

DISCOVERY IN FIRST-PARTY INSURANCE CLAIMS

By

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I. INTRODUCTION

Discovery in First-Party Claims most often begins well before any lawsuit has ever been commenced. Before a First-Party Claim is denied and litigation is commenced, there has often been a thorough investigation and meticulous discovery.

These materials will provide an overview of the discovery done both before litigation and after litigation in a First-Party Insurance Claim.

II. PRE-SUIT INVESTIGATION AND DISCOVERY

A. The Importance of a Prompt and Thorough Investigation.

A successful defense of any First-Party Insurance Claim invariably begins with a prompt and thorough investigation of the facts surrounding the claim. First-Party Insurance Claims often involve fires. In such a claim, the claims adjuster and preferably, the attorney and fire investigator/expert, should make a physical inspection of the premises as quickly as possible. Extreme care should be taken to preserve physical evidence and to secure the premises until the investigators have had a full opportunity to complete their investigation and analysis. Early involvement of a competent fire investigator or cause-and-origin expert is critical.

Witnesses should also be identified and interviewed as soon as possible. Statements should also be obtained from the appropriate witnesses.

B. The Examination Under Oath.

A very important part of the pre-suit investigation process is the Examination Under Oath. Under the Minnesota Standard Fire Insurance Policy, an insured is required to submit to Examinations Under Oath and to produce documents reasonably requested by the insurer.

The Minnesota Standard Fire Insurance Policy provides in pertinent part, as follows:

“The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and, after being informed of the right to counsel and that any answers may be used against the insured in later civil or criminal proceedings, the insured shall, within a reasonable period after demand by this company, submit to examinations under oath by any person named by this company, and subscribe the oath. The insured, as often as may be reasonably required, shall produce for examination all records and documents reasonably related to the loss, or certified copies thereof if originals are lost, at a reasonable time and place designated by this company or its representatives, and shall permit extracts and copies thereof to be made.”

Minn. Stat. § 65A.01 subd. 3.

1. Information/Warnings Needed to be Provided to the Insured Prior to an Examination Under Oath.

As set forth in the portion of the statute quoted above, prior to submitting to an Examination Under Oath, the insured must be advised of the following:

- (a) That they have the right to counsel; and
- (b) That any answers may be used against the insured in later civil or criminal proceedings.

This language, which is not required in most states, oftentimes may cause an insured to abandon a fraudulent claim without the necessity of extensive-and expensive-litigation.

2. Multiple Examinations Under Oath.

As can be seen from the statutory language cited above, under certain circumstances, multiple Examinations Under Oath can be required in accordance with the terms of the statute. The statute specifically refers to “examinations” under oath “as often as may be reasonably required”.

Obviously, for reasons of expense and economy, in most cases, multiple Examinations Under Oath of the same insured should not and will not be taken. However, if the need arises, the statute allows for such multiple Examinations Under Oath.

3. Sequestering Insureds During Examinations Under Oath

In State Farm Fire and Casualty Company v. TAN, 691 F. Supp. 1271 (S.D. Cal. 1988), the United States District Court for the Southern District of California recognized that an insurer was permitted to conduct separate examinations of insureds who submitted claims for a theft loss under a homeowner’s policy of insurance. The Court concluded that the cooperation clause of the homeowner’s policy allowed the insurer to take reasonable steps to ascertain the truth relating to the insured’s claims. As such, separate examinations were found by the Court to enhance the insurer’s ability to discover the true facts and to assess the veracity of the insured’s claims.

In Shelter Insurance Companies v. Spence, 656 S.W.2d 36 (Tenn. App. 1983), the Tennessee Court of Appeals reversed a finding in Chancery Court that held that the insureds were entitled to give statements under oath in the presence of each other. The insurer had sought to examine the insureds separately regarding their claimed loss, but the insureds stated that they would give the statements only in the presence of each other. The insurer then brought an action for declaratory judgment as to whether the insureds should be required to give separate sworn statements. The Chancery Court held that the insureds were entitled to give statements in the presence of each other. The insurer appealed. The Tennessee Court of Appeals held that in order to assure accuracy and avoid fraud and collusion, the insurer was entitled under the cooperation clause of the insurance policy to take a sworn statement from each insured privately and out of each other's presence.

In dealing with this issue, the language of the particular policy should also be reviewed. Many policies in Minnesota state that after the insured is informed of their right to counsel and that their answers may be used against the insured in later civil or criminal proceedings, that the insurance company "May examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim. In the event of an examination, an insured's answers must be signed." ISO Commercial Property Form CP 01 08 12 95 - Minnesota Changes.

4. Production of Documents

As the language cited above from the Minnesota Standard Fire Policy indicates, in addition to requiring the insured to submit to Examinations Under Oath, "The

insured, as often as may be reasonably required, shall produce for examination all records and documents reasonably related to the loss, or certified copies thereof if originals are lost, at a reasonable time and place designated by this company or its representatives, and shall permit extracts and copies thereof to be made.”

However, Minnesota’s Unfair Claims Practices Act makes it an unfair claims practice for an insurer to require an insured to provide information or documentation that is or would be dated more than 5 years prior to or 5 years after the date of a fire loss, except for proof of ownership of the damaged property. See Minn. Stat. § 72A.20, subd. 12 (15).

5. The Examination Under Oath is a Condition Precedent to Recovery.

The Minnesota Supreme Court has held that the satisfaction of the policy provision requiring an Examination Under Oath is a condition precedent to recovery of benefits under the policy. McCullough v. The Travelers Companies, 424 N.W.2d 542 (Minn. 1988).

C. Coordination and Cooperation with Law Enforcement Officials: The Arson Reporting Immunity Law and the 1994 and 2002 Anti-Fraud Legislation.

Since 1979, the Arson Reporting Immunity Law, Minn. Stat. §§ 299F.052 to 299F.057, has required insurers and their agents to release to an appropriate law enforcement official or other “authorized person” all relevant information the insurer possesses regarding a suspicious fire loss. The Law grants immunity from civil or criminal liability for disclosures made in conformity with the Law. Minn. Stat. § 299F.054, subd. 4.

In 1994, the legislature enacted Minn. Stat. §§60A.951 to 955, a statute similar to--but much broader in scope than--the Arson Reporting Immunity Law. Among other things, the 1994 Act requires disclosure of information relating to any suspected "insurance fraud," and grants immunity for all good faith disclosures under the Act.

The 2002 legislature passed additional Anti-Fraud Legislation. See 2002 Minnesota Session Laws Chapter 331. A portion of the new legislation, codified as Minn. Stat. § 45.0135 creates a division of insurance fraud prevention within the Department of Commerce. Other portions of the new legislation broaden the provisions of Minn. Stat. §§ 60A.951-956. The final portion of the new legislation, Minn. Stat. § 609.612, provides felony penalties for whoever employs, uses, or acts as a "runner", "capper", or "steerer" as those terms are defined in the statute. The new statute became effective August 1, 2002.

While a comprehensive discussion of the requirements and protections of these statutes is beyond the scope of these materials, counsel handling First-Party insurance claims involving suspected arson or suspected insurance fraud must be thoroughly familiar with both the Arson Reporting Immunity Law and the 1994 and 2002 Anti-Fraud Legislation, and must be prepared to cooperate with law enforcement personnel. Ultimately, the interaction with law enforcement officials is beneficial to the insurer not only because it assists in the criminal investigation or prosecution, but also because it is likely to be a valuable source of information

III. POST-SUIT INVESTIGATION AND DISCOVERY

As outlined above, an insurer is entitled to discover a wealth of information in a First-Party claim presented by an insured prior to an insured commencing suit. From a practical standpoint, the insurer

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should have developed this type of information in order to investigate and make a reasoned decision with respect to acceptance or denial of an insured's claim if the insurer had questions about the merits of the claim as submitted by the insured.

If and when an insured's claim is denied, it may often result in litigation by the insured in bringing a breach of contract lawsuit against the insurer for failure to pay the claim submitted by the insured under the policy of insurance.

Once a First-Party claim is placed into suit, both parties are entitled to discovery from the other party as set forth within the parameters of Minnesota's Rules of Civil Procedure.

A. Elements of Proof in an Arson Case.

To prove arson in Minnesota, an insurer must establish that: (1) the fire was of an incendiary nature (i.e., intentionally caused and not accidental); and (2) that the insured had motive to start the fire. DeMarais v. North Star Mutual Insurance Company, 405 N.W.2d 507 (Minn. Ct. App. 1987); Quast v. Prudential Property and Casualty Company, 267 N.W.2d 493 (Minn. 1978).

In some jurisdictions, the insurer may also be required to prove that the insured had opportunity to set the fire, or to present unexplained surrounding circumstantial evidence implicating the insured. See, e.g., St. Paul Fire & Marine Ins. Co. v. Salvatore Beauty College, 930 F.2d 1329 (8th Cir. 1991) (applying Iowa law), and Boone v. Royal Indemnity Co., 460 F.2d 26 (10th Cir. 1972) (applying Colorado law). Although these additional elements are not required in Minnesota, proof of opportunity or other evidence implicating the insured is certainly helpful.

In an arson case, the insurer needs to keep these elements in mind as it considers what discovery to conduct in the lawsuit.

B. Proof of Incendiary Origin.

This evidence will necessarily have been obtained by the insurer before the claim is denied or any lawsuit is started. However, the insurer should conduct discovery into the theories and opinions of any expert witness dealing with the origin and cause of the fire who may be called as a witness on behalf of the insured.

C. Proof of Motive.

1. Evidence of Financial Problems.

Evidence that the insured was experiencing financial difficulties prior to or at the time of the loss is the most common--and a very effective--means of proving that the insured had motive to intentionally cause the fire. Care should be exercised during the investigative and discovery stages of the lawsuit to obtain a complete picture of the insured's financial situation by using authorizations to obtain copies of tax returns, IRS documents, bank statements, etc.

Facts which may be helpful in proving motive include the following:

- Insured is heavily in debt.
- Insured has lost his/her employment.
- Insured has recently gone through or is going through a divorce proceeding.
- Insured is behind on mortgage or Contract for Deed payments.
- Insured is behind on utility bills.
- Insured has received shut-off notices from utilities.
- Insured has run up a large amount of debt.
- Insured's monthly expenses exceed his/her

monthly income.

- Insured has a gambling problem.
- There are judgments and/or tax liens against the insured or the insured property.
- The property is encumbered by multiple mortgages or liens.
- The building was for sale at the time of the loss.
- A business showing losses or experiencing declining profits.
- Poor business location.
- Zoning problems and/or building code problems.
- Seasonal business problems.
- Foreclosure or bankruptcy eminent.
- Balloon payment on contract for deed coming due.
- Insured is unable to obtain financing for the property in question or for other real estate.
- The building was in need of substantial repairs, remodeling or improvements.
- Fixtures/equipment used in business are obsolete or in a state of disrepair.

2. Other Facts Indicating Motive.

In addition to proof of financial problems, there are other types of evidence that may create an inference of motive.

In the DeMarais case, for example, there was evidence that the insureds were dissatisfied with their home, and that their house had been characterized as a "lemon." The court held that this evidence (in conjunction with other evidence of financial difficulty, including overdue mortgage payments) was sufficient to prove motive. DeMarais, 405 N.W.2d at 511.

Similarly, the Court in Quast held that evidence of the insured's prior unsuccessful attempts to sell the house was, in and of itself, sufficient to establish motive. Quast, 267 N.W.2d at 495.

The fact that the insured had a prior loss at the same location within a relatively short time frame may also be used as evidence of motive. Multiple fires in succession could indicate that the insured was attempting to "finish off" a previously failed attempt at destroying the property and/or its contents.

Evidence that the property and/or the contents were insured significantly in excess of actual value may be used to establish that the insured had a motive to cause the loss.

D. Proof of Opportunity.

Although proof that the insured had the opportunity to set the fire is not required to prevail on an arson defense in Minnesota, see DeMarais, 405 N.W.2d at 510-11, evidence of opportunity is certainly helpful in proving arson. For example, eyewitness testimony that places the insured in or around the premises at or near the time the fire started is clearly probative of the notion that the insured set the fire. Evidence that the building was secured at the time of the fire or evidence that the insured was one of only a few persons who had access to the premises at the time of the fire is equally probative on the issue of opportunity.

E. Other Types of Evidence Indicating Arson or Fraud: Proof that the Incendiary Fire was Planned.

Evidence suggesting that the insured planned the fire, though not a required element of an arson defense, may also be extremely helpful in proving the insured intentionally set the fire.

For instance, there was evidence in the DeMarais case that the insured and all of his family members were conveniently away from home at the time of the fire, even though they normally would have been home at that hour. The court accepted this as competent evidence that the insured had planned the fire, and relied upon this evidence in upholding the jury's finding of arson. DeMarais, 405 N.W.2d at 511.

The suspicious absence of a family pet at the time of the fire, or the removal of valuable personal property or items of sentimental value prior to the fire constitute additional facts which may be used to establish that the insured planned the fire.

The insured's behavior prior to the fire can also provide evidence that the fire was planned. If, for example, the insured increased the amount of coverage shortly before the loss, or even if the insured simply contacted the agent or insurer to verify the extent of coverage, an inference that the insured planned the fire can be argued. Likewise, evidence that a fire or burglar alarm system had been disconnected prior to the fire or that windows or doors which would allow passersby to see what was happening inside a building were covered at the time of the fire can be used to create strong inferences that a fire had been planned.

Suspicious behavior by the insured during the submission of the insurance claim is yet another source of evidence that may be used to implicate the insured. Unusual familiarity with the claims process or insurance terminology, pushy behavior or an eagerness to settle, and an inability to provide receipts or other documentation to establish ownership of personal property all may be indicators of a fraudulent claim.

F. Don't Forget Damages.

Too often, a civil arson or fraud case is viewed as an "all or nothing" proposition, with the focus solely upon whether or not

the fraud was committed. In such instances, the insurer may be overlooking another important defense to the claim: the extent of the insured's damages.

While the evolution of valued policy law has, in some instances, eliminated the need to prove the value of a dwelling, contesting the value of contents, equipment, inventory, additional living expense, loss of income and the like remains a viable defense to a claim. Hence, even where the insurer fails to prove arson, it is nevertheless possible to defeat a portion of the claim by introducing evidence to challenge or disprove the claimed damages.

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AND STATEMENTS IN AN ARSON/FRAUD CASE 26**

The Law Offices of
CHARLES J. NOEL & ASSOCIATES, P.A.

180 Grand Oak Office Center I
860 Blue Gentian Road
Eagan, MN 55121

Telephone: (651) 365-5020 March 25, 2003 Facsimile: (651) 365-5107

Mr. U. R. Insured
1234 South First Street
Minneapolis, MN 55402

RE: Our Client: All Heart Insurance Company
 Insured: U. R. Insured Bar
 Date of Loss: June 30, 2002
 Location of Loss: 5678 Main Street, Minneapolis, Minnesota
 Cause of Loss: Fire
 Claim No:
 Policy No:
 Our File No:

Dear Mr. Insured:

We have been retained by All Heart Insurance Company to represent its interests in connection with the claim being submitted by U. R. Insured Bar as a result of the fire loss of June 30, 2002, at 5678 Main Street, Minneapolis, Minnesota. Under the terms of your policy of insurance, one of your duties after loss is to submit to Examinations Under Oath, as often as All Heart Insurance Company may reasonably require.

We are scheduling the Examination Under oath of Mr. U. R. Insured for 9:00 a.m. on Monday, April 14, 2003, at our office. We are also scheduling the Examination Under Oath of Mrs. U. R. Insured on Monday, April 14, 2003, at our office. Once the examination of Mr. U. R. Insured has been completed, we will proceed with the Examination Under Oath of Mrs. U. R. Insured. We intend to sequester Mrs. U. R. Insured during the Examination Under Oath of Mr. U. R. Insured.

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Upon receipt of this letter, I ask that you please confirm your availability for your Examinations Under Oath on April 14, 2003. In the event you need to reschedule to a different time or date, we will make every effort to accommodate your schedules.

We request that you bring with you to the Examinations Under Oath, any and all records pertinent to the claim U.R. Insured Bar is presenting relative to the above-captioned fire loss.

We specifically request that you bring with you to the Examinations Under Oath the following records and documents:

1. Any and all documents evidencing the ownership of, purchase of, and the value of the property included in the insurance claim;
2. Any documentation relating to any investigation of the fire loss;
3. Quarterly sales tax return summaries for 1999-2002.
4. Any other revenue and expense information for U. R. Insured Bar from your accountant for the years 1999-2002.
5. Federal and state income tax returns and all supporting schedules filed with the Internal Revenue Service or the Minnesota Department of Revenue for the years 1999-2002.
6. Monthly income statements for the years 1999-2002 for U. R. Insured Bar. The income statements should contain complete detail to all expense accounts maintained within the chart of accounts. If summary income statements are contained, please provide the general ledger for the years 1999-2002.
7. Monthly sales summaries for the years 1999-2002.
8. Loan statements and related credit files for all loans outstanding and/or applied for between January, 1999 and July, 2002.
9. Monthly actual and planned/budgeted/forecasted asset listings for January, 1999, through July, 2002.
10. Monthly actual and planned/budgeted/forecasted capital expenditures for January, 1999, through July, 2002.

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11. The names and addresses of all suppliers of any of the contents damaged or destroyed in the fire together with all invoices relating to any such items.
12. The names and last known addresses of all employees of U. R. Insured Bar from 1999-2002.
13. All income tax withholding records relating to all employees of U. R. Insured Bar from January, 1999, through July, 2002.
14. Any and all records and documents supporting or relating to the amount being claimed as a result of the above-referenced fire loss.
15. Any and all records evidencing any replacement of the property damaged or destroyed in the above-referenced fire loss.
16. Any and all records or documents relating to any attempts to obtain financing or re-financing for the property involved in the above-referenced fire loss.
17. Any and all records or documents relating to any building permits taken out in connection with the property involved in the above-referenced fire loss.
18. Any and all records or documents relating to any renovation, restoration, or repair plans undertaken or intended to be undertaken with respect to the property involved in the above-referenced fire loss.
19. Any and all records or documents relating to any code violations or citations issued with respect to the property involved in the above-referenced fire loss.
20. Any and all records or documents relating to property taxes on the property involved in the above-referenced fire loss. This request specifically includes but is not limited to any and all records of payments of said taxes and notices with respect to payments or non-payments of said taxes.
21. Records of all sources of income to U. R. Insured Bar for the years 1999-2002 from any source.
22. Records of all expenses incurred by U. R. Insured Bar for the years 1999-2002 from any source.

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23. Records of all bank accounts, savings and loan association accounts, credit union accounts, money markets, mutual funds, certificates of deposit, or other assets owned by U. R. Insured Bar for the years 1999-2002.
24. Records of all loans, mortgages, or other forms of indebtedness incurred by U. R. Insured Bar for the years 1999-2002.
25. Statements for the years 1999-2002 from all credit card companies with whom U. R. Insured Bar had accounts and all institutions where U. R. Insured Bar had loans or from whom it has received credit during that time period.
26. Any and all records and documents relating to any attempt to sell the property involved in the fire by U. R. Insured Bar.

Please be advised that the continued investigation of this matter by All Heart Insurance Company, including this request for the Examinations Under Oath and production of documents is not intended to be, nor should it be, construed as an admission of liability by All Heart Insurance Company under the policy of insurance issued to U. R. Insured Bar. All Heart Insurance Company hereby expressly reserves all rights and defenses it may have to any and all claims submitted as a result of the above-referenced fire loss.

Finally, pursuant to Minnesota statute, we are required to advise you that you have the right to be represented by counsel during the Examinations Under Oath, and that the contents of the Examinations Under Oath may be used against you in later civil or criminal proceedings.

Yours very truly,

Charles J. Noel

CJN/kmm

Pete Pyro and Priscilla Pyro,

Plaintiffs,

**DEFENDANT'S
INTERROGATORIES
TO PLAINTIFFS**

vs.

We Cover Anything
Insurance Company,

Defendant.

TO: PLAINTIFFS PETE PYRO AND PRISCILLA PYRO AND THEIR
ATTORNEY, JAMES C. ERICKSON, 1500 MINNESOTA WORLD
TRADE CENTER, 30 EAST SEVENTH STREET, ST. PAUL, MN
55101.

PLEASE TAKE NOTICE that Defendant We Cover Anything
Insurance Company demands answers, under oath, to the following
Interrogatories, within thirty (30) days of service hereof, in accordance with
the Rules of Civil Procedure of the above-entitled Court:

1. State the full name, address and present occupation of the person(s) giving answers to these Interrogatories.
2. State the full name, present address and present occupation of all persons consulted with in the preparation of your answers to these Interrogatories.
3. State the full name, present address and present occupation of every person known to Plaintiffs who has knowledge of any facts pertaining to the above-entitled lawsuit and give a brief statement of the facts believed to be known by each person.
4. Identify each and every tangible item or exhibit relating to or bearing upon any fact or legal issue in the above-entitled lawsuit, which is in

the possession of Plaintiffs, their attorney, or any other person or company representing Plaintiffs. Please attach copies of each such items or exhibit capable of being photocopied.

5. State the full name, occupation and employer of each and every person from whom Plaintiffs, their attorneys, or any other person of company representing Plaintiffs have obtained a "statement" as defined in Rule 26.02(3) Minnesota Rules of Civil Procedure, relating to the above lawsuit and state the date of each "statement."

6. State the name and present address of each and every person whom you expect to call as a witness or as an "expert witness" at the trial of the above-captioned lawsuit and give a brief description of the matters upon which each witness or expert witness is expected to testify.

7. With respect to each expert identified in your answer to the preceding Interrogatory, state the following:

- (a) The area of expertise of said expert, his/her educational background and experience;
- (b) The subject matter on which said expert is expected to testify;
- (c) The facts and opinions to which said expert is expected to testify; and
- (d) The grounds for said opinion.

8. State the name and present address of each and every person whom Plaintiffs, Plaintiffs' attorneys or Plaintiffs' representatives have consulted with as an "expert" and whom Plaintiffs do not intend to call as an "expert witness" at the trial of the above-captioned lawsuit.

9. With respect to all damage alleged to have occurred to Plaintiffs' property as a result of the fire referred to in the Complaint, state the following:

- (a) Itemize all claimed damages per article;

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- (b) Itemize all repairs or restoration made of said damages per article;
- (c) State the dates of said repairs or restoration per article;
- (d) State the name, address, and occupation of the party performing said repairs or restoration per article;
- (e) State the costs to Plaintiffs of said repairs or restoration per article;
- (f) State the manner (i.e. cash, check, etc.) of payment of said costs referred to in Answer to (e) above, per article;
- (g) Itemize all repairs or restoration which remains to be completed and state the reasonable value for materials and labor to complete said repairs or restoration per article;
- (h) Itemize all salvage which was realized from any of the property involved in the fire loss; and
- (i) State the current location of any property which was salvaged from the fire loss.

10. With respect to all damages claimed for "additional living expenses" as a result of the fire referred to in the Complaint, state the method of calculation of said alleged "additional living expense."

11. With respect to all "expenses incurred by Plaintiffs" alleged to have been incurred by Plaintiffs as a result of the fire referred to in the Complaint, state the method of calculation of said alleged "expenses incurred by Plaintiffs."

12. With respect to all "attorney's fees and other incidental costs incurred in maintaining this action" alleged to have been incurred by Plaintiffs as a result of the fire referred to in the Complaint, state the method of calculation of said alleged "attorney's fees and other incidental costs incurred in maintaining this action."

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13. With respect to all outstanding debts owed by the Plaintiffs, jointly or individually, on the date of the fire referred to in the Complaint, state the following:

- (a) Name and address of the creditor;
- (b) Date the debt was initially incurred;
- (c) Amount of the debt when initially incurred;
- (d) Amount of the debt remaining as of the date of the fire;
- (e) The reason for which the debt was incurred; and
- (f) The amount of monthly payments on the debt.

14. State all sources of income to Plaintiffs on the date of the fire referred to in the Complaint, and state the amount of income per month from each of said sources.

15. With respect to all banks, saving and loan associations, credit unions, or other such institutions that had accounts with the Plaintiffs, jointly or individually, on the date of the fire referred to in the Complaint, state the following:

- (a) Name and address of the bank, savings and loan, credit union or other such institution;
- (b) Type of account with each such institution;
- (c) Each account number;
- (d) The balance in the account as of the date of the fire referred to in the Complaint.

16. State in detail all prior claims that either Plaintiff has had with any insurance company, including the following:

- (a) The name of the insurance company;
- (b) The policy of insurance;

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- (c) The date of the alleged loss;
- (d) The type of the alleged loss;
- (e) The amount of the claim submitted by the Plaintiff as a result of the alleged loss; and
- (f) The amount received from the insurance company as a result of the alleged loss.

17. With respect to each policy of insurance referred to in the preceding interrogatory, state whether any of these policies have been cancelled or non-renewed. State further the reason for any such cancellation or non-renewal and the date of any such cancellation or non-renewal.

18. State whether or not you claim that Defendant's liability has been affected, controlled, enlarged or established by any admissions or acts made by, undertaken or committed by or on behalf of Defendant.

19. If the answer to the preceding Interrogatory is in the affirmative, state the following:

- (a) What was said, written or done to constitute said admission or act;
- (b) The date upon which you claim said admission or act occurred;
- (c) Identify all persons who stated, overheard or observed said admissions or acts; and
- (d) What, if anything, Plaintiffs did in reliance thereon.

20. Set forth all banks, saving and loan associations, credit unions, or other such institutions that Plaintiffs, jointly or individually, had dealt with or had taken loans out from within the last five years before the fire which is the subject matter of this lawsuit, and state the following:

- (a) The name and address of the bank, savings and loan association, credit union or other such institution;

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- (b) The type of account or loan with each such institution;
- (c) The account number or loan number; and
- (d) The amount owed on the account or loan as of the date of the fire.

21. State whether or not Plaintiffs jointly or individually have had any checks returned "NSF" (non-sufficient funds) within the two years immediately preceding the fire which forms the basis of this lawsuit.

22. With respect to all lawsuits that Plaintiffs, either jointly or individually, have been a party to state the following:

- (a) The title of the action and the Court in which the lawsuit was or is venued, including the Court file number;
- (b) A detailed description of the lawsuit;
- (c) The present status or ultimate resolution of the lawsuit;
- (d) The names and address of the attorneys representing the various parties to the lawsuit.

23. Set forth the date, place of occurrence, type, source, and extent of damages from any fire which has occurred on or adjacent to property, whether real or personal, owned by the Plaintiffs, jointly or individually, within the last five (5) years.

24. Specifically describe each of the Plaintiffs' activities on the date of the fire, commencing from the time each Plaintiff awoke and got up until the fire on that date had been extinguished.

25. Identify all charge or credit cards held by Plaintiffs jointly or individually within the past five years prior to the fire by providing the following information:

- (a) the name of the charge card or credit card company;
- (b) the complete address of the charge card or credit card company;

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- (c) the name and address that each charge card or credit card was in;
- (d) the account number for each such card;
- (e) the outstanding balance on each such card on the date of the fire;
- (f) the monthly payment due at the time of the fire.

26. State whether or not either Plaintiff has ever been charged with or convicted of a crime. If so, state the following:

- (a) The offense that either Plaintiff was charged with or convicted of;
- (b) The date of each such charge or conviction;
- (c) The county in which each such charge or conviction occurred;
- (d) The outcome or disposition of each such charge or conviction.

27. With respect to your Answers to these Interrogatories and your Response to the Demand for Production of Documents and Statements served contemporaneously with these Interrogatories, if you are refusing to identify, objecting to, or refusing to produce any document, please state the following with respect to each such document:

- (a) The author or authors;
- (b) The recipient or recipients;
- (c) The date and type (letter, memorandum, etc.) of the document; and
- (d) The privilege or privileges you are claiming for each such document.

These Interrogatories are deemed to be continuing in nature and you are hereby notified of your duty to provide supplementation of your answers in

accordance with the provisions of Rule 26.05, Minnesota Rules of Civil Procedure. YOU ARE FURTHER NOTIFIED THAT OBJECTION WILL BE MADE AT THE TIME OF TRIAL TO ANY ATTEMPT TO INTRODUCE EVIDENCE WHICH IS DIRECTLY SOUGHT BY THESE INTERROGATORIES AND TO WHICH NO DISCLOSURE HAS BEEN MADE, said objection will be made in accordance with the Supreme Court decision in Gebhard v. Niedzwiecki, 265 Minn. 471, 122 N.W.2d 110 (1963).

CHARLES J. NOEL & ASSOCIATES, P.A.

Dated: _____

Charles J. Noel (#79406)
Attorneys for Defendant
180 Grand Oak Office Center I
860 Blue Gentian Road
Eagan, MN 55121
(651) 365-5020

Pete Pyro,

Plaintiff,

vs.

We Cover Anything
Insurance Company,

Defendant.

**DEFENDANT'S DEMAND
FOR PRODUCTION OF
DOCUMENTS AND
STATEMENTS TO
PLAINTIFF**

TO: PLAINTIFF PETE PYRO AND HIS ATTORNEY, JAMES C.
ERICKSON, 1500 MINNESOTA WORLD TRADE CENTER, 30 EAST
SEVENTH STREET, ST. PAUL, MN 55101.

You are hereby requested, pursuant to Rules 34.01 and 26.02 of the Rules
of Civil Procedure for the District Courts of Minnesota, to produce and permit
Charles J. Noel, as attorney for the Defendant, to inspect and copy the following
designated documents:

1. Any and all photographs, films, videotapes, or motion pictures in the possession of Plaintiff or anyone acting on Plaintiff's behalf relating to the fire loss or damages claimed by Plaintiff which forms the basis of this lawsuit.
2. Any and all police, fire, or investigation reports relating to the fire or damages claimed by Plaintiff which forms the basis of this lawsuit.
3. Any and all statements in the possession of Plaintiff or anyone acting on his behalf.
4. Any and all maps, charts, sketches or diagrams in the possession of Plaintiff or anyone acting on his behalf relating to the fire loss which forms the basis of this lawsuit.

5. State and federal income tax returns filed by Plaintiff individually or jointly for the years 1998 through the present.
6. Copies of all documents which Plaintiff contends support his claim for the damages referred to in Plaintiff's Complaint.
7. All books, records, journals, ledgers or other records maintained by Plaintiff which set forth his income and expenditures for the two years prior to the date of the fire referred to in Plaintiff's Complaint.
8. Any and all correspondence between Plaintiff, or anyone acting on his behalf, and Defendant from the date of the inception of the policy of insurance which forms the basis of this lawsuit to the present.
9. Any and all documents identified by Plaintiff in response to Defendant's Interrogatories.
10. Any other documents Plaintiff intends to offer at the trial of this lawsuit.
11. Copies of any and all documents dealing with any zoning regulations or other regulations regarding the use of the property involved in the fire, specifically including but not limited to any and all documents relating to any attempts to obtain any variance from any such regulation.
12. Copies of any and all documents relating to the purchase of the property involved in this lawsuit by Plaintiff.
13. Copies of any and all documents relating to any attempted sale of the property involved in this fire by the Plaintiff.
14. Copies of any and all documents dealing with any alleged violation of any codes, ordinances or regulations which were served upon the Plaintiff during his ownership of this property.
15. Any and all records evidencing Plaintiff's ownership of, purchase of, and the value of the property included in this claim.
16. All records and documentation supporting the amount claimed in the Sworn Statement in Proof of Loss submitted by Plaintiff in the amount of \$846,500.00.

Discovery in First-Party Insurance Claims

17. Records of all bank accounts, stocks, bonds, or other assets owned by Plaintiff from 1999 through the present.
18. Records of all loans or other forms of indebtedness that Plaintiff has incurred from 1999 through the present.

Inspection will take place at the offices of Charles J. Noel & Associates, P.A., 180 Grand Oak Office Center I, 860 Blue Gentian Road, Eagan, Minnesota 55121 on _____.

In lieu of the above, you may provide copies of the above requested documents by mail prior to the date set forth above.

Please be advised the Defendant will move for the exclusion of any document or evidence you attempt to introduce at trial which has not previously been provided pursuant to this Request for Production of Documents and Statements.

CHARLES J. NOEL & ASSOCIATES, P.A.

Dated: _____

Charles J. Noel (#79406)
Attorneys for Defendant
180 Grand Oak Office Center I
860 Blue Gentian Road
Eagan, MN 55121
(651) 365-5020