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Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ABDUL-JALIL al-HAKIM, Plaintiff, V. CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, KENNETH C. GEORGE, RONALD J. COOK, WILLOUGHBY, STUART & BENING, AND DOES 1 THROUGH 100 , inclusively, Defendants, _____/	Case No. 811337-3 **PLAINTIFF'S REPLY TO JUDGES ANSWER TO STATEMENT OF DISQUALIFICATION OF JUDGES. C.C.P. §170.1, §170.1(a)(6)** **Date: September 6, 2005** **Time: 9:00 A.M.** **Location: Department 31** **Trial Date: NONE**

Unfortunately, I must state that Judge James Richman is disingenuous and not being forthright in his answer as:

1) In paragraph 5 he states that he has known Dave Rudy since the late 1970's, has "worked with on a few cases together" in the 1980's as a lawyer, lived across the street from him, but they are not close friends. That simply is not plausible since plaintiff did not know that they were friends, Judge Richman firmly beat plaintiff over the head with it on several occasions so that plaintiff was forced to understand that fact. As noted, he has said they were friends at the January 15, 2004 hearing on the motion of Eric Haas and Burnham Brown to be relieved as counsel; the hearing in camera on June 8, 2004 on the Motion by Charles Bonner to be Relieved; and again at the hearing on June 29, 2004 (P8L23 of transcript attached to motion as Exhibit "C")on the defendants Motion for Summary Judgment and to Dismiss; This conclusion drawn by plaintiff is the direct result of Judge Richman's own repeated, conscience, and willful actions.

2) Further in paragraph 5 he now states that he knows Eric Haas from the Earl Warren Inn of Court which he has been a member of for four years. At the January 15, 2004 hearing on the motion of Eric Haas and Burnham Brown to be relieved as counsel, he stated that he was **friends** with **Dave Rudy**- the plaintiffs former appraiser, **Ralph Lombardi**- the proposed umpire, **members** of the defense firm of Ropers Majeski, and the **partners** of Burnham Brown, <u>though not Eric Haas</u>. He even described the firm of Burnham Brown as prestigious and reputable. I was personally taken aback when he said that he did not know Mr. Haas since Mr. Haas had informed me in April-May 2003, nearly a year earlier

that they were friends and also had a professional relationship through an association they both belong to. I know that Mr. Haas has several religious and professional associations that he belongs to and is understandably proud of that fact.

Finally at the hearing in camera on June 8, 2004 on the Motion by Charles Bonner to be Relieved as attorney of Record. Judge Richman again mentioned that he was impressed with plaintiffs' former attorney in the motion to vacate Mr. McKeown, he is **friends** with **Dave Rudy**- the plaintiffs former appraiser, **Ralph Lombardi**- the proposed umpire, **members** of the defense firm of Ropers Majeski, and **partners** of Burnham Brown **and now Eric Haas.** Again Judge Richman is not being truthful.

3) Perhaps more unsettling about the answer in paragraph 5 is that now he claims that he has no personal relationship with Lombardi, McKeown, any attorney's at Ropers or Burnham Brown. What he does not answer is if he has any relationship with anyone at Willoughby Stuart and Bening, the defendants that he dismissed from the suit on August 26, 2004 or the partners of Burnham Brown as he previously stated. He also does not answer how he suddenly does not a personal relationship or friendship, or acquaintance with any of the aforementioned individuals or firms. After stating that he knew these people, partners, and firms, now when it is convenient, he does not know them.

4) In paragraph 6 of his answer he says that he does not have fixed opinions of plaintiff and cites an occurrence were plaintiff referees to his comments of "take him(plaintiff) to trial and put before the jury that he spent 19 months futzing around firing Rudy and disagreeing with Lombardi(**his well noted friends**) and giving outrageous requests for disclosure"(transcript of hearing on August 26, 2004 P6L18). He says that he was in fact explaining why he was ruling in plaintiff's favor. He conveniently does not mention his comments of "you don't trust anyone", and "if there is a problem then it must be you!!!(plaintiff)"(hearing on January 15, 2004), that he believed that " the inference is that you(plaintiff) committed fraud or inadvertent fraud" (hearing on January 15, 2004) , called plaintiff "a liar"(hearing on June 8, 2004), says of plaintiff "his damages is increasing because he is out of the home"(transcript of hearing on August 26, 2004 P24L20) further suggesting that "plaintiff has motives not to complete the appraisal"(transcript of hearing on August 26, 2004 at P24L23) accusing plaintiff of wrongdoing. Is there a better example of his fixed opinion of plaintiff ? And there are many fixed opinions of plaintiff's case.

5) In paragraph 7 of his answer he talks about in chambers proceedings but does not defend how he has engaged in a systematic, concerted effort to undermine and destroy the ruling on the motion to vacate and plaintiff's case with his subsequent rulings. He can't simply take back the things that he has said and done or sweep them under the rug and act as if they never happened and wait for another chance to fulfill his desire to kill the case. He denies that he has ever expressed extreme regret or any regret over the ruling, but I stand firm on what he said and intended by his comments on January 15, 2004, June 8, 2004, June 29, 2004 and August 26, 2004. It matters not if he has strong language between attorney's and clients during in camera hearings, these were comments that came from him, not some infuriated plaintiff, or shylock lawyer trying to dump a disgruntled client. A quick perusal of his

comments on record will give the untrained eye a view of where he is psychologically and emotionally. He says "he is troubled by the case, that he opened up the appraisal and made the order for plaintiff"(transcript of hearing on June 29, 2005 at P8L2), "soon as I did(grant the motion), his lawyer leaves, I never understood that"(transcript of hearing on June 29, 2005 at P8L5), "something is going on that troubles me"(transcript of hearing on June 29, 2005 at P8L7), he doesn't understand what's going on(transcript of hearing on June 29, 2005 at P8L24) repeats it's very troubling(transcript of hearing on June 29, 2005 at P9L2), this is the largest civil file in 6 years in law and Motion, he doesn't understand it(transcript of hearing on June 29, 2005 at P9L8), he has his notes with a bunch of exclamation points that he doesn't understand what's happened(transcript of hearing on August 26, 2004 at P8L3). His support of the defense litigation premise and emotional imbalance in this matter is clearly displayed in his own words for all to see.

6) In paragraph 8 of his answer he says that he has not communicated with Judge Brick, directly or through any third party regarding plaintiff's challenges or how to rule on them, yet he offers at the end of paragraph 3 that he understands that Judge Brick has struck the challenges against him as well. What he does not explain is how the orders for striking from both judges were identical.

7) In paragraph 9 Judge Richman mentions his decision in the Motion to Vacate the Appraisal Awards. He has often mentioned that decision and in particular at the January 15, 2004 hearing on the motion of Eric Haas and Burnham Brown to be relieved as counsel. At that hearing he stated unequivocally that he had "given you(al-Hakim) the best decision in my six years on the bench". I do not know Judge Richman and he has never given me anything, the law determined that decision, not Judge Richman. Here again what is important about his response is what he omitted.

In late February 2003, Judge Richman vacated the second appraisal due to, among other grounds, "the award was procured by corruption, fraud, or other undue means"; or the appraisers "exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted". The order**(attached hereto as exhibit A)** further cited the improper use of "cash value" as replacement cost, use of erroneous "used cost" figures, denial of coverage, injection of fraud, concealment, breach of contract, and coverage issues without any reason or evidence. What the court did not address in the decision on the motion to vacate was the actual collusion and fraud again perpetrated upon the court by the defendants Ron Cook, defense counsels Stephan Barber and Sean O'Halloran of Ropers Majeski, CSAA and their expert when they provided to their corrupted appraiser Mike DeCesare and the appraisal panel adopted the improper "cash values" used in the vacated awards and the exhibits to support them came directly from the presentation of CSAA's expert Gary Halpin at the vacated appraisal, and that the fraudulent award itself was further prepared, written, submitted and distributed by defendant Cook and the hostile intervener**(attached hereto as exhibit B)**.

I was at the hearing on January 2, 2003 on the motion to vacate the appraisal awards and Judge Richman asked where the costs figured used by the appraisers had come from, and everyone looked around stunned as I responded "Ron Cook and CSAA's expert". Here yet again judge Richman does not find that there was corruption, fraud, or other undue means on the part of the parties involved. As he did in the second motion to dismiss by the defendants on August 2004, he let them off the hook when

they were clearly guilty of fraud, corruption, and collusion. After having made the statement several times that he wanted to let the attorney's out of this case even before he made the decision, it makes one wonder about the corruption and collision on his own behalf.

The Attorneys:

Judge Richman has frequently said he does not know what's going on with this case and in particular the plaintiff and his attorneys. He has been so pro attorney that he can not believe that perhaps there is a problem with them and certainly not six of them! Well this is what he did not want to know or maybe knew and did not want to be made public.

Frank Mc Keown:

INEFFECTIVE ASSISTANCE OF COUNSEL caused **Irreparable Harm to Plaintiff**:

Plaintiff contends his attorney was ineffective (U.S. Const., 6th Amend.) in failing to object to several crucial matters including judicial misconduct and timely file for a mistrial under the circumstances in the underlying case against Rescue Industries. Former counsel had informed plaintiff that there was ample grounds for a mistrial being declared before the trial began as a result of the inclusion of the hostile intervener**(see letters from McKeown dated November 15, 2002; and from al-Hakim dated November 18, 2002, November 19, 2002, November 25, 2002, December 10, 2002, and December 28, 2002 attached hereto as exhibit C)** and that it was well established between the parties. However, after promising to declare and file for a mistrial, he waited until the day before the deadline to file for said mistrial to inform appellant that he would not do so**(see letter from McKeown dated January 31, 2003 attached hereto as exhibit C)**. Further, counsel refused to provide appellant counsel one single document of the files to make the appellant record**(see letter dated March 7, 2003 from Lewis Nelson attached hereto as exhibit C)**.

In that case, trial counsel's failure to make a Hitch objection to the introduction of testimony concerning plaintiff's statements constituted ineffective representation by counsel under People v. Pope (1979) 23 Cal. 3d 412, 424-426 [152 Cal. Rptr. 732, 590 P.2d 859, 2 A.L.R. 4th 1]. Mc Keown should have objected to the presence of the intervener and provided the hearing transcript; the introduction of the City of Oakland file tainted and spoiled by the hostile intervener CSAA, their counsels Steve Barber and Sean O'Halloran and defendant Ron Cook; the intervener's insurance documents, testimony and questions; the denial of testimony and evidence by appellant's key witness Debbie Fallehy from the Oakland Police Department; the denial of questioning, testimony and evidence by appellant of defendant's key rebuttal witness former City of Oakland Mayor Elihu Harris; the Demonizing comments regarding appellant's religion; the repeated verbal convictions of the assault; the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel; and the denial of cross examination by appellant on the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel. Because this was Judge Lee's last trial before retiring and he rushed the case along, Mc Keown did not knowingly and intelligently waive his right to object to the

above. Plaintiff also argues that fundamental fairness requires that he be permitted to impeach the the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel and parties unnamed after they have now admitted the perjury; examine the spoliation of the City of Oakland file committed by the intervener CSAA, their counsels Steve Barber and Sean O'Halloran and defendant Ron Cook, the defendant's in this insurance case; and the detective's explanation by use of the original notes taken at the time of the event. Thus, these issues must be deemed to have substantial materiality for impeachment purposes.

The court is required to preserve the process and the denial of the rights to the answers of these issues for possible use at trial, the plaintiff is placed in an impossible position. He cannot impeach the the perjurious testimony of the defendant's, their witnesses and experts solicited by defense counsel, or examine the spoliation of the City of Oakland file committed by the intervener and defendant's in the insurance case since it was not permitted by the court due to time or otherwise. You must presume that because of the solicited perjurious testimony and the spoliation of evidence now having been exposed, the changed evidence and testimony based on the truth would shed new light on plaintiff's case at trial. It is quite possible, however, that due to time, error, bias, discretion or omission by the court, this course was not allowed to go forward.

Further, plaintiff and counsel were prevented from providing a full, more complete record to the appeals court because their efforts were frustrated by former trial counsel Frank McKeown whom refused to provide any notes of the case from any period of time, pre-trial motions and related documents, motions in limine, side bar conversations, in chambers discussions, jury instructions, a brief of trial, the case files in this matter, a declaration of any kind, even asked current counsel not to take the matter on appeal, and adamantly refused to cooperate with any investigation of the facts surrounding this case and it's proper appeal of all pertinent issues that would reveal his dereliction and malpractice. Even though plaintiff gave written instructions to provide the case files to appellants counsel only**(see letter from al-Hakim dated May 19, 2003 and June 24, 2003 attached hereto as exhibit C)**, McKeown even went as far to dispatch the files to another attorney that was not involved in the matter in any way**(see letter from McKeown dated June 25, 2003 and June 27, 2003 attached hereto as exhibit C)**, while requesting $1,000 for appellants counsel for a copy of appellants own files that he requested be sent to appellants attorney handling the appeal. To this day McKeown has never spoken with appellant or his counsel regarding his actions; sent the requested documents, records or files of any type or importance; and refuses to cooperate in any way with this matter**(see letter from al-Hakim dated June 24, 2003 and June 26, 2003 attached hereto as exhibit C)**. After he had given plaintiff's files to Mr. Haas against plaintiff's instruction, he refused to accept them back from Mr. Haas(**see Haas letter dated January 30, 2004 attached hereto as exhibit C)**

In relations to the precise facts of the instant case, plaintiff's trial counsel was required under the standard of People v. Pope, supra, 23 Cal. 3d 412, 425 to make a Hitch objection and to move for the applicable bar. A reasonably competent attorney acting as a diligent advocate would have done so.

With the results of People v. Murtishaw, supra, 29 Cal. 3d 733, and the court's opinion in People v. Goss, supra, 109 Cal.App.3d 443, Justice Reynoso's dissent in In re Gary G. (115 Cal.App.3d 629 [171 Cal. Rptr. 531]) , plaintiff's trial counsel was put on notice of the real possibility that a Hitch

motion would have been successful if it had been timely made in the present case. The fact that there was no published opinion squarely in point on under circumstances such as here, is of no importance. Under then existing law, reasonably competent trial counsel would have been alerted to the potential merits of the Hitch objection.

Plaintiff contends he was deprived of his right to effective assistance of counsel and denied his rights to a fair trial and to due process under the federal and state Constitutions (U.S. Const., 6th & 14th Amends; Cal. Const., art. 1, §§ 7, 15, 24), because of the trial court's continual interference with plaintiff's case, allowing the hostile intervener to participate in the trial, admitting evidence tainted and spoiled by the hostile intervener, allowing testimony on said evidence tainted and spoiled by the hostile intervener, admitting evidence and allowing testimony on the 1991 back up, admitting evidence and allowing testimony on same by defense on insurance coverage for the hostile intervener, admitting evidence and allowing testimony on insurance coverage by the hostile intervener, denying appellant's crucial key witness testimony and evidence, making demonizing and disparaging comments regarding appellant, and erroneous inclusion of crucial defense evidence. Alternatively, he contends his attorney Frank Mc Keown was ineffective (U.S. Const., 6th Amend.) in failing to object to such matters and timely file for a mistrial under the circumstances.

Eric Haas and Burnham Brown

Burnham Brown is primarily an Insurance Defense Firm that judge Richman characterized as prestigious and reputable. Over a period of several months plaintiff discussed with Mr. Haas how we could proceed, wherein Mr. Haas offered that the firm was in the position to financially prosecute this matter and had a number of outside attorneys and experts with whom the firm was associated whom would be able to handle all aspects of the pending Appraisal, litigate various aspects of the case that Burnham Brown may have a potential conflict in(Plaintiff's Bad Faith and Personal Injury), and expertise to assist in the preparation of the case from a Plaintiff's Bad Faith perspective. We decided to go forward in May 2003 and after an interview, Mr. Haas retained Dave Rudy to act as the appraiser in this matter and attorney Bill Green to handle the appraisal.

Plaintiff was informed by Mr. Haas that he knew Judge Richman and was in an association with him; that he had some contact with the Ropers firm due to his serving on a committee of an association of insurance defense firms that they both belong to. Plaintiff later found out that they have worked together as co counsel and consultants and the same thing is true for their relationship with the defendants Ron Cook and Willoughby Stuart & Bening(**see letter from Ron Cook dated August 5, 2003 attached hereto as exhibit D)** but these developments were never revealed to me. Plaintiff just recently found out that Dave Rudy has been employed as a consultant, mediator and arbitrator on numerous occasions for CSAA and both the Ropers and Willoughby firms and never disclosed that to plaintiff(**see email from Dave Rudy dated July 14, and 21, 2003 attached hereto as exhibit D)**. During a meeting at Burnham in August 2003 with Mr.'s Haas and Rudy, it was disclosed that Tim Schmal, CSAA proposed appraiser had read, studied, and digested the plaintiff's EUO transcript and all related material as well as the appraisal transcript and all related material and recommended that his

paralegal could redact the portions of it that the court had ruled was unacceptable and submit it in this appraisal. I objected to such and proclaimed that he was tainted and would have to make full written disclosure to explain how he could have done such and could remain impartial for this process(**see letter from al-Hakim dated December 16, 2003; January 14, 2004, March 1, 2004, April 4, 2004, August 16, 2004 by certified mail on August 24, 2004 attached hereto as exhibit D**).

On March 23, 2004 Plaintiff received a email from Dave Rudy stating that he was retained by Burnham Brown and his services were terminated on January 30, 2004, causing his withdrawal. He referred all questions to Haas and stated that he would return all documents back to Mr. Haas at his request(**see email from Dave Rudy dated March 23, 2004 attached hereto as exhibit D)**. Plaintiff is still awaiting the answers regarding Schmals and Lombardi and his appraisal materials from Judge Richman's neighbor Dave Rudy.

On August 16, 2004, plaintiff sent to Mr.'s Rudy, Lombardi and Haas by certified mail a letter requesting that they provide any and all information on the purported retaining of Mr. Lombardi. To date nothing has been forthcoming from Judge Richman's friends/associates/neighbors Rudy, Haas or Lombardi**(see letter and mail receipt from al-Hakim dated August 16, 2004 attached hereto as exhibit D).**

During another meeting in October 2003 it was requested by Mr. Rudy that plaintiff submit the defective construction bid from the defense expert from the vacated appraisal. Plaintiff rejected that idea and questioned what the benefit was and that it is a document that would be prohibited due to the courts decision and would not represent our position in any manner. That idea was never brought up again, however I happen to see that the document was submitted as part of a pre-appraisal package later provided to Mr. Lombardi after it was communicate to Lombardi that we would not submit it and was requested that Mr. Schmal provide it(**see letter from Dave Rudy dated October 27, 2003 attached hereto as exhibit D)**.

Mr.'s Haas and Rudy recommended that Ralph Lombardi serve as the umpire in the appraisal and plaintiff informed them that he was aware that Mr. Lombardi had a conflict in this matter, and that sentiment was echoed by Mr. Haas with a potential conflict that he considered as well. Mr.'s Haas and Rudy have never addressed that issue either. After two years of requests Mr. Lombardi finally admitted that he was co counsel and a bad faith consultant for the defense counsel Ropers, that he would consult them after the appraisal, that his firm has a financial relationship with defendant CSAA and that he personally has and currently was handling an arbitrations/mediations for them. He refused to answer any further questions regarding his conflict and decided that he just wanted to be paid for the time that he had put into the process to that date. Since he had never made disclosure, was never retained and served no benefit to plaintiff, he was referred to the party that retained him and has never requested plaintiff to pay anything.

Plaintiff was unaware of any issue of differences until he read the motion to withdraw that was given to him at a meeting at Burnham on December 30, 2003 at 3:00 pm. This motion was filed with the court on December 15, 2003 but never served on me until that meeting with the hearing on the withdrawal only 14 days later. Judge Richman refuse to deal with the lack of service on the part of his friend Mr. Haas in this matter yet he has rejected plaintiffs service even when the dates were provided

by the calendaring clerk, the motion was properly responded to and prove of no prejudice to the opposing party nor was any prejudice claimed, on at least three occasions.

Charles Bonner

Mr. Bonner was retained at the end of January 2004 as Mr. Haas withdrew. As testified to by plaintiff, Bonner had not done any of the things that he had promised upon being retained and never followed up on any of the normal duties that any attorney would have during the normal course of litigation. He misstated his educational and legal background citing that he had attended Stanford Law School when he attended the New College of San Francisco; the professional abilities of his firm; the association of a Law firm as co-counsel in Oregon(plaintiff later found out he did not know anyone at the firm and it was actually located in Washington State); the retention of a local co-counsel(whom Bonner was representing in a wrongful termination case wherein he had been fired because he lost a sure multimillion dollar verdict and did not want to make a disclosure) that later wanted to be paid to answer the defendants motions for summary judgment and to dismiss; and the possible retaining of two potential appraisers(neither of which was ever retained, one was so severely conflicted and none of his references would recommend him while one did not know him, that he refused to make the court required full written disclosure and the other potential appraiser felt that he was not right for the job and never called back); and again requested that Bonner perform his duties as prescribed under the law while reiterating that the court would cause irreparable harm to his case if it decide otherwise.

Plaintiff stated to Judge Richman that his only concern was to have Mr. Bonner to answer the defendants motions for summary judgment and to dismiss and he would retain new counsel with only days before trial and that the court would cause irreparable harm to his case if it decide otherwise. He informed the court that Mr. Bonner had never informed him of any irreconcilable differences regarding the severely conflicted appraiser and in fact agreed that he could not serve on the panel.

Mr. Bonner gave testimony that the appraiser that he named and was the subject of the alleged irreconcilable difference had in fact refused to give a full written disclosure, that plaintiff had provided him with a list of retired judges from JAMS to serve as an appraiser, that he was going to bring on co-counsel as represented by plaintiff, that **he** never asked to be paid to answer the defendants motions and that he had the defendants second motions for summary judgment and to dismiss and had planned to withdraw as counsel weeks before he had informed plaintiff of either due to an irreconcilable difference over the severely conflicted appraiser. The conflicted appraiser was very close personal friend of the appraisers, umpire and CSAA expert from the vacated appraisal and said that lives near them and dines out with two days of week. He also said that he is friends with Ron Cook and has done appraisals for CSAA.

Mr. Bonner wanted to retain him because he claimed that he could deliver Amy Bach and the United Policy Holders as co counsel to Bonner. This was the same promise that his wrongful termination client stated with the firm in Washington State. Neither of those options were forthcoming as well. Upon realizing that and that he could not veil his failure, he used the irreconcilable differences as to his reasons for withdrawal. Bonner sent plaintiff a substitution of attorneys form on April 28, 2004(**see letter attached hereto as exhibit E)**, and when plaintiff did not sign it Bonner sent him a

Notice to Withdraw as Counsel that was set in department 17 with no date for the hearing(**see notice from Charles Bonner dated May 3, 2004 attached hereto as exhibit E**).

At the hearing Judge Richman asked Bonner if he stood behind his allegations at the hearing, and upon affirmative answer, he was allowed out of the case. That has singularly been the biggest blow of irreparable harm to this case because it lead to a series of poor attorneys that did not have plaintiff's best interest in mind at all.

Pete McCloskey, Julian Hubbard and Adrianna Moore

Originally I was referred to the offices of Pete McCloskey of which Julian Hubbard and Adrianna Moore are lawyers in the firm of McCloskey, Hubbard, Ebert and Moore, LLP. After discussing the matter with Pete for several months and providing him with file documents to review(**see email from Pete McCloskey dated May 11, 2004 attached hereto as exhibit F**), I came in and met Julian and Adrianna and went over the case to give them some first hand insight and to get to know them. In our discussing the matter they made several comments about the atrocious behavior on the part of the defendants and their counsels. At one point Julian says "these are bad people". Upon mentioning the defendants Willoughby Stuart and Bening, Julian says "we know that firm" and Adrianna says "we've had business with them". Julian said that he did not feel that because you know someone that you could not litigate the case effectively against them, it could remain a professional job that one would do just as any other. At a subsequent meeting with Hubbard we discussed the retainer agreement and agreed that it would be a simple standard fee based relationship with plaintiff being responsible for reimbursement of costs advanced and I signed the substitution of attorneys. He further stated that he felt the relationship between the parties did not have to be adversarial and he wanted to change that by opening up more pleasant and malleable conversation and relations. Plaintiff returned to the office for a meeting with Julian and Adrianna on June 16, 2004 only to be presented with a draft retainer agreement that was not close to what we had agreed to. The proposed agreement contained clauses that defied logic, would essentially allow them to commit malpractice and leave plaintiff without any meaningful recourse, and a substitution of attorneys form to execute in advance of any services being rendered(**see substitution dated June 6, 2004 attached hereto as exhibit F**). This was a complete turnaround from our last meeting and was very disturbing. I responded by taking the proposed agreement home and reviewing it further. I commented on it by requesting another meeting to establish a clean slate to move forward. At that meeting on June 22, 2004 we discussed the proposed retainer and decided that there would be significant changes in it before it would be endorsed and I requested a complete copy of the defendants pending motions for summary judgment and to dismiss to have it reviewed by other counsel. What I received was incomplete copies of the motions. I responded with a letter on June 26, 2004 to reiterate our stance to go forward with the case and the changes to the draft retainer. Hubbard followed with a letter on June 28, 2004 stating that they would appear at the hearing on my behalf and requested that I sign a consent form to agree with whatever they argue at the hearing. I did not know what he planned to argue so I told him I did not feel comfortable in doing so, just as I did not feel good about pre signing a substitution of attorneys. I next day plaintiff received a fax threatening to withdraw if plaintiff did not sign the services agreement, substitution of attorneys and list of recommendations by

Monday August 2, 2004(**see undated substitution attached hereto as exhibit F**). At the conclusion of the hearing on June 29, 2004 Hubbard and plaintiff meet to discuss the hearing and the status of the case and their agreement. Of particular interest to plaintiff was the discussion of the stay or lack there of, as noted by the judge the fact that defendants failed to timely file and serve the motion for dismissal and it needed to be refiled and served, the idea of sanctioning plaintiff for delays by putting "teeth into the order" and plaintiff tendering $5,000 for the retaining of Ralph Lombardi as the umpire in the appraisal upon plaintiff's approval of his disclosure. Plaintiff followed that meeting with a letter requesting a written response(**see letter dated July 1, 2004 attached hereto as exhibit F).** From that date of July 1, 2004 until July 16, 2004 Mr. Hubbard avoided my calls, letters and requests to retrieve my files. Finally on Friday July 16, 2004 he answered my call briefly stating that we would meet in a few days and he would call on Monday. That did not happen, nor did any call or response to plaintiff's call on Tuesday, July 20, 2004 so plaintiff had to send the letter dated July 22, 2004 again making the same requests(**see letter dated July 22, 2004 attached hereto as exhibit F**). He still had not responded to any of plaintiff's requests and failed to send the needed motions for plaintiff to retain new counsel to answer the motions. Plaintiff had become very alarmed at the obvious collusion between the attorneys in this case and the misconduct displayed by several judges and therefore informed and requested from several politicians nationally that the case be monitored in 2003. On July 26, 2004 after plaintiff had grown tired of being denied his files from McCloskey/Hubbard/Moore/ he sent a fax to the offices of Congresswoman Barbara Lee and Alameda County Supervisor Keith Carson asking that they intervene in assisting plaintiff in obtaining his files and answers from them(**see al-Hakim letter dated July 26, 2004 attached hereto as exhibit F**). Finally on July 30, 2004 Plaintiff sent by certified mail copies of the letters dated June 26, 2004, August 2, 2004, and July 22, 2004 for Mr. Hubbard and Mrs. Moore to respond to(**see certified letter receipt dated July 30, 2004 attached hereto as exhibit F**). Plaintiff received a voice mail message from Mr. Hubbard on Sunday August 1, 2004 stating that the stay and the tolling was the same as what the judge granted by taking the trial off calendar. Plaintiff then responded with his letter for clarification of the changes to their requested recommendations and retainer, that the motion to dismiss had to be re-served and answered with the summary judgment, I had spoken to them for two minutes in over five weeks with only promises that they would send me a copy of the two pending motions of CSAA, inform me of the pending dates to respond to the motions and the new trial date, would return my calls, respond to my letters and faxes, and schedule a planning meeting. I later received a fax copy of the motions to dismiss and summary judgment which had to be reserved and answered but they were the same ones that the defendants had filed with the court initially.(**see both letters dated August 2, 2004 attached hereto as exhibit F**). I received a faxed copy of their August 3, 2004 letter in response to my June 26 2004 letter regarding the proposed changes to the recommendations and retainer and their intention to tender $5,000 to Ralph Lombardi upon his providing Julian with appropriate answers to his disclosure during a conference call scheduled later that afternoon. I reiterated my request that Mr. Lombardi make full written disclosure and <u>until I am satisfied that he has no conflict, and I agree to retain him with my signature</u>, there will not be any tendering of funds from the client trust account to him and that I am already informed and satisfied that Mr. Lombardi can not serve as umpire on this panel and Mr. Schmal is tainted as well. I

also requested copies of all emails relative to the appraisal(**see letter dated August 4, 2004 attached hereto as exhibit F**). The next day I responded to a letter from Hubbard dated August 3, 2004 wherein I merely wanted to know the new dates of the trial, and to respond to the pending motions which he then provided me. We had a week to respond to the motions, there was a case management conference set and the trial date being taken off calendar, they further distinguish the difference now that this undertaking is not essentially the same as a stay as Hubbard first stated in that it does not toll the five year statute. That is a hugh difference. I again requested Lombardi's written disclosure, Hubbard disclosed that he went to Law School with Schmal, CSAA's appraiser, and plaintiff asked "is there anything else I should know with regard to your disclosure?". We discussed the changes in the retainer, their request for a settlement demand, the process for trial, arbitration, the stay in proceedings, and punitive damages in the event that there is a dispute between the parties. What I proposed and we had agreed was a standard, simple, commonly found clause for the arbitration process that does not limit either party for any reason. As it is, their firm assumes no real liability, makes no financial commitment, makes no representations as to any outcome, wants to be indemnified from any suit, wants the ability to withdraw as attorney with my substitution at any time, and wants to act with impunity with regard to malpractice(**see letter dated August 5, 2004 attached hereto as exhibit F**). After not having received a response, plaintiff acknowledged that he have not yet received any communication from them that day regarding any needed information for the completion of responses to the pending motions from CSAA, that I feel it would be unwise for them to participate in any respective conference calls, meetings, etc., or submit dates, times or materials for the appraisal. That should be done by new counsel. That plaintiff had Hubbard's recent disclosure regarding Mr. Schmal but they did not respond to the others nor did McCloskey and Moore ever responded to any(**see al-Hakim letter dated August 11, 2004 attached hereto as exhibit F**). However, later that day on August 11, Mr. Hubbard responds to my letter of the same date and relates that he has had cases where the Willoughby Stuart firm were opposing counsel or mediators but he had not had any contact with Ron Cook and never mentions that he knew or worked with and for the three partners of the firm(**see Hubbard letter dated August 11, 2004 attached hereto as exhibit F**). Plaintiff was shocked in view of Mr. Hubbards revelation on Thursday, August 19, 2004 of his conference call with the current appraisal panel after I had requested weeks ago in writing that it would be unwise for him to participate in any respective conference calls, meetings, etc., or submit dates, times or materials for the appraisal, that it should be done by new counsel and the oversight in his disclosure of his previous employment as a law clerk at Hoge Fenton with and for the three partners of the law firm of Willoughby Stuart Bening whom are defendants in this matter and still represent CSAA in the current appraisal matter and plaintiff again requested that he make full written disclosure(**see letter dated August 23, 2004 attached hereto as exhibit F**). What was perhaps most disturbing is the letter dated August 24, 2004 that I received from Mr. Hubbard stating the fact that he was reminded by RON COOK that he had worked at Hoge Fenton with the three partners of Willoughby. Then by declaration the three partners and Cook all swear that they did not have any contact or remember Mr. Hubbard(**see all four declarations dated October 13-14, 2004 attached hereto as exhibit F). ALL these declarations are untruthful and they never addressed the relationships with McCloskey and Moore!** If no one of the three partners at

Willoughby had any knowledge or recollection of Julian Hubbard, how is it that it was Ron Cook, whom never knew him previously, was the one to remind him of the conflict and non-disclosure? Who told Ron Cook? Hubbard and his partner Adrianna Moore both had relationships with the defendants. The most obvious wrong here is the blatant attempt to make plaintiff sign a waiver of malpractice, an advance substitution of attorneys, refusal to return or provide plaintiff with his files, to prepare for and properly answer the motions for for summary judgment, withhold the conflicts, the failed response from McCloskey/Hubbard/Moore to the defendants motion for summary judgment, coupled with Judge Richman's prejudicial conduct in his ruling and the implications of the same on the plaintiff's case. There was no conflict as per Judge Richman, and this matter is now under review in the appeals court.

Michael Cohen

Mr. Cohen came into the matter while plaintiff was trying to retrieve his files from Hubbard and Moore since June 2004. Mr. Cohen had been in contact with plaintiff since mid 2000 after plaintiff's first attorney became a witness due to the actions of defendant Ron Cook during the appraisal. Mr. Cohen recommended Chris Lavdiotis, a personal friend and mentor, as the appraiser and encouraged plaintiff to approve Lombardi as the umpire. It was soon realized by plaintiff that Mr. Lavdiotis was Mr. Lombardi's law partner, further complicating things. Days later Mr. Cohen informed plaintiff that his office was losing several attorney's, there were only two left, he was suffering from a heart condition and could not service the case as he had planned. We agreed to part ways and he informed me that he had come to an agreement with the defendants to extend the five year statute to April 19, 2006. Plaintiff had not known of, reviewed, or approved any such agreement at any time. A copy of the agreement was provided to plaintiff after it was executed by the courts and Mr. Cohen was being relieved as attorney of record. Mr. Cohen recently informed plaintiff that the reason that he did so was because he was confused about the time remaining to bring the matter to trial. Plaintiff found that without substance since the issue was filed and before the courts when he signed the agreement.

Defendants CSAA, Ron Cook and counsel Stephan Barber BRAGGED about their successful Extrinsic Fraud Upon the Court and Law

At a recent hearing on August 15, 2005, before Judge Henry Needham, defendant Ron Cook and defense counsel Stephan Barber addressed the court and boasted about how they twice defeated plaintiff's motion to dismiss their motion to intervene in the underlying matter of al-Hakim v. Rescue Industries. These matters were known by McCloskey Hubbard Moore yet were not apart of the response to defendants motion for summary judgment filed by them. What follows is the account of what happened in that matter before Judge Lee in pretrial motions as boasted about by defendants and their counsel.

Criminal Deception and Patterned Fraud, Fraud Upon the Court and Law, Extrinsic Fraud, Fraudulent Concealment, Subornation and Solicitation of Perjurious Testimony, Spoliation of Evidence, and Unclean Hands by CSAA and their Defense Counsel:

Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get an advantage over another. (1) No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling, and unfair ways by which another is deceived. (Armstrong v. Wasson, 93 Okla. 262 [220 P. 643].) The statutes of California expressly provide that the suppression of a fact by one who gives information of other facts likely to mislead for want of communication of the fact concealed is deceit (Civ. Code, sec. 1710), and any other act fitted to deceive is actual fraud. (Civ. Code, sec. 1572.) (2) Where a deceiving, misleading document is presented to the court for the purpose of obtaining an order, this of itself is an act of fraud both upon the court and upon the party adversely affected, and any judgment based thereon will be set aside.(Stern v. Judson, 163 Cal. 726 [127 P. 38].) The codes are as follows:

Civ. Code, sec.
1710. A deceit, within the meaning of the last section, is either:
1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing it.

1571. Fraud is either actual or constructive.

1572. Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:
1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

1573. Constructive fraud consists:
1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

1574. Actual fraud is always a question of fact.

(a) Except as provided in subdivision (b), an order admitting a will to probate or appointing a personal representative, when it becomes final, is a conclusive determination of the jurisdiction of the court and cannot be collaterally attacked.

(b) Subdivision (a) does not apply in either of the following cases:

(1) The presence of extrinsic fraud in the procurement of the court order.

(2) The court order is based on the erroneous determination of the decedent's death.

As has been said, fraud may be committed by the suppression of the truth as well as by the suggestion of falsehood. It may consist in suppression of that which it is one's duty to declare as well as in the declaration of that which is false (12 Cal. Jur. 770). Had such facts known to the hostile intervener and concealed by them been disclosed to the court, there would have been no need for them to present to the court the order, for court had already concluded that it was not a proper party to this litigation.

TO WIT:

In pretrial motions, the Honorable Judge Stanley Lee had ruled that the hostile intervener CSAA was dismissed, not a proper party to this action and would not be allowed to participate in the trial(V1P2L17-24). He did based on the fact there was no legal predicate for them to intervene by having waived their right during the EUO**(see declaration of Michael Michel attached hereto in exhibit H, and EUO in pertinent part attached hereto as exhibit G).** Again during closing arguments, he states that "I had specifically ruled that the 1991 event may be referred to during the course of the evidence as to how it, through your experts, could have caused, in part or in whole, the condition of the house as it is now"(V5P1068L6-9). That was the entire limit placed on the use of anything regarding the 1991 event. He not only went against his own ruling based on a motion that retired Judge Hodge granted to CSAA on January 19, 2001, during the time that plaintiff was not represented and serving in Pro Per and allowed the intervener into the case, further allowed full and complete exploration of the 1991 matter before the jury. What Judge Lee did not know was that the hostile intervener had deceived and perpetrated extrinsic fraud, and criminal, corrupt fraud on the court and law by not disclosing that Judge Hodge, in his last days on the bench, had granted their motion to intervene in the matter at that time, but further conditioned that order that he would leave it to the trial judge to determine if they could, in fact and law, intervene and be a proper party to the trial**(see January 19, 2001 hearing transcript attached hereto as exhibit H, P6L21-P7L19). Judge Hodge states at the hearing beginning at page 6 line 21:**

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21 THE COURT: I'm going to grant the leave to

intervene, making it very clear, however, that I'm not trying to co-opt the trial judge in any way. And any order that the trial judge may make with respect to this motion, in terms of whether he bifurcates the proceeding or whether he handles it as an equitable matter, or whatever he or she chooses to do, I'm not, by granting the motion to intervene, again, attempting to co-opt the

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trial judge with respect to any of these issues.

So, I'm still leaving to the trial judge, and **I want to emphasize this for the record**. If you need this record, you may want to order it for the trial judge. I'm leaving to the trial judge whatever discretion that judge has to figure out how best to handle these interlocking issues.

I will say, parenthetically, when I'm the trial judge, and some judge has made orders like this before, I often get miffed. So, I want to make it very clear that I'm permitting the Motion to Intervene, but how

12 that's going to be adjudicated at the trial level is

13 going to be for the trial judge, and how he or she

14 chooses to, say, handle it as an equitable matter, or

15 try it first or last or whatever, that's entirely up to

16 the trial judge.

17 Now, having decided that, aren't we now to the

18 time of selecting a trial date for this case and getting

19 it going? Is there any reason not to try it?

20 MR. O'HALLORAN: Are we going to be at issue?

21 THE COURT: I don't know. Who is not in this?

The defense counsels for the hostile intervener, Sean O'Halloran and Stephan Barber of Ropers Majeski, then prepared a fraudulent order that eliminated the condition of their being a proper party of and admittance to this matter being left to the sole discretion of the trial judge and has it endorsed by the court after judge Hodge has retired and without review or approval by plaintiff. **Now,** on October 21, 2002 **AFTER Judge Lee has determined that the hostile intervener is not a proper legal party to the action and dismissed them,** Sean O'Halloran, counsel for the hostile intervener produced to Judge Lee only the fraudulent order for their intervention, and then willfully and intentionally concealed and withheld their knowledge and insight from the hearing and the transcript from said hearing**(attached hereto as exhibit H)**, though they had a copy of the transcript and full knowledge of the events of the hearing, so as to sabotage the appellants case with their subversive actions. Since the transcript clearly states that the trial court judge will make the decision if the intervention is proper, and the trial court judge has already ruled that the intervention was not proper and dismissed the intervener, the order to allow them in was moot and of no effect, thus should have never been presented.

It is charged that this material fact was concealed from the court and under plaintiff's evidence there was criminal fraud upon the court, extrinsic fraud practiced upon the court and law that consisted of the suppression of facts which the intervener and his attorneys were bound to disclose (Civ. Code, § 1710). That they had a duty to inform the court that the attorneys were aware of the truth of the judges order and the nature of the hearing transcript is not open to doubt. The fact that the plaintiff/appellant had filed pretrial objections to the request for intervention and the court heard the matter and ruled

against them, only to have the attorneys return with just the order only, would indicate to the court, quite persuasively, that the intervener was aware of the order and hearing transcript, was informed of the content therein and considered the transcript a death blow to their efforts. Little did the court know that the attorneys for the intervener could not allow for a fair and impartial trial and had all the facts we have mentioned been known to the court, the evidence of the order itself would have been without significance.

With their two bites at the apple, the allowance of the presence of the hostile intervener into this matter set off a chain of events, shrouded in deception and criminal patterned fraud upon the court that has shaken the very foundation of the legal system and is a major cause of contention in this petition. As you will witness, this was not the first nor last fraud or deception that the hostile intervener was to have their unclean hands involved in. These facts, which should have been made known to the court, were concealed from it.

The evidence proved these allegations. It will be presumed, without special pleading or proof that, if the court had been informed of these circumstances, it would have refused to enter the order allowing the intervention or even entertaining the possibility. A fraud upon the court was thus pleaded and proved, and the strict rules applying to the pleading of fraud generally are not controlling under these circumstances. The interest of the state in the preservation of the right to anyone to a fair trial makes it an interested party in the proceedings and any action of the principals which conceals the true facts and circumvents this interest is against the public policy and is a fraud upon the court. The rule is stated in McGuinness v. Superior Court, 196 Cal. 222, 230 [237 P. 42, 40 A. L. R. 1110], as follows: "It was also extrinsic fraud in so far as the court itself granting such decree was concerned since it was effected through concealment from the court in an ex parte proceeding of facts which the defendant in said action was bound to disclose and which if disclosed would have rendered improper the granting and impossible the procurement of such final decree."

The foregoing recitals are ample to show fraud, when we consider that notwithstanding them the hostile intervener appeared before the court in October, 2002, and without disclosing any of the recited facts, testified and induced the court to grant them an order. In McGuinness v. Superior Court, 196 Cal. 222 [237 Pac. 42, 40 A. L. R. 1110], it was held that the concealment of the real facts constituted a fraud upon the court. It could not be otherwise. The law books are full of statements to the effect that the state is interested and concerned with a fair trial and the welfare of all litigants, and to conceal such facts from the court constitutes a fraud upon the court and the adverse party. Here the fraud established by the showing of the respondent was extrinsic (McGuinness v. Superior Court, supra; Tomb v. Tomb, 120 Cal. App. 438 [7 Pac. (2d) 1104]), and it has been determined that where it is of that character, the court has the inherent power to set aside the decree regardless of the limitations prescribed by section 473. (McGuinness v. Superior Court, supra; Aldrich v. Aldrich, 203 Cal. 433 [264 Pac. 754]; McKeever v. Superior Court, 85 Cal. App. 381 [259 Pac. 373]; Tomb v. Tomb, supra.). A court has inherent power to set aside a decree for extrinsic fraud (Cross v. Tustin, 37 Cal.2d 821, 825, [236 P.2d 142]) when a party has been prevented from fully presenting his case and there has therefore been no adversary trial of the issue. (Bacon v. Bacon, 150 Cal.477, 491 [89 P. 317]; Howard v. Howard, 27 Cal.2d 319, 321 [163 P.2d 439].)

This act by the hostile intervener was evasive and insincere on its face, and it is obvious from the entire record that they knew the facts and supported the defendants and planned to have the verdict in this case used as res judicata in their case. This is criminal fraud upon the court and law, extrinsic fraud -- fraud on the appellant, which prevented him from having his day in court and which, according to his testimony, has deprived him and his family of the celebration of their daily lives with the pursuit of happiness, ruined their health, destroyed his business, the savings of a lifetime, and it was also a fraud upon the court.

The hostile intervener committed bad faith, criminal fraud upon the court and law, fraudulent concealment, abuse of discretion, misconduct, gross negligence, bias, and showed malice toward appellant and thus prejudiced the jury by admitting and allowing questions, evidence and testimony of a deposition taken by the hostile intervener in another insurance case, into this matter by supplying that transcript to the defense, to the irreparable harm of the appellant.

I hope that the above answers Judge Richmans' questions regarding the attorneys in this matter and further gives an insight into his own answers refferenced above and plaintiff's ongoing battle for fairness, truth and justice for him and his family after nine years of abuse by the defendants and their counsel.

Respectfully submitted this 26th day of August, 2005.

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ABDUL-JALIL al-HAKIM
Plaintiff in Pro Per