honor, I am Michael Knoerzer. I represent the single Defendant in this case, Berkshire Hathaway, Inc.

As your Honor alluded, we earlier made a motion to dismiss for lack of personal jurisdiction. I understand that's not on for today and I won't argue that, but to use an old fashioned term, I will make a special appearance. I am not waiving any of that.

01:47:43

We contend we are not subject to jurisdiction here. Berkshire Hathaway is a holding company. It's not an

01:47:57

insurance company. There is no dispute about that. They are alleged in the complaint to be a holding company. Berkshire Hathaway, Inc does not issue insurance policies. There is no allegation in the complaint that they have ever issued an insurance policy.

01:48:15

They can't. By law, they can't. They are not licensed to issue insurance policies.

Therefore, Section 1213, the bond statute, does not apply to Berkshire Hathaway, Inc, because under that statute it expressly applies to foreign or alien insurers.

01:48:31

If you read, I have long experience with this statute, if you read the commentaries and the notes on what a, why the statute was originally drafted, it's a consumer protection statute essentially.

01:48:52

What it says is, if someone buys a policy from an out-of-state insurer, they can sue the insurer. There is a construct in the statute, they can sue the insurer in the state, but what the Courts didn't want, what the regulators didn't want, what the legislature didn't want, is for having, once the insured, having gotten a judgement, the insured wasn't going to be required to go out-of-state to enforce that judgement. That's the basis of Section 1213.

01:49:08

So normally, what you have is a crystallized policy demand, a claim amount that has not been paid that falls within the policy, and that's the kind of thing that you

01:49:25

ordinarily see in these sorts of cases. We don't see that here at all.

Certainly, it does not apply where you have a insurer, who has issued a policy and is in New York State, because the statute only applies to foreign or alien insurers.

So here, I am not, I don't have any skin in the game because I represent Berkshire Hathaway, Inc., but I can tell you where there is a policy and the only policy is issued by a New York licensed insured.

The fact that they sue other people for other things, doesn't change the fact that this, the only insurer involved in the case, is New York licensed. You can't bootstrap the fact that you have sued non New York companies and say well, gee, there is non New York companies involved as well who didn't issue policies, but I am going to use 1213 on them.

I think that's three minutes, your Honor.

THE COURT: Mr. Dowd, would you like to reply?

MR. DOWD: Briefly, your Honor. Thank you.

I think that the most important starting point is to focus on the words you heard previously, "retain premium". People who retain premium are doing the business of insurance in New York.

So, any of these entities that took Mr. Kotch's

money, as it passed through all of these entities, if any of them, as Mr. Stephens said retained premium, they are doing the business of insurance in New York.

01:51:12 Also, if they solicit insurance policies in New York, they are doing the business of insurance in New York.

I point your Honor to the reply affidavit of Martin Schwartzman dated 27th of October, Exhibit A. It says there, that as a member of Berkshire Hathaway, Inc., we have

01:51:46 the resources and you have the Applied Underwriters trademark, and it says a Berkshire Hathaway company.

This is addressed to Berkshire Courier -- Breakaway Courier Corporation in New York. This is doing and soliciting the business of insurance in New York.

01:52:09 If we go through all of this opaque group of contracts that are almost impossible to understand, you will see that each one takes their cut and takes some of Breakaway's premium and takes more of Breakaway's premium and takes more of Breakaway's premium until we are in the so

01:52:29 called protected cell. Everyone has heard about this protected cell. Well, we can never find out, all these years, was anything ever put into the protected cell? If so, what was it?

What we have seen, if we look at Exhibit D to Mr.

01:52:45 Schwartzman's affidavit, for the first time in 2013, September 2013, Mr. Kotch gets a plan analysis. Instead of

his usual plan analysis, where he has all of his workers' losses, he gets a huge printout starting from 2009, and this is on, if you back, it says page 5 of 31 at the top of this chart. He gets a whole print out of workers' claims from other companies that are all blanked out.

What we can see from this is that Applied is now saying, oh, this is not just your captive protected cell. We put a bunch of other workers in there. We are not telling you what their classifications are. We are not telling you who they are, and we are going to tell you for the first time in September of 2013 that you are stuck with a whole bunch of other people. You can see page --

THE COURT: Sorry, what do you mean by that? Can you --

MR. DOWD: We --

THE COURT: I am looking at the chart, but it's too folksy. Try to explain it in a more legal way.

MR. DOWD: Sure, your Honor. If we look, we page through the first page, where it says name, and it's all blank. Those are all workers, okay, that are not Breakaway workers. We turn to the next page. We see names, they are all blank. That's page 6 of 31. None of those are Breakaway workers. When we get to page 7 of 31, we see one name, Jason Litzenberg (ph).

THE COURT: I see this. But, tell me what this is.

PROCEEDINGS

MR. DOWD: The significance is, your Honor heard earlier that this policy was sold to Mr. Kotch on the premise that if he managed his claims well, he would get charged lower rates.

01:55:02

This, for the first time, reveals that he is stuck in with a whole bunch of other people, according to them now, so it doesn't matter how well he manages his claims. Any claim billing that he has been sent, is actually based on calculation of workers that are not his. Not something that was ever disclosed previously.

01:55:24

So here, we have specific example of fraud. We have him saying, you will get a discount if you can manage your claims, and this shows it's absolutely untrue. The first time this is revealed is in 2013.

01:55:42

So, we go through page after page, and there is only one on each or it's blank, and this is the calculation that has been made.

So, all these companies retaining premium, are doing the business of insurance in New York. All of these claims about you can get a discount for managing your claims well, false and misleading, and under New York State Insurance Law 4226, if there is any misleading statements made in the sale of insurance policy, my client has a private right of action guaranteed by that statute.

01:55:58

01:56:17

In addition, if there is any anticompetitive

behavior going on, there is a private right of action under Section 2316 of the New York Insurance Law.

Now, to understand, in recap, to get this policy, this Continental policy issued to you, you have to commit to three years -- illegal with an out-of-state insurer to get them to issue a policy. That is all specifically contrary to statute. We list specifically what statute it violates.

If we look at the Reinsurance Participation Agreement, we see a reference to issuing insurers. Also, there is references in the RPA to a pooling agreement.

Now, this pooling agreement is in the reply affidavit of Martin Schwartzman, and it's almost impossible to read, but what, in essence is, best I understand it and as best Mr. Schwartzman understands it, is that Continental, upon signing that pooling agreement, and if you look at the signature page of the pooling agreement, which is found at Exhibit C, we see one signature page, California Insurance Company, signed by President, Steven Menzies; Continental Indemnity Company signed by President Steve Menzies; Illinois Insurance Company signed by President Steve Menzies; Pennsylvania Insurance Company signed by President Steve Menzies.

This is not illegal, but what they are doing is cross insuring everyone for everything. What they are saying, I am sorry if it's folksy, your Honor, specifically,

PROCEEDINGS

with Continental, that upon Continental writing a policy, 100 percent of the liability is ceded to California. California, in turn, by a quota share agreement that is located at Exhibit B, cedes off to AUCRA. That's the Applied Underwriters Captive Risk insurance Company, a British Virgin Islands, and later an Iowa corporation.

So, in essence, it goes through this process with California, Continental first, taking only ceding commissions. What that means is, as a practical matter, is all of the premium never ends up in Continental by the plain language of the pooling agreement.

So, they, the assets that are supposed to pay the insurer is simply not in that entity. They pass to California. What does California do? California takes, in turn, a ceding commission, pockets that, and offloads to AUCRA. So, what's left in a protected cell is something that is di minimus.

On top of that, they enter into what's called an excess loss agreement, and for 2013 it was $128 million to another Berkshire Hathaway entity. What that means is that this supposed protected cell is likely to have absolutely nothing in it.

In sum, right in the complaint, Exhibit M, we have the testimony of Patrick Watson, Applied employee, saying that no one ever got money back from this scheme in the

PROCEEDINGS

whole history of this Applied Underwriters document.

Therefore, the terms, profit sharing right up front, are misleading, and we have causes of action under that, and therefore, we ought to have a bond in a fair amount to cover the amount of any final judgement that this Court might render.

Thank you, your Honor.

02:00:24

02:00:40

THE COURT: There was a lot of new argument there on that reply. If there is a request for anything further, under that circumstance, I will permit a response.

MR. STEPHENS: Just one thing -- two things from me, which is, I mean this argument about who knows where the money is some sort of a shell game. It's not supported by anything in the record.

02:01:07

If you take a look at Exhibit 2 to former Superintendent James Corcoran's declaration, it is the A.M. Best rating.

THE COURT: It is?

02:01:19

MR. STEPHENS: A.M. Best rating for Continental Indemnity and it says it has 500 to 750 million in size. It has an A plus rating. It is a superior claim paying operation. It has a capacity to pay its claims.

Regardless, of what it is that Mr. Dowd thinks is confusing about reinsurance arrangements, they are completely irrelevant to the argument that he is trying to

02:01:47

make about a bond.

The second thing is, Mr. Schwartzman put Exhibit D to his supplemental affidavit, and if you take a look at it, it's actually, you can start with top of the page, the plan term is, it's an analysis of the whole plan from July 1, '09 to 6/3/12 because it's a three-year plan.

If you actually flip the page, your Honor, you will see that there is actually a listing of each and every claim that was filed during that three-year period of time. It tells you whether it's opened or closed. It tells you how much was, the costs were as to each one, each one and every one of those claims. It goes on page after page after page. It shows you not only is the information all being communicated to Breakaway, it also shows you what I just said, which is the only open claim, you take a look at the end, is James Spencer, reserved at $40,000.

And so, I mean, the argument that you are hearing is essentially trying to mix everything up in a blizzard of argument that doesn't have anything, have anything to do with whether or not a bond is necessary.

MR. KNOERZER: I didn't hear anything that accused my client, Berkshire Hathaway, from being a insurance company, and all the expert reports that they are citing to on the Plaintiff's side are improper under the New York law because all they do is try to construe the contract language

or to find that somebody or something is in violation of statute. That's the province of your Honor. It's not the province of the experts. The expert reports aren't worth the paper they were written on.

02:03:56

Thank you.

THE COURT: I am going to reserve decision on the bond and the injunction motion.

It's requested that the Movant obtain a copy of the transcript of today's argument, e-file it with an errata sheet, and file two hard copies with the Clerk of Part 60 with the errata sheet. The motions will not be marked submitted until I receive the hard copies.

02:04:18

In addition, I am going to ask counsel, how close are we to the briefing on the Berkshire Hathaway motion to dismiss?

02:04:49

MR. KNOERZER: Our initial brief is filed, your Honor, so I think we are waiting for opposition.

THE COURT: Is there a date for the opposition brief?

02:05:03

MR. DOWD: We believe it's November 15th, your Honor.

THE COURT: So, when are counsel expecting to have it fully submitted?

02:05:14

MR. STEPHENS: Return date is the 22nd of November.

THE COURT: The 22nd in Part 130?

MR. STEPHENS: Right.

THE COURT: So, I think we will probably schedule that for after the first of the year, and when we get it, we will give you a date for both the motion to dismiss that was part of this series of motions, and the Berkshire Hathaway motion, and we will hear both of those arguments on the same date.

02:05:34

Thank you. The record is closed for today's proceedings.

02:05:51

XXX

THE FOREGOING IS CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPTION OF THE ORIGINAL STENOGRAPHIC NOTES.

NINA J. KOSS, C.S.R., C.M.
OFFICIAL COURT REPORTER

$

$100 [1] - 35:16
$128 [1] - 54:20
$40,000 [1] - 56:17
$45,000 [2] - 40:21, 44:16
$54,000 [1] - 26:17
$750 [1] - 44:9
$800,000 [1] - 39:22
$836,000 [1] - 23:15

'

'09 [2] - 36:9, 56:6
'12 [1] - 36:10

1

1 [2] - 1:16, 56:6
100 [1] - 54:3
10007 [1] - 1:16
10020 [1] - 2:7
10174 [1] - 2:3
10177 [1] - 1:22
10604 [1] - 2:12
1101 [2] - 31:21, 31:24
1133 [1] - 2:11
1213 [9] - 6:13, 6:24, 6:25, 31:15, 42:13, 46:11, 48:9, 48:23, 49:18
1251 [1] - 2:7
130 [1] - 57:26
15th [1] - 57:21

2

2 [3] - 26:10, 44:7, 55:16
20 [1] - 34:3
2009 [4] - 12:17, 17:17, 34:16, 51:3
2013 [7] - 34:16, 44:19, 50:25, 50:26, 51:12, 52:15, 54:20
2014 [1] - 12:18
2016 [1] - 1:16
22,000 [1] - 40:22
22nd [2] - 57:25, 57:26
2316 [2] - 23:12, 53:3
23rd [1] - 20:13
240 [1] - 9:9
250 [1] - 1:22
278 [1] - 9:9
27th [1] - 50:8

3

3 [1] - 36:23
300 [1] - 12:8
31 [3] - 51:4, 51:23, 51:24
37 [1] - 32:10

4

405 [1] - 2:3
4226 [2] - 23:9, 52:23

5

5 [1] - 51:4
500 [3] - 9:22, 44:8, 55:21
54,628 [1] - 26:10

6

6 [3] - 19:19, 21:15, 51:23
6/3/12 [1] - 56:7
60 [3] - 1:2, 1:15, 57:11
654806/16 [1] - 1:15

7

7 [2] - 42:8, 51:24
700 [1] - 9:22
750 [1] - 55:21

A

a-hum [1] - 39:19
A.M [5] - 9:21, 43:26, 44:6, 55:17, 55:20
abbreviation [1] - 11:9
able [3] - 14:11, 19:14, 45:8
absolute [1] - 42:12
absolutely [3] - 18:11, 52:14, 54:22
accept [1] - 38:13
accepted [1] - 21:8
accident [1] - 40:21
according [6] - 18:24, 19:22, 21:11, 21:13, 34:11, 52:7
account [1] - 40:15
accounting [1] - 38:3
ACCURATE [1] - 58:16
accurate [1] - 5:23
accused [1] - 56:22
acknowledge [1] - 5:12
acknowledging [1] - 40:7
acronyms [1] - 5:15
Act [1] - 23:13
acted [1] - 14:19
action [6] - 6:15, 13:18, 27:23, 52:25, 53:2, 55:4
activity [1] - 45:15
actual [2] - 10:25, 13:3
actuarial [2] - 21:6, 21:9
actuaries [3] - 21:3, 21:11, 27:9
AD2d [1] - 9:9
added [1] - 36:19
addition [3] - 3:21, 52:26, 57:14
additionally [1] - 24:21
address [3] - 8:15, 16:11, 18:22
addressed [1] - 50:12
adjustor [2] - 11:25
administrator [1] - 28:16
admitted [1] - 14:21
affidavit [10] - 19:25, 19:26, 20:12, 28:26, 32:9, 44:6, 50:7, 50:25, 53:13, 56:4
AGENCY [1] - 1:11
agent [8] - 14:17, 14:19, 28:14, 28:15, 28:21, 39:25, 40:8
aggrieved [1] - 23:9
ago [1] - 4:12
agree [2] - 4:24, 19:15
agreement [14] - 10:6, 10:11, 13:22, 14:15, 17:9, 36:25, 37:5, 53:11, 53:12, 53:16, 53:17, 54:4, 54:12, 54:20
Agreement [12] - 4:8, 13:6, 13:7, 16:20, 18:8, 18:14, 18:25, 20:6, 21:26, 36:4, 36:8, 53:10
agreements [1] - 30:18
aid [1] - 5:15
AIG [2] - 37:20, 38:10
Airlines [1] - 37:14
alien [3] - 6:26, 48:11, 49:6
allegation [1] - 48:5
allegations [1] - 12:4
alleged [2] - 29:13, 48:3
allows [2] - 37:3, 42:22
alluded [1] - 47:20
almost [2] - 50:16, 53:13
alone [2] - 27:15, 47:7
alumni [1] - 4:13
AMERICAN [1] - 1:11
Americas [1] - 2:7
amount [13] - 7:5, 23:5, 24:14, 25:12, 26:20, 26:21, 26:23, 27:2, 27:12, 33:16, 48:25, 55:6
amounts [2] - 12:14, 26:24
AN [1] - 1:12
analysis [12] - 17:22, 18:23, 19:17, 20:11, 20:20, 26:25, 27:17, 27:18, 30:16, 50:26, 51:2, 56:6
analyzed [3] - 19:18, 20:4, 26:19
AND [1] - 58:16
annual [1] - 18:2
answer [4] - 8:8, 18:22, 28:9, 31:6
ANTHONY [1] - 2:8
Anthony [1] - 3:11
anticipated [1] - 37:9
anticompetitive [1] - 52:26
appear [1] - 14:19
appearance [1] - 47:23
APPEARANCES [1] - 1:19
Appearances [1] - 1:25
appearances [1] - 3:3
Appellate [1] - 9:10
appended [1] - 20:10
application [3] - 15:13, 31:11, 38:11
Applied [29] - 2:6, 5:6, 11:3, 11:8, 11:19, 11:21, 12:21, 12:25, 13:9, 13:19, 14:16, 14:21, 16:9, 16:14, 16:22, 16:26, 21:4, 21:11, 21:24, 39:26, 41:22, 45:21, 50:10, 51:7, 54:6, 54:25, 55:2
applied [4] - 11:5, 15:24, 20:16, 35:6
APPLIED [4] - 1:9, 1:9, 1:10, 1:12
Applied's [1] - 21:13
applies [3] - 41:26, 48:11, 49:6
apply [2] - 48:10, 49:4
appreciate [1] - 6:10
approached [2] - 12:20, 12:22
appropriate [1] - 4:22
approved [6] - 7:5, 20:15, 35:19, 35:20, 36:18, 38:12
arbitration [6] - 3:23, 16:17, 31:12, 46:20, 46:22, 47:10
areas [1] - 33:10
argue [1] - 47:22
argument [14] - 5:22, 6:20, 9:20, 19:21, 23:4, 34:5, 39:17, 45:13, 55:9, 55:13, 55:26, 56:18, 56:20, 57:10
arguments [2] - 6:23, 58:7
arise [1] - 44:22
arrangement [5] - 34:11, 37:3, 38:7, 38:17, 43:20
arrangements [2] - 37:12, 55:25
ARS [4] - 1:11, 11:21, 14:15
Art [1] - 4:12
art [1] - 4:15
article [1] - 20:26
asbestos [1] - 21:18
aside [1] - 18:26
assets [2] - 9:18, 54:13
assistance [1] - 34:4
associated [1] - 35:16
assume [2] - 45:4, 45:7
Assurance [3] - 13:9, 13:19, 16:23
ASSURANCE [1] - 1:12
attached [2] - 19:17, 34:18
attempt [1] - 39:9
attention [3] - 27:26, 28:26, 34:23
attorneys [1] - 1:21
Attorneys [3] - 2:2, 2:6, 2:11
AUCRA [5] - 13:8, 16:25, 41:13, 54:5, 54:17
August [1] - 20:13
AUI [3] - 10:19, 10:23, 11:8
authority [3] - 28:22, 29:3, 29:18
available [4] - 7:13, 23:17, 38:8, 39:8
Avenue [4] - 1:22, 2:3, 2:7, 2:11
avoid [2] - 32:4, 42:13

B

backed [1] - 32:20
Bartholow [1] - 3:5
BARTHOLOW [1] - 1:21
based [6] - 5:3, 8:2, 25:17, 25:20, 26:22, 52:9
basics [1] - 15:24
basis [6] - 21:6, 21:16, 22:23, 24:8, 35:14, 48:23
BE [1] - 58:15
Beatrice [1] - 9:11
BEFORE [1] - 1:18
begin [1] - 45:9
beginning [1] - 28:26
behalf [2] - 5:4, 5:5
behavior [2] - 31:20, 53:2
belongs [2] - 38:9, 47:15
benefit [1] - 39:10
benefits [1] - 40:15
Berkshire [21] - 2:2, 2:11, 3:14, 3:20, 5:4, 12:24, 46:7, 47:13, 47:19, 47:26, 48:4, 48:10, 49:9, 50:9, 50:11, 50:12, 54:21, 56:23, 57:15, 58:6
BERKSHIRE [1] - 1:8
best [5] - 4:6, 29:17, 30:21, 53:14, 53:15
Best [5] - 9:21, 44:2, 44:6, 55:18, 55:20
better [1] - 36:20
between [2] - 15:5, 16:25
beyond [1] - 14:8
bicycle [1] - 12:7
big [3] - 19:6, 37:13, 37:19
bill [3] - 19:17, 23:24, 39:24
billing [9] - 14:17, 14:19, 28:14, 28:15, 28:21, 39:25, 40:8, 52:9
bills [7] - 19:5, 19:10, 19:11, 19:16, 20:9, 21:25, 24:6
bind [3] - 13:5, 15:16, 16:6
bit [1] - 14:9
blank [3] - 51:21, 51:23, 52:17
blanked [1] - 51:6
Blaustein [1] - 3:6
BLAUSTEIN [1] - 1:23
blizzard [1] - 56:19
board [1] - 4:13
body [1] - 16:14
bond [31] - 3:17, 3:22, 3:24, 5:9, 6:14, 6:19, 6:21, 7:4, 7:10, 9:11, 9:23, 19:19, 31:11, 31:19, 33:12, 33:16, 34:12, 41:13, 41:20, 42:7, 42:13, 42:24, 43:7, 45:10, 46:10, 47:10, 48:9, 55:5, 56:2, 56:21, 57:8
bonding [3] - 10:14, 29:11, 34:7
bonds [1] - 9:19
bootstrap [1] - 49:15
boroughs [1] - 12:9
Boston [2] - 45:20, 45:22
bottom [2] - 26:19, 27:4
bought [1] - 37:18
break [1] - 14:10
Breakaway [39] - 3:7, 10:4, 12:7, 12:18, 12:19, 13:13, 15:5, 15:14, 16:25, 17:5, 20:17, 20:19, 21:25, 25:24, 27:8, 27:12, 27:14, 28:6, 28:10, 29:19, 30:9, 34:14, 36:6, 36:24, 37:3, 39:8, 40:14, 40:16, 43:4, 45:5, 45:11, 45:17, 45:19, 50:12, 51:21, 51:24, 56:15
BREAKAWAY [2] - 1:3, 1:4
Breakaway's [4] - 20:22, 50:18, 50:19
BRIAN [1] - 1:24
Brian [1] - 3:6
brief [6] - 31:3, 42:8, 42:21, 46:2, 57:17, 57:20
briefed [1] - 3:20
briefing [1] - 57:15
briefly [2] - 4:17, 49:21
briefs [1] - 29:16
brings [1] - 28:25
British [3] - 13:10, 16:24, 54:7
broad [1] - 31:23
broker [2] - 40:10
brokers [1] - 12:21
bunch [3] - 51:9, 51:13, 52:7
burden [1] - 8:23
business [11] - 6:18, 29:23, 30:4, 31:22, 31:25, 41:7, 49:24, 50:4, 50:6, 50:14, 52:20
buy [2] - 37:16, 37:20
buying [1] - 36:22
buys [1] - 48:16
BVI [6] - 13:11, 13:14, 13:21, 13:22, 13:24, 28:17
BY [4] - 1:23, 2:4, 2:8, 2:12

C

C.M [2] - 2:18, 58:21
C.S.R [2] - 2:18, 58:21
calculate [1] - 20:22
calculation [3] - 21:12, 52:10, 52:17
calculations [3] - 21:6, 21:9, 21:13
California [17] - 8:14, 10:8, 10:19, 11:13, 15:5, 25:2, 30:15, 32:6, 41:16, 41:18, 53:18, 54:3, 54:4, 54:9, 54:15
CALIFORNIA [1] - 1:8
capacity [2] - 44:4, 55:23
capitalize [1] - 37:4
capitalized [1] - 38:3
Captive [5] - 13:9, 13:19, 16:23, 16:26, 54:6
CAPTIVE [1] - 1:12
captive [9] - 37:2, 37:12, 37:19, 37:22, 37:25, 38:6, 38:13, 51:8
captive" [1] - 38:2
captives [1] - 37:15
car [1] - 40:21
care [2] - 4:2, 37:18
case [24] - 4:17, 4:19, 4:22, 8:26, 9:15, 9:16, 27:14, 29:6, 29:7, 29:11, 29:12, 29:26, 30:5, 30:15, 30:20, 32:19, 33:10, 37:13, 45:18, 46:10, 47:12, 47:19, 49:14
cases [7] - 6:9, 29:9, 29:16, 30:11, 30:24, 31:4, 49:2
cash [3] - 7:3, 7:17, 9:18
casts [1] - 20:2
CASUALTY [1] - 1:11
catch [1] - 10:22
catchall [1] - 31:24
causes [2] - 27:23, 55:4
ceased [2] - 13:11, 13:23
cede [1] - 45:14
ceded [1] - 54:3
cedes [3] - 10:7, 10:9, 54:5
ceding [2] - 54:9, 54:16
cell [12] - 14:10, 22:11, 37:4, 37:5, 38:3, 38:15, 50:20, 50:21, 50:22, 51:8, 54:17, 54:22
cell" [1] - 18:26
cells [1] - 23:11
Centre [1] - 1:15
certain [3] - 13:3, 24:14, 38:23
certainly [2] - 33:21, 49:4
certificates [2] - 7:10, 8:17
certification [6] - 7:24, 8:20, 8:23, 9:14, 9:18, 31:19
CERTIFIED [1] - 58:15
certified [1] - 7:17
certify [1] - 8:18
change [3] - 35:23, 35:24, 49:13
changed [1] - 13:16
channel [1] - 43:20
chapter [1] - 32:2
charge [2] - 12:13, 12:14
charged [3] - 14:6, 35:5, 52:5
Charges [1] - 26:9
charges [1] - 26:17
charging [1] - 26:3
chart [5] - 5:21, 26:18, 35:3, 51:5, 51:17
charts [3] - 18:4, 20:10, 20:18
circumstance [1] - 55:11
circumstances [3] - 4:19, 9:12, 38:24
citation [2] - 9:9, 42:21
cite [2] - 29:24, 31:4
cited [4] - 9:5, 9:16, 29:15, 42:8
citing [1] - 56:24
City [1] - 12:9
claim [17] - 11:24, 11:25, 21:20, 21:23, 23:5, 23:16, 23:24, 24:9, 40:17, 41:17, 44:21, 47:8, 48:25, 52:9, 55:22, 56:9, 56:16
claimed [1] - 23:6
claiming [1] - 40:6
claims [29] - 4:7, 14:5, 14:23, 19:3, 21:24, 22:2, 22:3, 23:18, 27:3, 38:4, 39:10, 39:14, 39:20, 40:16, 40:24, 40:25, 44:16, 44:26, 45:2, 45:5, 45:8, 51:5, 52:4, 52:8, 52:14, 52:21, 55:23, 56:13
Claire [1] - 3:12
CLAIRE [1] - 2:12
clarify [2] - 11:10, 11:13
class [4] - 26:22, 35:6, 35:7, 35:21
classifications [7] - 35:4, 35:12, 35:19, 36:14, 36:18, 51:10
clause [1] - 16:17
clear [2] - 9:13, 47:10
clearer [1] - 33:7
clearly [1] - 42:22
Clerk [3] - 7:3, 7:4, 57:11
clerk [1] - 4:11
client [4] - 23:17, 33:14, 52:24, 56:23
close [1] - 57:14
closed [2] - 56:11, 58:9
closer [1] - 10:2
Clyde [1] - 3:14
CLYDE [1] - 2:2
CO [1] - 2:2
code [2] - 35:10, 35:11
coding [1] - 35:12
COLES [1] - 2:8
Coles [1] - 3:11
collected [1] - 10:3
collects [1] - 28:15
colorable [1] - 47:7
coming [1] - 21:4
commentaries [1] - 48:13
commercial [1] - 6:2
COMMERCIAL [1] - 1:8
commission [1] - 54:16

commissions [1] - 54:10
commit [1] - 53:5
common [1] - 37:13
communicated [1] - 56:15
Comp [9] - 12:18, 14:3, 16:15, 17:14, 21:17, 21:20, 24:13, 25:5, 25:11
companies [9] - 37:19, 37:21, 43:13, 43:21, 49:15, 49:16, 51:6, 52:19
Company [16] - 3:14, 9:4, 11:14, 11:16, 13:9, 13:19, 15:6, 16:23, 34:15, 41:17, 41:18, 53:19, 53:20, 53:21, 53:22, 54:6
COMPANY [3] - 1:8, 1:11, 1:12
company [20] - 1:13, 9:26, 10:20, 12:7, 13:8, 13:10, 13:18, 16:23, 16:25, 22:9, 36:20, 38:10, 40:11, 43:18, 43:24, 47:26, 48:2, 48:3, 50:11, 56:24
comparing [1] - 22:20
Compensation [16] - 9:26, 12:11, 17:26, 18:9, 21:2, 26:9, 26:16, 30:19, 34:14, 34:22, 34:26, 38:23, 38:24, 39:6, 39:7, 40:15
complaint [15] - 5:22, 13:17, 16:8, 16:22, 19:17, 20:26, 27:21, 34:19, 36:5, 36:8, 41:16, 47:15, 48:3, 48:5, 54:24
completely [5] - 19:26, 24:19, 27:15, 28:18, 55:26
complex [4] - 25:25, 32:19, 32:22, 32:26
complexity [3] - 25:26, 32:9, 32:19
complicated [4] - 16:4, 20:25, 21:5, 37:10
concededly [1] - 5:16
concepts [3] - 4:2, 4:7, 32:22
concerned [1] - 4:4
concerning [1] - 3:22
concluded [1] - 33:17
conclusory [1] - 19:26
conference [1] - 46:5
confirmation [1] - 30:12
confusing [4] - 24:2, 24:3, 39:24, 55:25
connection [1] - 4:16
consider [1] - 36:22
consideration [1] - 32:16
consistent [2] - 6:8, 9:16
conspiracy [1] - 43:15
construct [1] - 48:18
construe [1] - 56:26
consumer [1] - 48:14
containment [4] - 26:20, 26:21, 26:23, 27:2
contend [1] - 47:25
contention [2] - 7:23, 18:17
context [1] - 33:9
Continental [55] - 6:20, 8:14, 9:22, 9:25, 10:2, 10:3, 10:5, 10:6, 10:7, 10:10, 10:15, 10:18, 11:16, 12:16, 12:19, 15:8, 15:17, 23:23, 23:26, 27:11, 27:12, 28:2, 28:7, 28:10, 28:14, 29:19, 30:9, 34:15, 34:17, 34:20, 34:25, 39:18, 39:20, 40:6, 40:8, 40:14, 40:18, 40:23, 40:25, 41:11, 41:18, 42:3, 43:26, 44:7, 45:8, 53:5, 53:15, 53:19, 54:2, 54:9, 54:11, 55:20
CONTINENTAL [1] - 1:12
continued [1] - 1:25
contract [2] - 36:3, 56:26
contracts [3] - 24:2, 24:6, 50:16
contractual [1] - 13:14
contrary [1] - 53:7
copies [2] - 57:11, 57:13
copy [1] - 57:9
Corcoran [1] - 44:6
Corcoran's [1] - 55:17
corporate [2] - 13:3, 16:10
corporation [3] - 14:20, 17:10, 54:7
CORPORATION [7] - 1:3, 1:9, 1:10, 1:10, 1:11, 1:12, 1:13
Corporation [1] - 50:13
correct [9] - 11:7, 11:14, 11:15, 11:18, 15:2, 15:3, 16:10, 23:19, 38:25
correctly [1] - 18:7
cost [24] - 17:24, 20:14, 20:15, 20:20, 20:21, 21:9, 22:8, 25:5, 25:20, 26:2, 26:5, 27:4, 27:6, 27:10, 27:11, 30:19, 34:21, 36:12, 36:13, 36:16, 36:17, 38:5, 39:7
costs [6] - 18:5, 20:23, 26:26, 37:7, 39:10, 56:12
counsel [6] - 3:26, 4:18, 5:3, 5:18, 57:14, 57:23
counsel's [1] - 3:2
COUNTY [1] - 1:2
couple [1] - 32:10
courier [1] - 12:7
COURIER [2] - 1:3, 1:4
Courier [3] - 3:7, 50:12, 50:13
course [3] - 18:18, 19:16, 34:12
COURT [112] - 1:2, 2:18, 3:2, 3:15, 4:23, 4:26, 5:7, 5:9, 5:17, 5:25, 6:7, 7:22, 8:2, 8:9, 8:22, 8:26, 9:8, 10:21, 10:24, 11:2, 11:5, 11:10, 11:13, 11:16, 11:19, 11:23, 11:26, 14:26, 15:4, 15:8, 15:10, 15:13, 15:23, 16:7, 16:9, 16:12, 17:4, 17:11, 17:18, 17:20, 18:6, 18:12, 18:16, 19:9, 19:19, 19:25, 20:7, 22:20, 22:24, 23:14, 23:16, 23:20, 24:3, 24:22, 24:25, 25:7, 25:14, 26:4, 26:13, 27:17, 27:25, 28:4, 28:6, 28:22, 29:3, 29:7, 29:9, 29:13, 29:17, 29:24, 30:8, 30:22, 30:26, 31:3, 31:6, 31:10, 32:17, 33:11, 33:17, 33:19, 33:24, 34:9, 38:6, 38:16, 38:20, 38:22, 39:2, 39:5, 39:16, 39:20, 40:3, 40:5, 40:13, 41:2, 41:22, 42:14, 42:19, 43:8, 46:14, 46:23, 49:20, 51:14, 51:17, 51:26, 55:9, 55:19, 57:7, 57:19, 57:23, 57:26, 58:3, 58:22
Court [16] - 6:12, 6:13, 6:22, 7:3, 7:5, 7:6, 7:8, 7:17, 7:20, 8:18, 8:24, 10:13, 21:3, 34:5, 42:22, 55:7
Court's [2] - 28:25, 41:21
courtroom [1] - 3:8
courts [1] - 24:25
Courts [2] - 32:23, 48:19
cover [2] - 21:15, 55:6
coverage [11] - 4:9, 13:5, 15:16, 16:6, 17:15, 18:5, 18:9, 18:10, 25:12, 25:15, 40:23
covered [2] - 24:15, 46:5
create [1] - 37:15
created [1] - 4:13
cross [1] - 53:25
crystallized [1] - 48:24
curious [1] - 45:18
cut [1] - 50:17

D

d/b/a [1] - 1:3
damages [3] - 23:6, 23:7, 23:11
dandy [1] - 42:10
data [2] - 36:15, 36:21
date [7] - 17:22, 27:4, 41:2, 57:19, 57:25, 58:5, 58:8
dated [2] - 20:13, 50:8
deal [2] - 14:12, 34:2
dealing [1] - 32:21
decades [1] - 36:15
decide [1] - 33:22
decision [2] - 47:10, 57:7
declaration [1] - 55:17
declarations [1] - 44:25
Defendant [4] - 11:2, 11:6, 13:18, 47:19
DEFENDANTS [1] - 1:14
Defendants [11] - 2:6, 2:11, 6:15, 6:21, 8:21, 8:23, 9:15, 9:23, 12:5, 31:18, 33:19
defense [1] - 5:18
definition [3] - 10:10, 29:23, 31:24
deliberately [1] - 15:26
delivery [2] - 35:10, 35:17
demand [2] - 46:24, 48:25
demanded [1] - 46:21
demonstrative [3] - 5:13, 5:26, 6:4
Department [8] - 7:16, 7:25, 8:4, 8:18, 19:24, 32:7, 42:9, 42:17
deposit [2] - 7:2, 7:9
describe [2] - 3:26, 34:6
describes [1] - 17:23
designed [3] - 31:26, 39:12, 39:13
despite [2] - 41:10, 41:11
details [2] - 13:16, 19:13
determining [1] - 36:16
develop [1] - 44:26
development [1] - 20:16
devoid [1] - 9:13
di [1] - 54:18
differ [1] - 27:26
different [9] - 6:17, 17:25, 23:8, 25:13, 25:14, 26:3, 27:6, 35:6, 41:13
difficult [6] - 5:12, 5:16, 22:16, 22:17, 22:18, 22:19
dime [1] - 10:3
dinners [1] - 4:16
direct [3] - 10:4, 15:17, 34:22
directly [1] - 10:3
disappeared [1] - 43:14
disclosed [2] - 27:20, 52:11
disclosure [2] - 4:11, 5:3

discount [3] - 14:4, 52:13, 52:21
discounts [1] - 18:3
discretion [6] - 7:9, 7:21, 41:21, 42:6, 42:22, 43:6
discuss [1] - 30:6
discusses [1] - 30:17
discussing [1] - 29:16
discussion [2] - 8:15, 30:21
dismiss [7] - 3:17, 3:18, 3:19, 47:12, 47:21, 57:16, 58:5
dispense [1] - 42:23
dispensing [1] - 7:9
displacement [1] - 45:15
dispute [2] - 34:17, 48:2
distraction [1] - 45:14
divide [1] - 33:22
Division [1] - 9:10
DLA [2] - 2:6, 3:11
docket [1] - 32:20
document [5] - 16:19, 17:3, 17:21, 18:2, 55:2
documentation [1] - 8:3
documents [11] - 12:24, 12:26, 13:2, 14:18, 14:26, 15:25, 15:26, 17:4, 20:4, 27:24
dollars [2] - 41:5, 41:9
done [5] - 6:8, 20:22, 20:25, 23:3, 46:18
Donnelly [1] - 23:13
DOWD [78] - 1:23, 3:4, 4:21, 5:8, 5:11, 6:5, 6:10, 7:24, 8:7, 8:13, 8:25, 9:2, 9:9, 10:23, 10:25, 11:3, 11:7, 11:15, 11:18, 11:21, 11:24, 12:6, 15:3, 15:7, 15:9, 15:11, 15:16, 16:5, 16:8, 16:10, 16:13, 17:6, 17:12, 17:19, 17:21, 18:11, 18:15, 18:19, 19:15, 19:22, 20:3, 20:9, 22:22, 23:7, 23:15, 23:19, 23:21, 24:11, 24:24, 25:2, 25:10, 25:17, 26:7, 26:14, 27:19, 28:3, 28:5, 28:8, 28:24, 29:5, 29:8, 29:10, 29:15, 29:22, 30:2, 30:14, 30:24, 31:2, 31:5, 31:14, 33:6, 33:13, 33:18, 49:21, 51:16, 51:19, 52:2, 57:21
Dowd [11] - 3:5, 4:14, 4:20, 5:7, 6:7, 29:24, 31:10, 32:17, 44:14, 49:20, 55:24
down [5] - 10:12, 23:18, 35:26, 46:4
drafted [1] - 48:14
drivers [1] - 35:10
Dunnington [1] - 3:5
DUNNINGTON [1] - 1:21
during [4] - 12:17, 39:16, 44:21, 56:10

E

e-file [1] - 57:10
easily [1] - 34:24
easy [1] - 47:9
effect [4] - 18:14, 20:8, 28:23, 41:3
effort [1] - 46:26
either [4] - 7:2, 9:17, 23:4, 38:3
elaborate [1] - 4:7
Elser [1] - 3:12
ELSER [1] - 2:10
emerge [1] - 13:17
employee [1] - 54:25
employees [6] - 12:8, 12:10, 35:6, 35:10, 35:17, 39:13
employer [4] - 24:16, 25:24, 36:21, 39:13
employers [3] - 24:13, 37:13, 38:23
empty [1] - 10:11
enable [1] - 33:3
end [6] - 19:3, 28:12, 35:22, 37:7, 39:2, 56:17
ends [1] - 54:11
enforce [1] - 48:23
enforcement [1] - 33:8
engaged [1] - 10:7
enjoin [3] - 31:12, 46:20, 46:25
Enron [2] - 22:17, 22:20
enter [2] - 24:17, 54:19
entered [2] - 7:14, 13:22
entering [1] - 13:26
entertained [1] - 22:10
entirely [1] - 29:2
entities [16] - 6:14, 7:17, 8:10, 8:13, 10:12, 10:16, 12:2, 24:21, 30:10, 41:14, 41:15, 42:26, 43:9, 45:13, 49:26, 50:2
entitled [1] - 46:11
entity [12] - 10:26, 11:19, 13:15, 13:21, 14:24, 15:22, 29:20, 29:21, 41:25, 43:3, 54:14, 54:21
equal [1] - 33:21
equivalent [1] - 31:26
errata [2] - 57:10, 57:12
ESQ [7] - 1:23, 1:23, 1:24, 2:4, 2:8, 2:8, 2:12
essence [3] - 22:5, 53:14, 54:8
essentially [7] - 5:21, 17:9, 36:11, 38:17, 48:15, 56:19
estimate [1] - 18:4
estimated [3] - 25:17, 26:19, 27:4
estimates [1] - 27:7
estimating [1] - 18:3
evade [1] - 32:2
evidence [9] - 6:6, 7:22, 8:5, 18:17, 31:17, 41:3, 41:6, 42:5, 43:16
evident [1] - 9:24
exact [2] - 27:12, 30:24
exactly [6] - 12:22, 19:11, 22:25, 24:8, 36:5, 37:11
examined [2] - 44:11, 44:12
example [1] - 52:12
except [1] - 2:11
excess [2] - 22:3, 54:20
excuse [4] - 7:22, 14:26, 18:16, 39:16
executed [1] - 15:25
executive [1] - 21:2
exhibit [3] - 16:7, 17:17, 20:26
Exhibit [22] - 16:8, 16:19, 16:21, 17:7, 17:20, 18:2, 20:12, 26:8, 26:14, 27:17, 27:26, 34:23, 36:7, 36:23, 44:7, 50:8, 50:24, 53:18, 54:5, 54:24, 55:16, 56:3
exhibits [3] - 5:26, 17:13, 17:16
Exhibits [2] - 17:12, 17:18
exist [3] - 13:11, 13:23, 30:26
existing [1] - 16:24
expand [1] - 45:9
expect [1] - 17:23
expecting [1] - 57:23
expense [1] - 37:22
experience [3] - 25:21, 36:16, 48:12
experienced [1] - 19:2
experiencing [1] - 22:5
expert [7] - 19:23, 20:2, 22:7, 22:25, 32:24, 56:24, 57:4
experts [4] - 3:26, 21:3, 22:12, 57:4
explain [11] - 4:2, 4:6, 11:26, 18:12, 20:7, 22:25, 23:2, 25:8, 28:4, 46:8, 51:18
explained [1] - 32:23
explicit [1] - 32:24
expressly [2] - 24:17, 48:11
extant [1] - 44:22
extremely [1] - 20:25

F

face [2] - 21:9, 25:10
fact [15] - 19:6, 20:25, 34:14, 34:18, 35:24, 41:11, 41:12, 42:26, 43:4, 45:6, 45:9, 47:7, 49:12, 49:13, 49:15
factors [2] - 20:16, 20:21
facts [1] - 30:21
factual [1] - 30:16
fair [2] - 9:15, 55:5
fallacy [1] - 9:24
falls [1] - 48:25
false [1] - 52:22
fashioned [1] - 47:23
Federal [1] - 32:3
fee [1] - 36:19
feelings [1] - 32:18
fewer [1] - 14:6
fights [1] - 19:6
figure [8] - 14:14, 20:24, 21:4, 22:6, 22:17, 27:9, 27:22, 32:26
figured [2] - 22:7, 36:14
file [3] - 7:4, 57:10, 57:11
filed [7] - 25:3, 32:3, 45:5, 47:12, 47:13, 56:10, 57:17
files [1] - 6:26
filing [2] - 31:12, 42:24
final [5] - 7:7, 7:13, 7:18, 20:26, 55:6
finances [1] - 44:14
financial [3] - 32:22, 44:5, 44:8
Financial [5] - 7:16, 7:25, 8:18, 42:9, 42:17
firm [1] - 3:5
first [15] - 3:24, 13:10, 13:12, 14:2, 16:21, 22:17, 34:25, 35:9, 50:25, 51:12, 51:20, 52:6, 52:15, 54:9, 58:4
five [3] - 31:8, 34:19, 40:22
five-minute [1] - 31:8
fixed [2] - 7:6, 33:16
flip [2] - 35:2, 56:8
focus [3] - 19:13, 34:7, 49:23
focusing [1] - 15:19
folksy [2] - 51:18, 53:26
follow [1] - 5:13
following [5] - 5:15, 10:17, 26:11, 26:18, 26:25
forbidden [2] - 24:17, 24:19
Fordham [1] - 4:12
foregoing [1] - 31:26
FOREGOING [1] - 58:15
foreign [3] - 6:26, 48:11, 49:6
foremost [1] - 14:2
form [1] - 37:19
former [2] - 44:25, 55:16
forming [1] - 37:22
forth [2] - 31:18, 33:15
forums [2] - 4:15, 4:16
frankly [8] - 35:8, 36:15, 43:15, 43:16, 44:12, 45:26, 46:19, 46:26
fraud [3] - 46:7, 46:8,

52:12
fraudulent [1] - 43:15
FRIEDMAN [1] - 1:18
front [3] - 42:10, 47:15, 55:4
fully [2] - 19:18, 57:24
fund [1] - 8:19
funds [5] - 7:11, 7:12, 7:26, 10:13, 14:22
future [2] - 27:2, 27:3

G

game [2] - 49:9, 55:14
gee [1] - 49:16
general [1] - 15:26
GENERAL [1] - 1:8
giant [1] - 43:14
given [4] - 8:21, 20:19, 33:6, 42:5
gold [1] - 22:11
great [2] - 14:12, 18:24
group [1] - 50:15
Group [1] - 12:25
guaranteed [14] - 24:13, 25:5, 25:20, 26:2, 26:5, 27:6, 27:10, 27:11, 30:19, 34:21, 36:12, 36:13, 39:7, 52:25
guess [1] - 5:20
guest [1] - 4:15
gun [1] - 32:6

H

half [1] - 45:3
hand [2] - 5:14, 9:7
handle [1] - 19:14
handy [1] - 42:10
handy-dandy [1] - 42:10
Hankin [1] - 3:12
HANKIN [2] - 2:12, 3:12
hard [3] - 22:15, 57:11, 57:13
harm [2] - 47:4, 47:6
HATHAWAY [1] - 1:8
Hathaway [19] - 2:2, 3:14, 3:20, 5:4, 12:24, 12:25, 46:7, 47:13, 47:19, 47:26, 48:4, 48:10, 49:9, 50:9, 50:11, 54:21, 56:23, 57:15, 58:6
hats [1] - 12:23
hear [11] - 3:18, 3:24, 4:17, 5:9, 19:20, 25:9, 31:12, 33:19, 34:12, 56:22, 58:7
heard [6] - 4:20, 39:16, 39:21, 49:23, 50:20, 52:2
hearing [2] - 23:3, 56:18
hedge [1] - 36:10
held [1] - 25:2
helpful [1] - 46:3
higher [3] - 25:23, 37:9, 38:5
highly [2] - 12:12, 24:15
himself [1] - 20:6
hired [1] - 4:11
hiring [1] - 22:7
history [1] - 55:2
holding [4] - 9:18, 10:20, 47:26, 48:3
home [1] - 44:12
honest [1] - 34:3
honestly [1] - 46:9
Honor [62] - 4:21, 5:5, 5:8, 5:11, 6:5, 6:10, 8:7, 8:25, 9:7, 11:7, 11:15, 11:18, 12:6, 15:7, 16:5, 17:2, 17:6, 17:12, 17:19, 18:11, 18:19, 19:15, 20:18, 22:22, 23:19, 24:11, 25:10, 26:7, 28:3, 28:24, 30:2, 30:14, 30:25, 31:5, 31:14, 32:15, 33:6, 33:13, 33:18, 33:26, 34:23, 36:13, 37:14, 42:6, 42:20, 43:6, 45:18, 46:9, 47:14, 47:18, 47:20, 49:19, 49:21, 50:7, 51:19, 52:2, 53:26, 55:8, 56:8, 57:3, 57:18, 57:22
Honor's [3] - 8:16, 18:22, 32:8
HONORABLE [1] - 1:18
hope [1] - 6:22
hour [1] - 33:21
huge [1] - 51:3
hum [1] - 39:19
hundred [1] - 35:15
hundreds [2] - 41:5, 41:8

I

IBM [1] - 37:14
idea [1] - 22:10
identifies [2] - 34:25, 39:25
illegal [14] - 15:21, 25:3, 25:24, 26:3, 27:15, 28:11, 28:18, 29:2, 29:18, 30:8, 38:17, 38:21, 53:6, 53:24
illegality [1] - 29:14
Illinois [1] - 53:21
immediately [1] - 10:7
imminent [1] - 33:14
important [4] - 15:20, 31:23, 43:23, 49:22
impose [1] - 6:13
imposition [1] - 9:11
impossible [2] - 50:16, 53:13
improper [1] - 56:25
Inc [20] - 3:14, 10:19, 10:23, 11:4, 11:5, 11:8, 11:22, 12:24, 12:26, 14:15, 14:16, 14:21, 16:14, 16:23, 41:23, 47:19, 48:4, 48:10, 49:9, 50:9
INC [7] - 1:8, 1:9, 1:10, 1:10, 1:11, 1:13
include [1] - 38:15
including [2] - 3:16, 45:21
increase [1] - 45:4
incurred [2] - 21:23, 22:2
Indemnity [12] - 11:16, 34:15, 34:17, 34:26, 40:18, 40:23, 41:18, 43:26, 44:8, 45:8, 53:20, 55:21
INDEMNITY [2] - 1:9, 1:12
INDEX [1] - 1:15
indicated [1] - 36:14
indicating [1] - 15:15
individual [2] - 37:4, 37:5
influences [1] - 35:24
Information [1] - 56:14
informed [1] - 13:11
initial [4] - 13:2, 13:21, 20:12, 57:17
injunction [3] - 5:10, 33:12, 57:8
injunctive [1] - 47:4
injured [6] - 21:12, 21:14, 21:19, 21:22, 35:8, 39:15
injuries [2] - 21:15, 24:15
instance [2] - 13:10, 37:3
instances [2] - 31:17, 32:10
instead [4] - 19:5, 19:10, 37:25, 50:26
insurance [56] - 4:7, 6:18, 6:25, 9:4, 9:26, 11:24, 11:25, 12:11, 14:3, 21:21, 22:6, 22:14, 23:17, 23:20, 23:25, 24:9, 24:14, 28:2, 28:12, 29:23, 29:25, 30:4, 31:22, 32:7, 34:15, 36:19, 36:26, 37:7, 37:9, 37:12, 37:17, 37:18, 38:11, 38:24, 40:11, 40:15, 42:15, 43:3, 43:18, 43:24, 45:6, 45:12, 45:25, 48:2, 48:4, 48:6, 48:8, 49:25, 50:4, 50:5, 50:6, 50:14, 52:20, 52:24, 54:6, 56:23
INSURANCE [2] - 1:8, 1:11
Insurance [18] - 6:13, 11:13, 15:5, 15:20, 23:8, 23:12, 29:5, 31:15, 31:21, 32:11, 38:22, 41:17, 41:18, 52:23, 53:3, 53:18, 53:21, 53:22
insured [9] - 28:19, 28:20, 34:20, 36:10, 39:8, 45:20, 48:21, 48:22, 49:11
insurer [16] - 6:26, 7:11, 8:19, 14:22, 27:12, 28:12, 34:16, 42:3, 42:23, 48:17, 48:18, 49:5, 49:13, 53:6, 54:14
insurers [8] - 7:25, 30:6, 42:2, 42:4, 43:2, 48:11, 49:7, 53:10
insuring [2] - 43:2, 53:25
interpreting [1] - 29:26
investment [2] - 36:25, 41:12
invite [1] - 34:19
invited [1] - 4:14
involved [2] - 49:14, 49:16
Iowa [3] - 13:18, 13:23, 54:7
IOWA [2] - 1:12, 1:13
iPad [1] - 42:11
irrelevant [1] - 55:26
irreparable [1] - 47:6
IS [1] - 58:15
Islands [3] - 13:10, 16:24, 54:7
issue [14] - 3:22, 6:8, 6:12, 12:18, 15:15, 16:16, 20:2, 30:23, 31:3, 36:3, 48:4, 48:8, 49:17, 53:7
issued [9] - 9:26, 15:11, 15:24, 23:23, 34:18, 48:6, 49:5, 49:11, 53:5
issues [1] - 3:21
issuing [2] - 34:26, 53:10
itself [4] - 9:25, 39:11, 39:25, 41:26

J

James [3] - 44:6, 55:17, 56:17
Jason [1] - 51:25
job [4] - 24:4, 35:6, 35:8, 35:12
join [1] - 4:14
Judge [1] - 22:17
judgement [6] - 7:7, 7:13, 7:19, 48:21, 48:23, 55:6
July [1] - 56:6
junior [1] - 4:11
jurisdiction [2] - 47:21, 47:25
Justice [3] - 1:18, 9:5, 9:10

K

keep [3] - 14:11, 25:8, 47:17
keeping [1] - 45:24
kept [1] - 12:15
kind [1] - 48:26
kinds [1] - 12:26
KNOERZER [9] - 2:4, 3:13, 4:25, 5:4, 33:23, 33:26, 47:17, 56:22, 57:17
Knoerzer [2] - 3:13, 47:18
knows [1] - 55:13
KOSS [2] - 2:18, 58:21
Kotch [15] - 3:8, 12:20, 13:20, 13:22, 13:25, 16:19, 17:4, 17:22, 19:4, 20:6, 20:24, 24:16, 25:11,

50:26, 52:3
Kotch's [1] - 49:26

L

lack [1] - 47:21
laid [1] - 20:14
language [9] - 4:3, 5:16, 6:24, 8:16, 16:15, 22:19, 26:4, 54:12, 56:26
language" [1] - 3:26
last [4] - 22:10, 32:21, 44:18, 46:23
law [20] - 4:11, 8:26, 9:16, 17:14, 17:26, 24:19, 27:16, 27:23, 28:11, 29:7, 29:25, 29:26, 30:6, 30:20, 30:22, 31:4, 33:10, 48:7, 56:25
Law [13] - 4:12, 6:13, 15:20, 23:8, 23:12, 29:5, 31:15, 31:21, 32:11, 38:22, 42:13, 52:23, 53:3
laws [2] - 16:24, 38:23
lawyer's [2] - 24:4, 33:25 .
lawyering [1] - 33:3
LDF [1] - 20:21
leads [1] - 10:17
least [1] - 45:19
left [2] - 44:17, 54:17
legal [7] - 12:14, 19:13, 19:20, 28:22, 29:3, 34:11, 51:18
legality [1] - 24:26
legislature [1] - 48:20
less [5] - 14:6, 20:2, 25:22, 28:5, 35:7
letterhead [1] - 15:14
letterheads [1] - 12:23
level [1] - 37:17
Levin [1] - 29:11
Lexington [1] - 2:3
liabilities [1] - 10:8
liability [1] - 54:3
license [3] - 9:17, 12:16, 30:5
licensed [32] - 6:20, 8:10, 8:14, 9:14, 9:26, 11:14, 11:17, 11:20, 11:23, 11:24, 11:25, 14:22, 28:14, 28:15, 28:16, 28:20, 28:21, 31:18, 34:15, 41:11, 41:14, 41:15, 41:16, 41:25, 42:3, 43:4, 43:26, 44:11, 45:12, 48:8, 49:11, 49:14
light [2] - 5:13, 20:2
likely [3] - 35:7, 54:22
Linen [1] - 30:15
list [1] - 53:8
listing [1] - 56:9
literary [1] - 46:2
litigation [1] - 24:23
Litzenberg [1] - 51:25
Lloyds [1] - 9:4
LLP [3] - 1:21, 2:2, 2:6
located [1] - 54:5
look [23] - 6:24, 9:24, 10:2, 10:16, 20:12, 26:8, 29:22, 31:15, 31:20, 31:21, 35:2, 36:7, 36:23, 44:5, 44:13, 50:24, 51:19, 53:9, 53:16, 55:16, 56:4, 56:16
looking [7] - 5:24, 26:13, 26:14, 30:11, 32:9, 36:22, 51:17
looks [4] - 17:12, 20:18, 25:10, 30:14
loss [14] - 18:3, 20:14, 20:15, 20:20, 21:9, 25:21, 26:19, 26:21, 26:23, 27:2, 54:20
losses [10] - 14:6, 14:12, 19:2, 22:5, 25:17, 25:22, 25:23, 37:6, 37:8, 51:3
low [2] - 14:12, 19:2
lower [6] - 25:22, 37:6, 37:7, 38:4, 39:10, 52:5

M

mail [1] - 35:9
maintains [3] - 7:11, 7:26, 8:19
manage [2] - 14:5, 52:13
managed [2] - 19:2, 52:4
manages [1] - 52:8
managing [1] - 52:21
mandatory [2] - 12:12, 31:16
MANGAN [1] - 1:24
Mangan [1] - 3:6
Manley [1] - 4:12
manner [2] - 31:26, 43:12
MARCY [1] - 1:18
marked [1] - 57:12
Martin [2] - 50:7, 53:13
Massachusetts [1] - 45:25
massive [1] - 45:4
math [1] - 20:25
matter [4] - 25:26, 38:11, 52:8, 54:10
mean [8] - 32:18, 40:9, 41:4, 41:22, 45:10, 51:14, 55:13, 56:18
meaning [3] - 17:3, 30:26, 47:9
means [3] - 44:4, 54:10, 54:21
meat [1] - 47:11
mechanics [1] - 14:9
meet [1] - 44:5
member [1] - 50:9
Members [1] - 9:4
Menzies [4] - 53:19, 53:20, 53:22, 53:23
messenger [1] - 12:7
methodology [1] - 40:12
MICHAEL [1] - 2:4
Michael [2] - 3:13, 47:18
might [3] - 10:18, 46:25, 55:7
Miller [1] - 3:5
MILLER [1] - 1:21
million [7] - 9:22, 19:19, 21:15, 44:8, 44:9, 54:20, 55:21
minimus [1] - 54:18
minute [1] - 31:8
minutes [5] - 33:23, 33:25, 34:3, 49:19
misconduct [1] - 32:12
misleading [6] - 27:7, 27:22, 27:23, 52:22, 52:23, 55:4
missing [2] - 13:24, 17:17
misspeak [1] - 17:8
misspoke [2] - 11:8, 17:7
mix [1] - 56:19
modification [1] - 25:7
modifications [1] - 25:6
modified [1] - 26:5
modify [3] - 25:5, 26:2, 30:18
moment [2] - 11:11, 40:3
money [20] - 10:16, 10:17, 10:18, 12:15, 14:7, 14:13, 14:20, 14:25, 18:24, 19:3, 28:21, 29:20, 30:10, 37:4, 38:4, 45:14, 46:26, 50:2, 54:26, 55:14
monies [1] - 18:26
month [1] - 46:19
Morgan [1] - 4:12
morning [4] - 3:2, 3:4, 3:10, 25:9
mortgage [1] - 32:20
most [3] - 43:10, 44:15, 49:22
mostly [1] - 12:8
motion [12] - 3:16, 3:17, 3:18, 3:19, 31:12, 47:12, 47:20, 57:8, 57:15, 58:5, 58:7
motions [3] - 3:16, 57:12, 58:6
Movant [1] - 57:9
moving [1] - 9:20
MR [112] - 3:4, 3:10, 3:13, 4:21, 4:24, 4:25, 5:4, 5:5, 5:8, 5:11, 5:20, 6:5, 6:10, 7:24, 8:7, 8:13, 8:25, 9:2, 9:9, 10:23, 10:25, 11:3, 11:7, 11:15, 11:18, 11:21, 11:24, 12:6, 15:3, 15:7, 15:9, 15:11, 15:16, 16:5, 16:8, 16:10, 16:13, 17:6, 17:12, 17:19, 17:21, 18:11, 18:15, 18:19, 19:15, 19:22, 20:3, 20:9, 22:22, 23:7, 23:15, 23:19, 23:21, 24:11, 24:24, 25:2, 25:10, 25:17, 26:7, 26:14, 27:19, 28:3, 28:5, 28:8, 28:24, 29:5, 29:8, 29:10, 29:15, 29:22, 30:2, 30:14, 30:24, 31:2, 31:5, 31:14, 33:6, 33:13, 33:18, 33:23, 33:26, 34:2, 34:13, 38:8, 38:18, 38:21, 38:26, 39:4, 39:6, 39:19, 39:21, 40:9, 40:17, 41:4, 41:24, 42:16, 42:20, 43:10, 46:16, 46:24, 47:17, 49:21, 51:16, 51:19, 52:2, 55:12, 55:20, 56:22, 57:17, 57:21, 57:25, 58:2
MS [1] - 3:12
multiples [3] - 20:14, 20:15, 21:9
multiplication [1] - 35:21
multiplications [1] - 20:22
multiplied [1] - 35:17
multipliers [1] - 20:20
must [3] - 8:18, 9:19, 31:18
mystifying [1] - 21:5

N

name [7] - 3:4, 3:13, 10:25, 16:9, 16:10, 51:20, 51:25
named [2] - 11:2, 11:5
names [4] - 12:23, 12:26, 13:3, 51:22
NEBRASKA [3] - 1:9, 1:10, 1:11
Nebraska [2] - 16:11, 28:17
necessary [1] - 56:21
need [7] - 4:5, 9:23, 21:14, 33:3, 33:23, 45:11, 46:10
net [1] - 10:9
never [5] - 10:3, 28:8, 28:10, 50:21, 54:11
new [3] - 13:18, 46:19, 55:9
NEW [4] - 1:2, 1:2, 1:10
New [82] - 1:16, 1:22, 2:3, 2:7, 2:12, 6:13, 6:18, 6:24, 11:14, 11:17, 11:20, 11:21, 11:22, 11:23, 12:8, 12:13, 12:20, 14:15, 14:16, 14:22, 15:20, 15:22, 17:14, 19:23, 21:14, 23:8, 23:12, 24:12, 24:19, 25:20, 25:24, 27:15, 27:23, 28:11, 28:19, 29:5, 29:23, 30:17, 30:20, 30:22, 31:3, 31:4, 31:22, 32:11, 34:16, 35:11, 35:20, 41:11, 41:16, 41:19, 41:23, 42:3, 42:13, 42:14, 43:2, 43:26, 44:11, 45:12, 45:20, 45:23, 49:5, 49:11, 49:14, 49:15, 49:16, 49:25, 50:4, 50:5, 50:6, 50:13, 50:14, 52:20, 52:22, 53:3, 56:25

next [3] - 1:25, 35:14, 51:22
NINA [2] - 2:18, 58:21
NO [1] - 1:15
non [5] - 9:14, 21:24, 31:18, 49:15, 49:16
none [3] - 8:21, 28:16, 51:23
normally [1] - 48:24
NORTH [1] - 1:11
note [1] - 19:7
NOTES [1] - 58:17
notes [1] - 48:13
nothing [4] - 15:12, 37:10, 39:10, 54:23
notion [1] - 41:20
November [3] - 1:16, 57:21, 57:25
number [6] - 4:15, 13:25, 19:23, 23:7, 35:11, 35:18
numbers [3] - 27:4, 27:25, 28:2

O

objection [2] - 5:19, 5:20
objections [1] - 6:3
obligations [1] - 44:5
observation [2] - 5:21, 46:2
obtain [1] - 57:9
obtained [3] - 8:3, 9:17, 18:9
occurrence [1] - 44:20
October [1] - 50:8
OF [5] - 1:2, 1:2, 1:10, 58:16
offer [1] - 28:19
offered [1] - 6:6
offering [1] - 13:2
offers [2] - 37:24, 43:24
OFFICIAL [2] - 2:18, 58:22
offloads [1] - 54:16
offshore [1] - 37:15
often [1] - 45:26
old [1] - 47:23
once [1] - 48:21
one [49] - 6:17, 8:14, 9:6, 11:19, 13:16, 13:26, 14:24, 17:7, 17:13, 17:14, 17:15, 17:16, 21:3, 21:18, 23:8, 29:16, 30:3, 31:18, 32:13, 33:21, 34:23, 35:5, 35:12, 40:3, 40:11, 40:19, 40:20, 40:26, 41:14, 42:26, 43:5, 44:22, 44:23, 45:14, 45:19, 45:20, 45:22, 46:11, 50:17, 51:24, 52:17, 53:18, 54:26, 55:12, 56:12, 56:13
opaque [3] - 22:26, 47:11, 50:15
open [1] - 56:16
opened [1] - 56:11
operate [2] - 12:8, 25:15
operation [2] - 44:2, 55:23
operations [1] - 45:19
opined [1] - 20:3
opinion [2] - 42:8, 42:16
opportunity [2] - 33:6, 37:24
opposed [1] - 47:11
opposition [3] - 6:16, 57:18, 57:19
order [1] - 7:9
ordinarily [2] - 5:25, 49:2
organization [2] - 44:10, 44:19
organizations [1] - 42:4
organized [1] - 16:23
ORIGINAL [1] - 58:17
originally [1] - 48:14
otherwise [1] - 7:12
ought [1] - 55:5
out-of-state [3] - 48:17, 48:22, 53:6
outset [1] - 24:18
outstanding [2] - 40:20, 40:26
overall [1] - 37:9
own [6] - 21:13, 37:5, 37:15, 37:22, 37:25, 38:3
owned [1] - 37:4
owner [2] - 38:14

P

package [1] - 35:10
page [27] - 1:25, 16:18, 26:10, 26:11, 26:15, 26:18, 26:25, 34:25, 35:2, 35:3, 42:8, 51:4, 51:13, 51:19, 51:20, 51:22, 51:23, 51:24, 52:16, 53:17, 53:18, 56:5, 56:8, 56:13
pager [1] - 9:6
paid [19] - 14:10, 23:14, 28:10, 29:19, 29:20, 39:17, 39:20, 39:22, 40:6, 40:8, 40:9, 40:14, 40:15, 40:19, 40:22, 40:24, 41:2, 48:25
paint [1] - 12:3
paper [1] - 57:5
papers [8] - 3:25, 4:5, 9:5, 13:21, 23:3, 33:5, 33:15, 47:14
paragraph [3] - 16:21, 32:10, 36:23
parcel [1] - 35:9
Park [1] - 1:22
parse [1] - 18:21
PART [1] - 1:2
part [5] - 5:2, 6:9, 9:20, 27:21, 58:6
Part [2] - 57:11, 57:26
participant [2] - 36:24, 38:2
participating [1] - 36:25
Participation [12] - 4:8, 13:6, 13:7, 16:20, 18:8, 18:13, 18:25, 20:5, 21:26, 36:4, 36:8, 53:9
particular [1] - 36:9
particularly [1] - 5:14
partner [1] - 3:11
party [6] - 23:9, 27:14, 27:15, 28:13, 28:16, 41:13
pass [2] - 28:17, 54:14
passed [1] - 50:2
patent [1] - 32:4
Patrick [1] - 54:25
pause [2] - 11:12, 40:4
pay [18] - 14:23, 19:8, 22:3, 24:14, 25:11, 25:22, 25:23, 28:12, 28:20, 30:9, 39:14, 39:23, 39:26, 40:11, 45:8, 54:13, 55:23
paying [7] - 27:14, 27:15, 28:7, 36:12, 40:25, 55:22
payment [1] - 7:6
payroll [5] - 26:23, 35:16, 35:24, 35:25, 35:26
pays [1] - 27:12
pending [1] - 7:3
Pennsylvania [1] - 53:22
people [5] - 27:22, 49:12, 49:24, 51:13, 52:7
per [3] - 26:22, 35:15, 35:16
percent [1] - 54:3
perhaps [5] - 10:19, 37:18, 38:5, 39:9, 44:15
period [8] - 21:18, 34:16, 34:19, 36:9, 41:8, 44:21, 44:26, 56:10
permit [2] - 42:23, 55:11
permitted [1] - 24:16
personal [1] - 47:21
persuade [1] - 6:22
pertinent [1] - 43:17
pertinently [1] - 44:15
ph) [1] - 51:25
pick [4] - 26:19, 26:21, 26:23, 27:2
picture [1] - 12:3
piece [1] - 46:12
PIPER [1] - 2:6
Piper [1] - 3:11
place [1] - 39:8
places [2] - 31:16, 37:15
plain [3] - 4:3, 9:2, 54:11
Plains [1] - 2:12
PLAINTIFF [1] - 1:5
Plaintiff [7] - 1:21, 3:7, 3:9, 4:9, 15:5, 40:5, 43:11
Plaintiff's [3] - 38:16, 39:17, 56:25
plan [16] - 14:2, 17:22, 17:24, 18:23, 20:19, 25:19, 27:2, 27:4, 27:19, 37:10, 50:26, 51:2, 56:5, 56:6, 56:7
Plan [3] - 26:9, 26:11, 26:17
pleading [1] - 6:26
plus [1] - 55:22
pockets [1] - 54:16
point [9] - 13:16, 24:20, 26:4, 30:16, 31:23, 33:8, 38:16, 49:22, 50:7
pointed [1] - 32:6
pointing [1] - 18:16
policies [17] - 10:2, 12:18, 15:11, 18:4, 21:14, 30:19, 34:6, 34:10, 34:18, 34:21, 34:22, 34:24, 35:18, 48:4, 48:8, 49:17, 50:5
policy [50] - 15:4, 15:10, 15:13, 15:15, 16:16, 17:11, 17:13, 17:15, 17:16, 21:17, 23:23, 25:5, 25:11, 26:2, 26:5, 27:7, 27:10, 27:11, 28:2, 28:12, 34:26, 36:12, 36:13, 36:16, 36:17, 36:26, 39:7, 39:11, 39:12, 43:4, 43:24, 43:25, 44:18, 44:20, 44:21, 45:12, 48:6, 48:16, 48:24, 48:26, 49:5, 49:10, 52:3, 52:24, 53:4, 53:5, 53:7, 54:2
Ponzi [1] - 45:24
pooling [8] - 10:6, 10:10, 43:20, 53:11, 53:12, 53:16, 53:17, 54:12
pored [1] - 22:12
position [6] - 8:22, 18:7, 34:10, 34:12, 43:8
possibly [2] - 3:22, 47:3
post [3] - 9:19, 9:23, 31:19
posted [1] - 42:19
posting [1] - 42:13
pot [1] - 22:11
practical [1] - 54:10
practice [1] - 6:2
precisely [1] - 5:26
preliminary [1] - 47:3
premise [1] - 52:4
premium [19] - 10:3, 28:20, 35:14, 35:22, 35:24, 35:25, 35:26, 39:22, 39:23, 40:2, 43:13, 43:19, 49:24, 50:3, 50:18, 50:19, 52:19, 54:11
premium" [1] - 49:24
premiums [15] - 10:8, 23:9, 23:14, 28:7, 29:19, 29:20, 30:9, 36:11, 36:12, 36:13, 39:17, 40:6, 40:10, 40:12, 40:14
prepared [1] - 5:13
presented [2] - 19:4, 36:6
President [6] - 3:9, 4:12, 53:19, 53:20, 53:21, 53:22

press [2] - 46:5, 46:6
pretty [1] - 32:13
previously [2] - 49:23, 52:11
price [1] - 37:9
print [1] - 51:5
printout [1] - 51:3
private [3] - 3:26, 52:25, 53:2
privity [8] - 10:4, 12:17, 12:19, 13:8, 13:13, 15:12, 15:18, 15:19
problem [2] - 28:9, 33:4
proceed [1] - 6:3
proceeding [4] - 7:2, 7:3, 7:7, 7:14
proceedings [1] - 58:10
proceedings) [2] - 11:12, 40:4
process [2] - 3:20, 54:8
procure [1] - 38:24
produce [1] - 8:23
profit [2] - 13:26, 55:3
profit-sharing [1] - 13:26
profits [2] - 14:11, 23:10
program [2] - 26:26, 45:21
prohibitive [1] - 37:23
project [1] - 26:23
Projected [1] - 26:11
projected [3] - 26:26, 27:2, 27:3
projections [1] - 27:5
promise [1] - 47:17
promised [1] - 13:25
promissory [1] - 19:7
proposing [1] - 31:25
proposition [5] - 8:6, 25:26, 29:18, 30:12, 30:25
propositions [1] - 32:14
protect [4] - 23:17, 39:12, 39:13, 45:11
protected [10] - 14:10, 18:26, 22:11, 23:11, 50:20, 50:21, 50:22, 51:8, 54:17, 54:22
protection [3] - 45:11, 45:12, 48:15
prove [5] - 42:5, 42:25, 43:5, 43:6, 47:3
provide [1] - 25:18
provided [2] - 5:17, 17:21
province [2] - 57:3, 57:4
provision [1] - 31:24
provisions [2] - 32:2, 32:12
public [2] - 38:9, 38:10
publicity [1] - 46:4
purchased [1] - 4:9
purports [1] - 18:2
purpose [2] - 32:4, 45:10
purposes [1] - 36:25
pursuant [1] - 10:14
put [10] - 6:19, 6:21, 13:7, 20:6, 20:16, 31:18, 37:4, 50:22, 51:9, 56:3

Q

questions [4] - 4:3, 18:20, 18:22, 32:8
quite [1] - 6:8
quota [1] - 54:4

R

raise [1] - 44:15
rarely [1] - 19:26
rate [4] - 35:6, 35:15, 35:20, 35:21
rated [2] - 9:21, 43:26
rates [6] - 18:2, 21:4, 26:3, 26:22, 36:19, 52:5
rather [3] - 25:19, 34:7, 37:20
rating [6] - 25:19, 43:25, 44:7, 55:18, 55:20, 55:22
ratio [1] - 27:3
RAYMOND [1] - 1:23
Raymond [1] - 3:4
read [7] - 8:9, 8:17, 10:6, 20:4, 48:12, 48:13, 53:14
reading [4] - 9:2, 9:16, 10:10, 42:14
real [3] - 16:10, 23:25, 47:11
realize [1] - 22:8
really [6] - 4:4, 14:12, 19:13, 31:16, 32:17, 47:9
reason [4] - 5:26, 21:24, 45:3, 45:7
reasonably [2] - 44:26, 47:9
reasons [2] - 33:15, 37:16
recap [1] - 53:4
receive [1] - 57:13
recess [1] - 31:8
Recess [1] - 31:9
record [8] - 7:23, 8:21, 9:13, 18:17, 19:12, 41:3, 55:15, 58:9
records [1] - 13:23
refer [3] - 13:8, 15:17, 20:10
reference [1] - 53:10
references [1] - 53:11
referred [2] - 27:19, 29:14
referring [2] - 15:26, 32:18
regardless [1] - 55:24
registered [1] - 41:24
regulated [3] - 12:12, 24:15, 44:11
regulation [1] - 32:5
regulators [3] - 17:26, 25:6, 48:19
regulatory [1] - 33:9
Reinsurance [12] - 4:8, 13:5, 13:7, 16:20, 18:8, 18:13, 18:25, 20:5, 21:25, 36:4, 36:8, 53:9
reinsurance [7] - 15:21, 24:17, 28:19, 37:2, 37:5, 37:12, 55:25
reinsure [1] - 37:17
reinsures [1] - 43:19
relates [1] - 8:16
relationship [2] - 13:13, 13:17
relevant [1] - 30:3
relief [2] - 5:2, 47:4
relies [1] - 10:11
relying [3] - 8:6, 29:3, 29:9
render [1] - 55:7
rendered [2] - 7:7, 22:18
repeatedly [1] - 6:9
reply [4] - 49:20, 50:7, 53:12, 55:10
reported [3] - 21:24, 22:2, 22:3
REPORTER [2] - 2:18, 58:22
reports [3] - 21:23, 56:24, 57:4
represent [3] - 3:14, 47:18, 49:9
representation [1] - 5:23
representatives [1] - 12:21
represented [1] - 14:5
representing [1] - 40:13
request [8] - 4:18, 5:2, 13:4, 15:16, 16:5, 33:15, 46:22, 55:10
requested [1] - 57:9
requesting [1] - 33:16
require [3] - 38:23, 42:7, 43:7
required [3] - 12:10, 41:13, 48:22
requirement [4] - 6:14, 30:5, 34:8, 39:3
requirements [1] - 10:14
requires [6] - 6:13, 6:25, 24:13, 25:20, 27:13, 32:24
reserve [4] - 21:26, 22:4, 44:17, 57:7
reserved [2] - 40:21, 56:17
reserves [1] - 21:15
residential [1] - 32:20
resides [1] - 6:17
resources [1] - 50:10
respond [1] - 45:6
response [3] - 32:8, 38:20, 55:11
result [1] - 10:9
results [1] - 6:3
retain [3] - 43:13, 49:23, 49:24
retained [1] - 50:3
retaining [1] - 52:19
retrospective [1] - 25:19
return [1] - 57:25
returned [1] - 22:12
revealed [1] - 52:15
reveals [1] - 52:6
reverse [1] - 45:24
review [1] - 8:2
rhetorical [1] - 31:7
RISK [3] - 1:9, 1:10, 1:12
risk [3] - 20:6, 33:14, 38:13
Risk [10] - 11:21, 13:9, 13:19, 14:16, 16:23, 16:26, 41:19, 41:22, 54:6
risks [2] - 22:8, 37:19
road [2] - 10:12, 23:18
Robert [1] - 3:8
role [4] - 12:4, 13:20, 43:8, 43:11
route [1] - 28:13
RPA [17] - 15:17, 23:25, 24:18, 24:22, 24:26, 25:12, 25:25, 27:18, 27:20, 27:21, 36:4, 36:22, 36:23, 41:12, 45:21, 53:11
ruling [1] - 6:7
run [2] - 14:23, 39:2
running [1] - 37:23
runoffs [1] - 20:21

S

sale [1] - 52:24
Samuel [1] - 3:6
SAMUEL [1] - 1:23
satisfy [2] - 7:13, 7:18
save [1] - 18:24
saw [1] - 32:7
scandal [2] - 22:18, 22:21
schedule [1] - 58:3
scheme [7] - 9:25, 22:18, 24:9, 29:14, 32:4, 45:24, 54:26
Schwartzman [11] - 19:22, 20:3, 21:8, 21:12, 24:19, 28:25, 30:17, 50:8, 53:13, 53:15, 56:3
Schwartzman's [4] - 19:25, 20:10, 32:9, 50:25
screen [2] - 4:19, 4:22
second [8] - 9:20, 16:18, 17:24, 26:14, 30:4, 35:2, 42:6, 56:3
Section [3] - 48:9, 48:23, 53:3
secure [1] - 7:6
securities [7] - 7:4, 7:12, 7:18, 7:26, 8:20, 10:13, 32:20
security [1] - 45:17
see [25] - 5:17, 16:22, 20:13, 26:8, 26:18, 26:25, 28:8, 34:24, 35:9, 35:14, 44:6, 44:7, 46:9, 47:14, 49:2, 50:17, 51:7, 51:13, 51:22, 51:24, 51:26, 53:10, 53:18, 56:9
seem [1] - 12:22
sell [1] - 15:21
send [1] - 23:24

sending [1] - 21:24
sense [1] - 45:25
sent [2] - 40:10, 52:9
September [2] - 50:26, 51:12
series [1] - 58:6
Services [10] - 7:16, 7:25, 8:18, 11:22, 14:16, 41:19, 41:22, 42:9, 42:17
SERVICES [2] - 1:9, 1:10
services [1] - 15:17
set [5] - 18:2, 18:26, 33:15, 37:26, 38:17
several [2] - 3:16, 13:12
Shainswit [1] - 9:5
Shainswit's [1] - 9:11
shall [1] - 7:2
sham [1] - 23:25
Shand [1] - 3:10
SHAND [1] - 2:8
share [1] - 54:4
sharing [2] - 13:26, 55:3
Shasta [2] - 30:15, 30:20
sheet [2] - 57:11, 57:12
shell [2] - 10:11, 55:14
shifted [1] - 22:9
short [1] - 44:26
show [5] - 12:24, 13:21, 20:9, 26:6, 30:16
showing [1] - 25:6
shown [3] - 31:17, 32:3, 47:7
shows [4] - 10:2, 52:14, 56:14, 56:15
shred [1] - 42:5
side [1] - 56:25
sign [3] - 16:18, 17:5, 19:7
signature [2] - 53:17, 53:18
signed [14] - 13:4, 13:5, 13:14, 15:2, 15:4, 15:10, 15:12, 16:5, 16:20, 17:7, 53:19, 53:20, 53:21, 53:22
significance [1] - 52:2
signing [2] - 20:4, 53:16
signs [1] - 13:4
similar [1] - 9:11
simple [9] - 24:12, 25:26, 28:9, 28:18, 32:14, 35:18, 36:2, 36:17, 38:5
simply [6] - 6:17, 10:15, 24:20, 29:2, 36:13, 54:14
single [2] - 40:19, 47:18
sister [1] - 43:21
sit [1] - 24:5
situation [1] - 9:10
size [2] - 44:8, 55:21
skin [1] - 49:8
smaller [1] - 37:21
smoking [1] - 32:6
so-called [1] - 3:17
Society [1] - 4:13
sold [1] - 52:3
solely [1] - 6:5
solicit [1] - 50:5
soliciting [1] - 50:14
solid [1] - 22:23
someone [3] - 20:7, 24:3, 48:16
sometimes [1] - 32:24
sophisticated [1] - 22:25
sorry [9] - 10:21, 11:3, 11:7, 17:7, 17:19, 20:19, 40:14, 51:14, 53:26
sort [4] - 14:4, 17:22, 45:26, 55:14
sorts [1] - 49:2
sounded [1] - 14:12
sounds [1] - 19:20
special [1] - 47:23
specific [4] - 19:9, 25:16, 26:4, 52:12
specifically [5] - 36:24, 42:24, 53:7, 53:8, 53:26
Spencer [1] - 56:17
split [1] - 33:20
sponsor [1] - 37:26
stand [1] - 10:24
standards [1] - 47:3
start [2] - 15:23, 56:5
started [1] - 19:5
starting [2] - 49:22, 51:3
STATE [1] - 1:2
state [13] - 7:11, 7:12, 7:18, 7:26, 8:19, 9:19, 10:14, 32:5, 44:12, 48:17, 48:19, 48:22, 53:6
State [10] - 12:13, 19:23, 32:11, 35:11, 35:19, 35:20, 42:14, 43:2, 49:5, 52:22
statements [1] - 52:23
statistical [2] - 36:15, 36:21
statute [20] - 8:7, 8:9, 9:3, 12:11, 12:12, 24:18, 27:13, 41:26, 42:22, 48:9, 48:10, 48:13, 48:14, 48:15, 48:18, 49:6, 52:25, 53:8, 57:3
statutes [2] - 30:3, 33:8
stayed [1] - 3:23
STENOGRAPHIC [1] - 58:17
Stephens [3] - 3:10, 4:23, 50:3
STEPHENS [28] - 2:8, 3:10, 4:24, 5:5, 5:20, 34:2, 34:13, 38:8, 38:18, 38:21, 38:26, 39:4, 39:6, 39:19, 39:21, 40:9, 40:17, 41:4, 41:24, 42:16, 42:20, 43:10, 46:16, 46:24, 55:12, 55:20, 57:25, 58:2
Steve [3] - 53:20, 53:21, 53:23
Steven [1] - 53:19
still [7] - 14:13, 21:20, 22:10, 40:20, 40:25, 45:21
story [3] - 19:10, 24:6, 28:12
straightforward [1] - 30:13
Street [1] - 1:15
strike [1] - 3:17
stuck [2] - 51:12, 52:6
stuff [2] - 17:25, 24:2
stunt [1] - 46:4
subject [4] - 21:20, 24:22, 41:21, 47:25
submit [1] - 7:20
submitted [5] - 40:17, 40:18, 40:24, 57:13, 57:24
substance [1] - 31:25
sue [3] - 48:17, 48:18, 49:12
sued [2] - 46:7, 49:15
sufficient [4] - 7:5, 7:6, 7:12, 7:18
suggest [1] - 36:21
suggested [1] - 33:2
suggesting [1] - 41:10
suing [1] - 11:26
sum [1] - 54:24
summarize [2] - 6:16, 17:2
Summary [1] - 26:9
summary [1] - 26:16
sums [2] - 29:20, 30:10
Superintendants [1] - 44:25
Superintendent [5] - 7:10, 7:15, 8:17, 42:17, 55:17
Superintendents [1] - 44:24
Superior [1] - 44:3
superior [2] - 44:4, 55:22
supplemental [2] - 4:5, 56:4
supplied [1] - 17:17
support [2] - 31:11, 43:12
supported [1] - 55:14
supports [3] - 7:23, 8:26, 18:17
supposed [2] - 54:13, 54:22
sureties [1] - 7:5
suspicion [1] - 44:14
switch [3] - 12:23
system [2] - 24:12, 25:4
SYSTEMS [1] - 1:4

T

tale [1] - 21:10
talks [1] - 31:21
tax [1] - 37:16
ten [1] - 21:19
TERM [1] - 1:2
term [3] - 18:26, 47:23, 56:6
terms [9] - 13:13, 16:2, 17:23, 25:13, 25:14, 25:25, 27:10, 29:10, 55:3
testimony [4] - 21:3, 22:25, 32:24, 54:25
THE [112] - 1:2, 3:2, 3:15, 4:23, 4:26, 5:7, 5:9, 5:17, 5:25, 6:7, 7:22, 8:2, 8:9, 8:22, 8:26, 9:8, 10:21, 10:24, 11:2, 11:5, 11:10, 11:13, 11:16, 11:19, 11:23, 11:26, 14:26, 15:4, 15:8, 15:10, 15:13, 15:23, 16:7, 16:9, 16:12, 17:4, 17:11, 17:18, 17:20, 18:6, 18:12, 18:16, 19:9, 19:19, 19:25, 20:7, 22:20, 22:24, 23:14, 23:16, 23:20, 24:3, 24:22, 24:25, 25:7, 25:14, 26:4, 26:13, 27:17, 27:25, 28:4, 28:6, 28:22, 29:3, 29:7, 29:9, 29:13, 29:17, 29:24, 30:8, 30:22, 30:26, 31:3, 31:6, 31:10, 32:17, 33:11, 33:17, 33:19, 33:24, 34:9, 38:6, 38:16, 38:20, 38:22, 39:2, 39:5, 39:16, 39:20, 40:3, 40:5, 40:13, 41:2, 41:22, 42:14, 42:19, 43:8, 46:14, 46:23, 49:20, 51:14, 51:17, 51:26, 55:9, 55:19, 57:7, 57:19, 57:23, 57:26, 58:3, 58:15, 58:17
themselves [2] - 34:21, 37:17
theories [1] - 23:8
theory [3] - 18:13, 18:21, 28:18
therefore [6] - 6:19, 7:20, 9:22, 48:9, 55:3, 55:5
thinks [1] - 55:24
third [4] - 27:14, 27:15, 28:13, 28:16
third-party [4] - 27:14, 27:15, 28:13, 28:16
thousands [2] - 41:5, 41:8
threatened [1] - 47:5
three [13] - 26:26, 32:21, 33:23, 33:24, 33:25, 41:15, 44:19, 44:22, 49:19, 53:6, 56:7, 56:10
three-year [3] - 26:26, 56:7, 56:10
threshold [1] - 3:21
throughout [1] - 37:13
tireder [1] - 46:16
TO [1] - 58:15
today [6] - 3:6, 3:8, 3:18, 5:24, 6:12, 47:22
today's [2] - 57:10, 58:9
took [2] - 20:13, 49:26
top [4] - 35:3, 51:4, 54:19, 56:5
total [1] - 26:26

totally [2] - 25:12, 28:11
trademark [1] - 50:11
trail [1] - 10:17
transaction [3] - 5:24, 43:9, 45:16
transcript [1] - 57:10
TRANSCRIPTION [1] - 58:16
Travelers' [2] - 9:3, 29:11
treble [1] - 23:11
TRIAL [1] - 1:2
trucking [2] - 35:9, 35:16
true [2] - 27:8, 39:22
TRUE [1] - 58:16
trust [3] - 7:12, 7:26, 8:20
try [7] - 4:2, 4:6, 18:21, 36:10, 47:17, 51:18, 56:26
trying [7] - 8:8, 14:14, 42:2, 44:15, 46:24, 55:26, 56:19
turn [5] - 10:9, 10:11, 51:22, 54:4, 54:16
turning [1] - 28:21
turns [2] - 37:6, 37:8
two [11] - 6:17, 8:13, 18:20, 19:23, 21:22, 30:3, 42:25, 45:3, 45:19, 55:12, 57:11
type [2] - 15:21
types [1] - 31:20

U

unauthorized [3] - 6:25, 9:14, 42:23
unclear [2] - 12:22, 27:21
under [28] - 4:18, 15:19, 16:24, 17:14, 17:26, 21:14, 21:25, 23:8, 23:12, 27:11, 27:15, 27:22, 28:11, 30:20, 31:3, 32:15, 38:23, 42:13, 45:12, 45:21, 46:11, 48:10, 52:22, 53:2, 55:4, 55:11, 56:25
undermine [1] - 25:15
undermined [1] - 24:10
undermining [2] - 4:8, 18:8
understood [4] - 14:2, 14:3, 21:7, 24:7
Underwriters [16] - 11:4, 11:5, 11:8, 12:25, 13:9, 13:19, 14:21, 16:9, 16:14, 16:22, 16:26, 39:26, 50:10, 54:6, 55:2
UNDERWRITERS [2] - 1:9, 1:12
underwrites [1] - 43:25
Underwriting [1] - 9:4
undisputed [2] - 8:12, 34:14
undoubtedly [1] - 41:5
unfiled [1] - 30:18
United [1] - 37:14
unlicensed [3] - 6:14, 10:20, 30:6
unpack [2] - 24:4, 33:4
unproven [1] - 43:15
untrue [1] - 52:14
up [21] - 5:14, 6:19, 6:21, 9:7, 16:18, 17:24, 21:4, 21:10, 26:24, 27:3, 33:20, 35:25, 36:11, 37:10, 37:26, 38:17, 46:19, 54:11, 55:3, 56:19
upheld [1] - 9:10
usual [1] - 51:2

V

value [1] - 21:10
various [1] - 26:22
variously [1] - 12:24
vary [1] - 27:9
verified [2] - 16:8, 16:22
versus [1] - 9:4
violated [1] - 32:12
violates [1] - 53:8
violation [1] - 57:2
Virgin [3] - 13:10, 16:24, 54:7
void [1] - 30:20
Volume [1] - 26:12

W

waiting [1] - 57:18
waiving [1] - 47:24
waste [1] - 46:25
watch [1] - 33:26
Watson [1] - 54:25
WC-174 [1] - 35:3
website [4] - 8:2, 42:10, 42:15, 42:19
week [2] - 4:11, 46:23
Westchester [1] - 2:11
whatsoever [1] - 23:20
wherewithal [1] - 39:14
White [1] - 2:12
whole [10] - 22:14, 45:10, 45:13, 45:23, 46:4, 51:5, 51:13, 52:7, 55:2, 56:6
willing [1] - 46:3
WILSON [1] - 2:10
Wilson [1] - 3:12
wisely [1] - 19:3
wish [1] - 33:22
withdrawn [1] - 18:6
word [2] - 15:19, 38:2
words [6] - 20:5, 20:20, 21:10, 28:14, 38:9, 49:23
Worker [1] - 16:15
worker [3] - 21:19, 21:22, 26:22
Workers [8] - 9:26, 12:11, 12:18, 14:3, 17:14, 17:26, 18:9, 21:2
workers [8] - 21:11, 21:14, 39:15, 51:9, 51:21, 51:22, 51:24, 52:10
workers' [2] - 51:2, 51:5
Workers' [16] - 21:17, 21:20, 24:13, 25:5, 25:11, 26:9, 26:16, 30:19, 34:14, 34:22, 34:26, 38:22, 38:24, 39:6, 39:7, 40:15
works [3] - 25:4, 26:6, 34:24
world [1] - 37:13
worth [3] - 9:22, 40:23, 57:4
write [2] - 45:26, 46:3
writing [1] - 54:2
written [2] - 3:25, 57:5
wrongdoing [1] - 19:21

X

XXX [1] - 58:12

Y

year [9] - 17:15, 17:16, 21:18, 22:10, 26:26, 46:16, 56:7, 56:10, 58:4
years [12] - 13:12, 21:19, 21:22, 32:21, 34:20, 36:9, 40:23, 44:19, 44:22, 45:3, 50:22, 53:6
YORK [4] - 1:2, 1:2, 1:10
York [82] - 1:16, 1:22, 2:3, 2:7, 2:12, 6:13, 6:18, 6:24, 11:14, 11:17, 11:20, 11:21, 11:22, 11:23, 12:9, 12:13, 12:21, 14:15, 14:17, 14:22, 15:20, 15:22, 17:14, 19:23, 21:14, 23:8, 23:12, 24:12, 24:19, 25:20, 25:24, 27:16, 27:23, 28:11, 28:19, 29:5, 29:23, 30:17, 30:20, 30:22, 31:4, 31:22, 32:11, 34:16, 35:11, 35:20, 41:11, 41:16, 41:19, 41:23, 42:4, 42:13, 42:14, 43:2, 43:26, 44:11, 44:12, 45:12, 45:20, 45:23, 49:5, 49:11, 49:14, 49:15, 49:16, 49:25, 50:4, 50:6, 50:13, 50:14, 52:20, 52:22, 53:3, 56:25