

ORDERED, ADJUDGED, and DECREED that Plaintiff, RELIANCE INSURANCE COMPANY OF ILLINOIS, takes nothing from the DEFENDANTS, by reason of this suit; and that each party bears its own costs; it is further,

ORDERED, ADJUDGED, and DECREED that the DEFENDANTS take nothing from the Plaintiff/Counter-Defendant, RELIANCE INSURANCE COMPANY OF ILLINOIS.

All relief sought herein which is not expressly granted is hereby denied.


SIGNED this 23 day of February, 1999.



Judge Presiding

APPROVED AS TO FORM AND CONTENT:

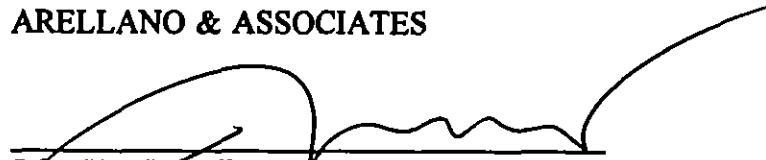
SPAGNOLETTI & ASSOCIATES



FRANCIS I. SPAGNOLETTI
State Bar No. 18869600
JOHN P. ABBEY
State Bar No. 00789010
1600 Smith, Suite 4545
Houston, Texas 77002
713-653-5600
FAX: 713-653-5656

ATTORNEYS FOR PLAINTIFF/COUNTER-DEFENDANT
RELIANCE INSURANCE COMPANY OF ILLINOIS

ARELLANO & ASSOCIATES



John "Lee" Arellano
State Bar No. 01299250
2211 Norfolk, Suite 820
Houston, Texas 77098
713/529-6000
FAX: 713/529-7373

**ATTORNEY FOR DEFENDANTS/COUNTER-PLAINTIFFS,
VISTA BONITA APARTMENTS,
PHOENIX NORTH APARTMENTS,
VISTA BONITA APARTMENTS now known as
NEW SUN COAST APARTMENTS, L.L.C.
PHOENIX NORTH APARTMENTS now known as
NEW SUN COAST APARTMENTS, L.L.C.
and NEW SUN COAST APARTMENTS, L.L.**

P-61

CAUSE NO. 98-33861

RELIANCE INSURANCE COMPANY OF ILLINOIS
Plaintiff and Counter-Defendant

IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

VISTA BONITA APARTMENTS, PHOENIX NORTH
APARTMENTS, VISTA BONITA APARTMENTS
NOW KNOWN AS NEW SUN COAST
APARTMENTS, L.L.C., PHOENIX NORTH
APARTMENTS NOW KNOWN AS NEW SUN
COAST APARTMENTS, L.L.C. AND NEW SUN
COAST APARTMENTS, L.L.C.

Defendants and Counter-Plaintiff

FILED FOR RISK
CHARLES BRADY
DISTRICT CLERK
HARRIS COUNTY TEXAS
NOV 20 AM 11:39
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127th JUDICIAL DISTRICT

**NEW SUN COAST APARTMENTS, L.L.C., DBA VISTA BONITA PARTMENTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT TO ENFORCE APPRAISAL
AWARD**

TO THE HONORABLE JUDGE OF THIS COURT:

NEW SUN COAST APARTMENTS, L.L.C., DBA VISTA BONITA APARTMENTS, Defendant and Counter-Plaintiff, (VISTA BONITA APARTMENTS), files this its Motion for Partial Summary Judgment seeking a declaration from this court enforcing an Appraisal Award against RELIANCE INSURANCE COMPANY OF ILLINOIS (RELIANCE), Plaintiff and Counter-Defendant, and would respectfully show unto this Court the following:

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GENERAL FACTS

Counter-Defendant, RELIANCE, sold a policy of insurance covering any building damage and/or loss of rents that might be suffered by VISTA BONITA APARTMENTS for a period from August 1, 1997, to August 1, 1998, Policy No. NZA1702535. ¹ On or about February 10, 1998, high winds struck the premises of the VISTA BONITA APARTMENTS, located at 9313 Tallyho, Houston, Texas, 77017, causing building damage and loss of rents. Before RELIANCE filed its suit for Declaratory Judgment, VISTA BONITA APARTMENTS, in compliance with the terms of the insurance policy, applied for and received a validly appointed Umpire, pursuant to the Order Appointing Umpire, signed by the Hon. Mary Bacon, Texas State District Judge of the 338th District Court of Harris County, Texas, on June 9, 1998. The court appointed Umpire, Cyndal Porter, entered an Appraisal Award on July 29, 1998 for the insured in the sum of ONE HUNDRED THIRTY EIGHT THOUSAND SIX HUNDRED EIGHTY SEVEN AND 51/100 (\$138,687.51) DOLLARS, enforcement of which is now being sought. ²

VISTA BONITA APARTMENTS has fully paid the premiums on the insurance and complied with all its terms and conditions. The insurer has refused to pay the Appraisal Award; rather, it is attempting to either deny or delay the payment of this claim by taking positions not supported in the law. Specifically, RELIANCE alleges that District Judge Mary Bacon's Order Appointing Umpire is void because she does not have "jurisdiction" to appoint an umpire. This conclusory allegation is not supported by any facts or evidence produced by RELIANCE, because it has none to proffer. RELIANCE has no other grounds for its failure to pay the Appraisal Award. ³

¹ See applicable policy provisions from Reliance's policy showing coverage and Appraisal Provision attached hereto as Exhibit "1" (See also Reliance's Appraisal definition in its Motion for Summary Judgment).

² See Judge Bacon's Order Appointing Umpire and the Umpire's Appraisal Award attached hereto as Exhibit "2"

³ See Reliance's responses to VISTA BONITA APARTMENTS' Interrogatories and Requests for Admission attached hereto as Exhibit "3" (See also Reliance's basis for its Motion for Summary Judgment to set aside Umpire.)

APPRAISAL AWARD IS VALID ON ITS FACE

An Appraisal Award was entered on this claim by the Umpire, Cyndal Porter, which is valid on its face. When a dispute between the insurer and the insured arises over the amount of a loss, and the parties cannot agree on an Umpire to resolve their differences, then they rely on the Appraisal Provision, which states as follows:

APPRAISAL PROVISION

"If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request that a selection be made by a judge of a court having jurisdiction. Each appraiser will state the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding as to the amount of loss. ..."

ARGUMENT AND AUTHORITIES:

The insured hired a public adjuster, Kubala & Company, who notified RELIANCE that the insured was demanding appraisal because the parties could not agree to the amount of the loss that resulted from the February storm. The insured, through its public adjuster, hired Appraiser Thomas Kelly and by letter dated 4-21-98, RELIANCE was made aware of the insured's demand for appraisal. RELIANCE, by letter dated 4-24-98, acknowledged the insured's demand for appraisal and notified the insured of the name of the carrier's appraiser, Mike Hickey. The two appraisers then attempted to select a mutually agreeable Umpire which they did not do. On 5-29-98, Thomas Kelly, *the insured's appraiser*, requested Mike Hickey, *RELIANCE'S appraiser*, to ask a Judge of his own choice to appoint an Umpire. Hickey responded by letter dated June 1, 1998, stating that he would file suit to set aside any Umpire *that the insured* might seek even though the letter clearly requests RELIANCE to get an Umpire appointed. In several other letters written by Hickey in June and July he kept insisting that the appraisal process be delayed or held up; of course, all the while the insured's property continued to deteriorate for lack of repairs. After 46 days had elapsed (15 days required under the policy) from when the 2 appraisers could first mutually agree on an

Umpire, and *after* RELIANCE failed or refused to obtain an Umpire, Kelly requested Judge Bacon appoint an Umpire which she did on June 9, 1998. The appraisal went forward, however, RELIANCE refused to participate; instead, it filed this suit to set aside the Appraisal Award based on Judge Bacon's lack of jurisdiction.⁴

VISTA BONITA APARTMENTS IS ENTITLED TO ATTORNEY'S FEES

VISTA BONITA APARTMENTS was forced to file its counterclaim on August 7, 1998, to compel RELIANCE to pay the Appraisal Award issued by Cyndal Porter. As a result, it has incurred attorney's fees and costs. RELIANCE should be ordered to pay those attorney's fees and costs after the court's declaration that the Appraisal Award is valid.

ARGUMENT AND AUTHORITIES

RELIANCE is liable for attorney's fees incurred by VISTA BONITA APARTMENTS for breach of contract and under the provisions of the Texas Deceptive Trade Practices Act and the Texas Insurance Code. Furthermore, attorney's fees can also be awarded pursuant to Texas Civil Practice & Remedies Code §§ 38.001 and 37.009. For this Court's convenience, reference is made to the case of *The Commissioners Court of Titus County, Texas and Carl Johnson, County Auditor, Petitioners v. Cynthia Agan, County Treasurer of Titus County, Texas, Respondent*, 940 S.W.2d 77 (Tex. 1997) wherein the Supreme Court held as follows:

"The Texas Uniform Declaratory Judgments Act allows the trial court to award reasonable and necessary attorney's fees and costs as are equitable and just. See Tex. Civ. Prac. & Rem. Code § 37.009. The decision to grant or deny attorney's fees and costs is within the trial court's sound discretion. *Oake v. Collin County*, 692 S.W.2d 454, 455 (Tex. 1985)."

⁴ See pertinent letters between insured and insurer discussed in this paragraph, attached hereto as Exhibit "4".

RELIANCE OWES 18% PERCENT STATUTORY PENALTY

RELIANCE received notice of the Umpire's Appraisal Award from the insured's adjuster, Tom Ross, by his letter dated August 7, 1998. Accordingly, after 5 days from its receipt, RELIANCE had to either pay the award or it became liable for additional statutory damages according to the provisions of the Texas Insurance Code.

TEXAS INSURANCE CODE, ARTICLE 21.55 § 6

***Damages:** In all cases where a claim is made pursuant to a policy of insurance and the insurer liable therefor is not in compliance with the requirements of this article, such insurer shall be liable to pay the holder of the policy, or the beneficiary making a claim under the policy, in addition to the amount of the claim, 18 percent per annum of the amount of such claim as damages, together with reasonable attorney fees. If suit is filed, such attorney fees shall be taxed as part of the costs in the case. [Amended by Acts 1995, 74th Leg., Ch. 333, Sec. 1.]

Texas law is well-established that an appraisal award made pursuant to an insurance policy is binding and enforceable absent fraud, accident, or mistake. See, *Barnes v. Western Alliance Ins. Co.*, 844 S.W.2d 264, 267 (Tex.App.-Fort Worth 1992, writ dismissed by agr.); *Providence Lloyds Ins. Co. v. Crystal City I.S.D.*, 877 S.W.2d 872, 875 (Tex.App.-San Antonio 1994, no writ) (citing *Scottish Union & Nat'l Ins. Co. v. Clancy*, 71 Tex. 5, 8 S.W. 630, 631 (1888)). Therefore, VISTA BONITA APARTMENTS is entitled to recover, in addition to the amount of its Appraisal Award, an additional eighteen percent (18%) in damages on the amount of such loss together with reasonable attorney's fees for the prosecution and collection of this claim.

CONCLUSION

The Appraisal Award entered by the court appointed Umpire in the sum of \$138,687.51 is valid on its face. RELIANCE also owes the 18% statutory penalty in the sum of \$24,963.75, plus attorney's fees and prejudgment interest.

PRAYER

WHEREFORE, PREMISES CONSIDERED, NEW SUN COAST APARTMENTS, L.L.C., DBA VISTA BONITA APARTMENTS prays that its Motion for Partial Summary Judgment Enforcing the Appraisal Award be in all things sustained.

Respectfully submitted,

ARELLANO & ASSOCIATES

By: _____

JOHN "LEE" ARELLANO
TBA# 01299250
Specialization # CT 01782-91
Frost Bank Building, Suite 820
2211 Norfolk
Houston, Texas 77098
(713) 529-6000 Telephone
(713) 529-7373 Facsimile

ATTORNEYS FOR VISTA BONITA APARTMENTS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing instrument has been served on counsel record by faxing, hand delivery or mailing same by first class, United States Certified Mail, return receipt requested, postage prepaid, addressed as follows:

Francis I. Spagnoletti
John Abbey
Spagnoletti & Associates
1600 Smith Street, Suite 4545
Houston, Texas 77002

CERTIFIED MAIL RRR P 076 603 783

SIGNED this 19th day of November, 1998.

John "Lee" Arellano

AFFIDAVIT OF TOM ROSS

BEFORE ME the undersigned authority personally appeared **TOM ROSS**, who being sworn, did depose and state the following:

"My name is **TOM ROSS**. I am over eighteen years of age, of sound mind, and have never been convicted of a felony, and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein.

"I am Vice President for Kubala & Company, a public adjusting company, in Houston, Harris County, Texas, that handles insurance claims for insureds. Our company was hired by the owners of the **VISTA BONITA APARTMENTS** to adjust a windstorm loss resulting from a storm that occurred on February 10, 1998. **RELIANCE INSURANCE COMPANY OF ILLINOIS** was the insurer of these apartments as seen on the insurance documents. On March 6, 1998, we met with **RELIANCE'S** adjuster, D. R. Tuggle, to inspect the damaged apartments and presented Mr. Tuggle with our estimated cost of repairs. On April 7, 1998, we received Mr. Tuggle's estimated cost of repairs which was significantly different from ours; therefore, on 4-21-98, we notified **RELIANCE** that the insured was demanding appraisal because the parties could not agree on the amount of the loss. **RELIANCE** was further informed that we hired Appraiser Thomas Kelly to work on behalf of the insured. By letter dated 4-24-98, **RELIANCE** acknowledged the insured's demand for appraisal and notified us of its appraiser, Mike Hickey. The two appraisers then attempted to select a mutually agreeable Umpire which they did not do. On 5-29-98, Kelly requested Hickey to get a Judge of **RELIANCE'S** own choice to appoint an Umpire. Hickey responded by letter dated June 1, 1998, stating that he would file suit to set aside any Umpire that the insured might seek even though Kelly's confirmation letter dated 6-2-98 clearly requests **RELIANCE** to get an Umpire appointed. In several other letters written by Hickey in June and July he kept insisting that the appraisal process be delayed or held up; of course, all the while the insured's property continued to deteriorate for lack of repairs. After 46 days (only 15 days required under the policy) had elapsed from when the 2 appraisers could first (i.e. April 24, 1998) mutually agree on an Umpire, and after **RELIANCE** failed or refused to obtain an Umpire, Kelly requested Judge Bacon appoint an Umpire which she did on June 9, 1998. The appraisal went forward, however, **RELIANCE** refused to participate, as seen by the Umpire's letter dated July 27, 1998. A true and correct copy of the following exhibits from our files, which are operative documents related to this appraisal, are attached to this Affidavit, to-wit:

- | | |
|-----------|---|
| Exhibit 1 | Agreement retaining Kubala & Company and pertinent insurance provisions of the insured's policy relating to coverage and appraisal. |
| Exhibit 2 | Judge Mary Bacon's Order Appointing Umpire for this claim, the Appraisal Award issued by Umpire Cyndal Porter, and her letter dated July 27, 1998, regarding the insurer's failure to participate in the appraisal process. |

Exhibit 4

Letters between insured and insurer and Umpire; specifically, letters dated February 20, 1998, April 21, 1998, April 24, 1998, June 1, 1998, June 2, 1998 and July 3, 1998 and August 7, 1998.

"I have worked in the insurance claims business for approximately 17 years. In the course of that time I have worked on hundreds of disputed claims as a public adjuster, as an appraiser and as an Umpire which have gone through the appraisal process. I am familiar with the Appraisal Provision contained in commercial insurance policies and how the process works in Texas. RELIANCE'S appraisal provision provided as follows:

"If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request a that selection be made by a judge of a court having jurisdiction. Each appraiser will state the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding as to the amount of loss. ..."

"In the In my years of handling claims that have proceeded through the insurance appraisal process, Judge Mary Bacon has appointed umpires on many different occasions. In all cases in which our firm has participated, the insurance company has always paid the Appraisal Award entered by a Judge Bacon appointed Umpire. This is the first case in which an insurance company has filed a suit where our company has been involved alleging that Judge Bacon does not have authority to appoint an Umpire. The Umpire, Cyndal Porter, entered an Appraisal Award for \$138,687.51 for the owners of the VISTA BONITA APARTMENTS. RELIANCE was notified of the Award by my letter dated August 7, 1998, and to date no payment has been received by the insured on this claim.

"I have reviewed all the applicable correspondence and related documents pertinent to this appraisal. I have spoken with both the insured's appraiser and the insurer's appraiser and adjuster. It is my opinion that the deadlines specified in Appraisal Provision language quoted above were complied with by the insured and its representatives and that the request to Judge Bacon seeking the appointment of an Umpire was timely made in accordance with the terms of the insurance policy.

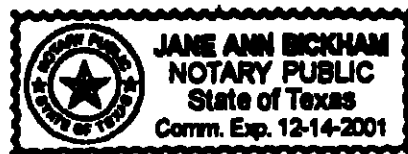
"FURTHER AFFIANT SAYETH NOT."

By: Tom Ross
TOM ROSS

STATE OF TEXAS §
COUNTY OF HARRIS §

SUBSCRIBED AND SWORN TO BEFORE ME, appeared TOM ROSS, on this the

9th day of November, 1998.



Jane Ann Bickham
NOTARY PUBLIC

AFFIDAVIT ON ATTORNEY'S FEES

BEFORE ME, the undersigned authority, on this day appeared John "Lee" Arellano, who, on his oath being duly sworn, did depose and state the following:

"My name is John "Lee" Arellano, I am over 21 years of age, of sound mind, capable of making this affidavit, and fully competent to testify to the matters stated herein, and I have personal knowledge of the matters recited herein and I have never been convicted of a felony.

"I am a licensed and practicing attorney in Houston, Harris County, Texas and I am familiar with the rates charged by attorney's in this locale. I have been a licensed and practicing attorney in Houston, Harris County, Texas, since 1981. My qualifications and work experiences to give this Affidavit are as follows: Board Certified, Civil Trial Law, Texas Board of Legal Specialization; Mediator, United States Federal and State District Courts; 1998/1999 President, Association of Attorney Mediators, Houston Chapter; 1996/1998 Member, Board of Directors and Chairman of Education and Website Committees, Association of Attorney Mediators, Houston Chapter; Pilot Mediator, 1st Court of Appeals, Houston, Texas; Panel Judge, Harris County Dispute Resolution Center's Moderated Settlement Conference; Member, Association of Attorney Mediators, National; Ex-Officio Member, Board of Directors of the Association of Attorney Mediators, National; Member in Good Standing in the Texas Supreme Court, Houston Bar Association, Federal Courts for the Southern District of Texas, Fifth Circuit Court of Appeals; Member, Houston Lawyer Referral Service; Member, Pro Bono College of the State Bar of Texas; Member, Texas Association of Civil Trial and Appellate Specialists, Houston Chapter; Fellow, Houston Bar Foundation; Fellow, College of the State Bar of Texas; Lecturer, State Bar of Texas MCLE approved seminars; Contributing Author Docket Plus™ legal management computer software; Volunteer, Harris County Dispute Resolution Center Pro Bono Mediation Program; Broker, Texas Real Estate Commission.

"Attached to this Affidavit as Exhibits "3" and "5" are true and correct copies of RELIANCE'S responses to VISTA BONITA APARTMENTS' Interrogatories and Requests for Admission and a statement showing reasonable and necessary attorney's fees incurred by the insured, to date, respectively.

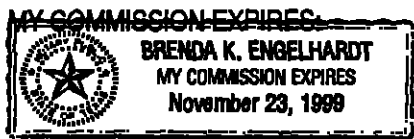
"I am the attorney for VISTA BONITA APARTMENTS, the named insured in this lawsuit. In this regard, the attorney whose name is subscribed to this Affidavit has been employed to assist the insured in defending against a suit for declaratory judgment filed by the insurer and to prosecute its counterclaim for payment of the Appraisal Award issued by the court appointed Umpire, Cyndal Porter. It is my opinion that a reasonable and necessary attorney's fee in this area is based on an attorney's experience, reputation, knowledge and the complexity of the issues in dispute. The attorney's fees will be based on the time the attorney expends and costs incurred by the insured. It is my impression that a hourly rate of \$200.00-\$300.00 per hour is reasonable and necessary in this case for the insured. These figures are based on my experience and knowledge of reasonable and necessary attorney's fees charged by other attorneys in the Houston, Harris County area. For work expended in the preparation and trial of this cause, up to the filing of VISTA BONITA APARTMENTS' Motion for Partial Summary Judgment, a reasonable and necessary attorney fee for the insured is \$14,891.96. In the event of an appeal to the court of appeals, the insured would be further entitled to \$10,000.00 as a reasonable attorney's fee, and in the event of an appeal to the Supreme Court, the insured would be entitled to an additional sum of \$7,500.00 as a reasonable attorney's fee.

"FURTHER AFFIANT SAYETH NOT".

[Handwritten Signature]
JOHN "LEE" ARELLANO, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on this 19th day of November, 1998 appeared John "Lee" Arellano.

[Handwritten Signature]
NOTARY PUBLIC



1



KUBALA AND COMPANY

**Public Insurance Adjusters
And Appraisers For The
Named Insured**

2-17 1978

To the Insurance Companies Interested and to Whom it May Concern:

I do hereby authorize and engage the Kubala and Company Adjusters, to assist in adjusting the loss and damage by WIND/DAMAGE sustained by NEW SUNDAY APT. BLDG VISTA GREEN APARTMENTS at 9317 TILLY RD HOUSTON, TX 77017 on 2-10-78 and agree to pay them for their services and hereby assign AS AGREED of the amount as adjusted or otherwise recovered on account of loss.

X _____

ACORD. EVIDENCE OF PROPERTY INSURANCE

DATE / WA

2-16

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

PRODUCER MID-CONTINENTAL INSURANCE AGENCY, INC. 1717 MONTROSE HOUSTON, TEXAS 77006		PHONE (A.C. No. Ext): (713) 528-2961		COMPANY RELIANCE INSURANCE COMPANY OF ILLINOIS CHICAGO, ILLINOIS	
CODE:		SUB CODE:		AGENCY CUSTOMER ID #: INSURED NEW SUNCOAST APARTMENTS, L.L.C. DBA VISTA BONITA APARTMENTS 9313 TALLYHO HOUSTON, TEXAS 77017	
LOAN NUMBER		POLICY NUMBER NZA1702535		EFFECTIVE DATE 09-18-97	
EXPIRATION DATE 08-01-98		CONTINUED UNTIL TERMINATED IF C		THIS REPLACES PRIOR EVIDENCE DATED:	

PROPERTY INFORMATION

LOCATION DESCRIPTION

INSURED LOCATION: 9313 TALLYHO
HOUSTON, TEXAS 77017

OCCUPANCY : APARTMENT COMPLEX

COVERAGE INFORMATION

COVERAGE-PERILS FORMS	AMOUNT OF INSURANCE	DEC
FIRE, EXTENDED COVERAGE, CAUSES OF LOSS-SPECIAL FORM CP 10 30, REPLACEMENT COST ENDORSEMENT:		
BLANKET BUILDING INSURANCE :	\$3,042,000	\$5
LOSS OF RENTS INSURANCE :	\$ 206,000	II

REMARKS (Including Special Conditions)

90% CO-INSURANCE: BUILDINGS
60% CO-INSURANCE: RENTS

CANCELLATION

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW 10 % WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT 1 % INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

ADDITIONAL INTEREST

NAME AND ADDRESS

TEXAS FIRST NATIONAL BANK
9315 BELLAIRE BLVD.
HOUSTON, TEXAS 77036

<input checked="" type="checkbox"/>	MORTGAGEE	<input type="checkbox"/>	ADDITIONAL INSURED
<input type="checkbox"/>	LOSS PAYEE	<input type="checkbox"/>	

AUTHORIZED REPRESENTATIVE

 MID-CONTINENTAL INSURANCE AGENCY, INC.

AGORD. EVIDENCE OF PROPERTY INSURANCE

DATE (MM.DD.Y)

2-16-98

THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY.

PRODUCER MID-CONTINENTAL INSURANCE AGENCY, INC. 1717 MONTROSE HOUSTON, TEXAS 77006		PHONE (A.C. No, Ext): (713) 528-2961		COMPANY RELIANCE INSURANCE COMPANY OF ILLINOIS CHICAGO, ILLINOIS	
COGE: _____ SUB CODE: _____		AGENCY CUSTOMER ID #: _____		LOAN NUMBER _____ POLICY NUMBER NZA1702535	
INSURED NEW SUNCOAST APARTMENTS, L.L.C. DBA VISTA BONITA APARTMENTS 9313 TALLYHO HOUSTON, TEXAS 77017		EFFECTIVE DATE 09-18-97		EXPIRATION DATE 08-01-98	
		<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECK		THIS REPLACES PRIOR EVIDENCE DATED: _____	

PROPERTY INFORMATION

LOCATION DESCRIPTION
 INSURED LOCATION: 9313 TALLYHO
 HOUSTON, TEXAS 77017

OCCUPANCY : APARTMENT COMPLEX

COVERAGE PERILS FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
FIRE, EXTENDED COVERAGE, CAUSES OF LOSS-SPECIAL FORM CP 10 30, REPLACEMENT COST ENDORSEMENT:		
BLANKET BUILDING INSURANCE :	\$3,042,000	\$5,00
LOSS OF RENTS INSURANCE :	\$ 206,000	INCL

REMARKS (Including Special Conditions)

90% CO-INSURANCE: BUILDINGS
 60% CO-INSURANCE: RENTS

CANCELLATION

THE POLICY IS SUBJECT TO THE PREMIUMS, FORMS, AND RULES IN EFFECT FOR EACH POLICY PERIOD. SHOULD THE POLICY BE TERMINATED, THE COMPANY WILL GIVE THE ADDITIONAL INTEREST IDENTIFIED BELOW 10 DAY WRITTEN NOTICE, AND WILL SEND NOTIFICATION OF ANY CHANGES TO THE POLICY THAT WOULD AFFECT THE INTEREST, IN ACCORDANCE WITH THE POLICY PROVISIONS OR AS REQUIRED BY LAW.

ADDITIONAL INTEREST

NAME AND ADDRESS
 TEXAS FIRST NATIONAL BANK
 9315 BELLAIRE BLVD.
 HOUSTON, TEXAS 77036

MORTGAGEE
 LOSS PAYEE
 ADDITIONAL INSURED

AUTHORIZED REPRESENTATIVE
John R. [Signature]
 MID-CONTINENTAL INSURANCE AGENCY, INC.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE: 2-1

PRODUCER
 MID-CONTINENTAL INSURANCE AGENCY, INC.
 1717 MONTROSE
 HOUSTON, TEXAS 77006
 TELEPHONE: (713) 528-2961

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFO ONLY AND CONFERS NO RIGHTS UPON THE CER HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXT ALTER THE COVERAGE AFFORDED BY THE POLICIES

COMPANIES AFFORDING COVERAGE

- COMPANY A AMERICAN EQUITY INSURANCE COMPANY
- COMPANY B
- COMPANY C
- COMPANY D

INSURED
 NEW SUNCOAST APARTMENTS, L.L.C.
 DBA VISTA BONITA APARTMENTS
 9313 TALLYHO
 HOUSTON, TEXAS 77017

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT <input checked="" type="checkbox"/> \$500 DEDUCTIBLE, EACH CLAIM	ACC034369	09/18/97	07/31/98	GENERAL AGGREGATE \$ 2,0 PRODUCTS - COMPROP AGG \$ IN PERSONAL & ADV INJURY \$ 1,0 EACH OCCURRENCE \$ 1,0 FIRE DAMAGE (Any one fire) \$ 1 MED EXP (Any one person) \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRE AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: \$ EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> THE PROPRIETOR PARTNERS EXECUTIVE OFFICERS ARE <input type="checkbox"/> INCL <input type="checkbox"/> EXCL <input type="checkbox"/> OTHER				WC STATE TOPLIMITS OTH-ER EL EACH ACCIDENT \$ EL DISEASE - POLICY LIMIT \$ EL DISEASE - EA EMPLOYEE \$

DESCRIPTION OF OPERATIONS, LOCATIONS, VEHICLES, SPECIAL ITEMS
 EXCLUSIONS: INDEPENDENT CONTRACTORS; TOTAL POLLUTION; ASBESTOS, SILICA DUST, TOXIC SUBS
 LEAD CONTAMINATION; VOLUNTARY LABOR; EMPLOYMENT RELATED PRACTICES; COMMUNIC
 DISEASES. ATTACHMENT: SWIMMING FACILITY CONDITIONAL ENDORSEMENT.

CERTIFICATE HOLDER: _____ **CANCELLATION:** _____
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

ENDORSEMENT**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY
SWIMMING FACILITY CONDITIONAL ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**LIFESAVING EQUIPMENT CONDITIONAL EXCLUSION**

The following exclusion is added to **COVERAGE A**:

This insurance does not apply to "bodily injury" arising out of the ownership, maintenance, operation or use of a swim pool, lake, pond or other water recreational area unless Red Cross or U.S. Coast Guard approved lifesaving equipment is maintained and available at all times.

SWIMMING POOL FENCING CONDITIONAL EXCLUSION

The following exclusion is added to **COVERAGES A & B**:

This insurance does not apply to "bodily injury" or "personal injury" arising out of the ownership, maintenance, operation or use of a swimming pool unless the swimming pool is fenced with a self-locking gate and meets or exceeds all governing codes and regulations.

WATER HAZARD POSTING REQUIREMENT CONDITIONAL EXCLUSION

The following exclusion is added to **COVERAGE A**:

This insurance does not apply to "bodily injury" arising out of the ownership, maintenance, operation or use of a swim pool, lake, pond or other water recreational area unless "No Swimming", "Swim At Your Own Risk" or similar signs are posted warning of water related hazards.

LIFEGUARD CONDITIONAL EXCLUSION

The following exclusion is added to **COVERAGES A & B**:

This insurance does not apply to "bodily injury" or "personal injury" arising out of the ownership, maintenance, operation or use of a swimming pool, lake, pond or other water recreational area unless:

1. Certified Red Cross lifeguard(s) are on duty and in attendance at all times during scheduled swimming periods.
2. "No Swimming" or "Swim At Your Own Risk" signs are posted when no lifeguard is on duty.

All other Terms and Conditions of this Policy remain unchanged

FROM MONTGOMERY COLLINS HOUSE

(THU) 4.23'98 9:20 A.M. 9:16/NO. 3769105463 P 6

Limit of Insurance—Bldg. 1: \$80,000

Limit of Insurance—Bldg. 2: \$80,000

Loss to Bldg. 1: \$60,100

Loss to Bldg. 2: \$90,000

The amount of loss to Bldg. 1 (\$60,100) is less than the sum (\$80,250) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Bldg. 1:

\$60,100

- 250

\$59,850 Loss Payable—Bldg. 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Bldg. 2. Loss payable for Bldg. 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,850 + 80,000 = \$139,850

Example No. 2:

(This example, too, assumes there is no coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example No. 1.

Loss to Bldg. 1: \$70,000 (exceeds Limit of Insurance plus Deductible)

Loss to Bldg. 2: \$90,000 (exceeds Limit of Insurance plus Deductible)

Loss Payable—Bldg. 1: \$80,000 (Limit of Insurance)

Loss Payable—Bldg. 2: \$80,000 (Limit of Insurance)

Total amount of loss payable: \$140,000

E. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their dif-

ferences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, cost, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CP 01 42 12 92

TEXAS CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

A. When this endorsement is attached to the Standard Property Policy CP 00 89, the term Coverage Part is replaced by the term Policy.

B. The provisions of items B.1. through B.5. below apply to the following coverage forms:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM;

CONDOMINIUM ASSOCIATION COVERAGE FORM;

CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM;

BUILDERS RISK COVERAGE FORM;

TOBACCO SALES WAREHOUSES COVERAGE FORM; AND

STANDARD PROPERTY POLICY

1. Under Additional Coverages, the Debris Removal coverage is deleted and replaced by the following:

Debris Removal

We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period.

2. Under Additional Coverages, the Fire Department Service Charge coverage is deleted.

3. Under Additional Coverages, the Pollutant Clean Up and Removal coverage is deleted.

4. Under LIMITS OF INSURANCE, the third and fourth paragraphs (second and third paragraphs in the Tobacco Sales Warehouses Coverage Form) are deleted and replaced by the following:

The limits applicable to the Coverage Extensions are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

a. Preservation of Property; or

b. Debris Removal; but if the sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance, we will pay up to an additional \$5,000 for each loca-

tion in any one occurrence under the Removal Additional Coverage.

5. Under DEFINITIONS, the definition of "pollutant" is deleted.

C. The ADDITIONAL COVERAGE - COLLAPSE CAUSES OF LOSS - BROAD FORM is deleted and replaced by the following:

Additional Coverage - Collapse

We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building.

We will not pay for loss or damage described unless the loss or damage is a direct result of collapse of a building:

1. Loss or damage to the following types of property otherwise covered in this Coverage Part: door radio or television antennas, including lead-in wiring, masts or towers; awnings; gutters and downspouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces; and

2. Loss or damage by settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings.

This Additional Coverage will not increase the Limit of Insurance provided in this Coverage Part.

Section E. of this endorsement restricts collapse coverage on property covered under the Builders Coverage Form.

D. The provisions of items D.1. through D.5. below apply to the CAUSES OF LOSS - SPECIAL FORM.

1. Exclusion B.2.d.(4) is deleted and replaced by the following exclusion:

(4) Settling, cracking, shrinking, bulging or expansion of pavements, foundations, walls, floors, roofs, ceilings, curbs, fences, retaining walls or swimming pools.

2. Exclusion B.2.f., which pertains to continuous repeated seepage or leakage of water that occurs over a period of 14 days or more, is deleted.

However, all other exclusions pertaining to loss or damage by water continue to apply.

3. Exclusion B.2.k., Collapse, is deleted. However, Section E. of this endorsement restricts collapse coverage on property covered under the Builders Risk Coverage Form.
4. Exclusion B.2.l., which pertains to pollutants, is deleted.
5. Limitation C.1.c. is replaced by the following:

c. We will not pay for loss of or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

6. Section D., ADDITIONAL COVERAGE - COLLAPSE, is deleted.

E. In the BUILDERS RISK COVERAGE FORM, condition F.3., Restriction of Additional Coverage - Collapse, is replaced by the following:

3. Restriction of Collapse Coverage

If the Causes of Loss - Broad Form or Causes of Loss - Special Form applies to the Builders Risk Coverage Form, coverage for collapse is restricted as follows:

We will not pay for loss or damage caused by or resulting from collapse of a building under construction, or any part of a building under construction, caused by use of defective materials or methods in construction, remodeling or renovation.

F. LEGAL ACTION AGAINST US

1. The LEGAL ACTION AGAINST US Commercial Property Condition is replaced by the following, except as provided in F.2. below:

LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

- a. There has been full compliance with all of the terms of this Coverage Part; and
- b. The action is brought within 2 years and one day after the date on which the direct physical loss or damage occurred.

2. Paragraph F. 1. above does not apply to the Legal Action Against Us loss condition in the LEGAL LIABILITY COVERAGE FORM CP 00 40.

G. APPRAISAL

1. Except as provided in G.2. below, the APPRAISAL

Loss Condition in the:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM;

CONDOMINIUM ASSOCIATION COVERAGE FORM;

CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM;

BUILDERS RISK COVERAGE FORM;

EXTRA EXPENSE COVERAGE FORM;

LEASEHOLD INTEREST COVERAGE FOR TOBACCO SALES WAREHOUSES COVERAGE FORM; and

STANDARD PROPERTY POLICY

is replaced by the following:

APPRAISAL

If we and you disagree on the amount of either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days of such umpire, either may request that selection be made by a judge of a court having jurisdiction. Each appraiser will state the amount of loss. If they fail to agree, they will submit their difference to the umpire. A decision agreed to by any party will be binding as to the amount of loss.

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal equally.

If there is an appraisal:

- a. You will still retain your right to bring a legal action against us, subject to the provisions of the Legal Action Against Us Commercial Property Condition; and
 - b. We will still retain our right to deny the claim.
2. The APPRAISAL Condition in the:

BUSINESS INCOME COVERAGE FORM (WITH EXTRA EXPENSE); and

BUSINESS INCOME COVERAGE FORM (WITHOUT EXTRA EXPENSE)

is replaced by the following:

APPRAISAL

If we and you disagree on the amount of income and operating expense or the amount of loss, either may make written demand for appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days of such umpire, either may request:

selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense and the amount of loss.

If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding as to the amount of loss. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal:

- a. You will still retain your right to bring a legal action against us, subject to the provisions of the Legal Action Against Us Commercial Property Condition; and
- b. We will still retain our right to deny the claim.

- h. The provision requiring signed, sworn proof of loss in the DUTIES IN THE EVENT OF LOSS OR DAMAGE Loss Condition is replaced by the following:

Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 91 days after our request. We will supply you with the necessary forms.

- i. Under the LOSS PAYMENT CONDITION, the provisions pertaining to notice of our Intentions and the time period for payment of claims are deleted and replaced by the following:

1. Claims Handling

- a. Within 15 days after we receive written notice of claim, we will:

- (1) Acknowledge receipt of the claim. If we do not acknowledge receipt of the claim in writing, we will keep a record of the date, method and content of the acknowledgment;

- (2) Begin any investigation of the claim; and

- (3) Request a signed, sworn proof of loss, specify the information you must provide and supply you with the necessary forms. We may request more information at a later date, if during the investigation of the claim such additional information is necessary.

- b. We will notify you in writing as to whether:

- (1) The claim or part of the claim will be paid;

- (2) The claim or part of the claim has been denied, and inform you of the reasons for denial;

- (3) More information is necessary; or

- (4) We need additional time to reach a decision. If we need additional time, we will inform you of the reasons for such need.

We will provide notification, as described in

b.(1) through b.(4) above, within:

- (1) 15 business days after we receive signed, sworn proof of loss and information we requested; or

- (2) 30 days after we receive the signed, sworn proof of loss and all information requested, if we have reason to believe the loss resulted from arson.

If we have notified you that we need additional time to reach a decision, we must then approve or deny the claim within 45 days of such notice.

2. We will pay for covered loss or damage within 5 business days after:

- a. We have notified you that payment of the claim or part of the claim will be made, we have reached agreement with you on the amount of loss; or

- b. An appraisal award has been made.

However, if payment of the claim or part of the claim is conditioned on your compliance with the terms of this Coverage Part, we will make payment within 5 business days after the date we have complied with such terms.

The following paragraphs are added:

3. Catastrophe Claims

If a claim results from a weather related catastrophe or a major natural disaster, the claim handling and claim payment deadlines described in 1.2. above are extended for an additional 30 days.

Catastrophe or Major Natural Disaster means a weather related event which:

- (1) Is declared a disaster under the Texas Disaster Act of 1975; or

- (2) Is determined to be a catastrophe by the State Board of Insurance.

4. The term "business day," as used in the PAYMENT CONDITION, means a day other than Saturday, Sunday or a holiday recognized in the state of Texas.

- J. The following is added to the VALUATION Loss Condition:

Article 6.13. Policy A Liquidated Demand. In an insurance policy, in case of total loss by fire of property insured, shall be held and considered to be a liquidated demand against the Company for the amount of such policy. The provisions of this A shall not apply to personal property.

- K. Paragraphs d. and f. of the MORTGAGE HOLDING ADDITIONAL CONDITION are replaced by the following:

- d. If we deny your claim because of your failure to comply with the terms of this Coverage Part, the mort

holder will still have the right to receive loss payment if the mortgage holder:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 91 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

f. If we cancel this policy, we will give written notice to the mortgage holder at least:

- (1) 14 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

L. The following is added to Paragraph D.1. in the Duties in the Event of Accident, Claim or Suit loss condition in the LEGAL LIABILITY COVERAGE FORM:

We will notify the first Named Insured in writing of:

1. An initial offer to compromise or settle a claim made or "suit" brought against the Insured under this coverage. The notice will be given not later

than the 10th day after the date on which the offer is made.

2. Any settlement of a claim made or "suit" brought against the Insured under this coverage. The notice will be given not later than the 30th day after the date of the settlement.

M. In the CAUSES OF LOSS - BROAD FORM, the Water Damage Cause of Loss is replaced by the following:

Water Damage, meaning accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam, other than an Automatic Sprinkler System. If the building or structure containing the system or appliance is Covered Property, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or steam escapes.

We will not pay:

- a. The cost to repair any defect that caused the loss or damage; or
- b. For loss or damage caused by or resulting from freezing, unless:
 - (1) You do your best to maintain heat in the building or structure; or
 - (2) You drain the equipment and shut off the water supply if the heat is not maintained.

2

ORDER APPOINTING UMPIRE

THE STATE OF TEXAS
COUNTY OF HARRIS

IN THE DISTRICT COURT
338 DISTRICT JUDICIAL

NOW COMES THE COURT, to consider the request of the insured, Dr. Nick Bhagia for the court to appoint an umpire, pursuant to certain provisions of an insurance policy no. NZA 1702535, (claim no. 8025343) issued by Reliance Insurance Company and which Dr. Nick Bhagia is the insured, and noting that a dispute has arisen as to the appropriate figure for the insured's compensable losses resulting from an insured peril occurring on February 10, 1998 at his/her property at 9313 Tallho, Houston, Texas and it appearing to the Court that said request is well taken.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Under Porter Phone # (713) 963-1975 is hereby appointed as Umpire in this claim brought by the insured, under the aforesaid Policy No. NZA 1702535 (Claim No. 8025343) issued by the Reliance Insurance Company and covering the aforesaid loss incurred by this insured on the above mentioned date.

Signed this 9th day of June 19 98

Mary Brian
Judge
338th District Court

08/08/92 11:11 713 530 1035

HAAG-HOUSTON

2002

APPRAISAL AWARD
DATE: July 29, 1998

Insurance Company
Name: Reliance Insurance Company
Street: _____
City: _____

Insured
Name: Dr. Nick Bhagia
Street: _____
City: _____

Policy No: NZA 1702535 Type & Endorsements: _____
Loss Date: Feb. 10, 1998 Cause: Wind damage
(Wind, Hail, Fire, Etc.)

Property Description/Address: 9313 Tallyho

We hereby select Cyndal Porter to act as umpire to settle our differences only, if any in accord with the policy provisions.

Witness our hands this 29 day of July, 1998 A.D.

APPRAISER _____

APPRAISER _____

ITEM NO.	DESCRIPTION	REPLACEMENT COST	AGREED DAMAGE VALUE
1.	<u>138,687.51</u>	<u>No Depreciation</u>	<u>Actual Cash Value</u>
2.			<u>138,687.51</u>
3.			
4.			
5.			
6.			

ALL _____

Full replacement cost of building or buildings: * _____
(* Not required unless requested by Insured or Insurance Co.)

CLARIFICATIONS IF ANY: _____

We certify that we have conscientiously and impartially performed the duties assigned to us in accord with the appraisal provisions of the policy and do hereby award the amounts established above for the the described loss.

Witness our hand this 29 day of July, 1998.

Thomas Kelly APPRAISER

APPRAISER

Cyndal Porter UMPIRE
(A minimum of two signatures required)

M-Star, Inc.

5317 Fayette
Houston, Texas 77056
(713) 963-1975 Fax (713) 963-1976

July 27, 1998

Mr. Thomas Kelly
Kelly's Reconstruction Service
2910 Preston
Houston, Texas 77003
Reference:9313 Tallyho

Dear Mr. Kelley,

Acting as umpire for the 338TH District Court I have made a physical inspection of the property located at 9313 Tallyho as well as reviewed the information submitted to me by Mr. Michael Hickey at Texas General Contractors. Mr. Hickey declined to submit any information to me stating that he did not agree with the process. At that time I explained to Mr. Hickey that he left me with no other alternative but to make my decision based on the information that I could obtain elsewhere.

When I inspected the property, I found significant wind damage to the roofs on all of the building in the apartment complex. Since this damage occurred in February the original damage has been magnified by neglect in doing timely repairs. The owner, of course, was prohibited from doing the repairs, pending a settlement of his claim. As a result of the delay this claim has a higher dollar amount than if settlement had occurred in a timely manner.

Sincerely,



Cyndal Porter

cc: Mr. D. R. Tuggle
GAB Robins

Mr. Thomas Ross
Kubala and Company

Honorable Judge Mary Bacon
338 District Court



RELIANCE INSURANCE COMPANY	§	IN THE DISTRICT COURT OF
OF ILLINOIS	§	
	§	
vs.	§	HARRIS COUNTY, T E X A S
	§	
VISTA BONITA APARTMENTS,	§	
PHOENIX NORTH APARTMENTS,	§	
VISTA BONITA APARTMENTS now known	§	
as NEW SUN COAST APARTMENTS,	§	
L.L.C., PHOENIX NORTH APARTMENTS	§	
now known as NEW SUN COAST	§	
APARTMENTS, L.L.C. and NEW SUN	§	
COAST APARTMENTS, L.L.C.	§	127TH JUDICIAL DISTRICT

RELIANCE INSURANCE COMPANY OF ILLINOIS'
OBJECTIONS AND RESPONSES TO DEFENDANTS' REQUESTS FOR ADMISSION

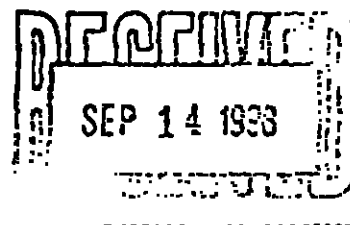
TO: Defendants, by and through their attorney of record, John "Lee" Arellano, Frost Bank Building, Suite 820, 2211 Norfolk, Houston, Texas 77098.

COMES NOW, RELIANCE INSURANCE COMPANY OF ILLINOIS, Plaintiff in the above-entitled and numbered cause, and pursuant to Rule 169 of the Texas Rules of Civil Procedure, makes the following Objections and Responses to the Requests for Admission propounded by Defendants:

1. You are the insurer of the insured's claims.

RESPONSE:

Plaintiff objects to the extent the term "claims" is over broad, vague and ambiguous. Subject to and without waiving said objections, Plaintiff admits that it issued an insurance policy but denies the Defendants' contention regarding the extent of damages and amount of damages that compromise the insured's "claims."



2. Your insurance policy was in full force and effect for the benefit of the policyholder and provides coverage on its claims.

RESPONSE:

Plaintiff objects to the extent that the term "claims" is over broad, vague and ambiguous. Subject to and without waiving said objections, Plaintiff admits that the policy was in full force and effect on February 10, 1998, but denies the Defendants' contention regarding the extent of damages and amount of damages that compromise the insured's "claims."

3. The policyholder provided you timely notice of its claims.

RESPONSE:

Plaintiff objects to the extent that the term "claims" is over broad, vague and ambiguous. Subject to and without waiving said objections, Plaintiff admits this request.

4. Your appraiser and the insured's appraiser failed to agree upon the selection of an Umpire.

RESPONSE:

Plaintiff must deny the request as worded. The insured's appraiser, Thomas Kelly, could not agree upon the selection of an umpire despite Michael Hickey's efforts to try to reach an agreement.

5. The policyholder secured the appointment of an Umpire on these claims.

RESPONSE:

Plaintiff objects to the extent the terms "secured" and "claims" are over broad, vague and ambiguous. Furthermore, after reasonable inquiry, the information known or easily obtainable by the Plaintiff is insufficient to enable the Plaintiff to admit or deny this request and, therefore, the Plaintiff must deny this request.

6. Your insurance policy allows a Texas State District Judge in the county where the loss occurs to appoint an Umpire.

RESPONSE:

Plaintiff denies this request. The policy, which speaks for itself, specifically provides that the selection of an umpire may be made "by a judge of a court having jurisdiction."

7. The insured's Umpire was timely appointed according to your insurance policy.

RESPONSE:

Plaintiff denies this request. The insured's umpire was not appointed "by a judge of a court having jurisdiction" and, therefore, the alleged appointment is void for all purposes.

8. The insured's Umpire was appointed by a Texas State District Judge in the county where the claims arose.

RESPONSE:

Plaintiff objects to this request to the extent it is misleading, vague and ambiguous. Subject to and without waiving said objections, Plaintiff only admits that the insured's umpire was appointed by a Criminal State District Judge in Harris County, Texas.

9. You wanted a different Umpire appointed.

RESPONSE:

Plaintiff denies this request as worded. Plaintiff only admits that its appraiser, Michael Hickey, suggested the names of other umpires and, before an agreement could be reached, the insured or the insured's appraiser sought the appointment of an umpire whose appointment should be vacated.

10. You failed to have an Umpire appointed prior to the policyholder's Umpire being appointed.

RESPONSE:

Plaintiff denies this request as worded, but admits that the Plaintiff did not request that an umpire be appointed before Judge Bacon appointed an umpire.

11. The policyholder's Umpire was appointed according to Texas State law.

RESPONSE:

Plaintiff objects to the extent this request involves a pure question of law and, therefore, is improper under the Texas Rules of Civil Procedure. Plaintiff also objects to the extent that this request calls for a legal opinion, an expert opinion and/or a legal conclusion and, therefore, is an improper request. Subject to and without waiving said objections, Plaintiff denies this request.

12. You have had Umpires appointed in Harris County, Texas according based on other insurance policies issued by Reliance that contain the exact same Appraisal Provision language as the policy purchased by the insured from you in this case.

RESPONSE:

Plaintiff objects to this request since it is over broad, vague and is unintelligible as worded. Subject to and without waiving said objections, Plaintiff admits that it has requested that a judge of a court having jurisdiction select an umpire.

13. Under your insurance policy an Umpire cannot be validly appointed less than 15 days from the date the two appraisers first begin attempting to agree on the selection of an Umpire.

RESPONSE:

Plaintiff objects to the extent "your insurance policy" is undefined, over broad, vague and ambiguous. Subject to and without waiving said objections, Plaintiff denies this request with regard to the policy issued to the insured.

14. The policyholder's Umpire was not appointed by fraud, accident or mistake.

RESPONSE:

After reasonable inquiry, the information known or easily obtainable by the Plaintiff is insufficient to enable the Plaintiff to admit or deny this request and, therefore, Plaintiff must deny this request.

15. You did not participate in the Appraisal Process as set forth in your insurance policy on these claims.

RESPONSE:

Plaintiff objects to this request to the extent it is over broad, vague and ambiguous and unintelligible as worded. The terms "participate" and "process" are too vague and ambiguous for the Plaintiff to respond to this request. Subject to and without waiving said objections, the Plaintiff denies this request as worded. Plaintiff admits that it followed and complied with the appraisal provisions in the policy and all other terms of the policy.

16. You did not meet with the Umpire appointed on these claims.

RESPONSE:

Plaintiff admits that it did not meet with the umpire, Cyndal Porter, whose appointment should be vacated.

17. You were advised by the policyholder that the Appraisal Process was being conducted.

RESPONSE:

Plaintiff objects to the extent this request is over broad, vague and ambiguous especially with respect to the terms "process" and "conducted." Subject to and without waiving said objections, Plaintiff denies this request.

18. You refused to pay the insured's claim within 5 days of the date of the Umpire's Award.

RESPONSE:

Plaintiff admits that it has not paid the insured's claim within 5 days of the date of the umpire's award, because the appointment of the umpire is void and should be vacated and the award of the umpire should be vacated.

19. The insured owned a policy purchased from you that contained a provision commonly called "Replacement Cost Coverage."

RESPONSE:

Plaintiff objects to the term "owned" and further objects to this request to the extent that the policy in question speaks for itself and the policy itself is the best evidence of the provisions contained in the policy. Subject to and without waiving said objections, Plaintiff admits that there is a provision in the policy entitled "Replacement Costs," which is contained under the Optional Coverages section of the policy.

20. You charged these insureds' additional money for attaching this "Replacement Cost" endorsement to their policy which you would not otherwise have charged them had they not requested, purchased and paid you a high premium specifically for that provision.

RESPONSE:

After reasonable inquiry, the information known or easily obtainable by the Plaintiff is insufficient to enable the Plaintiff to admit or deny this request. Plaintiff is seeking

to obtain the necessary information from the managing general agent and/or broker. Plaintiff will supplement this response in accordance with the Texas Rules of Civil Procedure.

21. You sold this "Replacement Cost" provision to these insureds' by representing that it grants special rights in return for the a higher premium paid.

RESPONSE:

Plaintiff objects to this request to the extent it is over broad, vague and ambiguous and, more specifically, Plaintiff objects to the term "special rights" which is undefined, over broad, vague and ambiguous. After reasonable inquiry, the information known or easily obtainable by the Plaintiff is insufficient to enable the Plaintiff to admit or deny this request. Plaintiff will supplement this request in accordance with the Texas Rules of Civil Procedure.

22. The Replacement Cost provision grants the policyholder the right to full reimbursement for all costs incurred when making the necessary repairs and replacements to their damaged property.

RESPONSE:

Plaintiff objects to this request to the extent that it mischaracterizes or misstates the "replacement cost" provision in the policy. The insurance policy speaks for itself and is the best evidence of the terms and provisions of the policy. Subject to and without waiving said objections, Plaintiff denies this request as worded.

23. You determined the replacement cost value on the insured claim(s).

RESPONSE:

Plaintiff objects to this request to the extent the term "claim(s)" is over broad, vague and ambiguous. Subject to and without waiving said objection, Plaintiff denies this request as worded. Plaintiff admits that it has estimated the replacement cost.

24. The policyholder incurred costs for temporary repairs resulting from damages caused by these claims.

RESPONSE:

After reasonable inquiry, the information known or easily obtainable by the Plaintiff is insufficient to enable the

Plaintiff to admit or deny this request and, therefore, the Plaintiff must deny this request.,

25. Your insurance policy requires the insured to take precautionary measures to protect its property from further damage.

RESPONSE:

Plaintiff objects to the use of the term "precautionary measures" because it is undefined, over broad, vague and ambiguous. Plaintiff further objects to this request to the extent that it mischaracterizes or misstates what the policy states or requires. The insurance policy speaks for itself and is the best evidence of the terms of the policy. Subject to and without waiving said objections, Plaintiff admits that the insured must comply with all of the terms of the insurance policy including, but not limited to, the terms of the policy which require the insured to take all reasonable steps to protect its property from further damage.

26. All estimates submitted by Kubala & Company to you were reasonable and necessary costs to repair the insureds premises.

RESPONSE:

Deny.

27. Any insured who refuses to take precautionary measures is in violation of that provision of the policy.

RESPONSE:

Plaintiff objects to the use of the term "precautionary measures" because it is undefined, over broad, vague and ambiguous and attempts to mischaracterize or misstate the terms of the applicable insurance policy. The insurance policy speaks for itself and is the best evidence of the terms of the policy. Subject to and without waiving said objections, an insured who fails to take all reasonable steps to protect its property from further damage is in breach of the insurance policy.

28. Your insured complied with your insurance policy regarding taking precautionary measures to protect its property from further damage.

RESPONSE:

Plaintiff objects to the use of the term "precautionary measures" because it is undefined, over broad, vague and ambiguous and attempts to mischaracterize or misstate the terms of the applicable insurance policy. The insurance policy speaks for itself and is the best evidence of the terms of the policy. Subject to and without waiving said objections, after reasonable inquiry, the information known or easily obtainable by the Plaintiff is insufficient to enable the Plaintiff to admit or deny this request and, therefore, the Plaintiff must deny this request.

29. You were aware your insured was complying with your insurance policy when it took precautionary measures to protect its property from further damage.

RESPONSE:

Plaintiff objects to the use of the term "precautionary measures" because it is undefined, over broad, vague and ambiguous and attempts to mischaracterize or misstate the terms of the applicable insurance policy. The insurance policy speaks for itself and is the best evidence of the terms of the policy. Plaintiff further objects to this request to the extent it assumes facts not in evidence and assumes that the insured complied with the insurance policy. Assuming that the insured was complying with the terms of the insurance policy by taking precautionary measures, which is specifically denied by this Plaintiff, the Plaintiff denies it was aware that the insured allegedly took precautionary measures to protect its property. Subject to and without waiving said objections, Plaintiff denies this request.

30. An insureds' failure to make temporary repairs can result in you refusing to pay for any additional property damages.

RESPONSE:

Plaintiff objects to the extent that this request is over broad, vague and ambiguous. Plaintiff further objects to the extent this request is a hypothetical and an improper request for admission. Subject to and without waiving said objections, Plaintiff admits that an insured's failure to take all reasonable steps to protect its property from further damage, can result in the carrier refusing to pay for any additional property damage which results from the insured's failure to take all reasonable steps to protect its property from further damage.

31. Your failure to participate in the Appraisal Process was because you did not get the Umpire appointed that you wanted.

RESPONSE:

Plaintiff objects to this request to the extent it mischaracterizes and misstates facts and assumes facts not in evidence. Subject to and without waiving said objections, the Plaintiff denies this request. Plaintiff's appraiser was not given a sufficient opportunity to evaluate the claim and submit its differences to the umpire. Furthermore, the umpire, Cyndal Porter, was not appointed by a judge of a court having jurisdiction and, therefore, the appointment is void and should be vacated.

32. Your failure to pay the Umpire's Award was because you did not get the Umpire appointed that you wanted.

RESPONSE:

Plaintiff objects to this request to the extent it mischaracterizes and misstates facts and assumes facts not in evidence. Subject to and without waiving said objections, the Plaintiff denies this request. Plaintiff's appraiser was not given a sufficient opportunity to evaluate the claim and submit its differences to the umpire. Furthermore, the umpire, Cyndal Porter, was not appointed by a judge of a court having jurisdiction and, therefore, the appointment is void and should be vacated.

33. Your corporate policy is to file a lawsuit against your insured unless the Umpire appointed is satisfactory to you.

RESPONSE:

Deny.

34. You filed a lawsuit against your insured in Case No. 98-28666, Reliance v. Creekwood Landing Corp., et al., 334th District Court, Harris County, Texas.

RESPONSE:

Plaintiff objects to the extent this request is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objection, Plaintiff admits that it filed a declaratory judgment in the 334th District Court of Harris County, Texas, having Cause No. 98-28666, asking the court to declare the rights, duties and obligations of the parties under the insurance policy issued to Creekwood Landing Corp.

35. You filed a lawsuit against your insured in Case No. 98-33861, Reliance v. Vista Bonita Apartments, et al., 127th District Court, Harris County, Texas.

RESPONSE:

Plaintiff admits that it filed a declaratory judgment action in the 127th District Court of Harris County, Texas, having Cause No. 98-33861, requesting that the court declare the rights, obligations and duties of the parties.

36. You or your agents presented an ex parte Order Appointing Umpire to Texas State District Judge Kathy Stone on June 18, 1998, which she signed and subsequently voided.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Subject to and without waiving said objections, Plaintiff denies this request.

37. You or your agents telephoned Judge Stone's office after she signed the June 18, 1998, Order Appointing Umpire to request that she re-sign another Order Appointing Umpire on June 19, 1998, because the first signed Order was prematurely executed by one (1) day.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Subject to and without waiving said objections, Plaintiff denies this request.

38. You filed Case No. 98-28666, Reliance v. Creekwood Landing Corp., et al., 334th District Court, Harris County, Texas, on June 18, 1998, after Judge Stone signed the first Order Appointing Umpire that you or your agents presented to her.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Subject to and without waiving said objections, Plaintiff denies this request as worded. Plaintiff admits that it filed Cause No. 98-28666

in the 334th District Court of Harris County, Texas on June 18, 1998.

39. June 19, 1998, was the first date that an Umpire could be validly appointed, according to your insurance policy, in the case that is now No.98-28666, Reliance v. Creekwood Landing Corp., et al., 334th District Court, Harris County, Texas.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Plaintiff further objects to this request to the extent that it calls for legal opinions or legal conclusions. The policy speaks for itself and is the best evidence of the terms of the policy. Subject to and without waiving said objections, Plaintiff denies this request.

40. Your intent in filing NO. 98-28666, Reliance v. Creekwood Landing Corp., et al., 334th District Court, Harris County, Texas, on June 18, 1998, was to prevent the insured from obtaining an Umpire Appointment on June 19, 1998.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Plaintiff further objects to the extent this request invades the work product privilege and attempts to invade the mental processes and strategy of Plaintiff's attorney. Subject to and without waiving said objections, Plaintiff denies this request.

41. You presented an ex parte Order Appointing Umpire to Texas State District Judge John Devine on June 18, 1998, which he signed and subsequently altered due to incorrect dates and times typed in on such Order by you or your agents.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Subject to and without waiving said objections, Plaintiff denies this request.

42. Your insured in No. 98-28666, Reliance v. Creekwood Landing Corp., et al., 334th District Court, Harris County, Texas, obtained an Order Appointing Umpire signed on June 19, 1998.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Subject to and without waiving said objections, Plaintiff admits that its insured obtained an order appointing an umpire from a visiting judge in a court not having jurisdiction and said order was subsequently vacated by Judge Lloyd.

43. You have filed other Declaratory Judgment lawsuits against other Reliance insureds in Harris County, Texas.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Subject to and without waiving said objections, Plaintiff admits this request.

44. Your intent in filing Case No. 98-33861, Reliance v. Vista Bonita Apartments, et al., 127th District Court, Harris County, Texas, was to have the Umpire set aside and stop the Appraisal Process.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Plaintiff further objects to the extent this request invades the work product privilege and attempts to invade the mental processes and strategy of Plaintiff's attorney. Subject to and without waiving said objections, Plaintiff denies this request.

45. You have no legal grounds for requesting the Umpire on these claims to be set aside.

RESPONSE:

Plaintiff objects to this request to the extent it is over broad, vague and ambiguous with respect to the meaning of the term "these claims." Subject to and without waiving said objections, Plaintiff denies this request.

46. Your intent in filing Case No. 98-33861, Reliance v. Vista Bonita Apartments, et al., 127th District Court, Harris County, Texas, was to delay or refuse the payment of the insured's claims.

RESPONSE:

Plaintiff objects to the extent this request is not relevant to this lawsuit nor is it reasonably calculated to lead to the discovery of admissible evidence and this request is being asserted for the sole purpose of harassment. Plaintiff further objects to the extent this request invades the work product privilege and attempts to invade the mental processes and strategy of Plaintiff's attorney. Subject to and without waiving said objections, Plaintiff denies this request.

47. Judge Mary Bacon is a Texas State District Judge in Harris County, Texas.

RESPONSE:

Plaintiff objects to this request to the extent it misstates or mischaracterizes Judge Mary Bacon's full and correct title. Subject to and without waiving said objection, Plaintiff admits that Judge Mary Bacon is a Criminal State District Judge in Harris County, Texas.


48. Judge Mary Bacon signed the Order Appointing Umpire more than 15 days after the two appraisers failed to agree upon the selection of an Umpire.

RESPONSE:

Plaintiff objects to this request to the extent it mischaracterizes or misstates the facts and assumes facts not in evidence. Subject to and without waiving said objection, Plaintiff denies this request.

Respectfully submitted,

SPAGNOLETTI & ASSOCIATES

By: 
Francis I. Spagnoletti
State Bar No. 18869600
John P. Abbey
State Bar No. 00789010
M.S. "Frost" Haechen
State Bar No. 00796689
1600 Smith, Suite 4545
Houston, Texas 77002
713/653-5600
FAX: 713/653-5656

ATTORNEYS FOR PLAINTIFF/COUNTER-
DEFENDANT, RELIANCE INSURANCE
COMPANY OF ILLINOIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon the following counsel of record by facsimile on this 11th day of September, 1998:

John "Lee" Arellano
ARELLANO & ASSOCIATES
2211 Norfolk, Suite 820
Houston, Texas 77098
FAX: 713/529-7373


John P. Abbey

CAUSE NO. 98-33861

RELIANCE INSURANCE COMPANY § IN THE DISTRICT COURT OF
OF ILLINOIS §
§
vs. § HARRIS COUNTY, T E X A S
§
VISTA BONITA APARTMENTS, §
PHOENIX NORTH APARTMENTS, §
VISTA BONITA APARTMENTS now known §
as NEW SUN COAST APARTMENTS, §
L.L.C., PHOENIX NORTH APARTMENTS §
now known as NEW SUN COAST §
APARTMENTS, L.L.C. and NEW SUN §
COAST APARTMENTS, L.L.C. § 127TH JUDICIAL DISTRICT


PLAINTIFF'S OBJECTIONS AND ANSWERS TO
DEFENDANTS' FIRST SET OF INTERROGATORIES

TO: Defendants, by and through their attorney of record, John
"Lee" Arellano, Frost Bank Building, Suite 820, 2211 Norfolk,
Houston, Texas 77098.

COMES NOW, Plaintiff, and, in accordance with the Texas Rules
of Civil Procedure, files this, its Objections and Answers to
Defendants' First Set of Interrogatories.

Respectfully submitted,

SPAGNOLETTI & ASSOCIATES

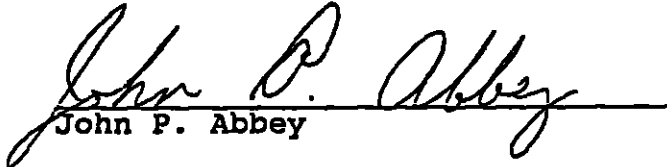
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1600 Smith, Suite 4545
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ATTORNEYS FOR PLAINTIFF/COUNTER-
DEFENDANT, RELIANCE INSURANCE
COMPANY OF ILLINOIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon the following counsel of record by facsimile on this 11th day of September, 1998:

John "Lee" Arellano
ARELLANO & ASSOCIATES
2211 Norfolk, Suite 820
Houston, Texas 77098
FAX: 713/529-7373



John P. Abbey

OBJECTIONS AND ANSWERS

1. Please state the (a) full name, (b) address, (c) Social Security number, (d) date of birth, and (e) driver's license number of the person answering these interrogatories.

ANSWER: Defendant objects to providing the driver's license number, social security number and date of birth since the information is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection:

Anthony Battle
RELIANCE NATIONAL PROPERTY CLAIMS
77 Water Street
New York, New York 10005

2. State the name, address and telephone number and employer of each person with knowledge of relevant facts regarding this suit.

ANSWER: Defendant objects to this interrogatory to the extent that it calls for the identification of purely consulting experts whose identity is protected from disclosure. Subject to and without waiving the foregoing objection:

Anthony Battle
RELIANCE NATIONAL PROPERTY CLAIMS
77 Water Street
New York, New York 10005

D.R. Tuggle
Branch General Adjuster
7322 S.W. Frwy., Suite 950
Houston, Texas 77074

Michael Hickey
Texas General Contractors
4601 South Wayside Drive
Houston, Texas 77003
(713) 640-2025

Thomas Kelly
Kelly's Reconstruction Service
2910 Preston
Houston, Texas 77003
(713) 237-1628

Thomas A. Ross

Kubala & Company
9000 W. Bellfort, Suite 550
Houston, Texas 77031
(713) 988-3325

3. With respect to each expert witness you intend to call and/or may call at trial, state:
- a. the name, address, telephone number and subject matter or field of expertise of such individual relative to this lawsuit;
 - b. all factual observations, test results, supporting data, learned treatises (medical books, texts or other publications) and opinions which the witness uses to support his or her opinions and conclusions or upon which the witness will base his or her testimony at trial, including the identity of each consulting expert whose opinions or data have been reviewed, referred to and/or relied upon by the expert witness, and the complete title and author of each learned treatise referred to and/or relied upon by the witness in forming and/or corroborating his or her opinions regarding this case and/or which the expert believes or will testify are authoritative on the subject matter of his anticipated testimony.
 - c. Please identify (title or description, author, date generated, published or disseminated) each "type" or "class" of documents and things (including, but not limited to written or electronically recorded or compiled notes, memoranda, correspondence, reports, tests, monographs, drawings, graphics, photographs, videotapes, models, and other compilations of data) relevant to the expert, and/or are reviewed by or support or form the basis in whole or in part of the mental impressions and opinions held by the expert regarding the subject matter of this anticipated testimony in this lawsuit (including the same requested information from each consulting expert whose work product forms a basis either in whole or in part of the expert witness' opinions) prepared by or for the anticipated expert witness in anticipation of the expert's trial and deposition testimony in this case.

ANSWER: Defendant asserts that under Texas Rule of Civil Procedure 166b(2)(e)(1) this interrogatory is improper in that such inquiry improperly invades the attorney-client and attorney work product privileges, as well as attorney's trial strategy. Defendant also objects to this interrogatory to the extent that it calls for the identification of purely consulting experts whose identity is protected from disclosure. See Employers Mut.

Liability Ins. Co. v. Butler, 511 S.W.2d 323, 324-25 (Tex. App. -- Texarkana 1974, writ ref'd n.r.e.). Subject to and without waiving the foregoing objections, experts have not yet been determined. Plaintiff will supplement.

4. Identify or describe any document prepared by you for your appraiser (whether in-house or independent) which contains instructions or procedures with respect to participating in the appraisal process related to this claim.

ANSWER: There are none.

5. State your understanding of how an Umpire gets appointed in Texas under your insurance policy if the two appraisers cannot agree on one.

ANSWER: Plaintiff objects to this interrogatory in that it is specifically intended to harass. Plaintiff further objects to the extent this interrogatory is overly broad, vague and ambiguous. Plaintiff also objects to the extent that the policy speaks for itself and the policy is the best evidence of the terms of the policy. Subject to and without waiving the foregoing objections, it is the Plaintiff's understanding that if the parties cannot agree on an umpire then either may request that selection be made by a judge of a court having jurisdiction.

6. State whether you have ever sought the appointment of an Umpire in Texas pursuant to the procedures you described in your answer to Interrogatory No. 5.

ANSWER: Reliance has requested that a judge of a court having jurisdiction select an umpire pursuant to the terms of the applicable policy.

7. State the name and policy number of any and all insurance policies, whether basic, umbrella or excess, which may pay any judgment in this case or provide any defense in this case and state the amount of your deductible and policy limits.

ANSWER: Plaintiff objects to this interrogatory insofar as it may seek to determine actual insurance "coverage" or any actual or implied admission as to Plaintiff's alleged liability, which is expressly denied. Plaintiff further objects to providing information regarding any policy other than the primary policy, if any, as any other policies would be neither relevant nor reasonably calculated to

lead to the discovery of admissible evidence. Martin v. Khoury, 843 S.W.2d 163, 166 (Tex. App. -- Texarkana 1992, orig. proceeding). Without waiving the foregoing objections, Reliance is self-insured for any judgment which may be entered in this case.

8. Does your insurance policy allow a Texas State District Judge to appoint an Umpire, if the two appraisers cannot agree upon one, if less than 15 days has expired from the date the two appraisers first began attempting to agree on the selection of an Umpire, and if not, please explain all reasons why not.

ANSWER: Plaintiff objects to this interrogatory in that it is specifically intended to harass. Plaintiff further objects to the extent this interrogatory is overly broad, vague and ambiguous. Plaintiff also objects to the extent that the policy speaks for itself and the policy is the best evidence of the terms of the policy. Plaintiff objects in that this interrogatory calls for a legal conclusion or legal opinion. Subject to and without waiving the foregoing objections, what the policy provides or allows is contained in the policy and it speaks for itself.

9. Does your insurance policy allow a Texas State District Judge to appoint an Umpire, if the two appraisers cannot agree upon one, if more than 15 days has expired from the date the two appraisers first began attempting to agree on the selection of an Umpire and if not, please explain all reasons why not.

ANSWER: Plaintiff objects to this interrogatory in that it is specifically intended to harass. Plaintiff further objects to the extent this interrogatory is overly broad, vague and ambiguous. Plaintiff also objects to the extent that the policy speaks for itself and the policy is the best evidence of the terms of the policy. Plaintiff objects in that this interrogatory calls for a legal conclusion or legal opinion. Subject to and without waiving the foregoing objections, what the policy provides or allows is contained in the policy and it speaks for itself.

10. If you secured the signature of a Texas State District Judge on an ex parte Order Appointing Umpire before 15 days had expired from the date the two appraisers first began attempting to agree on the selection of an Umpire, would you advise the Texas State District Judge that the 15 day period had not yet elapsed; and if so, please articulate the wording of the advisory; if not, please explain why not.

ANSWER: Plaintiff objects to the extent that this request is overbroad, vague, ambiguous, calls for speculation and is an incomplete hypothetical question. Plaintiff further objects to the extent that this interrogatory is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, as of this date, Plaintiff has not secured the signature of a judge in this lawsuit.

11. How many times have you filed a Declaratory Judgment in Harris County to get your insured's appraiser's appointed Umpire set aside since 1995.

ANSWER: Plaintiff objects to this interrogatory in that it is specifically intended to harass, it is over burdensome, it would be overly expensive to locate such information and it would be impossible for the Plaintiff to obtain this information. Plaintiff further objects to the extent that this interrogatory is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent that the interrogatory is overly broad and to the extent that this interrogatory is not limited to substantially similar suits. Plaintiff also objects to the extent that this public information is equally available and accessible to the Defendant.

12. Have you ever authorized an appraiser(s) retained by you to present an ex parte Order Appointing Umpire to a Texas State District Judge pursuant to the terms of your insurance policy, and if so, please provide the name, address and phone number of such appraiser(s).

ANSWER: Plaintiff objects to this interrogatory in that it is specifically intended to harass, it is over burdensome, it would be overly expensive to locate such information and it would be impossible for the Plaintiff to obtain this information. Plaintiff further objects to the extent that this interrogatory is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent that the interrogatory is overly broad and to the extent that this interrogatory is not limited to substantially similar suits. Plaintiff also objects to the extent that this public

information is equally available and accessible to the Defendant.

13. Have you ever authorized an attorney(s) retained by you to present an ex parte Order Appointing Umpire to a Texas State District Judge pursuant to the terms of your insurance policy, and if so, please provide the name, address and phone number of such attorney(s).

ANSWER: Plaintiff objects to this interrogatory in that it is specifically intended to harass, it is over burdensome, it would be overly expensive to locate such information and it would be impossible for the Plaintiff to obtain this information. Plaintiff further objects to the extent that this interrogatory is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent that the interrogatory is overly broad and to the extent that this interrogatory is not limited to substantially similar suits. Plaintiff also objects to the extent that this public information is equally available and accessible to the Defendant.

14. Does your insurance policy provide Defendant with replacement cost coverage on this claim?

ANSWER: Plaintiff objects to the extent that this interrogatory is over broad, vague and ambiguous. Plaintiff also objects to the extent that the policy speaks for itself. Subject to and without waiving the foregoing objections, yes.

15. Did you participate in the appraisal process related to this claim, and if not, please explain why not.

ANSWER: Plaintiff objects to the extent that this interrogatory is overbroad, vague and ambiguous and more particularly, the term "process" is vague and ambiguous. Subject to and without waiving the foregoing objection, yes.

16. Do you contend that the appraisers agreed on an Umpire for this claim, and if so, please explain all reasons for such contention.

ANSWER: No. The insured's appraiser, Thomas Kelly, made the unilateral decision that the parties could not agree on an umpire.

17. Do you contend that the Defendant obtained an Order Appointing Umpire for this claim less than 15 days after the two appraisers first began to attempt to agree on the selection of an Umpire, and if so, please explain all reasons for such contention.

ANSWER: Plaintiff contends that the Defendant did not obtain an Order Appointing Umpire from a judge of a court having jurisdiction and, therefore, the Order Appointing Umpire is void and should be vacated and the subsequent appraisal award is void and should be vacated. Judge Mary Bacon is a Criminal District Judge who did not have jurisdiction and could never have jurisdiction over this civil matter.

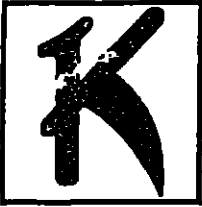
18. If you contend that the Defendant failed to properly obtain a validly appointed Umpire for this claim, please explain all reasons for such contention.

ANSWER: Plaintiff contends that the Defendant did not obtain an Order Appointing Umpire from a judge of a court having jurisdiction and, therefore, the Order Appointing Umpire is void and should be vacated and the subsequent appraisal award is void and should be vacated. Judge Mary Bacon is a Criminal District Judge who did not have jurisdiction and could never have jurisdiction over this civil matter.

19. Do you contend that you are not bound by the Appraisal Award rendered in this case, attached to Defendant's Original Answer, and if so, please explain all reasons for such contention.

ANSWER: Yes. Plaintiff contends that the Defendant did not obtain an Order Appointing Umpire from a judge of a court having jurisdiction and, therefore, the Order Appointing Umpire is void and should be vacated and the subsequent appraisal award is void and should be vacated. Judge Mary Bacon is a Criminal District Judge who did not have jurisdiction and could never have jurisdiction over this civil matter.

NUDALA AND CUMITANI
9000 W. BELLFORT, SUITE 550
HOUSTON, TEXAS 77031
PHONE: (713) 988-3325
FAX: (713) 988-5830



John Kutala, G.A.
President

Thomas A. Ross, S P P A
Vice President

Kirk D. Butternick
General Counsel

February 20, 1998

To: John R. Duffy, Agent
Mid Continental Insurance Agency, Inc
1717 Montrose
Houston, Texas 77006

Re: Named Insured: Vista Bonita Apartments
Loss Location: 9313 Tallyho
Houston, Texas 77017
Type of Loss: Wind/Water
Date of Loss: 02/10/98
Policy No: NZA1702535

Dear Mr. Duffy:

This letter will serve as formal notice that our office has been contacted by the named insured to assist in the settlement of his claim.

As required under the Basic Conditions-Requirements in Case of Loss, this letter will serve as written notice to the above occurrence.

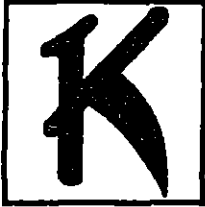
Our Employment Agreement noting our representation is enclosed. We trust you will forward this notification to the carrier of the loss and instruct their adjuster to contact our office for conclusion of the claim.

Thank you for your time and consideration concerning this matter.

Sincerely,

Thomas A. Ross, SPPA
Vice President

cc: Dr. Nick Bhagia



*John Kuba'a, G.A.
President*

*Thomas A. Ross, S P F A
Vice President*

*Kirk D. Euttermick
General Counsel*

KUDALA AND COMPANY
9000 W. BELLCOURT, SUITE 550
HOUSTON, TEXAS 77031
PHONE: (713) 988-3325
FAX: (713) 988-5830

April 21, 1998

*D.R. Tuggle, G.A.
GAB Robins North America, Inc.
7322 Southwest Freeway, Suite 950
Houston, Texas 77074-2020*

*Re: Insured : Vista Bonita Apartments
Loss Location : 9313 Tallyho, Houston, Texas
Type Loss : Wind/Water
Date of Loss : 02/10/98
Claim No. : 80253-13*

This letter will serve to advise you that I have review your estimate with the above referenced insured.

They are not in agreement with your evaluation nor the offer made, therefore they now wish to exercise the Appraisal Process as outlined in their policy provision "Appraisal".

They have named Mr. Thomas Kelly of Kelly Reconstruction Services, to act as their competent and independent appraiser. Mr. Kelly can be reached at (713) 237-1628. Please instruct the carrier to have their appraiser contact Mr. Kelly within the time limits allowed.

Your cooperation in this matter is appreciated.

Sincerely,

Thomas A. Ross
Thomas A. Ross SPPA
Vice President

*c: Dr. Nick Bahgia
Vista Bonita Apartments*



GAB Robins North America, Inc

7322 SW Freeway
Suite 950
Houston, TX 77074
T: 713-988-6700
F: 713-270-3800

April 24, 1998

THOMAS A. ROSS, SPPA
VICE PRESIDENT
KUBALA AND COMPANY
9000 WEST BELLFORT, SUITE 550
HOUSTON, TEXAS 77031

RE : GAB File No. :34724-73192
Insured :VISTA BONITA APARTMENTS (PHOENIX NORTH)
9313 TALLYHO, HOUSTON, TEXAS
Policy # :NZA1702535
Claim # :#8025343
Date of Loss : 02/10/98
Type of Loss :WIND AND WATER

DEAR MR. ROSS:

We acknowledge your letter dated April 21, 1998 whereby you stated that you were not in agreement with our evaluation of the damages or the offer made and that you were exercising the appraisal process as outlined in the policy provisions.

We acknowledge that you have named Mr. Thomas Kelly of Kelly Restoration Services to act as your appraiser.

Please be advised that Reliance National Insurance Company has elected Mr. Mike Hickey of Texas General Contractors, Inc., to act as their competent and independent appraiser. Mr. Hickey can be reached at 4601 South Wayside Drive, Houston, Texas, 77087. His phone number is 713-640-2025. Fax number is 713-640-1188. Please instruct your appraiser, Mr. Kelly, to contact Mr. Mike Hickey in the very near future so that they may work towards the selection of an umpire.

Very truly yours,

A handwritten signature in cursive script that reads "D. R. Tuggle".

D. R. Tuggle
Branch GA

cc: Mike Hickey
Texas General Contractors

Enclosures

DRT:pc

GAB N1671(5:95)



TEXAS GENERAL
CONTRACTORS

4001 South Wayside Drive
Houston, Texas 77087
FAX (713) 640-1188
(713) 640-2023

June 1, 1998

Mr. Tom Kelly
KELLY'S RESTORATION SERVICE
2910 Preston
Houston, Texas 77003

via fax 713.237.9184 Contractors
original mailed Loss Consulting
Disaster Response

RE: VISTA BONITA APPRAISAL

Dear Tom,

I am in receipt of your 05-29-98 two page fax. The Xerox copy of a portion of a text marked "7.Appraisal..." that then completes a paragraph stating the decision to submit to a judge for umpire selection is totally different from the policy information I have been supplied with. The policy information I have been supplied with specifically gives the charge of submitting to a judge to the two appraisers. Further, my policy information omits a time frame with which to complete this task.

Secondly, in my 05-14-98 one page fax communication to you, I was very clear in my request that we communicate, in the *spirit of the appraisal process*, through out this process with each other. I am confident you are fully aware my intention was and is to conduct this process in a manner consistent with fairness and impartiality to both parties. I find it unreasonable to impose a judge's time to review this matter when you never took the time to respond to my second communication of 05-14-98.

Therefore, upon receipt of notification from yourself or Kubala's office of an appointed umpire, be sure to provide me with the judge's address and telephone number. It is fully my intent to have the judge review this entire file. I will then request a set aside decree of the appointment.

Of course the real tragedy here is the consumer continues to wait for a settlement while the good ol' boys play one-upsmanship with the appraisal process.

Respectfully,

Michael Hickey
TEXAS GENERAL CONTRACTORS, INC.

cc Mr. D.R. Tuggle
GAB Robins

via fax 713.270.3800

Mr. Thomas Ross
Kubala and Company

via fax 713.988.5830

KELLY'S RECONSTRUCTION SERVICE

**2910 PRESTON
HOUSTON, TEXAS 77003
713/237-1628
FAX 713/237-9184
6-2-98**

**MICHAEL HICKEY
TEXAS GENERAL CONTRACTORS, INC.
4601 SOUTH WAYSIDE DR.
HOUSTON, TEXAS 77087**

RE: VISTA BONITA APPRAISAL

DEAR MR. MICHAEL HICKEY

WE SENT YOU A LETTER ON 5-29-98, TO INFORM YOU TO ASK THE INSURANCE COMPANY TO NOTIFY THE JUDGE TO APPOINT AN UMPIRE. AS OF 6-2-98, NO ONE HAS NOTIFIED THE JUDGE TO APPOINT AN UMPIRE. DURING THIS TIME YOU HAVE HAD AMPLE TIME TO NOTIFY THE INSURANCE COMPANY.

WE ALSO NOTIFIED THE INSURED TO NOTIFY THE JUDGE TO APPOINT AN UMPIRE.

YOU ARE RIGHT, IT IS A TRAGEDY THAT THE CUSTOMER (INSURED) HAS TO WAIT. BUT THERE IS A SET TIME PERIOD TO SETTLE CLAIMS.

ACCORDING TO YOUR LAST LETTER YOU ARE IMPLYING THAT THE JUDGE (HIM OR HER) THAT I DO NOT KNOW, IS DOING A FAVOR FOR ME. THAT IS VERY WRONG, I DO NOT EVEN KNOW WHO THE JUDGE IS.

IN THE APPRAISAL PROCESS IT IS MY UNDERSTANDING THAT YOU HAVE 15 WORKING DAYS TO PICK AN APPRAISER. AFTER THAT YOU AGAIN 15 DAYS TO PICK AN UMPIRE. THIS CLAIM IS WAY PAST THE DEADLINE. MR. HICKEY WE DO NOT NEED ANY GAMES LETS GET THE JOB DONE.

THANK YOU!

Thomas Kelly
THOMAS KELLY

KELLY'S RECONSTRUCTION SERVICE
2910 PRESTON
HOUSTON, TEXAS 77003
713-237-1628
FAX 713/237-9184
7-3-98

MICHAEL HICKEY
TEXAS GENERAL CONTRACTORS, INC.
4601 SOUTH WAYSIDE DRIVE
HOUSTON, TEXAS 77003
713/640-2025
FAX 713/640-1188

REF: VISTA BONITA APPRAISAL.

DEAR MR. HICKEY

AS OF 7-9-98, I HAVE WRITTEN MY BID. DO YOU HAVE YOU BID
READY? IF I HAVE NOT HEARD FOR YOU BY WED., 7-15-98, I WILL TURN
MY BID AND PAPER WORK OVER TO THE UMPIRE. SO THIS CLAIM CAN BE
SETTLED.

SINCERELY!

Thomas Kelly
THOMAS KELLY

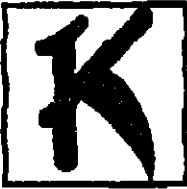
KUBALA AND COMPANY

9000 W. BELLFORT, SUITE 550

HOUSTON, TEXAS 77031

PHONE: (713) 888-3325

FAX: (713) 988-5830



*John Kubala, G.A.
President*

*Thomas A. Ross, S P P A
Vice President*

*Kirk D. Bussardwick
General Counsel*

Certified Mail Return Receipt Requested
P 107 856 574

August 7, 1998

**D. R. Tuggle, G.A.
GAB Robins North America
7322 Southwest Freeway, Suite 950
Houston, Texas 77074**

**Re: Insured : New Suncoast Apartments, L.L.C.
dba Vista Bonita Apartments
Loss Location : 9313 Tallyho, Houston, Tx. 77017
Claim No. : 8025343
Type Loss : Wind/Water**

Dear Mr. Tuggle:

This letter will serve to notify you and Reliance Insurance Company that the appraisal process has been completed by the Court Appointed Umpire and the Appraiser for the Assured per the terms and conditions of the insureds' policy.

In accordance to the above, I have enclosed the Appraisal Award noting an agreed damage value of \$138,687.51, which was signed by the Court Appointed Umpire and the Appraiser for the Assured.

Please instruct Reliance Insurance Company to issue payment in the amount of \$138,687.51 less any policy deductible and advances (if any) paid toward this claim.

In conclusion, the insured trust that Reliance Insurance Company will tender payment in accordance to the time limits established by Texas House Bill 2 and 62. Your cooperation in this matter is appreciated.

Sincerely,

**Thomas A. Ross SPPA
Vice President**

HOUSTON - LOS ANGELES

Licensed by the Texas State Board of Insurance

Licensed by the California State Board of Insurance

Nelson Jones - Date Returned: 01/10/11

© 1997 Wilson Jones Company



Arellano & Associates

2211 Norfolk, #820

Houston, TX 77098-4044

StatementDate **Wednesday, November 04, 1998**

From 8/3/98 To 11/4/98

Bhagia, Jacky
10333 Northwest Frwy., Ste. 111
Houston, Tx 77092

Date	Initials	Services Provided	←Legal Services→			←Flat Fees & Expenses→		Line Total
			Hrs	Rate	Hrly. Fees	\$Amt	Item	
<i>File Matter:</i>								
Reliance Insurance Co./VistaBonita								
8/3/98	Arella	Meeting with prospective client to review status of case and the appraisal process. Review client file. Review Original Petition for Declaratory Judgment filed by Reliance Ins. Co. Draft proposed employment contract.	3.50	\$250	\$875.00	\$0.00		\$875.00
8/4/98	Arella	Conference with Tom Ross of Kubala & Company regarding the appraisal process and how it was utilized in this case.	0.85	\$250	\$212.50	\$0.00		\$212.50
8/5/98	Arella	Draft revised employment agreement and correspondence to prospective client.	0.75	\$250	\$187.50	\$0.00		\$187.50
8/6/98	Arella	Various conferences with Bhagia regarding case and employment contract. Revise employment contract and draft correspondence to prospective client with final terms of employment agreed to. Review executed fax copy of contract.	1.50	\$250	\$375.00	\$0.00		\$375.00
8/7/98	Arella	Review correspondence forwarded by client which he received from Attorney Spagnoletti. Review Appraisal Award forwarded by Appraiser. Draft Defendant's Original Answer and Counterclaim. Draft correspondence to court filing same. Trip to courthouse to file pleadings.	6.50	\$250	\$1,625.00	\$0.00		\$1,625.00
8/10/98	Arella	Correspondence to client enclosing Answer and Counterclaim.	0.05	\$250	\$12.50	\$0.00		\$12.50
8/12/98	Arella	Begin drafting Defendants' First Set of Interrogatories.	5.00	\$250	\$1,250.00	\$8.40	copies	\$1,258.40
8/13/98	Arella	Complete Defendant's Interrogatories. Draft Defendant's Request for Production of Documents. Draft Defendant's Certificate of Written Discovery. Correspondence to court.	4.00	\$250	\$1,000.00	\$4.10	Postage	\$1,004.10
8/14/98	Arella	Draft Defendant's Requests for Admission. Correspondence to court. Conference with appraiser regarding status of repairs to client's property. Draft Defendant's Certificate of Written Discovery.	4.50	\$250	\$1,125.00	\$0.00		\$1,125.00
10/26/98	Arella	Review Reliance's Motion for Summary Judgment. Begin drafting client's response.	5.50	\$250	\$1,375.00	\$0.00		\$1,375.00

Arellano & Associates2211 Norfolk, #820
Houston, TX 77098-4044**Statement**Date **Wednesday, November 04, 1998**

From 8/3/98 To 11/4/98

Bhagia, Jacky
10333 Northwest Frwy., Ste. 111
Houston, Tx 77092

Date	Initials	Services Provided	←Legal Services→			←Flat Fees & Expenses→		Line Total
			Hrs	Rate	Hrly. Fees	\$Amt	Item	
11/1/98	Arella	Complete client's response to Reliance's Motion for Summary Judgment.	6.25	\$250	\$1,562.50	\$8.20	copies	\$1,570.70
11/2/98	Arella	Draft client's Motion for Summary Judgment against Reliance to enforce Appraisal Award. Conference with Tom Ross of Kubala & Co. Draft affidavit of Tom Ross regarding appraisal process.	7.00	\$250	\$1,750.00	\$0.00		\$1,750.00
11/3/98	Arella	Begin drafting VISTA BONITA APARTMENTS' Motion for Summary Judgment, Affidavits.	7.50	\$250	\$1,875.00	\$0.00		\$1,875.00
11/3/98	Engel	Correspondence to court enclosing Defendant's Response to Plaintiff's Motion for Summary Judgment.	0.10	\$65	\$6.50	\$14.76	Postage and Copies	\$21.26
11/4/98	Arella	Assemble exhibits for attachment to VISTA BONITA APARTMENTS' Motion for Summary Judgment. Review insured's adjuster's file and chronology. Conference with Tom Ross. Conference with Thomas Kelly. Draft Thomas Kelly Affidavit. Draft attorney's fee affidavit and Proposed Order on Summary Judgment.	6.50	\$250	\$1,625.00	\$0.00		\$1,625.00
Totals:			59.50		\$14,856.50	\$35.46		\$14,891.96

Amount Due Per This Statement

\$14,891.96