

MICHAEL K. JEANES, CLERK
BY
Elisha Flores
E. FLORES, FILED
17 NOV -9 PM 12: 57

William M. Brown
6751 E. Amber Sun Drive
Scottsdale, AZ 85266
(480) 595-9131

Plaintiff on his own behalf

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

William M. Brown, an individual,

Case No. CV2017-055475

Plaintiff,

Plaintiff's Supplement to
Application for An Order to
Show Cause (Contempt)

(Enforcement of An
Administrative Law Order No.
17F-H1716005-REL; Arizona
Department of Real Estate
Final Order No. 17F-
H1716005-REL)

(Assigned to the Hon. John R.
Hannah, Jr.)

vs.

Terravita Country Club, Inc., an Arizona
non-profit corporation; Sterling J. Laaveg,
President TCC, Inc., and his spouse; Paul
David Tolk, Vice-President TCC, Inc., and
his spouse; William H. Greig, Secretary
TCC, Inc., and his spouse; Michael T.
Ellington, Treasurer TCC, Inc., and his

spouse; John Does I-X and Jane Does I-X and their spouses; Carpenter, Hazlewood, Delgado & Bolen, PLC; Joshua M. Bolen 024053 and Anjali J. Patel 028138,

Defendants.

Plaintiff's Complaint for An Order to Show Cause why the Defendants should not be found in willful contempt of the decision and final orders of the OAH and ADRE, acts that show the Defendants' willful disrespect for the administration of justice and the dignity of the law, is the substantive issue before the Court.

Plaintiff's July 29, 2016 records request's (Exhibit A) only purpose was to require the Defendants to disclose pursuant to statute (§ 33-1805) the costs and fees directly relevant to the *Bianco* litigation (CV2014-053595, *Bianco vs. Terravita Community Association, Inc. [HOA] and Terravita Country Club, Inc. [Country Club]*), not the first such request respecting the costs of litigation in Terravita.

Pursuant to the Court's October 27, 2017 Order Entered By Court, Plaintiff's supplement to application will specify the records the Defendants did not produce pursuant to Plaintiff's July 29, 2016 records request, why the failure to produce the requested records is a violation of Judge Moses-Thompson's July 10, 2017 Decision and Recommended Order and will specify the records produced, whether requested or not, in furtherance of the Court's understanding Plaintiff's continuing assertion how and why the Defendants remain in defiance of the orders of the OAH and ADRE

recognizing the specificity of Plaintiff's unambiguous July 29, 2016 § 33-1805 records request, of which not a single comma has been changed to date.

Plaintiff's lawful records request is not, nor has ever been, a moving target, an affirmation which cannot be said for conduct and actions of the Defendants in this matter.

Records not produced and records produced are from Defendants' responses in this matter (*See* Complaint, Exhibit C; GM's [unreliable witness] July 18, 2017 response, Complaint, Exhibit G, Motion to Re-Open Record Exhibit C; Exhibit B, Brown to Bolen re Judge Hannah's Status Hearing and Exhibit C, Bolen's October 25, 2017 response, attached)

Records Requested by Plaintiff and Not Produced by Defendants

'Please provide the corporation's records of account/documents responsive to these questions/requests.' WMB, July 29, 2016 Records Request

- 1) Were any of the legal fees, taxable costs and any or all related expenses referenced in paragraph one covered by TCC's D&O policy? (§ 1. How much has the law firm of Carpenter, Hazlewood, Delgado & Bolen, PLC billed Terravita Country Club, Inc. ("TCC") for its representation of TCC in the referenced matter (*Bianco vs. TCC, Inc. and TCA, Inc.*) from on or about June 17, 2014 thru April 28, 2016 to date, including legal fees, taxable costs and any and all related expenses?);
- 2) Insurer's letter to insured re any exclusions or limits of liability for which the underwriter would not be liable; letter/check or other form of insurer's payment to insured pursuant to the contract (policy) between the parties.

Based upon the witnesses' testimony and evidence admitted at the June 19, 2017 hearing in 17F-H1716005-REL, Judge Velva Moses-

Thompson's July 10, 2017 Decision and Recommended Order "Ordered that Respondent comply with the applicable provisions of A.R.S. § 33-1805 regarding Petitioner's request of Respondent's records within 10 days of the Order entered in this matter," the Defendants remain, in part, non-compliant and, as such, in defiance of the OAH and ADRE's orders. *See* Complaint, Exhibit E, ¶¶ 16-24 [Note ¶ 16, "I (ALJ) find Mr. Brown's testimony to be credible," ¶ 21, "I (ALJ) find Ms. Wiley's (sic) testimony to be unreliable," and ¶ 18, "Terravita contended that it did not receive Mr. Brown's July 30, 2016 records request."]

ADRE Commissioner's July 11, 2017 Final Order accepted Judge Moses-Thompson's decision and "Ordered that Respondent comply with the applicable provisions of A.R.S. § 33-1805 regarding the Petitioner's request of Respondent records within 10 days of the Order entered in this matter." *See* Complaint, Exhibit F

The records request subject to OAH and ADRE's orders was Plaintiff's July 29, 2016 request made a part of Petitioner's August 15, 2016 Homeowners Association (HOA) Dispute Process Petition, "The complaint is a violation of A.R.S. § 33-1805(A)," received and accepted by ADRE on August 18, 2015.

Records Requested by Plaintiff and Produced by Defendants

'Please provide the corporation's records of account/documents responsive to these questions/requests.' WMB, July 29, 2016 Records Request

Defendants' counsel's October 25, 2017 response to the Court's October 18, 2017 Status Conference Set for October 27, 2017, "If Mr.

Brown is satisfied...if it is not resolved to Mr. Brown's satisfaction, then the Court will set further proceedings, as may be necessary, at the status conference," produced, in large part, the same non-responsive documents as Defendant's July 18, 2017 response and included some new responsive documents and/or documents not requested by Plaintiff on July 29, 2016. See Exhibits B and Exhibit C.

- 1) The first attachment is the **original records that were supplied to you on July 18, 2017 by TCC;**
- 2) The second attachment is **policy page that was already supplied to you in the first attachment** that outlines the premium for TCC's insurance policy that covered the Bianco lawsuit;
- 3) Per your request at the hearing, the third attachment is the actual payment of the premium (**record not previously provided Plaintiff**);
- 4) The fourth attachment is the Reservation of Rights letter from Liberty in the Bianco case. TCC did not have a copy of this letter in its records (unreliable). This law firm obtained a copy of the letter for you (officers of the Court, unreliable). (**record not previously provided Plaintiff, see Exhibit D, attached - Note: p. 3., ¶¶ 6-9.**);
- 5) The fifth attachment is the **deductible payment that was supplied to you in the first attachment**. You inquired about the redacted portion of this record. The redacted portion is the payment amount to Carpenter Hazlewood Delgado and Bolen, LLP for services that did not involve the Bianco lawsuit. The only amount paid in the Bianco lawsuit was this \$5,000.00 deductible - Liberty paid all other payments to this law firm and to the Plaintiffs. (**Emphasis added**)

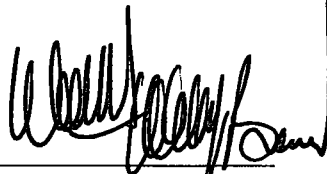
Defendant's "original records that were supplied to you on July 18, 2017 by TCC" included the *Bianco* Settlement and Release Agreement between the *Bianco* plaintiffs and its defendants, TCA, Inc. and TCC, Inc., a document (contract) not requested by Plaintiff, a document agreed to by the parties to be Confidential (¶ 5.) and protected by the contract's Remedies Upon Breach (¶ 7.). The sanctity of parties' contract would not seem to be inviolate at the whim of these Defendants.

Respondent's habit and practice respecting its members' lawful records requests is to be either non-responsive or to respond incompletely and inaccurately, to deny the existence of the requested record or "blame" the requester for not making their request two, three or more times all the while feigning ignorance respecting unambiguous, detailed and specific records requests...decisions, conduct and actions aided and abetted by the corporation's retained counsel. (See Complaint, Exhibit G, Motion to Re-Open Record, pp. 3-5.)

Defendant's remain, in part, non-responsive to Plaintiff's records request (records not produced) and, as such, remain in defiance (contempt) of the decision and orders of the OAH and ADRE.

Respectfully submitted this 9th day of November 2017.

William M. Brown
6751 East Amber Sun Drive
Scottsdale, Arizona 85266-7029



William M. Brown
Plaintiff, Pro Se

Certificate of Service

Original filed this 9th day of November 2017 with:

Clerk, Superior Court
Maricopa County Superior Court

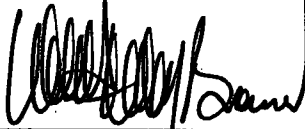
18380 N. 40th Street
Phoenix, Arizona 85032

Copy delivered this 9th day of November 2017 to:

Hon. John R. Hannah, Jr.
Maricopa County Superior Court
Northeast Court-G
18380 N. 40th Street, Courtroom 108
Phoenix, Arizona 85032-1484

Copy mailed this 9th day of November 2017 to:

Carpenter, Hazlewood, Delgado & Bolen, PLC
1400 E. Southern Avenue, Suite 400
Tempe, Arizona 85282

A handwritten signature in black ink, appearing to read "William M. Brown", written over a horizontal line.

William M. Brown
Plaintiff, Pro Se

Exhibit A

william brown

From: "william brown" <wmbs-pp@msn.com>
To: "Richard Cain" <ric401@cox.net>
Sent: Friday, August 12, 2016 7:50 PM
Attach: 8-12-16 Cust-Forbes 'no whistleblower policy-Snell & Wilmer'.email; 8-5-16 Cust Recds Req Whistleblower-Snell & Wilmer.email
Subject: Fw: Records Request

RC:

Drop dead date...COB Friday, August 12, 2016...nothing from TCC/Forbes other than the attached re August 5,2016 records request.

WMB

— Original Message —

From: william brown
To: few1@ccmcast.net
Sent: Saturday, July 30, 2016 8:35 AM
Subject: Records Request

Via Electronic Mail

July 29, 2016

Custodian of the Record
Terravita Country Club, Inc.
34034 N. 69th Way
Scottsdale, Arizona 85262

Re: Records Request

Custodian of the Record:

6/17/2017

Pursuant to Arizona's Revised Statutes (Title 33 Chapter 16) with reference to CV2014-053595 *Bianco v. TCC, Inc. and TCA, Inc.*, please make the following association record(s) responsive to the following questions available for examination and/or, on request, purchase of copies:

1. How much has the law firm of Carpenter, Hazlewood, Delgado & Bolen PLC billed Terravita Country Club, Inc. ("TCC") for its representation of TCC in the referenced matter from on or about June 17, 2014 thru April 28, 2016 to date, including legal fees, taxable costs and any and all related expenses?

Please provide the corporation's records of account/documents responsive to this question/request.

2. Who was TCC's insurer in this matter? Was the claim submitted to the insurer? Were any of the legal fees, taxable costs and any or all related expenses referenced in paragraph one covered by TCC's D & O policy? Were there any exclusions or limits of liability for which the underwriter would not be liable to make any payment for loss in this matter made against TCC? Was the claim accepted subject to the insurer's reservation of rights? What was TCC's insurer's retention in this matter? In this matter, how much did the insurer pay its insured (TCC)?

Please provide the corporation's records of account/documents responsive to these questions/requests: D&O Policy (to include but not limited to coverages/retention/endorsements/limitations/restrictions/reservations/other provisions) re this matter; insured's transmittal letter to insurer submitting claim; insurer's letter to insured re any exclusions or limits of liability for which the underwriter would not be liable; insurer's letter to insured accepting claim subject to the insurer's reservation of rights; letter/check/other form of insurer's payment to insured pursuant to the contract (policy) between the parties.

3. How much has TCC paid out of the corporation's funds to its insurer for any direct (retention/other) or indirect (premium/other) costs with respect to the referenced matter to date? How much did TCC pay the plaintiffs as a prerequisite for their agreement to settle the matter?

Please provide the corporation's records of account/documents responsive to these questions/requests.

4. How much, if any, did the plaintiffs pay of TCC's legal fees, taxable costs, and any or all related expenses with respect to the referenced matters to date?

Please provide the corporation's records of account/documents responsive to this question/request.

If my request is denied in whole or part, you are requested to justify all deletions by reference to specific exemption of the statutes. You are expected to release all segregable portions of otherwise exempt materials. I, of course, reserve the right to appeal your decision to withhold any requested information.

Your timely compliance is appreciated in advance.

s/William M. Brown

651 East Amber Sun Drive

Scottsdale, Arizona 85266-7029

Exhibit B

william brown

From: "william brown" <wmbs-pp@msn.com>
To: <josh@carpenterhazlewood.com>
Sent: Wednesday, October 18, 2017 11:32 AM
Attach: Records Request 07-29-2016 (17F-H1716005-REL, P2).pdf
Subject: CV2017-055475, WMB vs. TCC, Inc. (Hannah)

Counsel:

In advance of Judge Hannah's October 27, 2017, 11:30AM, scheduled Status Hearing, you may wish to juxtapose my July 29, 2016 (07/30/2016) records request with Forbes' July 18, 2017 "response" at issue in this matter.

As with my August 5, 2016 records request for TCC's whistleblower policy and, more recently, Anita Bell's September 28, 2017 records request for Empire West Title Agency's Commitment for Title Insurance issued pursuant to the transaction's escrow instructions and, again, as part of the transaction's closing documents, you are entreated to test the veracity of that which you are told which, when memorialized for the Court, is subject to challenge by me and those parties that created and conveyed documents which became records of the corporation.

May we agree, as a general proposition, that a corporation's lawyers' best counsel to its client would be to avoid litigation which is notoriously time consuming, inefficient, very costly to the corporation and its members, is unpredictable and fraught with emotion for some litigants, may precipitate unintended consequences unanticipated by the corporation and its directors in this matter as well as others likely to follow.

WMB

10/25/2017

Exhibit C

william brown

From: "Josh Bolen" <josh.bolen@carpenterhazlewood.com>
To: "william brown" <wmbs-pp@msn.com>
Cc: "Theresa Laubenthal" <Theresa.Laubenthal@carpenterhazlewood.com>; "Allison Preston" <Allison.Preston@carpenterhazlewood.com>
Sent: Wednesday, October 25, 2017 10:45 AM
Attach: 0883_001.pdf; Policy Page.pdf; 1204_001.pdf; Terravita Country Club 11.19.14.pdf; Bianco Deductible Payment.pdf; Records Request 07-29-2016 (17F-H1716005-REL, P2).pdf
Subject: Brown v. TCC et al.

Mr. Brown,

Pursuant to our October 18, 2017 hearing and Judge's ordered discussion, TCC has the following responses that will hopefully resolve this matter:

The first attachment is the original records that were supplied to you on July 18, 2017 by TCC.

The second attachment is policy page that was already supplied to you in the first attachment that outlines the premium for TCC's insurance policy that covered the Bianco lawsuit.

Per your request at the hearing, the third attachment is the actual payment of the premium.

The fourth attachment is the Reservation of Rights letter from Liberty in the Bianco case. TCC did not have a copy of this letter in its records. This law firm obtained a copy of the letter for you.

The fifth attachment is the deductible payment that was supplied to you in the first attachment. You inquired about the redacted portion of this record. The redacted portion is the payment amount to Carpenter Hazlewood Delgado and Bolen, LLP for services that did not involve the Bianco lawsuit. The only amount paid in the Bianco lawsuit was this \$5,000.00 deductible - Liberty paid all other payments to this law firm and to the

10/26/2017

intiffs.

We hope that this response is satisfactory and resolve any issues in this matter regarding the attached records request. If it does, pursuant to the Judge's order, we ask that we stipulate to dismiss this matter with prejudice. If it does not, please let me know why and we will answer any questions or concerns.

Sincerely,



CARPENTER HAZLEWOOD

Josh Bolen, Esq.

Direct Line: 480-427-2862

josh.bolen@carpenterhazlewood.com

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

Phoenix, 480-427-2800, 1400 East Southern Ave, Suite 400, Tempe, Arizona 85282

Tucson, 520-744-9480, 333 North Wilmot Rd, Suite 180, Tucson, Arizona 85711

Prescott, 928-443-0775, 1550 Plaza West Dr, Prescott, Arizona 86303

www.carpenterhazlewood.com



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This firm is a debt collector. Any information obtained will be used for that purpose.

Exhibit D



Liberty
International
Underwriters

Emily A. Sacchetti
Liberty International Underwriters
55 Water Street, 18th Floor
New York, NY 10041
Telephone: (212) 208-4287
Fax: (212) 898-4392
emily.sacchetti@libertyiu.com

November 19, 2014

Tom Forbes
Terravita Country Club
34522 N. Scottsdale Road
Scottsdale, AZ 85266

| | |
|----------------|--------------------------------------|
| Re: | Nonprofit Executive Advantage Policy |
| Insured: | Terravita Country Club |
| Insurer: | Liberty Insurance Underwriters Inc. |
| Policy No: | DOCH217352-213 |
| Policy Period: | July 1, 2013 to July 1, 2014 |
| Policy Limit: | \$2,000,000 |
| Retention: | \$5,000 |
| File: | Ralph Bianco, et al. |
| File #: | CHISPC000071922 |

Dear Mr. Forbes:

We have received a copy of a complaint filed in the matter styled Ralph Bianco, et al. v. Terravita Country Club, Inc., et al. filed in the Superior Court of the County of Maricopa, Arizona (the "Complaint"). The Complaint has been submitted for coverage under the above-referenced Nonprofit Executive Advantage Policy (the "Policy") issued to Terravita Country Club ("TCC" or the "Company" or the "**Insured Organization**") by Liberty Insurance Underwriters Inc. ("Liberty"). Liberty's preliminary coverage position for this matter is summarized below. Please note that the terms in bold in this letter correspond to their definitions set forth in the Policy. We ask that you please forward a copy of this letter to each **Insured** as soon as possible. If you are unable to do this, please advise us immediately.

We have now reviewed and considered the provisions of the Policy in light of the allegations contained in the Complaint. Liberty recognizes that the allegations are entirely unsubstantiated and nothing contained in this letter is intended to imply that Liberty believes that the allegations

have any factual or legal merit whatsoever. Nevertheless, we are only able to make a preliminary review of this matter and must fully reserve all rights under the Policy, at law and equity at this time, as set forth in more detail below.

The Complaint

Plaintiffs Ralph Bianco, Wayne Holsinger and Gary Nelson, members of the Terravita Country Club, have filed an Amended Complaint against TCC and Terravita Community Association ("TCA") regarding TCC's purported consideration of a plan to install pickle ball courts on property it owns. Plaintiffs argue that the pickle ball courts violate the Covenants, Conditions and Restrictions for Terravita and that they are not consistent with deed restrictions and zoning regulations regarding noise and nuisance. The Amended Complaint causes of action for: Breach of Contract against TCA; Breach of Contract against TCC; Breach of Duty of Good Faith and Fair Dealing against TCA; Breach of Duty against TCA and TCC; Violation of Statute against TCC; Declaratory Relief; and Injunctive Relief. The original Complaint named seven TCC board members who were later voluntarily dismissed with prejudice.

The Policy

Consistent with its terms and conditions, the Policy provides that Liberty will pay on behalf of the **Insureds** all **Loss** that they shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Insureds** for a **Wrongful Act** which takes place before or during the **Policy Period**.

The Policy has a **Policy Period** of July 1, 2013 to July 1, 2014 and a **Limit of Liability** of \$2,000,000 in the aggregate for the **Policy Year**. There is a \$5,000 Retention in the aggregate each **Claim** and a \$25,000 Retention applicable to each Employment Practices Liability **Claim** pursuant to Item IV of the Declarations, as amended by Endorsement No. 2, and other applicable terms and conditions of the Policy. **Defense Costs** do not erode the **Limit of Liability** but are applied against the Retention.

It shall be the right and duty of the Insurer to defend any **Claim**. [Policy at 2.1] The **Insureds** shall not incur any **Defense Costs**, admit to any liability, assume any obligation, agree to any settlement, or make any settlement offer with respect to any **Claim** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any **Defense Costs** incurred or any admissions, obligations, agreement or settlements made by the **Insureds** with out the Insurer's prior written consent. [Policy at 2.2]

As previously advised, Liberty consents to the **Insured's** retention of Carpenter Hazelwood Delgado & Bolen, PLC to represent them in this matter at rates of \$225 per hour for partners and \$200 per hour for associates. We ask that counsel be directed to keep us apprised of the status of this matter. Additionally, please provide copies of all legal bills for this matter.

Coverage Analysis

Exclusion 4.3 of the Policy excludes coverage for any **Claim** based upon, arising from or in any way related to any error, misstatement, misleading statement, act omission, neglect or breach of duty which has been reported or has been the subject of any notice under any insurance policy of

which this Policy is a renewal or replacement or under any other policy which it may succeed in time. Accordingly, Liberty reserves rights with respect to the above referenced provision. Please advise whether any other carrier(s) have been notified of this **Claim**.

Exclusion 4.7 **Claim** based upon, arising from or in any way related to the actual, alleged, or threatened discharge, dispersal, release or escape of **Pollutants, Fungi or Microbes**, or any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants, Fungi or Microbes**. The Policy defines **Pollutants** to include "smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products..." Plaintiffs allege that the pickle ball courts would cause noise and nuisance not consistent with deed restrictions and zoning regulations. Accordingly, Liberty reserves its rights to deny coverage for this matter should it be determined that Exclusion 4.7 applies.

Exclusion 5.2 provides that the Insurer shall not be liable to pay any **Loss** in connection with any **Claim**:

for any actual or alleged liability of any **Insured** under any contract or agreement, express or implied, written or oral, except for employment related obligations which would have attached absent such contract or agreement.

Liberty reserves its rights with respected to the provisions listed above.

Section 11 of the Policy requires Liberty and the **Insureds** to allocate between covered **Loss** and uncovered loss. Please also note that the Policy's applicable Retention only applies to allocated or covered **Loss**.

Section 12 provides that the Policy shall only apply as excess over any other valid and collectible insurance. Please advise the undersigned whether the **Insureds** have any other insurance available for this matter and whether any other carrier(s) have been notified.

Additionally, in the Insured's June 27, 2013 Application for Nonprofit Executive Advantage Policy which was relied upon by LIUI's underwriters in issuing the Policy, the Insured responded "No" to the following question:

"14. Does anyone for whom insurance is sought have any knowledge or information of any act, error, omission, fact or circumstance which may give rise to a Claim which may fall within the scope of the proposed insurance?"

The Application further provides "If a policy is issued, this Application and its attachments shall be the basis of such policy and shall be deemed attached to and shall form part of such policy. The undersigned, on behalf of all prospective Insureds, declares that the statements in this Application and its attachments are true and accurate. If there are material changes to any statements in this Application or its attachments prior to the inception date of the policy, the undersigned shall immediately notify the Insurer of such changes."

In Paragraph 60 of the Amended Complaint, plaintiffs allege that on February 2, 2012, Rena Young sent an e-mail to Linda Francis, a member of TCC's Board of Directors, expressing disapproval of pickle ball on existing tennis courts and the noise impact on her home. Please

provide a copy of this correspondence and any other correspondence received regarding this matter prior to the filing of suit.

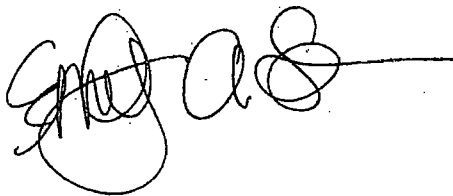
LIUI reserves all of its rights and defenses under the Policy, at law and in equity regarding any non-disclosure in the application. We reserve LIUI's rights to the extent the Insured was on notice of this matter prior to the issuance of the Policy.

Reservation of Rights

Liberty expressly reserves all rights and defenses under the Policy and at law including the rights to deny coverage on any of the foregoing bases and to deny coverage on additional and alternative bases as other terms, conditions, exclusions, endorsements of the Policy, including matters contained in any **Application**, are found to apply. Liberty's position with respect to coverage for this matter is based on a review of the allegations and currently known facts.

Please feel free to contact the undersigned should you have any questions or comments regarding the foregoing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Emily A. Sacchetti", with a long horizontal line extending to the right.

Emily A. Sacchetti
Specialty Casualty Claims
Liberty International Underwriters

cc: Todd Weber/Liberty International Underwriters

Chad Mutchler (CMutchler@crcins.com)
Claims Coordinator
CRC Insurance Services