

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

NAUTILUS INSURANCE  
COMPANY,

Appellant,

v.

ACCESS MEDICAL, LLC;  
ROBERT CLARK WOOD, II;  
AND FLOURNOY  
MANAGEMENT LLC,

Respondents.

) **Supreme Court 79130**

) Electronically Filed  
) Nov 20 2019 02:01 p.m.

) United States District Court  
) for the District of Nevada  
) Elizabeth A. Brown  
) Clerk of Supreme Court  
) Case No. 2:15-cv-00321

)  
) United States Court of Appeals  
) for the Ninth Circuit:  
) Case Nos. 17-16265  
) 17-16272  
) 17-16273

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**JOINT APPENDIX VOLUME IV**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

NAUTILUS INSURANCE  
COMPANY,

Appellant,

v.

ACCESS MEDICAL, LLC;  
ROBERT CLARK WOOD, II;  
AND FLOURNOY  
MANAGEMENT LLC,

Respondents.

) **Supreme Court 79130**

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United States District Court,  
for the District of Nevada  
Case No. 2:15-cv-00321

United States Court of Appeals  
for the Ninth Circuit  
Case Nos. 17-16265  
17-16272  
17-16273

**JOINT APPENDIX**

Citations to the joint appendix will include a page number, which refers to the "NV Sup Ct CQ – Joint Appendix00001" page numbering. This is to prevent any confusion, as many of the documents were previously numbered as exhibits in support of the briefing on this issue before the Ninth Circuit. The volumes of the Joint Appendix are labeled in Roman Numerals to prevent confusion with the volumes of the two underlying sets of exhibits. Tabs are only provided for the volumes of the Joint Appendix, not for the underlying sets of exhibits. Indices of the underlying exhibit volumes can be found at NV Sup CT CQ – JointAppendix00053, 00800.

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<sup>1</sup> NV Sup CT CQ – JointAppendix Numbering

# EXHIBIT 15



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April 5, 2016

**Via Email and Certified Mail, Return Receipt Requested**

Jordan Schnitzer, Esq.  
Kravitz, Schnitzer & Johnson  
8985 South Eastern Avenue, Suite 200  
Las Vegas, NV 89123

Re: *Nautilus Ins. Co. v. Access Medical, LLC, et al.*, United States District Court, District of Nevada, Case No. 2:15-cv-00321-JAD-GWF ("Coverage Action");  
*Switzer v. Flournoy Management, LLC, et al.*, Fresno County Superior Court, Case No. 11 CE CG 04395 ("Underlying Action")  
Our File No. : 3892.35805  
Insureds : Access Medical, LLC  
Claim No. : 10073578  
Policy No. : BN952426 (1/15/2011 to 1/15/2012)

Dear Mr. Schnitzer:

As you are aware, our firm is coverage counsel for Nautilus Insurance Company ("Nautilus") with respect to the above-captioned matters. On behalf of Nautilus, we are writing to confirm that Nautilus has reserved the right to demand that Access Medical, LLC ("Access"), Robert Clark Wood, II ("Wood"), and Flournoy Management, LLC ("Flournoy") (collectively "Insureds") reimburse Nautilus for defense fees and costs which Nautilus has incurred in defense of each of the Insureds in the Underlying Action. The purpose of bringing this matter to your attention is to encourage the Insureds to attempt to settle the Underlying Action before additional defense fees and costs are incurred.

As set forth in its reservation of rights letters dated May 19, 2014 and October 2, 2014 to Access and Wood, and its October 14, 2014 reservation of rights to Flournoy, Nautilus expressly reserved the right to seek reimbursement for any and all attorney fees, expert fees, defense costs, indemnification payments and any other litigation-related expenses that it pays in connection with the Insureds' defense and indemnification of the Underlying Action if it is determined that coverage is not available under the Nautilus Policy.

Under Nevada law, an insurer has a right to demand reimbursement of defense fees and costs expended in providing a defense if the insurer expressly reserved the right to reimbursement of defense fees for uncovered claims and there is a clear understanding between the parties that the insurer reserved the right to reimbursement of defense fees and costs. *Capitol Indem. Corp. v.*



Jordan Schnitzer, Esq.  
April 5, 2016  
Page 2

*Blazer*, 51 F. Supp.2d 1080, 1090 (D. Nev. 1999); see also *Forum Ins. Co. v. Cty. Of Nye*, No. 91-16724, 1994 WL 241384, at \*2-3 (9th Cir. June 3, 1994) ("[A]cceptance of monies constitutes an implied agreement to the reservation" of the insurer's right to seek reimbursement for claims outside of the policy's coverage). Nautilus expressly reserved its right to seek reimbursement of defense fees and costs in the May 19, 2014, October 2, 2014 and October 14, 2014 reservation of rights letters. Please consider this letter as additional notice that Nautilus continues to reserve the right to pursue reimbursement of defense fees and costs incurred in defense of the Insureds in the Underlying Action.

Pending in the Coverage Action (in the District of Nevada) is Nautilus's motion for partial summary judgment, wherein Nautilus is seeking a declaration that Nautilus has no duty to defend or indemnify any of the Insureds in the Underlying Action. Nautilus has a high likelihood of succeeding on the merits of its summary judgment motion because it is undisputed that there are no allegations or extrinsic evidence presented in the Underlying Action that potentially gives rise to a duty to defend under the Nautilus Policy. Once the District Court grants Nautilus's motion for partial summary judgment, Nautilus will file another motion seeking reimbursement of all defense fees and costs incurred in defending the Insureds in the Underlying Action.

Again, the purpose of sending this letter is to encourage the Insureds to attempt to resolve the Underlying Action before additional defense fees and costs are incurred.

Please note that nothing in this letter abrogates, curtails, extinguishes, limits or lessens, or in any other capacity restricts the reservation of rights asserted to date by Nautilus, including, but not limited to, the rights reserved by Nautilus in its May 19, 2014, October 2, 2014 and October 14, 2014 reservation of rights letters. Nautilus reserves all rights under the policy.

Please feel free to contact the undersigned if you have any questions.

Very truly yours,

LINDA WENDELL HSU

LWH:qtl

cc: Via Email and Certified Mail, Return Receipt Requested  
James E. Harper, Esq.  
HARPER LAW GROUP  
1935 Village Center Circle  
Las Vegas, NV 89134

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7 Attorneys for Plaintiff NAUTILUS  
INSURANCE COMPANY

8  
9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 NAUTILUS INSURANCE COMPANY,

12 Plaintiff,

13 v.

14 ACCESS MEDICAL, LLC; ROBERT CLARK  
15 WOOD, II; FLOURNOY MANAGEMENT,  
16 LLC; and DOES 1-10, inclusive,

17 Defendants.  
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Case No. 2:15-cv-00321-JAD-GWF

DECLARATION OF KENNETH RICHARD  
IN SUPPORT OF NAUTILUS INSURANCE  
COMPANY'S MOTION FOR FURTHER  
RELIEF UNDER 28 U.S.C.A. SECTION 2202  
AWARDING (1) DEFENSE COSTS  
NAUTILUS INCURRED IN THE  
UNDERLYING ACTION, (2) PRE-  
JUDGMENT INTEREST, AND (3) POST-  
JUDGMENT INTEREST

Selman Breitman LLP  
ATTORNEYS AT LAW

1 I, KENNETH D. RICHARD, declare as follows:

2 1. I am a Senior Litigation Specialist at Nautilus Insurance Company ("Nautilus"). I  
3 am an authorized agent for Nautilus for the purpose of making this declaration.

4 2. I am the claims person at Nautilus most familiar with and primarily responsible for  
5 claim number 10073577 at issue in the underlying cross-complaint entitled "Cross-Complaint of  
6 Ted Switzer for Legal and Equitable Relief on Individual Claims on his behalf and derivative  
7 claims on behalf of Nominal defendant, Flournoy Management, LLC," filed on June 3, 2013 in the  
8 underlying action entitled *Ted Switzer v. Flournoy Management, LLC, et al.*, Superior Court of  
9 California, County of Fresno, Case No. 11CECG04395 ("*Switzer* Cross-Complaint"). The *Switzer*  
10 Cross-Complaint was filed against Nautilus's named insureds, Access Medical, LLC ("Access")  
11 and Flournoy Management, LLC ("Flournoy"), and insured Robert Clark Wood, II ("Wood")  
12 (collectively "Insureds").

13 3. As a Senior Litigation Specialist, I have primary responsibility for maintaining the  
14 documents in the claim file for claim number 10073577. As such, I have personal knowledge of  
15 the facts contained in this declaration, either from my own personal knowledge or by reviewing  
16 the Nautilus claim file relevant to this case. If called upon to testify, I could and would  
17 competently testify thereto.

18 4. All of the documents referenced in this declaration are in Nautilus's files and were  
19 kept by Nautilus in the ordinary course of Nautilus's business.

20 5. Nautilus assigned claim number 10073577 to Flournoy's insurance claim pertaining  
21 to the *Switzer* Cross-Complaint.

22 6. Nautilus routinely audits the bills submitted to it by vendors, such as law firms and  
23 makes deductions. For example, Nautilus makes deductions for excessive time spent on a  
24 particular task, time spent on matters unrelated to the defense of its insureds or tasks that should  
25 be performed by a paralegal or administrative assistant. Nautilus then pays the remaining balance  
26 due to the vendor after deductions. The total amount Nautilus has paid to date for defense costs  
27 for claim number 10073577 is \$142,310.52.

28 7. Hall Hieatt & Connely was hired as defense counsel for Flournoy in the underlying

1 action. Hall Hieatt & Connely submitted invoices to Nautilus for payment dated June 30, 2014 to  
2 September 30, 2016. A true and correct copy of the invoices submitted by Hall Hieatt & Connely  
3 to Nautilus for payment are attached to Nautilus's Index of Exhibits as **Exhibit 11**. The total  
4 amount Nautilus paid Hall Hieatt & Connely was \$71,973.75.

5 8. McCormick Barstow acted as defense counsel for Flournoy prior to the  
6 appointment of Hall Hieatt & Connely. McCormick Barstow submitted invoices to Nautilus for  
7 payment dated May 2014 to September 2014. A true and correct copy of invoices submitted by  
8 McCormick Barstow to Nautilus for payment are attached to Nautilus's Index of Exhibits as  
9 **Exhibit 12**. The total amount Nautilus paid McCormick Barstow was \$60,374.74.

10 9. Amy R. Lovegren-Tipton was hired as independent counsel for Flournoy. Amy R.  
11 Love-Gren-Tipton submitted invoices to Nautilus for payment dated August 2015 to October  
12 2016. A true and correct copy of invoices submitted by Amy R. Lovegren-Tipton to Nautilus for  
13 payment are attached to Nautilus's Index of Exhibits as **Exhibit 13**. The total amount Nautilus  
14 paid Amy R. Lovegren-Tipton is \$9,962.00.

15 10. Nautilus never received a request from Flournoy to stop paying defense costs on its  
16 behalf.

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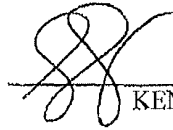


1           11. On October 17, 2014, Nautilus issued a reservation of rights letter to Flournoy  
2 setting forth Nautilus's agreement to provide Flournoy with a defense of the *Switzer* Cross-  
3 Complaint, subject to a full and complete reservation of rights to disclaim coverage and withdraw  
4 from defense, including the right to reimbursement of defense fees should it be determined that  
5 Nautilus has no duty to defend or indemnify Flournoy in the *Switzer* Cross-Complaint. A true and  
6 correct copy of the October 17, 2014 reservation of rights letter, bearing Bates number NIC-  
7 000243 to NIC-000255, is attached to Nautilus's Index of Exhibits as **Exhibit 14**.

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10           I declare under penalty of perjury under the laws of the United States of America that the  
11 foregoing is true and correct.

12           Executed this 24 day of October, 2016, at Scottsdale, Arizona.

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KENNETH D. RICHARD

Selman Breitman LLP  
ATTORNEYS AT LAW

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and, pursuant to Local Rule 5.1, service of the foregoing **DECLARATION OF KENNETH RICHARD IN SUPPORT OF NAUTILUS INSURANCE COMPANY'S MOTION FOR FURTHER RELIEF UNDER 28 U.S.C.A. SECTION 2202 AWARDDING (1) DEFENSE COSTS NAUTILUS INCURRED IN THE UNDERLYING ACTION, (2) PRE-JUDGMENT INTEREST, AND (3) POST-JUDGMENT INTEREST**, was served on the 25<sup>th</sup> day of October, 2016 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list, as follows:

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MANAGEMENT, LLC

/s/ Pamela Smith  
PAMELA SMITH  
An Employee of Selman Breitman LLP

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7  
8 Attorneys for Plaintiff NAUTILUS  
INSURANCE COMPANY  
9

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 NAUTILUS INSURANCE COMPANY,  
13

14 Plaintiff,  
15

16 v.  
17

18 ACCESS MEDICAL, LLC; ROBERT CLARK  
19 WOOD, II; FLOURNOY MANAGEMENT,  
20 LLC; and DOES 1-10, inclusive,  
21

22 Defendants.  
23  
24  
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26  
27  
28

Case No. 2:15-cv-00321-JAD-GWF

DECLARATION OF LINDA WENDELL  
HSU IN SUPPORT OF NAUTILUS  
INSURANCE COMPANY'S MOTION FOR  
FURTHER RELIEF UNDER 28 U.S.C.A.  
SECTION 2202 AWARDING (1) DEFENSE  
COSTS NAUTILUS INCURRED IN THE  
UNDERLYING ACTION, (2) PRE-  
JUDGMENT INTEREST, AND (3) POST-  
JUDGMENT INTEREST

1  
2 I, LINDA WENDELL HSU, declare as follows:

3 1. I am an attorney at law, duly licensed to practice before the courts of the State of  
4 California and the United States District Court, Districts of California. I have been admitted as  
5 pro hac vice counsel for this instant action. I am a Partner with the law firm of Selman Breitman  
6 LLP, attorneys of record for Plaintiff Nautilus Insurance Company ("Nautilus") in this action. The  
7 facts and documents identified in this declaration are known to me personally and were obtained  
8 and prepared in the ordinary course of business in the representation of Nautilus in this matter.  
9 The facts set forth herein are known to me personally, and if called upon to testify, I could and  
10 would competently testify thereto.

11 2. On behalf of Nautilus and pursuant to its authority, Selman Breitman was retained  
12 to investigate and evaluate Defendants Access Medical LLC, Robert Wood and Flournoy  
13 Management LLC's tender to Nautilus for defense and indemnity of the underlying cross-cross-  
14 complaint entitled "Cross-Complaint of Ted Switzer for Legal and Equitable Relief On Individual  
15 Claims on His Behalf and Derivative Claims on Behalf of Nominal Defendant Flournoy  
16 Management, LLC," filed on or about June 3, 2013, in Fresno County Superior Court, Case No. 11  
17 CE 04395 JH (hereinafter "Underlying Action"). Selman Breitman is also coverage counsel for  
18 Nautilus in this action.

19 3. Nautilus requested that our office review invoices submitted by Kravitiz, Schnitzer  
20 & Johnson for payment. Our office sent a letter to Kravitiz, Schnitzer & Johnson explaining  
21 deductions from the invoices for entries Nautilus declined to pay as non-covered and enclosing  
22 payment in the amount of \$10,013.50. A true and correct copy of the letter from my office to  
23 Kravitiz, Schnitzer & Johnson is attached to Nautilus's Index of Exhibits as **Exhibit 5**.

24 4. On April 5, 2016, our office sent a letter to Kravitiz, Schnitzer & Johnson  
25 confirming that Nautilus had reserved the right to demand that its insureds reimburse Nautilus for  
26 defense fees and costs which Nautilus incurred in the defense of each of the Insureds in the  
27 Underlying Action. A true and correct copy of the letter from my office to Kravitiz, Schnitzer &  
28 Johnson is attached to Nautilus's Index of Exhibits as **Exhibit 15**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Linda Wendell Hsu

Selman Breitman LLP  
ATTORNEYS AT LAW

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and, pursuant to Local Rule 5.1, service of the foregoing **DECLARATION OF LINDA WENDELL HSU IN SUPPORT OF NAUTILUS INSURANCE COMPANY'S MOTION FOR FURTHER RELIEF UNDER 28 U.S.C.A. SECTION 2202 AWARDDING (1) DEFENSE COSTS NAUTILUS INCURRED IN THE UNDERLYING ACTION, (2) PRE-JUDGMENT INTEREST, AND (3) POST-JUDGMENT INTEREST**, was served on the 25<sup>th</sup> day of October, 2016 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list, as follows:

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Attorneys for Defendants ACCESS  
MEDICAL, LLC and ROBERT CLARK  
WOOD, II

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MANAGEMENT, LLC

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WOOD, II

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Attorneys for Defendant FLOURNOY  
MANAGEMENT, LLC

/s/ Pamela Smith  
PAMELA SMITH  
An Employee of Selman Breitman LLP

Case 2:15-cv-00321-JAD-GWF Document 74 Filed 10/25/16 Page 1 of 6

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12 Attorneys for Plaintiff NAUTILUS  
13 INSURANCE COMPANY

14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 NAUTILUS INSURANCE COMPANY,

17 Plaintiff,

18 v.

19 ACCESS MEDICAL, LLC; ROBERT CLARK  
20 WOOD, II; FLOURNOY MANAGEMENT,  
21 LLC; and DOES 1-10, inclusive,

22 Defendants.

Case No. 2:15-cv-00321-JAD-GWF

DECLARATION OF RICHARD CONRAD IN  
SUPPORT OF NAUTILUS INSURANCE  
COMPANY'S MOTION FOR FURTHER  
RELIEF UNDER 28 U.S.C.A. SECTION 2202  
AWARDING (1) DEFENSE COSTS  
NAUTILUS INCURRED IN THE  
UNDERLYING ACTION, (2) PRE-  
JUDGMENT INTEREST, AND (3) POST-  
JUDGMENT INTEREST

1  
2 I, RICHARD CONRAD, declare as follows:

3 1. I am a Senior Litigation Specialist at Nautilus Insurance Company ("Nautilus"). I  
4 am an authorized agent for Nautilus for the purpose of making this declaration.

5 2. I am the claims person at Nautilus most familiar with and primarily responsible for  
6 claim number 10067276 at issue in the underlying cross-complaint entitled "Cross-Complaint of  
7 Ted Switzer for Legal and Equitable Relief on Individual Claims on his behalf and derivative  
8 claims on behalf of Nominal defendant, Flournoy Management, LLC," filed on June 3, 2013 in  
9 the underlying action entitled *Ted Switzer, v. Flournoy Management, LLC, et al.*, Superior Court  
10 of California, County of Fresno, Case No. 11CECG04395 ("*Switzer Cross-Complaint*"). The  
11 *Switzer Cross-Complaint* was filed against Nautilus's named insureds, Access Medical, LLC  
12 ("Access") and Flournoy Management, LLC ("Flournoy"), and insured Robert Clark Wood, II  
13 ("Wood") (collectively "Insureds").

14 3. As a Senior Litigation Specialist, I have primary responsibility for maintaining the  
15 documents in the claim file for claim number 10067276. As such, I have personal knowledge of  
16 the facts contained in this declaration, either from my own personal knowledge or by reviewing  
17 the Nautilus claim file relevant to this case. If called up on to testify, I could and would  
18 competently testify thereto.

19 4. All of the documents referenced in this declaration are in Nautilus's files and were  
20 kept by Nautilus in the ordinary course of Nautilus's business.

21 5. The total amount Nautilus paid as defense costs for claim number 10007276 is  
22 \$304,482.43.

23 6. Nautilus issued policy number NB952426 to named insured Access Medical LLC,  
24 effective January 15, 2011 to January 15, 2012 ("Policy"). A true and correct copy of the Policy,  
25 bearing Bates numbers NIC-000001 to NIC-000051, is attached to Nautilus's Index of Exhibits as  
26 **Exhibit 1.**

27 7. Access and Wood tendered the Switzer Cross-Complaint to Nautilus. Nautilus  
28 assigned claim number 10067276 to Access and Wood's insurance claim pertaining to the *Switzer*



1 Cross-Complaint.

2 8. On May 19, 2014, Nautilus issued a reservation of rights letter to Access and Wood  
3 setting forth Nautilus's agreement to provide Access and Wood with a defense of the *Switzer*  
4 Cross-Complaint, subject to a full and complete reservation of rights to disclaim coverage and  
5 withdraw from defense, including the right to reimbursement of defense fees should it be  
6 determined that Nautilus has no duty to defend or indemnify Access and/or Wood in the *Switzer*  
7 Cross-Complaint. A true and correct copy of the May 19, 2014 reservation of rights letter, bearing  
8 Bates numbers NIC-000213 to NIC-000226, is attached to Nautilus's Index of Exhibits as **Exhibit**  
9 **2.**

10 9. On October 2, 2014, Nautilus issued a supplemental reservation of rights letter to  
11 Access and Wood. In this letter, Nautilus reiterated its full and complete reservation of rights to  
12 disclaim coverage and withdraw from defense, including the right to reimbursement of defense  
13 fees should it be determined that Nautilus has no duty to defend or indemnify Access and/or Wood  
14 in the *Switzer* Cross-Complaint. Nautilus also advised Access and Wood of their option to select  
15 independent counsel. A true and correct copy of the October 2, 2014 supplemental reservation of  
16 rights letter, bearing Bates number NIC-000228 to NIC-000241, is attached to Nautilus's Index of  
17 Exhibits as **Exhibit 3.**

18 10. Nautilus never received a request from Access and Wood to stop paying defense  
19 costs on their behalf.

20 11. Nautilus routinely audits the bills submitted to it by vendors and makes deductions.  
21 For example, Nautilus makes deductions for excessive time spent on a particular task, time spent  
22 on matters unrelated to the defense of its insureds or tasks that should be performed by a paralegal  
23 or administrative assistant. Nautilus then pays the remaining balance due to the vendor after  
24 deductions.

25 12. Wild, Carter & Tipton was hired as independent counsel for Access Medical and  
26 Wood. Nautilus paid for invoices submitted by Wild, Carter & Tipton dated November 1, 2015 to  
27 October 1, 2016. A true and correct copy of invoices<sup>1</sup> submitted by Wild, Carter & Tipton to

28 <sup>1</sup> The invoices have been filed with redactions.

1 Nautilus for payment are attached to Nautilus's Index of Exhibits as **Exhibit 4**. The total amount  
 2 Nautilus paid Wild, Carter & Tipton under claim number 10067276 is \$37,970.88.

3 13. Defendants' counsel in this action, Kravitz, Schnitzer & Johnson submitted invoices  
 4 for payment to Nautilus for fees and costs incurred from October 21, 2013 through March 18,  
 5 2014. Nautilus sent the invoices to Selman Breitman to review. A true and correct copy of a letter  
 6 sent by Ms. Hsu to Kravitz, Schnitzer & Johnson explaining Nautilus's deductions from the  
 7 invoices and enclosing payment is attached to Nautilus's Index of Exhibits as **Exhibit 5**. The total  
 8 amount Nautilus paid Kravitz, Schnitzer & Johnson under claim number 10067276 is \$10,013.50.

9 14. Wolf & Wyman LLP was hired as panel defense counsel for Access and Wood.  
 10 Nautilus paid Wolf & Wyman LLP at a rate of \$170/hour for partners. Wolf & Wyman LLP  
 11 submitted invoices to Nautilus for payment dated June 24, 2014 to June 22, 2016. A true and  
 12 correct copy of the invoices submitted by Wolf & Wyman LLP for payment are attached to  
 13 Nautilus's Index of Exhibits as **Exhibit 6**. The total amount Nautilus paid Wolf & Wyman LLP  
 14 under claim number 10067276 is \$94,647.79.

15 15. Gordon Rees replaced Wolf & Wyman LLP as defense counsel for Access and  
 16 Wood. Nautilus agreed to pay Gordon Rees a rate of \$265/hour for partners and \$225/hour for  
 17 associates. Gordon Rees submitted invoices to Nautilus for payment dated May 16, 2016 to  
 18 August 25, 2016. A true and correct copy of the invoices submitted by Gordon Rees for payment  
 19 are attached to Nautilus's Index of Exhibits as **Exhibit 7**. The total amount Nautilus paid Gordon  
 20 Rees was \$76,796.63.

21 16. A forensic accountant, Hemming Morse LLP, was hired by Gordon Rees to aid in  
 22 the defense of Access and Wood. Gordon Rees forwarded invoices from Hemming Morse LLP to  
 23 Nautilus for payment. A true and correct copy of the invoices for Hemming Morse LLP are  
 24 attached to Nautilus's Index of Exhibits as **Exhibit 8**. The total amount Nautilus paid Hemming  
 25 Morse LLP is \$80,593.63.

26 17. Nautilus also received invoices for Access and Wood's portion of costs incurred for  
 27 a discovery facilitator, Downing Aaron. A true and correct copy of the correspondence requesting  
 28 payment for Access and Wood's portion of the costs of the discovery facilitator is attached to

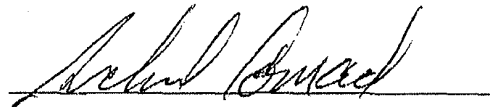
Selman Breitman LLP  
ATTORNEYS AT LAW

1 Nautilus's Index of Exhibits as **Exhibit 9**. The total amount Nautilus paid for Downing Aaron is  
2 \$2,960.

3 18. Nautilus received an invoice from JAMS for Access and Wood's costs related to  
4 mediation. A true and correct copy of the invoice from JAMS is attached to Nautilus's Index of  
5 Exhibits as **Exhibit 10**. The total amount Nautilus paid JAMS is \$1,500.

6  
7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9  
10 Executed this 24<sup>th</sup> day of October, 2016, at Scottsdale, Arizona.

11  
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13 

14 RICHARD CONRAD  
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28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and, pursuant to Local Rule 5.1, service of the foregoing **DECLARATION OF RICHARD CONRAD IN SUPPORT OF NAUTILUS INSURANCE COMPANY'S MOTION FOR FURTHER RELIEF UNDER 28 U.S.C.A. SECTION 2202 AWARDDING (1) DEFENSE COSTS NAUTILUS INCURRED IN THE UNDERLYING ACTION, (2) PRE-JUDGMENT INTEREST, AND (3) POST-JUDGMENT INTEREST**, was served on the 25<sup>th</sup> day of October, 2016 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list, as follows:

Jordan P. Schnitzer  
KRAVITZ, SCHNITZER & JOHNSON  
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WOOD, II

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MEDICAL, LLC and ROBERT CLARK  
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Attorneys for Defendant FLOURNOY  
MANAGEMENT, LLC

/s/ Pamela Smith  
PAMELA SMITH  
An Employee of Selman Breitman LLP

Selman Breitman LLP  
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**MPSJ**

Galina Kletser Jakobson  
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Email: qle@selmanlaw.com

Attorneys for Plaintiff NAUTILUS  
INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

NAUTILUS INSURANCE COMPANY,

Plaintiff,

v.

ACCESS MEDICAL, LLC; ROBERT CLARK  
WOOD, II; FLOURNOY MANAGEMENT,  
LLC; and DOES 1-10, inclusive,

Defendants.

Case No. 2:15-cv-00321-JAD-GWF

INDEX OF EXHIBITS IN SUPPORT OF  
PLAINTIFF NAUTILUS INSURANCE  
COMPANY'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT

Complaint Filed: February 24, 2015  
Discovery Cut-Off: November 18, 2015  
Motion Cut-Off: January 18, 2016  
Trial Date: None set

Filed concurrently with: Motion and  
Memorandum of Points and Authorities;  
Declaration of Dennis J. Curran; Declaration of  
Linda Wendell Hsu; and Request for Judicial  
Notice

Plaintiff Nautilus Insurance Company ("Nautilus") hereby submits the following Index of Exhibits in support of its motion for partial summary judgment:

EXHIBIT	DESCRIPTION
1.	The original complaint entitled "Complaint for Enforcement of Limited Liability Company Member Information and Inspection Rights," filed in the underlying action entitled <i>Ted Switzer v. Flournoy Management, LLC</i> , Superior Court of California, County of Fresno, Case No. 11CECG04395, filed on December 27, 2011 (hereinafter "Underlying Action").  <i>Request for Judicial Notice ¶ 1.</i>
2.	The "Second Amended Cross-Complaint of Flournoy" filed in the Underlying Action on or about November 16, 2012.  <i>Request for Judicial Notice ¶ 2.</i>
3.	The "Wood's Second Amended Cross-Complaint" filed in the Underlying Action on or about August 31, 2015.  <i>Request for Judicial Notice ¶ 3.</i>
4.	The "Judgment of Dismissal Re The Second Amended Cross-Complaint of Flournoy Management, LLC" filed in the Underlying Action on August 31, 2015.  <i>Request for Judicial Notice ¶ 4.</i>
5.	The "Cross-Complaint of Ted Switzer For Legal And Equitable Relief On Individual Claims On His Behalf And Derivative Claims On Behalf Of Nominal Defendant Flournoy Management, LLC" filed in the Underlying Action on or about June 3, 2013.  <i>Request for Judicial Notice ¶ 5.</i>

Selman Breitman LLP  
ATTORNEYS AT LAW

EXHIBIT	DESCRIPTION
6.	Nautilus's reservation of rights letter issued to Defendant Access Medical LLC, dated May 19, 2014, and bearing Bates numbers NIC-000213 to NIC-000226. <i>Declaration of Dan Curran ¶ 5.</i>
7.	Nautilus's supplemental reservation of rights letter issued to Defendant Access Medical LLC, dated October 2, 2014, and bearing Bates numbers NIC-000228 to NIC-000241. <i>Declaration of Dan Curran ¶ 6.</i>
8.	Nautilus's reservation of rights letter issued to Defendant Flournoy Management LLC, dated October 17, 2014, and bearing Bates numbers NIC-000243 to NIC-000255. <i>Declaration of Dan Curran ¶ 7.</i>
9.	Nautilus policy number BN952426 to named insured Access Medical LLC, effective January 15, 2011 to January 15, 2012, bearing Bates numbers NIC-000001 to NIC-000051. <i>Declaration of Dan Curran ¶ 8.</i>
10.	A series of emails sent by Ms. Jacquie Weide, Operations Manager of Access, to Deborah Fanning at Santa Barbara Cottage Hospital, bearing Bates number NIC-000349 to NIC-000350. <i>Declaration of Linda Wendell Hsu ¶ 3.</i>
11.	The "Law And Motion Minute Order" filed in the Underlying Action on or about August 13, 2015. <i>Request for Judicial Notice ¶ 6.</i>

1 DATED: January 15, 2016

SELMAN BREITMAN LLP

3 By: /s/ Linda Wendell Hsu

Galina Kletser Jakobson

Nevada Bar No. 6708

Linda Wendell Hsu (pro hac vice)

California Bar No. 162971

Quyen Thi Le (pro hac vice)

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33 New Montgomery, Sixth Floor

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Phone: 415.979.2066

Facsimile: 415.979.2099

Attorneys for Plaintiff NAUTILUS

INSURANCE COMPANY

Selman Breitman LLP  
ATTORNEYS AT LAW



**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and, pursuant to Local Rule 5.1, service of the foregoing INDEX OF EXHIBITS IN SUPPORT OF PLAINTIFF NAUTILUS INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT, was served this 15<sup>th</sup> day of January 2016, via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list, as follows:

Jordan P. Schnitzer  
KRAVITZ, SCHNITZER & JOHNSON,  
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8985 S. Eastern Ave., Ste. 200  
Las Vegas, NV 89123  
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Attorneys for Defendants ACCESS  
MEDICAL, LLC and ROBERT CLARK  
WOOD, II

James E. Harper  
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Attorneys for Defendants FLOURNOY  
MANAGEMENT, LLC

/s/ Linda Wendell Hsu

LINDA WENDELL HSU

An Employee of Selman Breitman LLP

Selman Breitman LLP  
ATTORNEYS AT LAW

# EXHIBIT 10

Karen Jones

---

**From:** Jacquie Weide <jacquie.weide@gmail.com>  
**Sent:** Monday, July 25, 2011 6:15 PM  
**To:** Deborah Fanning  
**Subject:** Re: Contract Information

Hi Deborah-

We use Alphatec Spine products. Alphatec Spine is located in Carlsbad, CA and manufactures all of their products onsite. I believe Dr. Early & Dr. Kahmann were using Alphatec's implants but their Distributor in the California area is now banned from selling Alphatec implants. We are in Las Vegas and have been using their products here for 2 years. Alphatec recently contacted us and asked that we take over the California region as well.

I am currently contracted with all of the large facilities in Las Vegas and I know that the Materials Managers here can attest to our affordability (we are always lower than Stryker, Medtronic, etc.) and professionalism. I would be happy to send you anything you need regarding 501k, etc. if you are not familiar with Alphatec.

I know many of the hospitals I work with now have construct pricing. If so, can you please send me that information and I will be happy to put together a price catalog, W9, and liability insurance package for your review. Thank you very much!

Jacquie Weide

On Mon, Jul 25, 2011 at 5:22 PM, Deborah Fanning <[dfanning@sbch.org](mailto:dfanning@sbch.org)> wrote:

Hello Jacquie,

I am the Clinical Manager of Materials for Surgery at SBCH. Which Doctor is interested in using your spinal implants? I would like to see information related to the products you carry, FDA approval, cost analysis and so forth. Which company (manufacturer) are you representing, we are familiar with most, have not heard of your organization Access Orthopedic Medical Group.

Have a good evening,

Deborah

Case 2:15-cv-00321-JAD-GWF Document 36-10 Filed 01/15/16 Page 2 of 3

000407

NIC-000349

Deborah Fanning, RN, CNOR

Clinical Manager Materials, Surgery

Santa Barbara Cottage Hospital

Tel: 805-569-7482

Fax: 805-569-7483

dfanning@sbch.org

---

**From:** Jacquie Weide [mailto:[jacquie.weide@gmail.com](mailto:jacquie.weide@gmail.com)]

**Sent:** Monday, July 25, 2011 4:27 PM

**To:** Deborah Fanning

**Subject:** Contract Information

Hi Ms. Fanning-

I am interested in obtaining a contract with your facility to provide spinal implants. Would you be the person I need to speak with? Thank you!

Jacquie Weide

Access Orthopedics Medical Group

Operations Manager

Case 2:15-cv-00321-JAD-GWF Document 36-10 Filed 01/15/16 Page 3 of 3

000408  
NIC-000350

# EXHIBIT 11

<b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b> <b>Civil Department - Non-Limited</b>	
TITLE OF CASE: <b>Ted Switzer vs Flournoy Management</b>	
<b>LAW AND MOTION MINUTE ORDER</b>	Case Number: <b>11CECG04395</b>

Hearing Date: **August 13, 2015**

Hearing Type: Motion- Strike/ Demurrer

Department: **501**Judge/Temporary Judge: **Mark Snauffer**

Court Clerk: L. Whipple

Reporter/Tape: Not Reported

**Appearing Parties:**

Plaintiff:

Defendant:

Counsel:

Counsel:

☐☐ Continued to ☐ Set for \_\_\_\_\_ at \_\_\_\_\_ Dept. \_\_\_\_\_ for \_\_\_\_\_☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.☐ Upon filing of points and authorities.☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.☐ Taken under advisement.☐ Demurrer ☐ overruled ☐ sustained with \_\_\_\_\_ days to ☐ answer ☐ amend☒ Tentative ruling becomes the order of the court.☒ Pursuant to CRC 391(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.☒ Service by the clerk will constitute notice of the order.☒ See attached copy of Tentative Ruling.☐ Judgment debtor \_\_\_\_\_ sworn and examined.☐ Judgment debtor \_\_\_\_\_ failed to appear.  
Bench warrant issued in the amount of \$ \_\_\_\_\_**Judgment:**☐ Money damages ☐ Default ☐ Other \_\_\_\_\_ entered in the amount of:  
Principal \$ \_\_\_\_\_ Interest \$ \_\_\_\_\_ Costs \$ \_\_\_\_\_ Attorney fees \$ \_\_\_\_\_ Total \$ \_\_\_\_\_☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$ \_\_\_\_\_ per \_\_\_\_\_**Further, court orders:**☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.☐ \$ \_\_\_\_\_ to be released to judgment creditor and balance returned to judgment debtor.☐ Levying Officer, County of \_\_\_\_\_, notified. ☐ Writ to issue☐ Notice to be filed within 15 days. ☐ Restitution of Premises☐ Other: \_\_\_\_\_

(20)

**Tentative Ruling**

Re: **Switzer v. Flournoy Management, LLC, et al.**, Superior Court Case No. 11CECG04395

Hearing Date: **August 13, 2015 (Dept. 501)**

Motion: Demurrers and Motions to Strike Answers to Ted Switzer's Cross-Complaint

**Tentative Ruling:**

To sustain the demurrers to the second through twentieth affirmative defenses of Robert Wood's Answer to Switzer's Cross-Complaint, with leave to amend as to the second through eighteenth affirmative defenses only. (Code Civ. Proc. § 430.20(a).)

To sustain the demurrer to all twenty affirmative defenses in Flournoy Management's Answer to Switzer's Cross-Complaint, with leave to amend granted only as to the nineteenth affirmative defense. (Code Civ. Proc. § 430.20(a).) To take the motion to strike off calendar as moot in light of the ruling on the demurrer.

To take the demurrer to the McCormick cross-defendants' answer off calendar in light of the filing of an amended answer on June 29, 2015. (Code Civ. Proc. § 472.)

Where leave to amend is granted, the amended pleading may be filed within 10 days of service of the order by the clerk. All new allegations shall be placed in **boldface** type.

**Explanation:**

Wood filed a response stating that he does not oppose the demurrer, agreeing to sustaining of all demurrers, including without leave to amend as to the nineteenth and twentieth affirmative defenses.

The demurrers to the first through eighteenth affirmative defenses asserted by Flournoy are sustained because the Cross-Complaint asserts no cause of action against, allege no liability and seeks no relief against Flournoy. Though nominally named as a defendant, Flournoy is actually a plaintiff in the eyes of the law. (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 489.) As a nominal defendant, an LLC is permitted to argue that the claimant lacks standing to file a derivative action, but is prohibited from defending the action on the merits (such as asserting the statute of limitations or arguing that any of the claims are factually deficient). That is because such claims, raised by demurrer, may be asserted only by the party against whom the complaint was

filed. (*Id.* at fn. 12.) It stands to reason that if a nominal defendant cannot raise such defenses by way of demurrer, it cannot either by way of answer.

The nineteenth affirmative defense alleges that Switzer failed to take the steps necessary and failed to provide written notice as required under Corporations Code section 800, and the claim is therefore barred. Section 800 governs the filing of derivative claims on behalf of corporations. The filing of derivative claims on behalf of limited liability companies, such as Flournoy, is governed by Corporations Code section 17501. Accordingly, the nineteenth affirmative defense fails to state facts sufficient to state an affirmative defense. (Code Civ. Proc. § 430.20.)

The twentieth affirmative defense is not an affirmative defense at all. Flournoy merely reserves the right to plead additional affirmative defenses, yet unstated.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:**

MWS  
(Judge's initials)

**on**

8/12/15.  
(Date)





<b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b> <b>Civil Department - Non-Limited</b> 1130 "O" Street Fresno, CA 93724-0002 (559)457-1900	FOR COURT USE ONLY
TITLE OF CASE: <b>Ted Switzer vs Flournoy Management</b>	
<b>CLERK'S CERTIFICATE OF MAILING</b>	CASE NUMBER: <b>11CECG04395</b>

Name and address of person served:

Jay A. Hieatt  
 Hall Hieatt & Connelly LLP  
 1319 Marsh Street, Second Floor  
 San Luis Obispo CA 93401

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the Minute Order/ Tentative Ruling was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at Fresno, California, on:

Date: **August 14, 2015**
 Clerk, by , Deputy  
 Mr. Santana

Gregory L. Altounian, Attorney at Law, 295 West Cromwell Ave Ste. 104, Fresno CA 93711  
 Jay A. Hieatt, Hall Hieatt & Connelly LLP, 1319 Marsh Street, Second Floor, San Luis Obispo CA 93401  
 Stephen T. Clifford, Clifford & Brown, Bank of America Building, 1430 Truxtun Ave Ste. 900, Bakersfield CA 93301  
 Jordan P. Schnitzer, Kravitz Schnitzer Sloane & Johnson, CHTD, 8985 S. Eastern Ave Ste 200, Las Vegas NV 89123  
 Eric T. Lamhofer, Wolfe & Wyman LLP, 2301 Dupont Drive Suite 300, Irvine CA 92612-7531

<b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b> <b>Civil Department - Non-Limited</b> 1130 "O" Street Fresno, CA 93724-0002 (559)457-1900	FOR COURT USE ONLY
TITLE OF CASE: <b>Ted Switzer vs Flournoy Management</b>	
<b>CLERK'S CERTIFICATE OF MAILING</b>	CASE NUMBER: <b>11CECG04395</b>

Name and address of person served:

Stephen T. Clifford  
 Clifford & Brown  
 Bank of America Building  
 1430 Truxtun Ave Ste. 900  
 Bakersfield CA 93301

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of Minute Order / Tentative Ruling was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at Fresno, California, on:

Date: **August 14, 2015**
 Clerk, by , Deputy  
~~Mr. Santana~~

Gregory L. Altounian, Attorney at Law, 295 West Cromwell Ave Ste. 104, Fresno CA 93711  
 Jay A. Hieatt, Hall Hieatt & Connelly LLP, 1319 Marsh Street, Second Floor, San Luis Obispo CA 93401  
 Stephen T. Clifford, Clifford & Brown, Bank of America Building, 1430 Truxtun Ave Ste. 900, Bakersfield CA 93301  
 Jordan P. Schnitzer, Kravitz Schnitzer Sloane & Johnson, CHTD, 8985 S. Eastern Ave Ste 200, Las Vegas NV 89123  
 Eric T. Lamhofer, Wolfe & Wyman LLP, 2301 Dupont Drive Suite 300, Irvine CA 92612-7531

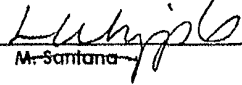
<b>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO</b> <b>Civil Department - Non-Limited</b> 1100 Van Ness Avenue Fresno, CA 93724-0002 (559)457-2000	FOR COURT USE ONLY
TITLE OF CASE: <b>Ted Switzer vs Flournoy Management</b>	
<b>CLERK'S CERTIFICATE OF MAILING</b>	CASE NUMBER: <b>11CECG04395</b>

Name and address of person served:

Eric T. Lamhofer  
 Wolfe & Wyman LLP  
 2301 Dupont Drive Suite 300  
 Irvine CA 92612-7531

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the Minute Order / Tentative Ruling was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at Fresno, California, on:

Date: **August 14, 2015**
 Clerk, by , Deputy

Gregory L. Altounian, Attorney at Law, 295 West Cromwell Ave Ste. 104, Fresno CA 93711  
 Jay A. Hieatt, Hall Hieatt & Connelly LLP, 1319 Marsh Street, Second Floor, San Luis Obispo CA 93401  
 Stephen T. Clifford, Clifford & Brown, Bank of America Building, 1430 Truxtun Ave Ste. 900, Bakersfield CA 93301  
 Jordan P. Schnitzer, Kravitz Schnitzer Sloane & Johnson, CHTD, 8985 S. Eastern Ave Ste 200, Las Vegas NV 89123  
 Eric T. Lamhofer, Wolfe & Wyman LLP, 2301 Dupont Drive Suite 300, Irvine CA 92612-7531

# Joint Appendix

## Tab #5

Appeal No. 17-16265 (lead); 17-16272, 17-16273

---

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

NAUTILUS INSURANCE COMPANY,

Plaintiff-Appellant-Cross-Appellee,

v.

ACCESS MEDICAL, LLC; ROBERT CLARK WOOD II;  
FLOURNOY MANAGEMENT, LLC,

Defendants-Appellees-Cross-Appellants.

---

On Appeal From the United States District Court,  
for the District of Nevada  
The Honorable Jennifer A. Dorsey, United States District Judge  
Case No. 2:15-CV-00321-JAD

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NAUTILUS INSURANCE COMPANY'S  
EXCERPTS OF RECORD  
VOLUME 4 OF 4

---

LINDA WENDELL HSU, ESQ  
JENNIFER WAHLGREN, ESQ  
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Telephone: 415.979.0400  
Facsimile: 415.979.2099

Attorneys for Plaintiff-Appellant-Cross-Appellee  
NAUTILUS INSURANCE COMPANY

<b><u>VOLUME 1</u></b>			
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

NAUTILUS INSURANCE COMPANY,  
Plaintiff,

v.

ACCESS MEDICAL, LLC; ROBERT CLARK  
WOOD, II; FLOURNOY MANAGEMENT,  
LLC; and DOES 1-10, inclusive,  
Defendants.

Case No. 2:15-cv-00321-JAD-GWF

REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF PLAINTIFF NAUTILUS  
INSURANCE COMPANY'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

Complaint Filed: February 24, 2015  
Discovery Cut-Off: November 18, 2015  
Motion Cut-Off: January 18, 2016  
Trial Date: None set

Filed concurrently with: Motion and  
Memorandum of Points and Authorities;  
Declaration of Dennis J. Curran; Declaration of  
Linda Wendell Hsu; and Index of Exhibits

Pursuant to Rule 201(b)(2) of the Federal Rules of Evidence, Plaintiff Nautilus Insurance Company ("Nautilus") hereby requests that the Court take judicial notice of the following documents in support of Nautilus's Motion for Partial Summary Judgment:

1. Attached to Nautilus's Index of Exhibits as **Exhibit 1** is a true and correct copy of the original complaint entitled "Complaint for Enforcement of Limited Liability Company Member Information and Inspection Rights," filed in the underlying action entitled *Ted Switzer v. Flournoy Management, LLC*, Superior Court of California, County of Fresno, Case No. 11CECG04395, filed on December 27, 2011 (hereinafter "Underlying Action").

2. Attached to Nautilus's Index of Exhibits as **Exhibit 2** is a true and correct copy of the "Second Amended Cross-Complaint of Flournoy" filed in the Underlying Action on or about November 16, 2012.

3. Attached to Nautilus's Index of Exhibits as **Exhibit 3** is a true and correct copy of the "Wood's Second Amended Cross-Complaint" filed in the Underlying Action on or about August 31, 2015.

4. Attached to Nautilus's Index of Exhibits as **Exhibit 4** is a true and correct copy of the "Judgment of Dismissal Re The Second Amended Cross-Complaint of Flournoy Management, LLC" filed in the Underlying Action on August 31, 2015.

5. Attached to Nautilus's Index of Exhibits as **Exhibit 5** is a true and correct copy of the "Cross-Complaint of Ted Switzer For Legal And Equitable Relief On Individual Claims On His Behalf And Derivative Claims On Behalf Of Nominal Defendant Flournoy Management, LLC" filed in the Underlying Action on or about June 3, 2013.

6. Attached to Nautilus's Index of Exhibits as **Exhibit 11** is a true and correct copy of the "Law And Motion Minute Order" filed in the Underlying Action on or about August 13, 2015.

1 DATED: January 15, 2016

SELMAN BREITMAN LLP

2  
3 By: /s/ Linda Wendell Hsu

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ATTORNEYS AT LAW

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and, pursuant to Local Rule 5.1, service of the foregoing REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF NAUTILUS INSURANCE COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT, was served this 15<sup>TH</sup> day of January 2016, via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list, as follows:

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/s/ Linda Wendell Hsu

LINDA WENDELL HSU

An Employee of Selman Breitman LLP

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INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

NAUTILUS INSURANCE COMPANY,

Plaintiff,

v.

ACCESS MEDICAL, LLC; ROBERT CLARK  
WOOD, II; FLOURNOY MANAGEMENT,  
LLC; and DOES 1-10, inclusive,

Defendants.

Case No. 2:15-cv-00321-JAD-GWF

DECLARATION OF LINDA WENDELL  
HSU IN SUPPORT OF PLAINTIFF  
NAUTILUS INSURANCE COMPANY'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

Complaint Filed: February 24, 2015  
Discovery Cut-Off: November 18, 2015  
Motion Cut-Off: January 18, 2016  
Trial Date: None set

Filed concurrently with: Motion and  
Memorandum of Points and Authorities;  
Declaration of Dennis J. Curran; Request for  
Judicial Notice; and Index of Exhibits

Selman Breitman LLP  
ATTORNEYS AT LAW

1 I, LINDA WENDELL HSU, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before the courts of the State of  
3 California and the United States District Court, Districts of California. I have been admitted as  
4 *pro hac vice* counsel for this instant action. I am a Partner with the law firm of Selman Breitman  
5 LLP, attorneys of record for Plaintiff Nautilus Insurance Company ("Nautilus") in this action. The  
6 facts and documents identified in this declaration are known to me personally and were obtained  
7 and prepared in the ordinary course of business in the representation of Nautilus in this matter.  
8 The facts set forth herein are known to me personally, and if called upon to testify, I could and  
9 would competently testify thereto.

10 2. On behalf of Nautilus and pursuant to its authority, Selman Breitman was retained  
11 to investigate and evaluate Defendants Access Medical LLC, Robert Wood and Flournoy  
12 Management LLC's tender to Nautilus for defense and indemnity of the underlying cross-cross-  
13 complaint entitled "Cross-Complaint of Ted Switzer for Legal and Equitable Relief On Individual  
14 Claims on His Behalf and Derivative Claims on Behalf of Nominal Defendant Flournoy  
15 Management, LLC," filed on or about June 3, 2013, in Fresno County Superior Court, Case No. 11  
16 CE 04395 JH (hereinafter "*Switzer* Cross-Complaint").

17 3. As part of Selman Breitman's investigation regarding the Defendants' tender of the  
18 *Switzer* Cross-Complaint, our office came across documents that include a series of emails sent by  
19 Ms. Jacquie Weide, Operations Manager of Access, to Deborah Fanning at Santa Barbara Cottage  
20 Hospital. A true and correct copy of this series of emails, bearing Bates number NIC-000349 to  
21 NIC-000350, are attached to Nautilus's Index of Exhibits as **Exhibit 10**.

22 I declare under penalty of perjury under the laws of the United States of America that the  
23 foregoing is true and correct.

24 Executed this 15<sup>th</sup> day of January, 2016, at San Francisco, California.

25  
26 /s/ Linda Wendell Hsu

27 LINDA WENDELL HSU  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and, pursuant to Local Rule 5.1, service of the foregoing DECLARATION OF LINDA WENDELL HSU IN SUPPORT OF PLAINTIFF NAUTILUS INSURANCE COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT, was served this 15<sup>th</sup> day of January 2016, via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list, as follows:

Jordan P. Schnitzer  
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MANAGEMENT, LLC

/s/ Linda Wendell Hsu

LINDA WENDELL HSU  
An Employee of Selman Breitman LLP



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Attorneys for Plaintiff NAUTILUS  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

NAUTILUS INSURANCE COMPANY,

Plaintiff,

v.

ACCESS MEDICAL, LLC; ROBERT CLARK  
WOOD, II; FLOURNOY MANAGEMENT,  
LLC; and DOES 1-10, inclusive,

Defendants.

Case No. 2:15-cv-00321-JAD-GWF

DECLARATION OF DENNIS J. CURRAN IN  
SUPPORT OF PLAINTIFF NAUTILUS  
INSURANCE COMPANY'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

Complaint Filed: February 24, 2015  
Discovery Cut-Off: November 18, 2015  
Motion Cut-Off: January 18, 2016  
Trial Date: None set

Filed concurrently with: Motion and  
Memorandum of Points and Authorities;  
Declaration of Linda Wendell Hsu; Request for  
Judicial Notice; and Index of Exhibits

I, DENNIS J. CURRAN, declare as follows:

1. I am a Senior Litigation Specialist at Nautilus Insurance Company ("Nautilus"). I am an authorized agent for Nautilus for the purpose of making this declaration.

2. I am the claims person at Nautilus most familiar with and primarily responsible for handling the investigation of the claims at issue in the underlying cross-complaint entitled "Cross-Complaint of Ted Switzer for Legal and Equitable Relief on Individual Claims on his behalf and derivative claims on behalf of Nominal defendant, Flournoy Management, LLC," filed on June 3, 2013 in the underlying action entitled *Ted Switzer, v. Flournoy Management, LLC, et al.*, Superior Court of California, County of Fresno, Case No. 11CECG04395 ("*Switzer* Cross-Complaint"). The *Switzer* Cross-Complaint was filed against Nautilus's named insureds, Access Medical, LLC ("Access") and Flournoy Management, LLC ("Flournoy"), and insured Robert Clark Wood, II ("Wood") (collectively "Insureds").

3. As a Senior Litigation Specialist, I have primary responsibility for maintaining the documents in the claim file for the *Switzer* Cross-Complaint matter. As such, I have personal knowledge of the facts contained in this declaration, either from my own personal knowledge or by reviewing the Nautilus claim file relevant to this case. If called upon to testify, I could and would competently testify thereto.

4. All of the documents reference in this declaration are in Nautilus's files and were kept by Nautilus in the ordinary course of Nautilus's business.

5. On May 19, 2014, Nautilus issued a reservation of rights letter to Access and Wood setting forth Nautilus's agreement to provide Access and Wood with a defense of the *Switzer* Cross-Complaint, subject to a full and complete reservation of rights to disclaim coverage and withdraw from defense, including the right to reimbursement of defense fees should it be determined that Nautilus has no duty to defend or indemnify Access and/or Wood in the *Switzer* Cross-Complaint. A true and correct copy of the May 19, 2014 reservation of rights letter, bearing Bates numbers NIC-000213 to NIC-000226, is attached to Nautilus's Index of Exhibits as **Exhibit 6**.

6. On October 2, 2014, Nautilus issued a supplemental reservation of rights letter to

Selman Breitman LLP  
ATTORNEYS AT LAW

1 Access and Wood. A true and correct copy of the October 2, 2014 supplemental reservation of  
2 rights letter, bearing Bates numbers NIC-000228 to NIC-000241, is attached to Nautilus's Index of  
3 Exhibits as **Exhibit 7**.

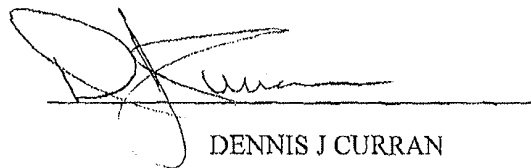
4 7. On October 17, 2014, Nautilus issued a reservation of rights letter to Flournoy  
5 setting forth Nautilus's agreement to provide Flournoy with a defense of the *Switzer* Cross-  
6 Complaint, subject to a full and complete reservation of rights to disclaim coverage and withdraw  
7 from defense, including the right to reimbursement of defense fees should it be determined that  
8 Nautilus has no duty to defend or indemnify Flournoy in the *Switzer* Cross-Complaint. A true and  
9 correct copy of the October 17, 2014 reservation of rights letter, bearing Bates numbers NIC-  
10 000243 to NIC-000255, is attached to Nautilus's Index of Exhibits as **Exhibit 8**.

11 8. Nautilus issued policy number BN952426 to named insured Access Medical LLC,  
12 effective January 15, 2011 to January 15, 2012 ("Policy"). A true and correct copy of the Policy,  
13 bearing Bates numbers NIC-000001 to NIC-000051, is attached to Nautilus's Index of Exhibits as  
14 **Exhibit 9**.

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct.

17 Executed this 12 day of January, 2016, at Scottsdale, Arizona.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
DENNIS J CURRAN

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and, pursuant to Local Rule 5.1, service of the foregoing DECLARATION OF DENNIS J. CURRAN IN SUPPORT OF PLAINTIFF NAUTILUS INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT, was served this 15<sup>th</sup> day of January 2016, via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list, as follows:

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/s/ Linda Wendell Hsu

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and ROBERT CLARK WOOD, II

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

NAUTILUS INSURANCE COMPANY

Plaintiff,

v.

ACCESS MEDICAL, LLC; ROBERT  
CLARK WOOD, II; FLOURNOY  
MANAGEMENT, LLC; TED SWITZER; and  
DOES 1-10, inclusive,

Defendants.

Case No. 2:15-cv-00321

**DEFENDANTS', ACCESS MEDICAL,  
LLC AND ROBERT CLARK WOOD, II,  
ANSWER TO COMPLAINT**

COMES NOW, Defendants ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II, by and through their counsel of record, Jordan P. Schnitzer, Esq. of the law firm of KRAVITZ, SCHNITZER & JOHNSON, CHTD., and for their Answer to Plaintiff's Complaint states:

**I. JURISDICTIONAL ALLEGATIONS**

1. The Answering Defendants deny the allegations contained in paragraph 1 of Plaintiff's Complaint.
2. The Answering Defendants admit the allegations contained in paragraphs 2, 4, 6, 7, 8, 9 and 10 of Plaintiff's Complaint.

3. The Answering Defendants have insufficient knowledge and information with which to form a belief as to the truth or falsity of the allegations contained in paragraphs 3, 5 and 11 of Plaintiff's Complaint and; therefore deny the same.

**II. VENUE ALLEGATIONS**

4. The Answering Defendants admit the allegations contained in paragraphs 12, 14, 16, and 17 of Plaintiff's Complaint.

5. The Answering Defendants have insufficient knowledge and information with which to form a belief as to the truth or falsity of the allegations contained in paragraphs 13, 15, 18 and 19 of Plaintiff's Complaint and; therefore deny the same.

**III. THE UNDERLYING SWITZER ACTION**

6. The Answering Defendants have insufficient knowledge and information with which to form a belief as to the truth or falsity of the allegations contained in paragraphs 20, 21, 22, 23, 24, 25 and 26 of Plaintiff's Complaint and; therefore deny the same.

**IV. THE NAUTILUS POLICY**

7. The Answering Defendants have insufficient knowledge and information with which to form a belief as to the truth or falsity of the allegations contained in paragraphs 27, 28, 29, 30 and 31 of Plaintiff's Complaint and; therefore deny the same.

**FIRST CAUSE OF ACTION**

**(Declaratory Relief Regarding No Duty to Defend – Defendants Access and Wood)**

8. In response to the allegations contained in paragraph 32 of the Complaint, these answering Defendants reassert and reallege all of its answers and defenses

1 contained in the above paragraphs of this Answer as if copied herein in extenso.

2 9. The Answering Defendants deny the allegations contained in paragraph 33 of  
3 Plaintiff's Complaint.

4 10. The Answering Defendants have insufficient knowledge and information with  
5 which to form a belief as to the truth or falsity of the allegations contained in  
6 paragraphs 34, 36, 37 and 38 of Plaintiff's Complaint and; therefore deny the  
7 same.

8  
9 11. The Answering Defendants admit the allegations contained in paragraph 35 of  
10 Plaintiff's Complaint.

11 **SECOND CAUSE OF ACTION**

12 **(Declaratory Relief Regarding No Duty to Defend – Defendant Flournoy)**

13 12. In response to the allegations contained in paragraph 39 of the Complaint, these  
14 answering Defendants reassert and reallege all of its answers and defenses  
15 contained in the above paragraphs of this Answer as if copied herein in extenso.

16  
17 13. The Answering Defendants have insufficient knowledge and information with  
18 which to form a belief as to the truth or falsity of the allegations contained in  
19 paragraphs 40, 41, 42, 43, 44 and 45 of Plaintiff's Complaint and; therefore deny  
20 the same.

21 **THIRD CAUSE OF ACTION**

22 **(Declaratory Relief Regarding No Duty to Indemnify – Defendants Access and Wood**

23  
24 14. In response to the allegations contained in paragraph 46 of the Complaint, these  
25 answering Defendants reassert and reallege all of its answers and defenses  
26 contained in the above paragraphs of this Answer as if copied herein in extenso.

- 1           15.    The Answering Defendants have insufficient knowledge and information with  
2                    which to form a belief as to the truth or falsity of the allegations contained in  
3                    paragraphs 47, 49, 50 and 51 of Plaintiff's Complaint and; therefore deny the  
4                    same.  
5           16.    The Answering Defendants admit the allegations contained in paragraph 48 of  
6                    Plaintiff's Complaint.  
7

8                                   **FOURTH CAUSE OF ACTION**

9                   **(Declaratory Relief Regarding No Duty to Indemnify – Defendant Flournoy**

- 10           17.    In response to the allegations contained in paragraph 52 of the Complaint, these  
11                    answering Defendants reassert and reallege all of its answers and defenses  
12                    contained in the above paragraphs of this Answer as if copied herein in extenso.  
13           18.    The Answering Defendants have insufficient knowledge and information with  
14                    which to form a belief as to the truth or falsity of the allegations contained in  
15                    paragraphs 53, 54, 55, 56 and 57 of Plaintiff's Complaint and; therefore deny the  
16                    same.  
17

18                                   **AFFIRMATIVE DEFENSES**

19                                   **First Affirmative Defense**

20                   Plaintiff's Complaint fails to state a claim against ACCESS MEDICAL, LLC and  
21                   ROBERT CLARK WOOD, II, upon which relief may be granted.  
22

23                                   **Second Affirmative Defense**

24                   By NAUTILUS INSURANCE COMPANY'S, own actions, Plaintiff has approved and  
25                   ratified the actions of ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II, in  
26                   connection with the allegations contained in Plaintiff's Complaint.  
27  
28



**Third Affirmative Defense**

By NAUTILUS INSURANCE COMPANY'S, own actions, Plaintiff is estopped from asserting any claim against ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II, in this case.

**Fourth Affirmative Defense**

By NAUTILUS INSURANCE COMPANY'S, own actions, Plaintiff has waived whatever right it may otherwise have had entitling it to relief from this Court.

**Fifth Affirmative Defense**

Plaintiff's Complaint is barred by the doctrine of laches.

**Sixth Affirmative Defense**

Plaintiff is guilty of unclean hands and, therefore, is not entitled to any relief from ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II.

**Seventh Affirmative Defense**

Plaintiff is barred from recovery on the grounds that it violated the implied covenant to deal fairly and in good faith with ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II.

**Eighth Affirmative Defense**

Plaintiff failed to satisfy contractual conditions precedent, which bar it from entitlement to further compensation.

**Ninth Affirmative Defense**

Plaintiff's Complaint is barred by the applicable Statutes of Limitation, including but not limited to NRS §§ 11.190, 11.220, 11.202, 11.203, 11.204 and/or 11.205.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

**Tenth Affirmative Defense**

ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II. hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Federal Rules of Civil Procedure. In the event further investigation or discovery reveals the applicability of any such defenses, ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II. reserves the right to seek leave of the Court to amend its answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**Eleventh Affirmative Defense**

The questions presented for declaratory judgment and injunction in this action are moot.

**Twelfth Affirmative Defense**

No substantial controversy exists between the Plaintiff and ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II that would entitle Plaintiff to any declaratory relief from ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II.

**Thirteenth Affirmative Defense**

Plaintiff and ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II. do not have adverse legal interests that would entitle Plaintiff to the declaratory relief requested.

**Fourteenth Affirmative Defense**

The issues presented in the Complaint are not ripe for judicial declaratory determination.

**Fifteenth Affirmative Defense**

Defendant hereby incorporates by reference those Affirmative Defenses enumerated in Nevada Rule of Civil Procedure 12(b) and Federal Rule of Civil Procedure 12(b).

**Sixteenth Affirmative Defense**

Plaintiff has failed to properly include or join, under NRCP or FRCP 19, indispensable parties without whom this matter cannot be properly adjudicated.

**Seventeenth Affirmative Defense**

That it has been necessary for ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II. to employ the services of an attorney to defend this action and a reasonable sum should be allowed to ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II. as and for attorneys' fees, together with costs expended to defend this action.

**Eighteenth Affirmative Defense**

ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II. alleges that this Court lacks jurisdiction to consider Plaintiff's claim and further alleges that this Court lacks jurisdiction to consider this action.

**Nineteenth Affirmative Defense**

Plaintiff has failed to set out the claims actually contained in the underlying Complaint completely, as said allegations trigger coverage.

///

KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

1 WHEREFORE, Defendant, ACCESS MEDICAL, LLC and ROBERT CLARK WOOD,  
2 II respectfully requests:

- 3 1. That Plaintiff takes nothing by way of this Complaint on file herein;  
4 2. That ACCESS MEDICAL, LLC and ROBERT CLARK WOOD, II be  
5 awarded its reasonable attorney's fees and costs in defending this action;  
6 and  
7 3. For such other and further relief as this Court deems just and proper.

8  
9 DATED this 22 day of May, 2015.

10 KRAVITZ, SCHNITZER  
11 & JOHNSON, CHTD.

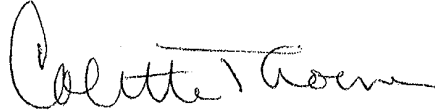
12  
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15 JORDAN P. SCHNITZER, ESQ.  
16 Nevada Bar No. 10744  
17 8985 S. Eastern Ave., Ste. 200  
18 Las Vegas, NV 89123  
19 Telephone: (702).362-6666  
20 Facsimile: (702).362-2203  
21 jschnitzer@ksjattorneys.com  
22 Attorneys for ACCESS MEDICAL, LLC  
23 and ROBERT CLARK WOOD, II  
24  
25  
26  
27  
28

KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

**CERTIFICATE OF SERVICE**

I HEREBY certify that on the 22<sup>nd</sup> day of May, 2015, I electronically transmitted the above **Defendants' Access Medical, LLC and Robert Clark Wood, II, Answer to Complaint** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter.



An Employee of KRAVITZ, SCHNITZER  
& JOHNSON CHTD.

KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
(702) 362-6666

1 **JAMES E. HARPER, ESQ.**

Nevada Bar No.: 9822

2 **HARPER LAW GROUP**

1935 Village Center Circle

3 Las Vegas, Nevada 89134

4 Ph.: (702) 948-9240

5 Fax: (702) 778-6600

E-Mail: [eservice@harperlawlv.com](mailto:eservice@harperlawlv.com)

6 *Attorney for Defendant*

7 *FLOURNOY MANAGEMENT, LCC*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 **NAUTILUS INSURANCE COMPANY,**

11 Plaintiff,

12 vs.

13 ACCESS MEDICAL, LLC; ROBERT  
14 CLARK WOOD, II; FLOURNOY  
15 MANAGEMENT, LLC; and DOES I -10,  
16 inclusive,

17 Defendants.

CASE NO.: 2:15-cv-00321-JAD-GWF

**DEFENDANT FLOURNOY  
MANAGEMENT, LLC'S ANSWER**

18 Defendant FLOURNOY MANAGEMENT, LLC ("Flournoy"), by and through its attorney,  
19 James E. Harper, Esq., of HARPER LAW GROUP, answers Plaintiff's Complaint as follows:

20 **I. JURISDICTIONAL ALLEGATIONS**

21 1. Answering Paragraph 1 of the Complaint, Flournoy denies the allegations contained  
22 therein.

23 2. Answering Paragraphs 2, 5, 7, 8, 9 and 10 of the Complaint, Flournoy admits the  
24 allegations contained therein.

3. Answering Paragraphs 3, 4, 6 and 11 of the Complaint, Flournoy is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and, accordingly, those allegations are hereby denied.

**II. VENUE ALLEGATIONS**

4. Answering Paragraphs 12, 15 and 17 of the Complaint, Flournoy admits the allegations contained therein.

5. Answering Paragraphs 13, 14, 15, 16, 18 and 19 of the Complaint, Flournoy is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and, accordingly, those allegations are hereby denied.

**III. THE UNDERLYING SWITZER ACTION**

6. Answering Paragraphs 20, 21, 22, 23, 24, 25 and 26 of the Complaint, Flournoy is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and, accordingly, those allegations are hereby denied.

**IV. THE NAUTILUS POLICY**

7. Answering Paragraphs 27, 28, 29, 30 and 31 of the Complaint, Flournoy is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and, accordingly, those allegations are hereby denied.

**FIRST CAUSE OF ACTION**

**(Declaratory Relief Regarding No Duty to Defend – Defendants Access and Wood)**

8. Answering Paragraph 32 of the Complaint, Flournoy repeats and realleges paragraphs 1 through 7 as though fully set forth herein.

9. Answering Paragraphs 33, 34, 35, 36, 37 and 38 of the Complaint, Flournoy is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and, accordingly, those allegations are hereby denied.

///

**SECOND CAUSE OF ACTION**

**(Declaratory Relief Regarding No Duty to Defend – Defendant Flournoy)**

10. Answering Paragraph 39 of the Complaint, Flournoy repeats and realleges paragraphs 1 through 9 as though fully set forth herein.

11. Answering Paragraphs 40, 41, 43, 44 and 45 of the Complaint, Flournoy denies the allegations contained therein.

12. Answering Paragraph 42 of the Complaint, Flournoy admits the allegations contained therein.

**THIRD CAUSE OF ACTION**

**(Declaratory Relief Regarding No Duty to Indemnify – Defendants Access and Wood)**

13. Answering Paragraph 46 of the Complaint, Flournoy repeats and realleges paragraphs 1 through 12 as though fully set forth herein.

14. Answering Paragraphs 47, 48, 49, 50 and 51 of the Complaint, Flournoy is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained therein, and, accordingly, those allegations are hereby denied.

**FOURTH CAUSE OF ACTION**

**(Declaratory Relief Regarding No Duty to Indemnify – Defendant Flournoy)**

15. Answering Paragraph 52 of the Complaint, Flournoy repeats and realleges paragraphs 1 through 14 as though fully set forth herein.

16. Answering Paragraphs 53, 55, 56 and 57 of the Complaint, Flournoy denies the allegations contained therein.

17. Answering Paragraph 54 of the Complaint, Flournoy admits the allegations contained therein.

///



**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

Plaintiff's Complaint fails to state a claim against Flournoy upon which relief may be granted.

**Second Affirmative Defense**

By Plaintiff's own actions, Plaintiff has approved and ratified the actions of Flournoy in connection with the allegations contained in Plaintiff's Complaint.

**Third Affirmative Defense**

By Plaintiff's own actions, Plaintiff is estopped from asserting any claim against Flournoy in this case.

**Fourth Affirmative Defense**

By Plaintiff's own actions, Plaintiff has waived whatever right it may otherwise have had entitling it to relief from this Court.

**Fifth Affirmative Defense**

Plaintiff's Complaint is barred by the doctrine of laches.

**Sixth Affirmative Defense**

Plaintiff is guilty of unclean hands and, therefore, is not entitled to any relief from Flournoy.

**Seventh Affirmative Defense**

Plaintiff is barred from recovery on the grounds that it violated the implied covenant to deal fairly and in good faith with Flournoy.

**Eighth Affirmative Defense**

Plaintiff failed to satisfy contractual conditions precedent, which bar it from entitlement to further compensation.

**Ninth Affirmative Defense**

Plaintiff's Complaint is barred by the applicable Statutes of Limitation, including but not limited to NRS §§ 11.190, 11.220, 11.202, 11.203, 11.204 and/or 11.205.

**Tenth Affirmative Defense**

Flournoy hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Federal Rules of Civil Procedure. In the event further investigation or discovery reveals the applicability of any such defenses, Flournoy reserves the right to seek leave of the Court to amend its answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**Eleventh Affirmative Defense**

The questions presented for declaratory judgment in this action are moot.

**Twelfth Affirmative Defense**

No substantial controversy exists between the Plaintiff and Flournoy that would entitle Plaintiff to any declaratory relief.

**Thirteenth Affirmative Defense**

Plaintiff and Flournoy do not have adverse legal interests that would entitle Plaintiff to the declaratory relief requested.

**Fourteenth Affirmative Defense**

The issues presented in the Complaint are not ripe for judicial declaratory determination.

**Fifteenth Affirmative Defense**

Plaintiff has failed to properly include or join indispensable parties without whom this matter cannot be properly adjudicated.

**Sixteenth Affirmative Defense**

That it has been necessary for the Flournoy to employ the services of an attorney to defend this action and a reasonable sum should be allowed to Flournoy as and for attorneys' fees, together with costs expended to defend this action.

///

**Seventeenth Affirmative Defense**

Flournouy alleges that this Court lacks jurisdiction to consider Plaintiff's claim and further alleges that this Court lacks jurisdiction to consider this action.

**Eighteenth Affirmative Defense**

Plaintiff has failed to set out the claims actually contained in the underlying Complaint completely, as said allegations allege facts which trigger coverage.

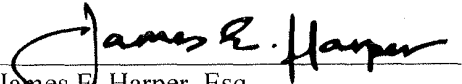
WHEREFORE, Defendant, FLOURNOY MANAGEMENT, LLC respectfully requests:

1. That Plaintiff takes nothing by way of the Complaint on file herein;
2. That FLOURNOY MANAGEMENT, LLC be awarded its reasonable attorney fees and costs in defending this action; and
3. For such other and further relief as this Court deems just and proper.

DATED this 22<sup>nd</sup> day of May 2015.

HARPER LAW GROUP

By:

  
James E. Harper, Esq.


Nevada Bar No. 009822  
1935 Village Center Circle  
Las Vegas, NV 89134  
*Attorney for Defendant*  
FLOURNOY MANAGEMENT, LCC

HARPER LAW GROUP  
CIVIL AND COMMERCIAL LITIGATION

**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of HARPER LAW GROUP and that on the 22<sup>nd</sup> day of May 2015, the foregoing document titled: **DEFENDANT FLOURNOY MANAGEMENT, LLC'S ANSWER** was served upon the parties via the Court's e-Filing and service program, addressed as follows:

GALINA KLETZER JAKOBSON  
SELMAN BREITMAN, LLP  
33 New Montgomery, Sixth Floor  
San Francisco, CA 94105-4537  
415.979-0400 Phone  
[gjakobson@selmanbreitman.com](mailto:gjakobson@selmanbreitman.com)  
*Attorney for Plaintiff*

  
An Employee of  
HARPER LAW GROUP

HARPER LAW GROUP

CIVIL AND COMMERCIAL LITIGATION

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the  
District of Nevada

NAUTILUS INSURANCE COMPANY

*Plaintiff*

v.

ACCESS MEDICAL, LLC, et al.

*Defendant*

Civil Action No. 2:15-CV-00321-JAD-GWF

WAIVER OF THE SERVICE OF SUMMONS

To: Selman Breitman LLP, counsel for Nautilus Ins. Co.,  
*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

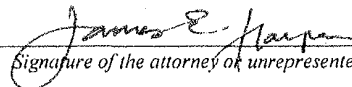
I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 03/23/2015, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: APRIL 2, 2015

Flournoy Management, LLC  
*Printed name of party waiving service of summons*

  
*Signature of the attorney or unrepresented party*

*Printed name*

Harper Law Group  
1935 Village Center Circle  
Las Vegas, NV 89134

*Address*

james@harperlawlv.com

*E-mail address*

(702) 948-9240

*Telephone number*

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the  
District of Nevada

NAUTILUS INSURANCE COMPANY

*Plaintiff*

v.

ACCESS MEDICAL, LLC, et al.

*Defendant*

Civil Action No. 2:15-CV-00321-JAD-GWF

WAIVER OF THE SERVICE OF SUMMONS

To: Selman Breitman LLP, counsel for Nautilus Ins. Co.,  
*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 03/23/2015, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

3/30/15

Robert Clark Wood, II

*Printed name of party waiving service of summons*

*Signature of the attorney or unrepresented party*

Jordan Schnitzer

*Printed name*

Kravitz, Schnitzer & Johnson  
8985 South Eastern Avenue, Suite 200  
Las Vegas, NV 89123

*Address*

jschnitzer@KSJattorneys.com

*E-mail address*

(702) 362-6666

*Telephone number*

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the  
District of Nevada

NAUTILUS INSURANCE COMPANY

Plaintiff

v.

ACCESS MEDICAL, LLC, et al.

Defendant

Civil Action No. 2:15-CV-00321-JAD-GWF

WAIVER OF THE SERVICE OF SUMMONS

To: Selman Breitman LLP, counsel for Nautilus Ins. Co.,  
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 03/23/2015, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 3/30/15

Access Medical, LLC

Printed name of party waiving service of summons

Signature of the attorney or unrepresented party

Jordan Schnitzer

Printed name

Kravitz, Schnitzer & Johnson  
8985 South Eastern Avenue, Suite 200  
Las Vegas, NV 89123

Address

jschnitzer@KSJattorneys.com

E-mail address

(702) 362-6666

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

1 GALINA KLETZER JAKOBSON  
2 NEVADA BAR NO. 6708  
3 SELMAN BREITMAN LLP  
33 New Montgomery, Sixth Floor  
San Francisco, CA 94105-4537  
Telephone: 415.979.0400  
4 Facsimile: 415.979.2099  
Email: gjakobson@selmanbreitman.com  
5

6 Attorneys for Plaintiff NAUTILUS  
INSURANCE COMPANY  
7

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 NAUTILUS INSURANCE COMPANY,

11 Plaintiff,

12 v.

13 ACCESS MEDICAL, LLC; ROBERT CLARK  
14 WOOD, II; FLOURNOY MANAGEMENT,  
LLC; and DOES 1-10, inclusive,

15 Defendants.  
16  
17

Case No. \_\_\_\_\_

NAUTILUS INSURANCE COMPANY'S  
COMPLAINT FOR:

(1) DECLARATORY RELIEF REGARDING  
DUTY TO DEFEND; AND

(2) DECLARATORY RELIEF REGARDING  
DUTY TO INDEMNIFY.

DEMAND FOR JURY TRIAL

18  
19  
20 Plaintiff Nautilus Insurance Company ("Nautilus") alleges as follows:

21 **I. JURISDICTIONAL ALLEGATIONS**

22 1. This is an action for declaratory relief requesting a judgment declaring the rights of  
23 plaintiff Nautilus with respect to an actual controversy arising under an insurance policy.

24 2. Nautilus is informed and believes and thereon alleges that jurisdiction is proper in  
25 this Court pursuant to 28 U.S.C. § 1332, since the amount in controversy exceeds \$75,000.00 and  
26 there is complete diversity between the parties.

27 3. Nautilus is an insurance company organized and existing under the laws of the  
28 State of Arizona with its principal place of business in Scottsdale, Arizona.



1           4. Nautilus alleges on information and belief that at all times relevant herein,  
2 Defendant Access Medical, LLC ("Access Medical") was and is a Delaware company with its  
3 principal place of business in Nevada and which transacts business in the State of Nevada and  
4 elsewhere.

5           5. Nautilus alleges on information and belief that at all times relevant herein,  
6 Flournoy Management, LLC ("Flournoy") was and is a Delaware company with its principal place  
7 of business in Nevada and which transacts business in the State of Nevada and elsewhere.

8           6. Nautilus alleges on information and belief that at all times relevant herein,  
9 Defendant Robert Clark Wood, II ("Wood") was a resident of the State of Nevada and a managing  
10 member of defendants Access Medical and Flournoy.

11           7. The cross-complaint filed in the underlying action entitled *Switzer v. Flournoy*  
12 *Management, LLC, et al.*, Superior Court of California for the County of Fresno, Case No. 11 CE  
13 CG 04395 ("*Switzer* Action") seeks damages in excess of \$75,000.00 from Access Medical and  
14 Wood. Flournoy is named as a nominal cross-defendant. A true and correct copy of the cross-  
15 complaint in the *Switzer* Action is attached hereto as Exhibit 1.

16           8. Nautilus is informed and believes that defense fees and costs in the underlying  
17 *Switzer* Action will also be in excess of \$75,000.00.

18           9. Access Medical, Wood and Flournoy tendered their defense of the cross-complaint  
19 filed by the underlying cross-complainant, Ted Switzer ("*Switzer*"), in the *Switzer* Action to  
20 Nautilus. Nautilus agreed to defend Access Medical, Wood and Flournoy in the *Switzer* Action  
21 under a reservation of rights.

22           10. Nautilus issued policy no. BN952426 to named insured Access Medical effective  
23 January 15, 2011 to January 15, 2012 ("Nautilus Policy"). Endorsement #1 adds the named  
24 insured Flournoy Management, LLC to the Nautilus Policy. A true and correct copy of the  
25 Nautilus Policy is attached hereto as Exhibit 2. The Nautilus Policy is incorporated by reference  
26 as though fully set forth herein.

27           11. Nautilus alleges that Access Medical, Flournoy, Wood, and DOES 1 through 10 are  
28 parties who claim or may claim rights under the Nautilus Policy issued to Access Medical with

1 respect to the underlying *Switzer* Action, and as such, are necessary parties herein so the  
 2 declaration of the parties' rights, duties, and obligations will be binding upon defendants, and each  
 3 of them, including Access Medical, Flournoy and Wood.

## 4 **II. VENUE ALLEGATIONS**

5 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a), (c) and (d) as the  
 6 parties either reside and/or do business in this judicial district.

7 13. Nautilus is and was, at all times relevant herein, authorized to and has and is  
 8 transacting business in the State of Nevada.

9 14. Nautilus alleges on information and belief that at all times relevant herein,  
 10 defendant Access Medical was and is a Delaware company transacting business in the State of  
 11 Nevada in or near Las Vegas, Nevada.

12 15. Nautilus alleges on information and belief that at all times relevant herein,  
 13 defendant Flournoy was and is a Delaware company transacting business in the State of Nevada in  
 14 or near Las Vegas, Nevada.

15 16. Nautilus alleges on information and belief that defendant Wood, as the managing  
 16 member of defendants Access Medical and Flournoy, transacts business in the State of Nevada in  
 17 or near Las Vegas, Nevada.

18 17. Nautilus alleges on information and belief that the substantial part of the events and  
 19 omissions giving rise to this claim including, but not limited to, the *Switzer* Action, occurred in or  
 20 near Las Vegas, Nevada.

21 18. Nautilus is unaware of the true identity, nature and capacity of each of the  
 22 defendants designated herein as DOES 1 – 10. Nautilus is informed and believes and thereon  
 23 alleges that defendants DOES 1 – 10 are persons or entities that are insured by, or otherwise claim  
 24 right to, policies of insurance issued by Nautilus, and are implicated by the allegations herein.  
 25 Upon learning the true identity, nature and capacity of DOE defendants 1 – 10, Nautilus will  
 26 amend this Complaint to allege their true names and capacities.

27 19. Nautilus is informed and believes and thereon alleges that, at all material times  
 28 herein alleged, the defendants, including the DOE defendants 1 – 10, and each of them, were the

agents, servants, employees, members, associates, shareholders, officers, directors, joint venturers, and/or alter egos of the other defendants, and each of them.

### III. THE UNDERLYING SWITZER ACTION

20. The *Switzer* Action arises from an alleged decision by Mr. Switzer and defendant Wood in November of 2010 to form a business to market and sell medical implants in Tennessee and Georgia (§ 47). Mr. Switzer and defendant Wood allegedly formed defendant Flournoy for that purpose in December of 2010 (§ 49).

21. In or about May of 2011, Mr. Switzer and defendant Wood allegedly orally agreed to use Flournoy to sell medical implants and associated hard goods in the markets previously reserved to Mr. Wood and Mr. Switzer, and not serviced by Flournoy (i.e. California, Oregon, and Nevada). (§ 50).

22. In his cross-complaint, Mr. Switzer alleges that defendant Wood breached his partnership agreement with Mr. Switzer by taking money that belonged to Mr. Switzer and/or Flournoy and keeping it for himself and/or for Access Medical. Mr. Switzer also alleges that "Mr. Wood took away from Mr. Switzer and kept for himself the lucrative business relationships and income Mr. Switzer had developed and enjoyed with hospitals previously serviced by Epsilon and the business entities associated with Mr. Switzer . . ." (§ 43). Mr. Switzer alleges that defendant Wood's actions "irreparably damage[d] the business reputation of Mr. Switzer." (§ 44).

23. In his cross-complaint, Mr. Switzer further alleges that defendant Wood "[stole] away accounts, customers and business relationships of Mr. Switzer and Epsilon in California" (§ 53). Mr. Switzer states causes of action against Wood and Access Medical for Breach of Fiduciary Duty / Constructive Fraud, Conversion, Unjust Enrichment, and Accounting.

24. The underlying *Switzer* Action sets forth four causes of action for interference with prospective economic advantage stemming from defendant Wood's alleged disruption of Mr. Switzer's business relationship with various hospitals. (§§ 107, 114, 121, 128). Mr. Switzer also alleges that defendant Wood breached his duty not to interfere with Mr. Switzer's existing business relationships. (§ 152).

25. In the underlying cross-complaint, Mr. Switzer states causes of action against defendants Wood and/or Access Medical for Dissolution of Flournoy, Unfair Competition, Treble Damages and Attorney's Fees. (§§ 162-180, 191-196).

26. The underlying cross-complaint filed by Mr. Switzer in the *Switzer* Action names Flournoy as a "nominal" cross-defendant (§ 2) against whom Mr. Switzer is making "derivative" claims (§ 14).

#### IV. THE NAUTILUS POLICY

27. As alleged above, Nautilus issued policy no. BN952426 to named insured Access Medical effective 1/15/11 to 1/15/12 ("Nautilus Policy"). Endorsement #1 adds the named insured Flournoy Management LLC to the Nautilus Policy.

28. The terms of the Nautilus Policy include the following insuring agreement, which provides in pertinent part:

#### SECTION II – LIABILITY COVERAGE

\* \* \*

#### COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

##### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

\* \* \*

29. The Nautilus Policy contains the following definitions:

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services[.]

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged...

\* \* \*

30. In letters to Access Medical and Flournoy, Nautilus reserved its rights under the Nautilus policy with respect to the *Switzer* Action. The letters stated, among other things, that:

Nautilus Insurance Company reserves the right to disclaim coverage and to bring an action in an appropriate state or federal court of competent jurisdiction and venue in order to limit, obtain a declaration, or interplead, to enforce the limitations mentioned herein and declare the obligations and responsibilities of the parties hereto under the contract of insurance.

31. Nautilus is informed and believes and therefore alleges that the terms, conditions, exclusions, and endorsements of the Nautilus Policy, along with Nevada law, preclude Nautilus from having any duty to defend Defendants Access Medical, Flournoy and/or Wood and/or indemnify said Defendants for damages which may be awarded in the underlying *Switzer* Action, thereby extinguishing any legal interest potentially held by Mr. Switzer as the underlying plaintiff.

# **FIRST CAUSE OF ACTION**

## **(Declaratory Relief Regarding No Duty to Defend – Defendants Access and Wood)**

32. Nautilus refers to Paragraphs 1 to 31 of this Complaint and incorporates the allegations set forth therein in full in this cause of action.

33. Nautilus is informed and believes and thereon alleges that an actual controversy has arisen and now exists between Plaintiff Nautilus, on the one hand, and Defendants Access Medical and Wood on the other hand, with respect to Nautilus' obligations, if any, under the Nautilus

1 Policy.

2 34. Nautilus contends that it has no duty to defend Defendants Access Medical and  
3 Wood in the *Switzer* Action pursuant to the Nautilus Policy, and in accordance with prevailing  
4 legal authority.

5 35. Nautilus is informed and believes and thereon alleges that Defendants Access  
6 Medical and Wood dispute the foregoing contention.

7 36. An actual controversy has arisen and now exists between Nautilus on the one hand,  
8 and Defendants Access Medical and Wood and each of them on the other hand, concerning  
9 Nautilus's duty to defend Defendants Access Medical and Wood in the *Switzer* Action, if any,  
10 under the Nautilus Policy.

11 37. This Court is vested with the power in the instant case, and Nautilus hereby  
12 respectfully requests a judicial determination and declaratory judgment of its rights with respect to  
13 its duty to defend Defendants Access Medical and Wood in the *Switzer* Action.

14 38. Such a judicial declaration is necessary and appropriate at this time in view of the  
15 controversy and genuine dispute between Plaintiff Nautilus on the one hand, and Defendants  
16 Access Medical and Wood on the other hand, as described above.

17 **SECOND CAUSE OF ACTION**

18 **(Declaratory Relief Regarding No Duty to Defend – Defendant Flournoy)**

19 39. Nautilus refers to Paragraphs 1 through 38 of this Complaint and incorporates the  
20 allegations set forth therein in full in this cause of action.

21 40. Nautilus is informed and believes and thereon alleges that an actual controversy has  
22 arisen and now exists between Plaintiff Nautilus, on the one hand, and Defendant Flournoy on the  
23 other hand, with respect to Nautilus' obligations, if any, under the Nautilus Policy.

24 41. Nautilus contends that it has no duty to defend Defendant Flournoy in the *Switzer*  
25 Action pursuant to the Nautilus Policy's provisions, and in accordance with prevailing legal  
26 authority.

27 42. Nautilus is informed and believes and thereon alleges that Defendant Flournoy  
28 disputes the foregoing contention.



43. An actual controversy has arisen and now exists between Nautilus on the one hand, and Defendant Flournoy on the other hand, concerning Nautilus's duty to defend Defendant Flournoy in the *Switzer* Action, if any, under the Nautilus Policy.

44. This Court is vested with the power in the instant case, and Nautilus hereby respectfully requests a judicial determination and declaratory judgment of its rights with respect to its duty to defend Defendant Flournoy in the *Switzer* Action.

45. Such a judicial declaration is necessary and appropriate at this time in view of the controversy and genuine dispute between Plaintiff Nautilus on the one hand, and Defendant Flournoy on the other hand, as described above.

### **THIRD CAUSE OF ACTION**

#### **(Declaratory Relief Regarding No Duty to Indemnify – Defendants Access and Wood)**

46. Nautilus refers to Paragraphs 1 through 45 of this Complaint and incorporates the allegations set forth therein in full in this cause of action.

47. Nautilus contends that it has no duty to indemnify Defendants Access Medical and/or Wood for any judgment entered in the *Switzer* Action, pursuant to the Nautilus Policy, and in accordance with prevailing legal authority.

48. Nautilus is informed and believes and thereon alleges that Defendants Access Medical and/or Wood dispute the foregoing contentions.

49. An actual controversy has arisen and now exists between Nautilus on the one hand, and Defendants Access Medical, Wood and each of them on the other hand, concerning Nautilus's duty to indemnify Defendants Access Medical and/or Wood, if any, under the Nautilus Policy.

50. This Court is vested with the power in the instant case, and Nautilus hereby respectfully requests a judicial determination and declaratory judgment of its rights with respect to its duty to indemnify Defendants Access Medical and/or Wood in the *Switzer* Action.

51. Such a judicial declaration is necessary and appropriate at this time in view of the controversy and genuine dispute between Plaintiff Nautilus on the one hand, and Defendants Access Medical and/or Wood on the other hand, as described above.

**FOURTH CAUSE OF ACTION**

**(Declaratory Relief Regarding No Duty to Indemnify – Defendant Flournoy)**

52. Nautilus refers to Paragraphs 1 through 51 of this Complaint and incorporates the allegations set forth therein in full in this cause of action.

53. Nautilus contends that it has no duty to indemnify Defendant Flournoy for any judgment entered in the *Switzer* Action, pursuant to the Nautilus Policy, and in accordance with prevailing legal authority.

54. Nautilus is informed and believes and thereon alleges that Defendant Flournoy disputes the foregoing contentions.

55. An actual controversy has arisen and now exists between Nautilus on the one hand, and Defendant Flournoy on the other hand, concerning Nautilus's duty to indemnify Defendant Flournoy, if any, under the Nautilus Policy.

56. This Court is vested with the power in the instant case, and Nautilus hereby respectfully requests a judicial determination and declaratory judgment of its rights with respect to its duty to indemnify Defendant Flournoy in the *Switzer* Action.

57. Such a judicial declaration is necessary and appropriate at this time in view of the controversy and genuine dispute between Plaintiff Nautilus on the one hand, and Defendants Flournoy on the other hand, as described above.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Nautilus prays for judgment against Defendants, and each of them, as follows:

1. For a judicial declaration that Nautilus has no duty to defend Defendants Access Medical and/or Wood under the Nautilus Policy in the *Switzer* Action;

2. For a judicial declaration that Nautilus has no duty to defend Defendant Flournoy under the Nautilus Policy in the *Switzer* Action;

3. For a judicial declaration that Nautilus has no duty to indemnify Defendants Access Medical and/or Wood for any judgment entered in the *Switzer* Action or, in the alternative,



1 Nautilus's duty to indemnify Defendants Access and/or Wood is limited as set forth in the Nautilus  
2 Policy;

3 4. For a judicial declaration that Nautilus has no duty to indemnify Defendant  
4 Flournoy for any judgment entered in the *Switzer* Action or, in the alternative, Nautilus's duty to  
5 indemnify Defendant Flournoy is limited as set forth in the Nautilus Policy;

6 5. For the costs of suit incurred herein; and

7 6. For such other further relief as this Court may deem just and proper.

8 Nautilus demands a trial by jury.

9 DATED: February 24, 2015

SELMAN BREITMAN LLP

10  
11 By: /s/ Galina Kletser Jakobson

12 GALINA KLETSER JAKOBSON  
13 NEVADA BAR NO. 6708  
14 33 New Montgomery, Sixth Floor  
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16 Phone: 415.979.2066  
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18 Attorneys for Plaintiff NAUTILUS  
19 INSURANCE COMPANY  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 1

NV Sup Ct CQ - Joint Appendix00623

1 Cross-Complainant alleges:

2 FACTS COMMON TO ALL CAUSES OF ACTION

3 1. Cross-Complainant, TED SWITZER (referred to hereafter as "Mr. Switzer"), is,  
4 and at all times herein mentioned was, a California resident, residing and doing business in the  
5 County of Fresno, State of California, and a member of record and a holder of a fifty percent  
6 (50%) voting interest in defendant, FLOURNOY MANAGEMENT, LLC. Mr. Switzer is also a  
7 principal of Charlie Medical, LLC (fka Omega Solutions, LLC) and Switzer Medical, Inc., both  
8 of which have assigned to Mr. Switzer the claims alleged herein, to the extent that such claims  
9 may belong to them.  
10

11 2. Nominal Cross-Defendant, FLOURNOY MANAGEMENT, LLC (referred to  
12 hereafter as "Flournoy"), is a limited liability company organized and existing under the laws of  
13 the State of Delaware, with its principal place of business in Nevada, and which transacts  
14 business in California, and is a "foreign limited liability company" as that term is defined by  
15 Corporations Code §17001(q), and is comprised of only two members, Mr. Switzer and cross-  
16 defendant ROBERT "SONNY" WOOD. Flournoy is also the sole member and manager of  
17 Epsilon Distribution I, LLC.  
18

19 3. Cross-Defendant, ROBERT CLARK WOOD, II (also known as Robert "Sonny"  
20 Wood and referred to hereafter as "Mr. Wood"), is, and since May 2011 has been, the sole  
21 managing member of Flournoy and does, and at all times mentioned herein did, exercise plenary  
22 power and control over the finances, affairs and activities of Flournoy.  
23

24 4. Cross-Defendant, ACCESS MEDICAL, LLC (referred to hereafter as "Access"),  
25 is a limited liability company organized and existing under the laws of the State of Delaware,  
26

1 with its principal place of business in Nevada, and which transacts business in California and  
2 elsewhere under various fictitious names including, but not limited to, Access Orthopedics,  
3 Access Orthopedic Medical Group and Access Medical Orthopedics, and, and at all times  
4 mentioned herein was managed by one or more of its members, including, but not limited to, Mr.  
5 Wood. Any reference to Mr. Wood herein shall also be deemed to be a reference to Access  
6 unless otherwise specifically stated or made absolutely impossible by context.

7  
8 5. Cross-Defendant, KRAVITZ, SCHNITZER, SLOAN & JOHNSON, CHTD  
9 (referred to hereafter as "Kravitz"), is a law firm which does, and at all times mentioned herein  
10 did, represent Flournoy and Mr. Wood.

11 6. Cross-Defendant, JORDAN P. SCHNITZER (referred to herein as "Mr.  
12 Schnitzer"), is an attorney at law, licensed to practice in the state of California, and at all times  
13 mentioned herein was an associate and member of Kravitz and was actively involved and  
14 participated in the representation of Flournoy and Mr. Wood. In doing the acts complained of  
15 herein, Mr. Schnitzer was acting at the direction of, or with the knowledge, permission, consent,  
16 acquiescence or ratification of, Kravitz and its principals, including, but not limited to Martin  
17 Kravitz, Gary Schnitzer and Melanie Morgan.

18  
19 7. Cross-Defendant, MCCORMICK, BARSTOW, SHEPPARD, WAYTE &  
20 CARRUTH, LLP (referred to hereafter as "McCormick"), is a law firm which does, and at all  
21 times mentioned herein from and after approximately March 2012, at least, did, represent  
22 Flournoy and Mr. Wood.

23 8. Cross-Defendant, GORDON M. PARK (referred to herein as "Mr. Park"), is an  
24 attorney at law, licensed to practice in the state of California, and at all times mentioned herein  
25

1 from and after approximately March 2012 was a principal and member of McCormick and was  
2 actively involved and participated in the representation of Flournoy and Mr. Wood.

3 9. Cross-Defendant, DANA B. DENNO (referred to herein as "Ms. Denno"), is an  
4 attorney at law, licensed to practice in the state of California, and at all times mentioned herein  
5 from and after approximately March 2012 was a principal and member of McCormick and was  
6 actively involved and participated in the representation of Flournoy and Mr. Wood.  
7

8 10. Cross-Defendant, IRENE V. FITZGERALD (referred to herein as "Ms.  
9 Fitzgerald"), is an attorney at law, licensed to practice in the state of California, and at all times  
10 mentioned herein from and after approximately March 2012 was an associate and member of  
11 McCormick and was actively involved and participated in the representation of Flournoy and Mr.  
12 Wood. In doing the acts complained of herein, Ms. Fitzgerald was acting at the direction of, or  
13 with the knowledge, permission, consent, acquiescence or ratification of, McCormick, Mr. Park  
14 and Ms. Denno.  
15

16 11. Mr. Switzer is ignorant of the true names and capacities of the cross-defendants  
17 sued herein as ROES 1 through 25, inclusive and, therefore, sues these cross-defendants by  
18 fictitious names. Mr. Switzer will amend this cross-complaint to allege their true names and  
19 capacities when ascertained. Mr. Switzer is informed and believes, and on that basis alleges, that  
20 each of these fictitiously named cross-defendants is responsible in some manner for the acts or  
21 omissions alleged in this cross-complaint and that Mr. Switzer's injuries were proximately  
22 caused by the acts or omissions of these defendants.  
23

24 12. Mr. Switzer knows the identities of ROES 26 through 50, inclusive, believes he  
25 has been damaged by said ROES, but is unaware of their capacity or conduct as described in this  
26

1 cross-complaint. Because Mr. Switzer is ignorant of their capacity or conduct, he sues them  
2 fictitiously. If necessary, Mr. Switzer will seek leave to amend this cross-complaint when he has  
3 knowledge of facts indicating the true nature of their capacity and conduct in the events described  
4 in this complaint. Some of the persons or entities sued herein pursuant to California Code of  
5 Civil Procedure section 474, may be persons or entities with whom or which Mr. Switzer is  
6 acquainted, but at this time Mr. Switzer is not aware of information or facts that cause him to  
7 conclude that he is aware of the identities of any persons or entities sued herein, other than those  
8 cross-defendants whose identities are specifically alleged. For these reasons, Mr. Switzer alleges  
9 on information and belief that he knows the identities of ROES 26 through 50, inclusive, but is  
10 unaware at this time of the specific details of the actions and conduct of these particular  
11 defendants that give rise to their legal liability to Mr. Switzer.  
12

13 13. At all times herein mentioned, cross-defendants were the agents, servants or  
14 employees of each of the remaining cross-defendants and in doing the things complained of  
15 herein were acting within the scope of their agency and employment, and acting with the full  
16 knowledge or subsequent ratification of their principals or employers. All references herein to  
17 any named cross-defendant will also be deemed to be references to all cross-defendants unless  
18 otherwise specifically stated or made impossible by context.  
19

20 14. Prior to filing the instant cross-complaint, Mr. Switzer did not make an effort to  
21 secure from Mr. Wood the actions Mr. Switzer desires to obtain by way of the derivative claims  
22 set forth herein because there was and is no reasonable possibility that Mr. Wood would have  
23 undertaken those actions voluntarily since they are in conflict with his personal interests as an  
24  
25  
26

1 individual and Mr. Wood has consistently and without exception placed his personal interests as  
2 an individual over and above any interests of either Flournoy or Mr. Switzer.

3 15. Prior to filing the instant cross-complaint, Mr. Switzer delivered a true copy of  
4 this cross-complaint to Flournoy and Mr. Wood by transmittal of same to Mr. Park.

5 **FIRST CAUSE OF ACTION**

6 **Breach of Fiduciary Duty – Derivative claim on behalf of Flournoy against McCormick,**  
7 **Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald, Mr. Schnitzer and ROES 1-10 and 26-35**

8 16. Mr. Switzer incorporates the allegations of paragraphs 1 through 15 above as  
9 though fully set forth by this reference.

10 17. As Flournoy's attorneys, McCormick, Kravitz, Mr. Park, Ms. Denno, Ms.  
11 Fitzgerald and Mr. Schnitzer, and each of them, owed a fiduciary duty, including a duty of  
12 utmost and undivided loyalty, to Flournoy.

13 18. Pursuant to Corporations Code §17453, as a member of Flournoy, Mr. Switzer is,  
14 and at all times mentioned herein was, entitled to all information and inspection rights provided  
15 in Corporations Code §17106, which rights cannot be waived.

16 19. Mr. Switzer became concerned about the management and operation of Flournoy  
17 by Mr. Wood, and desired to obtain information necessary to the process of evaluating whether  
18 or not Flournoy was being managed and operated by Mr. Wood in a manner consistent with Mr.  
19 Switzer's rights as a member of Flournoy.  
20

21 20. Corporations Code §17106(b)(1) provides that each member of a limited liability  
22 company "has the right upon reasonable request, for purposes reasonably related to the interest of  
23 that person as a member...: (1) To inspect and copy during normal business hours any of the  
24 records required to be maintained by Section 17058."  
25



21. Corporations Code §17106(i) provides that any request, inspection or copying by a member of a limited liability company may be made by the member's agent or attorney.

22. On or about September 30, 2011, pursuant to Corporations Code §17106, subdivisions (b)(1) and (i), Mr. Switzer's attorney made a written request of Mr. Wood and Flourney on behalf of Mr. Switzer that Mr. Wood and Flourney make available for inspection and copying by Mr. Switzer and his assistants, the following records:

(a) A copy of the articles of organization of Flourney Management, LLC, and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed. [California Corporations Code §17058(a)(3)]

(b) A copy of the operating agreement of Flourney Management, LLC, and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or any amendments thereto were executed. [California Corporations Code §17058(a)(5)]

(c) Copies of the financial statements of Flourney Management, LLC, for the six most recent fiscal years. [California Corporations Code §17058(a)(6)]

(d) The books and records of Flourney Management, LLC as they relate to the internal affairs of Flourney Management, LLC for at least the current and past four fiscal years. [California Corporations Code §17058(a)(7)] These books and records include, but are not limited to:

(i) For the period from May 1, 2011 through the date of inspection, all billing and charge sheets to, and checks, drafts and credits received from:

- a. Alameda Hospital – Alameda, CA
- b. Alta Bates Hospital – Berkeley, CA
- c. Centennial Hills – Las Vegas, NV
- d. Cottage Hospital – Santa Barbara, CA
- e. Doctors Medical Center – Modesto, CA
- f. El Camino Hospital – Los Gatos, CA
- g. Hollywood Presbyterian Medical Center – Los Angeles, CA
- h. Southern Hills – Las Vegas, NV
- i. Spring Valley – Las Vegas, NV
- j. St. Rose Dominican Hospital – Las Vegas, NV
- k. Stanislaus Surgical – Modesto, CA

- l. Summit Hospital – Berkeley, CA
- m. University Health – Augusta, GA
- n. University Medical Center – Las Vegas, NV

(ii) All bank statements and correspondence to or from banks and other financial institutions and financial services providers;

(iii) All commission statements and cancelled checks, drafts and credits showing commissions paid;

(iv) All insurance policies and cancelled checks, drafts and credits showing premiums and indemnity benefits paid;

(v) All leases and cancelled checks, drafts and credits showing all rents paid;

(vi) All service contracts for professional services and cancelled checks, drafts and credits showing payment for those services;

(vii) All contracts and bills for office services, facilities and equipment and cancelled checks, drafts and credits showing payment for those services, facilities and equipment;

(viii) All bills, invoices, packing and shipping lists for product from Alphatec, X-Spine, GS Medical and Orthovita, and checks, drafts and credits showing payment for that product, and all checks, drafts and credits showing all income from the resale of that product;

(ix) To the extent not identified above, all paid bills and cancelled checks, drafts and credits showing payment of those bills;

(x) To the extent not identified above, all checks, drafts, wire and other monetary transfers and credits issued by Flournoy Management, LLC or from accounts or funds owned or controlled by Flournoy Management, LLC, and all bills, contracts and other documents requiring or permitting such payments;

(xi) To the extent not identified above, all checks, drafts, wire and other monetary transfers and credits issued to Flournoy Management, LLC, and all bills, contracts and other documents requiring or permitting such payments;

(xii) All signed hospital contracts and physician contracts;

(xiii) All inventory lists and other documents and records showing each item of product owned or purchased by Mr. Switzer prior to May 1, 2011, and the location and disposition of each item of product from that date to the date of inspection;

(xiv) All inventory lists and other documents and records showing each item of product owned or purchased by Mr. Wood and Access Medical prior to May 1, 2011, and the location and disposition of each item of product from that date to the date of inspection;

(xv) All inventory lists and other documents and records showing each item of product owned or purchased by Flournoy Management, LLC from and after May 1, 2011, and the location and disposition of each item of product from May 1, 2011 to the date of inspection;

(xvi) To the extent not identified above, all inventory lists, shipping lists, packing lists, invoices, purchase orders, checks, drafts, credit memos, wire or other monetary transfers showing the sale or other transfer of any products by Flournoy Management, LLC, and all consideration received by Flournoy Management, LLC for that sale or other transfer.

(xvii) To the extent not identified above, all books, records and other documents which are necessary or useful in fully and accurately determining the financial condition and activities of Flournoy Management, LLC from May 1, 2011 to the date of inspection.

23. Kravitz, through its principal and authorized agent Gary E. Schnitzer, Esq., acting on behalf of Flournoy, refused, on several occasions, Mr. Switzer's request for access to Flournoy records for inspection and copying, asserting that, based on patently irrelevant supposed prior acts by Mr. Switzer, Mr. Wood believed that Mr. Switzer would use the requested records to harm Flournoy if Mr. Switzer was permitted access to the Flournoy records for inspection and copying.

24. The assertion of Kravitz, through its principal and authorized agent Gary E. Schnitzer, Esq., was false, and known by Kravitz to be false at the time that it was made, because, to avoid explaining what harm Mr. Switzer could possibly cause to Flournoy if Mr. Switzer had been allowed access to Flournoy records for inspection and copying as requested, Mr. Wood subsequently falsely stated under oath in discovery responses prepared by Kravitz,

1 McCormick, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer that the reason Kravitz  
2 repeatedly denied Mr. Switzer's requests for access to Flourmoy records for inspection and  
3 copying was that Mr. Switzer already had possession of either the originals or copies of all of the  
4 Flourmoy records to which Mr. Switzer had requested access for inspection and copying because  
5 those records had either been generated by Mr. Switzer or persons associated with Mr. Switzer,  
6 or had been provided to Flourmoy in the first instance by Mr. Switzer or persons or entities  
7 associated with Mr. Switzer, or had previously been provided to Mr. Switzer by Flourmoy in the  
8 regular course of business.

10 25. At the time Kravitz, through its principal and authorized agent Gary E. Schnitzer,  
11 Esq., completely denied, on behalf of Flourmoy, the requests of Mr. Switzer for access to  
12 Flourmoy records for inspection and copying, Kravitz knew or should have known that the  
13 records would show perfidy and fraud on behalf of Mr. Wood in the management and operation  
14 of Flourmoy including, but not limited to, Mr. Wood's defalcation and improper channeling to  
15 himself and his business entities of monies and property belonging to Mr. Switzer and supplied  
16 by Mr. Switzer to Flourmoy for the business operations of Flourmoy, and the improper taking by  
17 Mr. Wood for himself and his business entities of monies and property belonging to Flourmoy,  
18 and the improper failure of Mr. Wood to contribute monies and property to Flourmoy for the  
19 business operations of Flourmoy.

21 26. Kravitz, through its principal and authorized agent Gary E. Schnitzer, Esq.,  
22 breached its fiduciary duty to Flourmoy by concurrently representing Flourmoy and Mr. Wood  
23 despite the existence of a potential or actual conflict, and thereafter caused actual damage to  
24 Flourmoy by, among other things, knowingly using a false pretext to deny, on behalf of Flourmoy,  
25

1 Mr. Switzer's repeated requests for access to the Flournoy records for inspection and copying,  
2 resulting in Flournoy's unjustified refusal to provide Mr. Switzer with access to any of the  
3 requested materials and the filing by Mr. Switzer of a lawsuit against Flournoy to compel such  
4 access.

5         27. Kravitz, through its principal and authorized agent Gary E. Schnitzer, Esq.,  
6 breached its fiduciary duty to Flournoy by concurrently representing Flournoy and Mr. Wood  
7 despite the existence of a potential or actual conflict, and thereafter caused actual damage to  
8 Flournoy by, among other things, knowingly and intentionally placing the interests of Mr. Wood  
9 over and above the interests of Flournoy when responding on behalf of Flournoy to Mr. Switzer's  
10 repeated requests for access to Flournoy records for inspection and copying in a way that Kravitz  
11 knew was virtually certain to result in the filing of an action by Mr. Switzer against Flournoy to  
12 obtain access to Flournoy records for inspection and copying, just so that the revelation of Mr.  
13 Wood's perfidy and fraud with respect to the management and operation of Flournoy could be  
14 delayed for as long as possible.

15  
16         28. On or about December 27, 2011, Mr. Switzer filed an action against Flournoy and  
17 Mr. Wood which set forth a single cause of action under the California Corporations Code to  
18 compel Flournoy to permit Mr. Switzer access to Flournoy records for inspection and copying  
19 (hereafter referred to as the "Records Inspection Action").  
20

21         29. McCormick, Kravitz, Mr. Park, Ms. Fitzgerald and Mr. Schnitzer breached their  
22 fiduciary duty to Flournoy by concurrently representing Flournoy and Mr. Wood despite the  
23 existence of a potential or actual conflict, and thereafter caused actual damage to Flournoy by,  
24 among other things, responding on behalf of Flournoy to Mr. Switzer's complaint in the Records  
25

1 Inspection Action with an answer that contained patently meritless and inadequately pled  
2 affirmative defenses to which Mr. Switzer's demurrer was sustained, and then by filing a first-  
3 amended answer making the same inadequate and improper allegations to which Mr. Switzer  
4 demurred and moved to strike, and then by filing a second-amended answer without leave of  
5 Court which made the same inadequate and improper allegations to which Mr. Switzer moved to  
6 strike, all of which actions did nothing but benefit Mr. Wood by delaying the prosecution of Mr.  
7 Switzer's action and burden Flournoy by needlessly increasing its defense costs and providing  
8 further evidence of the unreasonable nature of its refusal to allow Mr. Switzer access to the  
9 requested records for inspection and copying.

11 30. McCormick, Kravitz, Mr. Park, Ms. Fitzgerald and Mr. Schnitzer breached their  
12 fiduciary duty to Flournoy by concurrently representing Flournoy and Mr. Wood despite the  
13 existence of a potential or actual conflict, and thereafter caused actual damage to Flournoy by,  
14 among other things, responding on behalf of Flournoy to Mr. Switzer's complaint in the Records  
15 Inspection Action with a third-amended answer which asserts as its sole actual affirmative  
16 defense the business judgment rule, a defense that they knew or should have known had no  
17 application or legitimate supporting factual basis because Mr. Wood is by no means an  
18 independent manager of Flournoy, he has obvious conflicts of interest with Flournoy, and has  
19 obviously acted in bad faith, fraudulently, oppressively and/or illegally with respect to the  
20 management and operation of Flournoy, and which caused a number of discovery disputes to  
21 arise when discovery responses of Flournoy and Mr. Wood that were drafted and served by  
22 McCormick, Kravitz, Mr. Park, Ms. Fitzgerald and Mr. Schnitzer to Mr. Switzer's discovery  
23 requests relating to this purported affirmative defense were unverified, improperly verified,  
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1 evasive, incomplete, and asserted patently meritless objections and would not be voluntarily  
2 corrected in response to Mr. Switzer's multiple and repeated meet and confer efforts, thus  
3 resulting in, again, a benefit to Mr. Wood in delaying the prosecution of Mr. Switzer's action and  
4 a burden to Flournoy by needlessly increasing its defense costs and providing further evidence of  
5 the unreasonable nature of its refusal to allow Mr. Switzer access to the requested records for  
6 inspection and copying.

7  
8 31. McCormick, Kravitz, Mr. Park, Ms. Fitzgerald and Mr. Schnitzer breached their  
9 fiduciary duty to Flournoy by concurrently representing Flournoy and Mr. Wood despite the  
10 existence of a potential or actual conflict, and thereafter caused actual damage to Flournoy by,  
11 among other things: responding on behalf of Flournoy to Mr. Switzer's complaint in the Records  
12 Inspection Action with a cross-complaint against Mr. Switzer, Mr. Switzer's wife, their elderly  
13 office manager and four business entities associated with Mrs. Switzer alleging a right to recover  
14 damages from these persons and entities for a variety of fictional acts and omissions despite the  
15 fact that such a cross-complaint was prohibited by Flournoy's operating agreement as not having  
16 been authorized by Flournoy's members or a majority of them; by falsely representing to the  
17 Court that the unauthorized cross-complaint was a compulsory one required by Code of Civil  
18 Procedure 426.10 et seq. when, in fact and in law, the cross-complaint was not compulsory  
19 because the purported contract and tort causes of action alleged in the cross-complaint did not  
20 arise out of the same transaction, occurrence, or series of transactions or occurrences as the single  
21 cause of action under the Corporations Code alleged in Mr. Switzer's complaint against Flournoy  
22 for access to Flournoy records for inspection and copying; by opposing Mr. Switzer's successful  
23 motion to strike and demurrer to the cross-complaint while at the same time purporting to file a  
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1 first-amended cross-complaint in order to moot that motion to strike and demurrer; by  
2 withdrawing the purported first-amended cross-complaint at the hearing on Mr. Switzer's motion  
3 to strike and demurrer to the initial cross-complaint and then filing an amended first-amended  
4 cross-complaint that did not correct the defects in the allegations of the initial cross-complaint;  
5 and then, after Mr. Switzer had filed a motion to strike and demurrer to the amended first-  
6 amended cross-complaint, by serving the amended first-amended cross-complaint on Mrs.  
7 Switzer, Ms. Holmes, Switzer Medical, Inc., Epsilon Distribution I, LLC and Charlie Medical,  
8 LLC, and requiring those cross-defendants to respond to the amended first-amended cross-  
9 complaint before the determination of Mr. Switzer's motion to strike and demurrer; by  
10 maintaining and prosecuting the unauthorized cross-action on behalf of Flournoy even after its  
11 unauthorized nature had been expressly brought to their attention by a demurrer filed against  
12 Flournoy's third amended cross-complaint; by filing and serving a cross-complaint on behalf of  
13 Mr. Wood alleging, among other things, that Flournoy is obligated to pay debts owed to Mr.  
14 Wood's other business entities, all of which resulted in, again, a benefit to Mr. Wood in delaying  
15 the prosecution of Mr. Switzer's action and greatly adding to the complexity and cost of the  
16 litigation, and a burden to Flournoy by needlessly increasing its defense costs and exposing it to  
17 liability for malicious prosecution for the false and baseless claims being asserted in the various  
18 cross-complaints filed on behalf of Flournoy and providing further evidence of the unreasonable  
19 nature of its refusal to allow Mr. Switzer access to the requested records for inspection and  
20 copying.  
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23 32. McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer  
24 breached their fiduciary duty to Flournoy by concurrently representing Flournoy and Mr. Wood  
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1 despite the existence of a potential or actual conflict, and thereafter caused actual damage to  
2 Flournoy by, among other things, repeatedly preparing and serving false, incomplete and evasive,  
3 and often unverified, discovery responses on behalf of Flournoy in response to discovery requests  
4 propounded by Mr. Switzer as the plaintiff with respect to the Records Inspection Action, and to  
5 discovery requests propounded by Mr. Switzer, Mrs. Switzer, Ms. Holmes, Switzer Medical,  
6 Inc., Epsilon Distribution I, LLC and Charlie Medical, LLC as the cross-defendants with respect  
7 to the false and baseless claims being asserted against them in the various unauthorized cross-  
8 complaints filed on behalf of Flournoy, and by repeatedly ignoring, rejecting, stonewalling and  
9 otherwise abusing the multiple good faith efforts of the propounding parties to informally resolve  
10 the manifold discovery disputes created by the incomplete, evasive and unverified discovery  
11 responses, all of which resulted in, again, a benefit to Mr. Wood in delaying the prosecution of  
12 Mr. Switzer's action and greatly adding to the complexity and cost of the litigation, and a burden  
13 to Flournoy by needlessly increasing its defense costs and exposing it to liability for, among other  
14 things, monetary sanctions for the multiple discovery abuses committed in the name of Flournoy  
15 by McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer and providing  
16 further evidence of the unreasonable nature of its refusal to allow Mr. Switzer access to the  
17 requested records for inspection and copying.

20 33. McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer  
21 breached their fiduciary duty to Flournoy by concurrently representing Flournoy and Mr. Wood  
22 despite the existence of a potential or actual conflict, and thereafter caused actual damage to  
23 Flournoy by, among other things, not even recommending the filing of an action on behalf of  
24 Flournoy against Mr. Wood to recover damages for Mr. Wood's perfidy and fraud with respect to  
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1 the management and operation of Flournoy despite the fact that they knew or should have known  
2 facts establishing such perfidy and fraud, which facts include, but are certainly not limited to the  
3 following dealing with the period between May 1, 2011 and August 31, 2011: Mr. Wood took in  
4 income of at least \$606,000.00 that belonged to Flournoy, but only deposited less than  
5 \$200,000.00 of that money into Flournoy's bank account; Mr. Wood deposited into Flournoy's  
6 bank account over \$402,000.00 of income provided by Epsilon and business entities associated  
7 with Mr. Switzer, but distributed less than \$85,000.00 from Flournoy's bank account to Epsilon,  
8 Mr. Switzer or business entities associated with Mr. Switzer, while at the same time paying  
9 \$485,000.00 to Mr. Wood's business, Access, from Flournoy's bank account despite the fact that  
10 Epsilon and Mr. Switzer, through business entities associated with him, had paid expenses  
11 properly reimbursable by Flournoy of at least \$293,000.00 or otherwise according to proof; Mr.  
12 Wood received income belonging to Flournoy of over \$545,000.00 or otherwise according to  
13 proof in the form of hospitals' payments of invoices, but deposited none of that money into  
14 Flournoy's bank account; Mr. Wood received income belonging to Flournoy of at least  
15 \$216,000.00 or otherwise according to proof in the form of checks from Epsilon and business  
16 entities associated with Mr. Switzer, but deposited none of that money into Flournoy's bank  
17 account.  
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20 34. McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer  
21 breached their fiduciary duty to Flournoy by, as mentioned in the preceding paragraphs,  
22 concurrently representing Flournoy and Mr. Wood despite the existence of a potential or actual  
23 conflict, and thereafter caused actual damage to Flournoy by consistently and repeatedly placing  
24 the interests of Mr. Wood over and above the interests of Flournoy, and McCormick, Kravitz,  
25

1 Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer are, and at all times mentioned herein  
2 have been, improperly engaged in an actual conflict of interest by their concurrent joint  
3 representation of Flournoy and Mr. Wood in the Records Inspection Action, in Flournoy's cross-  
4 action, and in Mr. Wood's cross-action, all contrary to well-established California law, including,  
5 but certainly not limited to California Rules of Professional Conduct, Rule 3-31-(C)(1) and (2),  
6 Rule 3-600(E), *Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4<sup>th</sup> 410, 428, *Blue Water*  
7 *Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4<sup>th</sup> 477, 487-490, *T&R Foods, Inc. v. Rose* (1996)  
8 47 Cal.App.4<sup>th</sup> Supp. 1, 8 and *Stanley v. Richmond* (1995) 35 Cal.App.4<sup>th</sup> 1070, 1086.

9  
10 35. The actual conflict of interest of McCormick, Kravitz, Mr. Park, Ms. Denno, Ms.  
11 Fitzgerald and Mr. Schnitzer has not been consented to or waived by Mr. Switzer, and could not  
12 and cannot be consented to by Mr. Wood.

13  
14 36. The breach by McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr.  
15 Schnitzer of their fiduciary duty to Flournoy has resulted in actual damage to Flournoy in an  
16 amount according to proof, but estimated to be in excess of \$4,000,000.00 and includes, but is  
17 not limited to any attorney's fees, costs and litigation expenses that Flournoy is required to pay to  
18 Mr. Switzer in the Records Inspection Action and to Mr. Switzer, Dixie Switzer, Jean Holmes, or  
19 any of the other cross-defendants in Flournoy's unauthorized cross-action, as well as all  
20 attorney's fees, costs and other litigation expenses incurred by Flournoy in defending against the  
21 Records Inspection Action and in prosecuting its cross-action, as well as the value of the income  
22 and property stolen from it by Mr. Wood and disbursed, consumed or otherwise disposed of or  
23 taken by Mr. Wood during the time of the cross-defendants' joint representation of Flournoy and  
24 Mr. Wood.  
25

38. The conduct of McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer was fraudulent, malicious, oppressive, despicable and was undertaken and accomplished with a conscious and intentional disregard for the rights of Flournoy, and for the purpose of maximizing the cross-defendants' financial gain despite the known risk of serious and irreparable damage to Flournoy, thus authorizing the imposition of punitive damages against the cross-defendants, and each of them, in an amount according to proof, for the purpose of punishing the cross-defendants and discouraging the cross-defendants and other attorneys facing similar circumstances from engaging in similar conduct in the future.

Breach of Contract - Direct claim by Mr. Switzer against Mr. Wood, Access  
and ROES 11-25 and 36-50

40. In or about May 2011, Mr. Wood and Mr. Switzer orally agreed to form a partnership for the purpose of selling medical implants and associated hard goods (referred to herein as the "Partnership Agreement").

1           41. The essential terms of the Partnership Agreement were that: (1) plenary power and  
2 control over the management and operation of Flournoy would be vested in Mr. Wood as  
3 Flournoy's sole manager; (2) income from a specific business entity associated with Mr. Switzer  
4 (Charlie Medical, LLC, fka Omega Solutions, LLC), income from a specific business entity  
5 associated with Flournoy (Epsilon Distribution I, LLC) and income from a specific business  
6 entity associated with Mr. Wood (Access Medical, LLC) earned for sales occurring on or after  
7 May 1, 2011 would be turned over to Flournoy to be maintained in one or more separate bank  
8 accounts of Flournoy and not commingled in any fashion with the funds of any other person or  
9 entity; and then, (3) Flournoy would use that income to reimburse the business entities for their  
10 costs and expenses and overhead attributable to the particular sales; and then, (4) Flournoy would  
11 deduct and pay its own costs and expenses, if any, associated with its administration of the  
12 Partnership Agreement from the remaining income; and then, (5) Flournoy would distribute the  
13 remaining income to Mr. Wood and Mr. Switzer in equal shares along with other required  
14 distributions from Flournoy's other independent business operation relating to implant sales in  
15 Augusta, Georgia.

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18           42. Mr. Switzer has performed all of the terms, conditions and covenants of the  
19 Partnership Agreement to be performed on his part, except those which have been excused or  
20 rendered impossible by Mr. Wood's conduct.

21           43. Mr. Wood breached the Partnership Agreement by, among other things: Mr. Wood  
22 took in income of at least \$606,000.00 or otherwise according to proof that should have been  
23 delivered to Flournoy, but deposited less than \$200,000.00 of that money or otherwise according  
24 to proof into Flournoy's bank account; Mr. Wood deposited into Flournoy's bank account over  
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1 \$402,000.00 or otherwise according to proof of income provided by business entities associated  
2 with Mr. Switzer, but distributed less than \$85,000.00 from Flournoy's bank account to Mr.  
3 Switzer, Epsilon or Charlie, while at the same time paying \$485,000.00 or otherwise according to  
4 proof to Mr. Wood's business, Access, from Flournoy's bank account despite the fact that  
5 Epsilon and Charlie had paid, or had become obligated to pay, expenses properly reimbursable  
6 by Flournoy of at least \$293,000.00 or otherwise according to proof and despite the fact that,  
7 exclusive of the \$485,000 payment from Flournoy, Access received and deposited into its bank  
8 account income of \$1,417,235.76, or otherwise according to proof, during the period from May  
9 1, 2011 through August 31, 2011; Mr. Wood received income that should have been delivered to  
10 Flournoy of over \$545,000.00 or otherwise according to proof in the form of hospitals' payments  
11 of invoices, but deposited none of that money into Flournoy's bank account; Mr. Wood received  
12 income that should have been delivered to Flournoy of at least \$216,000.00 or otherwise  
13 according to proof in the form of checks from Epsilon and business entities associated with Mr.  
14 Switzer, but deposited none of that money into Flournoy's bank account; Mr. Wood took away  
15 from Mr. Switzer and kept for himself the lucrative business relationships and income Mr.  
16 Switzer had developed and enjoyed with hospitals previously serviced by Epsilon and the  
17 business entities associated with Mr. Switzer, which hospitals include, but are not limited to Alta  
18 Bates in Oakland, California, Alameda in Oakland, California, Hollywood Presbyterian in Los  
19 Angeles, California, and Cottage Hospital in Santa Barbara, California.

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22 44. At the time the Partnership Agreement was formed, Mr. Wood knew that any breach  
23 of the Partnership Agreement as alleged in the preceding paragraphs would cause Mr. Switzer to  
24 suffer more than mere benefit of the bargain damages in that such a breach would irreparably  
25

1 damage the business and reputation of Mr. Switzer and, therefore, consequential damages in the  
2 form of lost future income and emotional distress were foreseeable to the parties at the time of  
3 contracting.

4 45. Mr. Wood's breaches have caused Mr. Switzer to suffer damages in an amount  
5 according to proof, but estimated to be in excess of \$6,000,000.00, for, among other things, the  
6 amounts due to Mr. Switzer as reimbursement and compensation under the Partnership Agreement,  
7 the loss of his business relationships and the income reasonably anticipated to be derived therefrom  
8 in the future, the damage to his ability to do business and derive income from the business entities  
9 associated with him, and for the embarrassment, annoyance and worry caused to him by Mr.  
10 Wood's breaches of the Partnership Agreement.  
11

### 12 THIRD CAUSE OF ACTION

13 Fraud - Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and 36-50

14 46. Mr. Switzer incorporates the allegations of paragraphs 1 through 15 above as  
15 though fully set forth by this reference.

16 47. In or about November 2010, Mr. Wood and Mr. Switzer discussed forming a  
17 business to market and sell medical implants and associated hard goods in Chattanooga,  
18 Tennessee and Augusta, Georgia, which were markets apart from Mr. Wood's market in Nevada  
19 and Mr. Switzer's markets in California and Oregon.  
20

21 48. During this discussion, Mr. Wood represented to Mr. Switzer that Mr. Wood did a  
22 volume of business in Nevada equivalent to the volume of business that Mr. Switzer did in  
23 California and Oregon, and that Mr. Wood had experience, morals, acumen and capabilities on  
24 par with Mr. Switzer's with respect to medical implant marketing and sales and would treat Mr.  
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1 Switzer in good faith and with fairness if Mr. Switzer agreed to enter into a business venture with  
2 Mr. Wood.

3 49. Mr. Switzer reasonably relied on Mr. Wood's representations, and agreed to the  
4 formation of Flournoy in December 2010, and contributed his time, efforts and his own existing  
5 inventory to enable Flournoy to begin conducting business in Chattanooga, Tennessee and  
6 Augusta, Georgia with additional marketing efforts in those markets being undertaken by Mr.  
7 Wood's brother, Zach Wood, for a monthly fee.  
8

9 50. In or about May 2011, Mr. Wood and Mr. Switzer orally agreed to form a  
10 partnership for the purpose of selling medical implants and associated hard goods (referred to  
11 herein as the "Partnership Agreement") in the markets previously reserved to Mr. Wood and Mr.  
12 Switzer, and not serviced by Flournoy.

13 51. The essential terms of the Partnership Agreement are set forth in Paragraph 41,  
14 above, and incorporated herein by this reference.  
15

16 52. Mr. Switzer entered into the Partnership Agreement in reasonable reliance on Mr.  
17 Wood's renewed representations to Mr. Switzer on, among other dates, May 10, 2011, that Mr.  
18 Wood had experience, morals, acumen and capabilities on par with Mr. Switzer's with respect to  
19 medical implant marketing and sales and would treat Mr. Switzer in good faith and with fairness  
20 if Mr. Switzer agreed to enter into this new business venture with Mr. Wood wherein Mr. Wood  
21 would now have plenary power and control over the management and operation of Flournoy. In  
22 doing so, Mr. Switzer contributed in excess of \$1 million to the operation of the partnership in  
23 the form of his money, time, industry, talents, and inventory previously purchased by him for use  
24 by Epsilon and the business entities associated with him. Mr. Switzer performed and continued  
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1 to perform his obligations under the Partnership Agreement in reasonable reliance of Mr. Wood's  
2 representations, made by e-mail messages from Mr. Wood's agent, Jacquie Weide, dated July 11,  
3 2011 to Jean Holmes, dated July 18, 2011 to Jean Holmes, dated July 20, 2011 to Jean Holmes,  
4 dated July 22, 2011 to Jean Holmes, dated July 28, 2011 to Jean Holmes, dated August 4, 2011  
5 to Jean Holmes and Mr. Switzer, dated August 4, 2011 and August 15, 2011 to Mr. Switzer and  
6 Mrs. Switzer, dated August 18, 2011 to Jean Holmes, dated August 26, 2011 to Jean Holmes,  
7 dated August 26, 2011 and August 29, 2011 to Jean Holmes, dated September 6, 2011 to Mr.  
8 Switzer, and dated September 7, 2011 to Mr. Switzer, that Mr. Wood was likewise performing  
9 his obligations under the Partnership Agreement.  
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11 53. Mr. Wood's representations were false, and known by Mr. Wood to be false,  
12 when they were made to Mr. Switzer. In reality, the volume of Mr. Wood's business was less  
13 than half of Mr. Switzer's business, Mr. Wood took the Augusta, Georgia business intended for  
14 Flournoy and kept it for himself through Access, Mr. Wood was not fully and faithfully  
15 performing his obligations under the Partnership Agreement, Mr. Wood did not have experience,  
16 morals, acumen and capabilities on par with Mr. Switzer's with respect to medical implant  
17 marketing and sales, and Mr. Wood had no intention of treating Mr. Switzer fairly or in good  
18 faith but, rather, intended to unfairly profit from Mr. Switzer's resources, experience, inventory  
19 and industry by utilizing them, and the profits they generated, for himself to the exclusion of Mr.  
20 Switzer, and also by stealing away customers, accounts and business relationships of Mr. Switzer  
21 and Epsilon in California, where Mr. Wood had no business presence prior to the Partnership  
22 Agreement.  
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1           54.     Mr. Wood fraudulently caused damage to Mr. Switzer by, among other things, the  
2 acts and omissions set forth in paragraph 43, above, which are incorporated herein by this reference.

3           55.     If Mr. Switzer had known the true facts regarding Mr. Wood's business  
4 operations, experience and intentions, Mr. Switzer would never have agreed to form Flournoy  
5 with Mr. Wood and certainly would have never agreed to enter into the Partnership Agreement  
6 with Mr. Wood in the first instance, and would never have performed as though the partnership  
7 actually existed for as long as he did.

8           56.     Mr. Wood's fraud has caused Mr. Switzer to suffer damages in an amount according  
9 to proof, but estimated to be in excess of \$6,000,000.00, for, among other things, the amounts due  
10 to Mr. Switzer as reimbursement and compensation under the Partnership Agreement, the loss of  
11 his inventory, business relationships and the income reasonably anticipated to be derived therefrom  
12 in the future, the damage to his ability to do business and derive income from the business entities  
13 associated with him, and for the embarrassment, annoyance and worry caused to him by Mr.  
14 Wood's fraudulent acts; as Mr. Wood's acts constitute the theft of Mr. Switzer's property, Mr.  
15 Wood is liable for treble the amount of damage sustained by Mr. Switzer and for Mr. Switzer's  
16 reasonable attorney's fees pursuant to Penal Code §496.

17           57.     In addition to compensation for the actual damage caused to Mr. Switzer by the  
18 multiple fraudulent acts of Mr. Wood, Mr. Switzer is also entitled to obtain from Mr. Wood  
19 disgorgement of all of the profits obtained by him through his perfidy and fraud, as well as all  
20 attorney's fees, costs and other litigation expenses incurred by Mr. Switzer for having to  
21 commence a civil action against Flournoy to obtain access to Flournoy's records for inspection  
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1 and copying and for having to defend himself and others against the unauthorized, retaliatory and  
2 malicious cross-action Mr. Wood caused Flournoy to institute and prosecute.

3 58. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
4 was undertaken and accomplished with a conscious and intentional disregard for the rights of Mr.  
5 Switzer, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk of  
6 serious and irreparable damage to Mr. Switzer, thus authorizing the imposition of punitive  
7 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
8 and discouraging him and others facing similar circumstances from engaging in similar conduct  
9 in the future.  
10

11 **FOURTH CAUSE OF ACTION**

12 **Breach of Fiduciary Duty/Constructive Fraud - Direct claim by Mr. Switzer against Mr.  
13 Wood, Access and ROES 11-25 and 36-50**

14 59. Mr. Switzer incorporates the allegations of paragraphs 1 through 15 above as  
15 though fully set forth by this reference.

16 60. In or about November 2010, Mr. Wood and Mr. Switzer discussed forming a  
17 business to market and sell medical implants and associated hard goods in markets apart from  
18 Mr. Wood's market in Nevada and Mr. Switzer's markets in California and Oregon.

19 61. During this discussion, Mr. Wood represented to Mr. Switzer that Mr. Wood did a  
20 volume of business in Nevada equivalent to the volume of business that Mr. Switzer did in  
21 California and Oregon, and that Mr. Wood had experience, morals, acumen and capabilities on  
22 par with Mr. Switzer's with respect to medical implant marketing and sales and would treat Mr.  
23 Switzer in good faith and with fairness if Mr. Switzer agreed to enter into a business venture with  
24 Mr. Wood.  
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1           62. Mr. Switzer reasonably relied on Mr. Wood's representations, and agreed to the  
2 formation of Flournoy in December 2010, and contributed his time, efforts and his own existing  
3 inventory to enable Flournoy to begin conducting business in Chattanooga, Tennessee and  
4 Augusta, Georgia with additional marketing efforts in those markets being undertaken, by Mr.  
5 Wood's brother, Zach Wood, for a monthly fee.

6           63. In or about May 2011, Mr. Wood and Mr. Switzer orally agreed to form a  
7 partnership for the purpose of selling medical implants and associated hard goods (referred to  
8 herein as the "Partnership Agreement") in the markets previously reserved to Mr. Wood and Mr.  
9 Switzer, and not serviced by Flournoy.

10           64. The essential terms of the Partnership Agreement are set out in Paragraph 41,  
11 above, which is incorporated by this reference.

12           65. As Mr. Switzer's partner, Mr. Wood owed Mr. Switzer a fiduciary duty to  
13 comport himself in the highest good faith and in a manner consistent with the standards and  
14 duties of a trustee, binding Mr. Wood to not obtain any advantage over Mr. Switzer in the  
15 partnership affairs by the slightest misrepresentation, concealment, threat or adverse pressure of  
16 any kind.

17           66. Mr. Wood's representations to Mr. Switzer were false. In reality, the volume of  
18 Mr. Wood's business was less than half of Mr. Switzer's business, Mr. Wood did not have  
19 experience, morals, acumen and capabilities on par with Mr. Switzer's with respect to medical  
20 implant marketing and sales, and Mr. Wood had no intention of treating Mr. Switzer fairly or in  
21 good faith but, rather, intended to unfairly profit from Mr. Switzer's resources, experience,  
22 inventory and industry by utilizing them, and the profits they generated, for himself to the  
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1 exclusion of Mr. Switzer, and also by stealing away customers, accounts and business  
2 relationships of Mr. Switzer in California, where Mr. Wood had no business presence prior to the  
3 Partnership Agreement.

4       67. Mr. Wood breached his fiduciary duty to Mr. Switzer and caused damage to Mr.  
5 Switzer by, among other things: Mr. Wood took in income of at least \$606,000.00 or otherwise  
6 according to proof that should have been delivered to Flournoy, but deposited less than  
7 \$200,000.00 or otherwise according to proof of that money into Flournoy's bank account; Mr.  
8 Wood deposited into Flournoy's bank account over \$402,000.00 or otherwise according to proof  
9 of income provided by business entities associated with Mr. Switzer, but distributed less than  
10 \$85,000.00 from Flournoy's bank account to Mr. Switzer or business entities associated with Mr.  
11 Switzer, while at the same time paying \$485,000.00 or otherwise according to proof to Mr.  
12 Wood's business, Access, from Flournoy's bank account despite the fact that Mr. Switzer,  
13 through business entities associated with him, had paid expenses properly reimbursable by  
14 Flournoy of at least \$293,000.00 or otherwise according to proof and despite the fact that,  
15 exclusive of the \$485,000 payment from Flournoy, Access received and deposited into its bank  
16 account income of \$1,417,235.76 during the period from May 1, 2011 through August 31, 2011;  
17 Mr. Wood received income that should have been delivered to Flournoy of over \$545,000.00 or  
18 otherwise according to proof in the form of hospitals' payments of invoices, but deposited none  
19 of that money into Flournoy's bank account; Mr. Wood received income that should have been  
20 delivered to Flournoy of at least \$216,000.00 or otherwise according to proof in the form of  
21 checks from business entities associated with Mr. Switzer, but deposited none of that money into  
22 Flournoy's bank account; Mr. Wood took away and kept for himself Flournoy's business in  
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1 Augusta, Georgia; Mr. Wood took away from Mr. Switzer and kept for himself the lucrative  
2 business relationships and income Mr. Switzer had developed and enjoyed with hospitals  
3 previously serviced by Epsilon and the business entities associated with Mr. Switzer, which  
4 hospitals include, but are not limited to Alta Bates in Oakland, California, Alameda in Oakland,  
5 California, Hollywood Presbyterian in Los Angeles, California, and Cottage Hospital in Santa  
6 Barbara, California; Mr. Wood responded to Mr. Switzer's request for access to Flournoy records  
7 for the purpose of inspection and copying with a complete refusal of any such access and by  
8 hiring attorneys to commence civil actions, including an unauthorized action in the name of  
9 Flournoy, against Mr. Switzer, Mr. Switzer's wife, Mr. Switzer's office manager, Epsilon and  
10 business entities associated with Mr. Switzer based on fictional and malicious claims, and to  
11 prosecute those actions in malicious and unethical ways so as to conceal for as long as possible  
12 the full extent of Mr. Wood's perfidy and wrongful conduct.  
13

14 68. Mr. Wood's breach of fiduciary duty and constructive fraud has caused Mr. Switzer  
15 to suffer damages in an amount according to proof, but estimated to be in excess of \$10,000,000.00,  
16 for, among other things, the amounts due to Mr. Switzer as reimbursement and compensation under  
17 the Partnership Agreement, the loss of his inventory, business relationships and the income  
18 reasonably anticipated to be derived therefrom in the future, the damage to his ability to do business  
19 and derive income from the business entities associated with him, for expenses in defending  
20 himself and others from Mr. Wood's civil actions, and for the embarrassment, annoyance and worry  
21 caused to him by Mr. Wood's fraudulent acts.  
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1           69. In addition to compensation for the actual damage caused to Mr. Switzer by the  
2 multiple breaches of fiduciary duty by Mr. Wood, Mr. Switzer is also entitled to obtain from Mr.  
3 Wood disgorgement of all of the profits obtained by him through his perfidy.

4           70. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
5 was undertaken and accomplished with a conscious and intentional disregard for the rights of Mr.  
6 Switzer, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk of  
7 serious and irreparable damage to Mr. Switzer, thus authorizing the imposition of punitive  
8 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
9 and discouraging him and others facing similar circumstances from engaging in similar conduct  
10 in the future.

12                                   FIFTH CAUSE OF ACTION

13           Conversion – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and  
14                                   36-50

15           71. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
16 57, and 60 through 69 above as though fully set forth by this reference.

17           72. In May, 2011, Mr. Switzer was the owner of personal property consisting of  
18 medical implants and associated hard goods worth \$62,910.00, or otherwise according to proof  
19 (referred to hereafter as the "Las Vegas Inventory").

20           73. In and after May, 2011, Mr. Wood wrongfully exercised dominion and control  
21 over the Las Vegas Inventory by fraudulently inducing Mr. Switzer to allow the Las Vegas  
22 Inventory to be sold pursuant to the Partnership Agreement and then by Mr. Wood keeping and  
23 applying the proceeds of the sale for his own use and benefit to the complete exclusion of Mr.  
24 Switzer.  
25

1           74. Mr. Wood's conversion of the Las Vegas Inventory resulted in damage to Mr.  
2 Switzer in an amount according to proof consisting not only of the price paid by Mr. Switzer  
3 when he purchased the Las Vegas Inventory, but also the profits lost by Mr. Switzer by being  
4 prevented from selling the Las Vegas Inventory himself, all of which are estimated to total, in the  
5 experience of Mr. Switzer, at least \$188,730.00 or otherwise according to proof.

6           75. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
7 was undertaken and accomplished with a conscious and intentional disregard for the rights of Mr.  
8 Switzer, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk of  
9 serious and irreparable damage to Mr. Switzer, thus authorizing the imposition of punitive  
10 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
11 and discouraging him and others facing similar circumstances from engaging in similar conduct  
12 in the future.

14                                   **SIXTH CAUSE OF ACTION**

15           **Conversion – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and**  
16                                   **36-50**

17           76. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
18 57, and 60 through 69 above as though fully set forth by this reference.

19           77. In May, 2011, Mr. Switzer was the owner of personal property consisting of  
20 medical implants and associated hard goods worth \$64,900.00, or otherwise according to proof  
21 (referred to hereafter as the "Los Angeles Inventory").

22           78. In and after May, 2011, Mr. Wood wrongfully exercised dominion and control  
23 over the Los Angeles Inventory by fraudulently inducing Mr. Switzer to allow the Los Angeles  
24 Inventory to be sold pursuant to the Partnership Agreement and then by Mr. Wood keeping and  
25



1 applying the proceeds of the sale for his own use and benefit to the complete exclusion of Mr.  
2 Switzer.

3 79. Mr. Wood's conversion of the Los Angeles Inventory resulted in damage to Mr.  
4 Switzer in an amount according to proof consisting not only of the price paid by Mr. Switzer  
5 when he purchased the Los Angeles Inventory, but also the profits lost by Mr. Switzer by being  
6 prevented from selling the Los Angeles Inventory himself, all of which are estimated to total, in  
7 the experience of Mr. Switzer, at least \$194,700.00 or otherwise according to proof.

8  
9 80. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
10 was undertaken and accomplished with a conscious and intentional disregard for the rights of Mr.  
11 Switzer, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk of  
12 serious and irreparable damage to Mr. Switzer, thus authorizing the imposition of punitive  
13 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
14 and discouraging him and others facing similar circumstances from engaging in similar conduct  
15 in the future.

16  
17 **SEVENTH CAUSE OF ACTION**

18 **Conversion – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and**  
19 **36-50**

20 81. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
21 57, and 60 through 69 above as though fully set forth by this reference.

22 82. In May, 2011, Mr. Switzer was the owner of personal property consisting of  
23 medical implants and associated hard goods worth \$448,685.00, or otherwise according to proof  
24 (referred to hereafter as the "Santa Barbara Inventory").

1           83. In and after May, 2011, Mr. Wood wrongfully exercised dominion and control  
2 over the Santa Barbara Inventory by fraudulently inducing Mr. Switzer to allow the Santa  
3 Barbara Inventory to be sold pursuant to the Partnership Agreement and then by Mr. Wood  
4 keeping and applying the proceeds of the sale for his own use and benefit to the complete  
5 exclusion of Mr. Switzer.

6           84. Mr. Wood's conversion of the Santa Barbara Inventory resulted in damage to Mr.  
7 Switzer in an amount according to proof consisting not only of the price paid by Mr. Switzer  
8 when he purchased the Santa Barbara Inventory, but also the profits lost by Mr. Switzer by being  
9 prevented from selling the Santa Barbara Inventory himself, all of which are estimated to total, in  
10 the experience of Mr. Switzer, at least \$1,346,055.00 or otherwise according to proof.

11           85. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
12 was undertaken and accomplished with a conscious and intentional disregard for the rights of Mr.  
13 Switzer, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk of  
14 serious and irreparable damage to Mr. Switzer, thus authorizing the imposition of punitive  
15 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
16 and discouraging him and others facing similar circumstances from engaging in similar conduct  
17 in the future.

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20                           **EIGHTH CAUSE OF ACTION**

21           **Conversion – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and**  
22                           **36-50**

23           86. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
24 57, and 60 through 69 above as though fully set forth by this reference.

1           87. In May, 2011, Mr. Switzer was the owner of personal property consisting of  
2 medical implants and associated hard goods worth \$74,050.00, or otherwise according to proof  
3 (referred to hereafter as the "Modesto Inventory").

4           88. In and after May, 2011, Mr. Wood wrongfully exercised dominion and control  
5 over the Modesto Inventory by fraudulently inducing Mr. Switzer to allow the Modesto Inventory  
6 to be sold pursuant to the Partnership Agreement and then by Mr. Wood keeping and applying  
7 the proceeds of the sale for his own use and benefit to the complete exclusion of Mr. Switzer.  
8

9           89. Mr. Wood's conversion of the Modesto Inventory resulted in damage to Mr.  
10 Switzer in an amount according to proof consisting not only of the price paid by Mr. Switzer  
11 when he purchased the Modesto Inventory, but also the profits lost by Mr. Switzer by being  
12 prevented from selling the Modesto Inventory himself, all of which are estimated to total, in the  
13 experience of Mr. Switzer, at least \$222,150.00 or otherwise according to proof.

14           90. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
15 was undertaken and accomplished with a conscious and intentional disregard for the rights of Mr.  
16 Switzer, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk of  
17 serious and irreparable damage to Mr. Switzer, thus authorizing the imposition of punitive  
18 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
19 and discouraging him and others facing similar circumstances from engaging in similar conduct  
20 in the future.  
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NINTH CAUSE OF ACTION

Conversion – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and 36-50

91. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through 57, and 60 through 69 above as though fully set forth by this reference.

92. In May, 2011, Mr. Switzer was the owner of personal property consisting of medical implants and associated hard goods worth \$423,285.00, or otherwise according to proof (referred to hereafter as the “Fresno Inventory”).

93. In and after May, 2011, Mr. Wood wrongfully exercised dominion and control over the Fresno Inventory by fraudulently inducing Mr. Switzer to allow the Fresno Inventory to be sold pursuant to the Partnership Agreement or to be delivered to Mr. Wood for return to the initial seller for a credit, and then by Mr. Wood keeping and applying the proceeds of the sale and return credit for his own use and benefit to the complete exclusion of Mr. Switzer, or by returning items to Mr. Switzer knowing that Mr. Switzer no longer had a market to sell such items because those markets had been usurped and taken away from Mr. Switzer by Mr. Wood.

94. Mr. Wood’s conversion of the Fresno Inventory resulted in damage to Mr. Switzer in an amount according to proof consisting not only of the price paid by Mr. Switzer when he purchased the Fresno Inventory, but also the profits lost by Mr. Switzer by being prevented from selling the Fresno Inventory himself, all of which are estimated to total, in the experience of Mr. Switzer, at least \$1,269,855.00 or otherwise according to proof.

95. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and was undertaken and accomplished with a conscious and intentional disregard for the rights of Mr. Switzer, and for the purpose of maximizing Mr. Wood’s financial gain despite the known risk of

1 serious and irreparable damage to Mr. Switzer, thus authorizing the imposition of punitive  
2 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
3 and discouraging him and others facing similar circumstances from engaging in similar conduct  
4 in the future.

5  
6 **TENTH CAUSE OF ACTION**

6 **Unjust Enrichment – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-  
25 and 36-50**

7  
8 96. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
9 57, 60 through 69, 72 through 74, 77 through 79, 82 through 84, 87 through 89, and 92 through  
10 94 above as though fully set forth by this reference.

11 97. Mr. Wood received benefits from or belonging to Mr. Switzer having an aggregate  
12 value in excess of \$10,000,000.00, or otherwise according to proof, and has unjustly retained  
13 those benefits at the expense of Mr. Switzer.

14  
15 **ELEVENTH CAUSE OF ACTION**

15 **Accounting – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and  
36-50**

16  
17 98. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
18 57, 60 through 69, 72 through 74, 77 through 79, 82 through 84, 87 through 89, and 92 through  
19 94 above as though fully set forth by this reference.

20 99. As the custodian and trustee of Mr. Switzer's partnership rights and benefits, Mr.  
21 Wood had a duty to exercise good faith toward Mr. Switzer and is obligated to account to Mr.  
22 Switzer for all income received, expenditures made, and any secret profits, gifts, and other  
23 benefits received in his handling of the partnership funds and property and in any undertaking  
24

1 that conflicted with or constituted a breach of the Partnership Agreement or his fiduciary duties  
2 to Mr. Switzer.

3 100. There is presently due a balance from Mr. Wood to Mr. Switzer that can only be  
4 ascertained by an accounting which determines, lists and values the assets, liabilities, income,  
5 expenditures and the secret profits, gifts and other benefits wrongfully obtained by Mr. Wood.

6 **TWELFTH CAUSE OF ACTION**

7 **Accounting – Derivative claim on behalf of Flournoy against McCormick, Kravitz, Mr.**  
8 **Park, Ms. Denno, Ms. Fitzgerald, Mr. Schnitzer and ROES 1-10 and 26-35**

9 101. Mr. Switzer incorporates the allegations of paragraphs 1 through 38 above as  
10 though fully set forth by this reference.

11 102. As the attorneys for Flournoy, the cross-defendants, and each of them, had a duty  
12 to exercise good faith toward Flournoy and are obligated to account to Flournoy for all income  
13 received, expenditures made, and any secret profits, gifts, and other benefits received in their  
14 representation of Flournoy and in any undertaking that conflicted with or constituted a breach of  
15 their fiduciary duties to Flournoy.

16 103. There is presently due a balance from the cross-defendants, and each of them, to  
17 Flournoy that can only be ascertained by an accounting which determines, lists and values the  
18 assets, liabilities, income, expenditures and the secret profits, gifts and other benefits wrongfully  
19 obtained by the cross-defendants.

20 **THIRTEENTH CAUSE OF ACTION**

21 **Interference with Prospective Economic Advantage – Direct claim by Mr. Switzer against**  
22 **Mr. Wood, Access and ROES 11-25 and 36-50**

23 104. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
24 57, and 60 through 69 above as though fully set forth by this reference.  
25

1           105. Mr. Switzer and Alta Bates Hospital enjoyed a long-standing and mutually  
2 beneficial relationship as seller and buyer, respectively, of medical implants and associated hard  
3 goods, and until the acts of Mr. Wood as alleged herein the probability of continued economic  
4 benefit to Mr. Switzer as a result of this relationship was high.

5           106. Mr. Wood knew of the long-standing relationship between Mr. Switzer and Alta  
6 Bates Hospital, and of the high probability of continued economic benefit to Mr. Switzer as a  
7 result of this relationship.

8           107. Mr. Wood, intentionally and without justification or privilege, and for his own  
9 individual benefit and to promote his own individual personal interests acted to disrupt the  
10 relationship between Mr. Switzer and Alta Bates Hospital by his wrongful acts as alleged herein:

11           108. The wrongful acts of Mr. Wood did in fact result in a disruption of the relationship  
12 between Mr. Switzer and Alta Bates Hospital in that Alta Bates Hospital ceased using Mr. Switzer  
13 or the business entities associated with him as vendors of medical implants and associated hard  
14 goods but, instead, used Mr. Wood and business entities associated with Mr. Wood for that purpose  
15 and has purported to interrupt or end its long-standing and mutually beneficial relationship with Mr.  
16 Switzer.

17           109. The wrongful acts of Mr. Wood has resulted in injury to the personal and business  
18 reputation of Mr. Switzer and the financial condition of Mr. Switzer through the sudden and  
19 unreasonable loss of Mr. Switzer's long-standing business relationship with Alta Bates Hospital and  
20 the income that Mr. Switzer would likely have derived from the continuation of that relationship.  
21 The exact amount of economic harm caused to Mr. Switzer by the wrongful acts of Mr. Wood is  
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1 unknown to Mr. Switzer at this time and is subject to proof at trial, but is estimated to exceed  
2 \$1,000,000.00.

3 110. The wrongful acts of Mr. Wood were malicious and were done with the intent to  
4 injure Mr. Switzer's profession, business and emotional well-being and with a conscious disregard  
5 of Mr. Switzer's rights, therefore warranting the imposition of punitive damages against cross-  
6 defendants, and each of them, in an amount according to proof sufficient to punish this conduct and  
7 to deter the occurrence of similar conduct in the future.

#### 9 FOURTEENTH CAUSE OF ACTION

10 Interference with Prospective Economic Advantage – Direct claim by Mr. Switzer against  
11 Mr. Wood, Access and ROES 11-25 and 36-50

12 111. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
13 57, and 60 through 69 above as though fully set forth by this reference.

14 112. Mr. Switzer and Alameda Hospital enjoyed a long-standing and mutually  
15 beneficial relationship as seller and buyer, respectively, of medical implants and associated hard  
16 goods, and until the acts of Mr. Wood as alleged herein the probability of continued economic  
17 benefit to Mr. Switzer as a result of this relationship was high.

18 113. Mr. Wood knew of the long-standing relationship between Mr. Switzer and  
19 Alameda Hospital, and of the high probability of continued economic benefit to Mr. Switzer as a  
20 result of this relationship.

21 114. Mr. Wood, intentionally and without justification or privilege, and for his own  
22 individual benefit and to promote his own individual personal interests acted to disrupt the  
23 relationship between Mr. Switzer and Alameda Hospital by his wrongful acts as alleged herein.  
24



1           115. The wrongful acts of Mr. Wood did in fact result in a disruption of the relationship  
2 between Mr. Switzer and Alameda Hospital in that Alameda Hospital ceased using Mr. Switzer or  
3 the business entities associated with him as vendors of medical implants and associated hard goods  
4 but, instead, used Mr. Wood and business entities associated with Mr. Wood for that purpose and  
5 has purported to interrupt or end its long-standing and mutually beneficial relationship with Mr.  
6 Switzer.

7           116. The wrongful acts of Mr. Wood has resulted in injury to the personal and business  
8 reputation of Mr. Switzer and the financial condition of Mr. Switzer through the sudden and  
9 unreasonable loss of Mr. Switzer's long-standing business relationship with Alameda Hospital and  
10 the income that Mr. Switzer would likely have derived from the continuation of that relationship.  
11 The exact amount of economic harm caused to Mr. Switzer by the wrongful acts of Mr. Wood is  
12 unknown to Mr. Switzer at this time and is subject to proof at trial, but is estimated to exceed  
13 \$1,000,000.00.

14           117. The wrongful acts of Mr. Wood were malicious and were done with the intent to  
15 injure Mr. Switzer's profession, business and emotional well-being and with a conscious disregard  
16 of Mr. Switzer's rights, therefore warranting the imposition of punitive damages against cross-  
17 defendants, and each of them, in an amount according to proof sufficient to punish this conduct and  
18 to deter the occurrence of similar conduct in the future.

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21                                   **FIFTEENTH CAUSE OF ACTION**

22           Interference with Prospective Economic Advantage – Direct claim by Mr. Switzer against  
23           Mr. Wood, Access and ROES 11-25 and 36-50

24           118. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
25 57, and 60 through 69 above as though fully set forth by this reference.

119. Mr. Switzer and Hollywood Presbyterian Hospital enjoyed a long-standing and mutually beneficial relationship as seller and buyer, respectively, of medical implants and associated hard goods, and until the acts of Mr. Wood as alleged herein the probability of continued economic benefit to Mr. Switzer as a result of this relationship was high.

120. Mr. Wood knew of the long-standing relationship between Mr. Switzer and Hollywood Presbyterian Hospital, and of the high probability of continued economic benefit to Mr. Switzer as a result of this relationship.

121. Mr. Wood, intentionally and without justification or privilege, and for his own individual benefit and to promote his own individual personal interests acted to disrupt the relationship between Mr. Switzer and Hollywood Presbyterian Hospital by his wrongful acts as alleged herein.

122. The wrongful acts of Mr. Wood did in fact result in a disruption of the relationship between Mr. Switzer and Hollywood Presbyterian Hospital in that Hollywood Presbyterian Hospital ceased using Mr. Switzer or the business entities associated with him as vendors of medical implants and associated hard goods but, instead, used Mr. Wood and business entities associated with Mr. Wood for that purpose and has purported to interrupt or end its long-standing and mutually beneficial relationship with Mr. Switzer.

123. The wrongful acts of Mr. Wood has resulted in injury to the personal and business reputation of Mr. Switzer and the financial condition of Mr. Switzer through the sudden and unreasonable loss of Mr. Switzer's long-standing business relationship with Hollywood Presbyterian Hospital and the income that Mr. Switzer would likely have derived from the continuation of that relationship. The exact amount of economic harm caused to Mr. Switzer by the

1 wrongful acts of Mr. Wood is unknown to Mr. Switzer at this time and is subject to proof at trial,  
2 but is estimated to exceed \$3,000,000.00.

3 124. The wrongful acts of Mr. Wood were malicious and were done with the intent to  
4 injure Mr. Switzer's profession, business and emotional well-being and with a conscious disregard  
5 of Mr. Switzer's rights, therefore warranting the imposition of punitive damages against cross-  
6 defendants, and each of them, in an amount according to proof sufficient to punish this conduct and  
7 to deter the occurrence of similar conduct in the future.

8  
9 **SIXTEENTH CAUSE OF ACTION**

10 **Interference with Prospective Economic Advantage – Derivative claim by Flournoy against**  
11 **Mr. Wood, Access and ROES 11-25 and 36-50**

12 125. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through  
13 57, and 60 through 69 above as though fully set forth by this reference.

14 126. One of the express purposes for the formation of Flournoy was to conduct medical  
15 implant sales in Augusta, Georgia; furthermore, Epsilon and Cottage Hospital enjoyed a long-  
16 standing and mutually beneficial relationship as seller and buyer, respectively, of medical  
17 implants and associated hard goods, and until the acts of Mr. Wood as alleged herein the  
18 probability of continued economic benefit to Flournoy, as Epsilon's sole member, as a result of  
19 this relationship was high.

20 127. Mr. Wood knew of Flournoy's purpose to conduct business in Augusta, Georgia  
21 and of the long-standing relationship between Epsilon and Cottage Hospital, and of the high  
22 probability of continued economic benefit to Flournoy as a result of this relationship.

23 128. Mr. Wood, intentionally and without justification or privilege, and for his own  
24 individual benefit and to promote his own individual personal interests acted to disrupt  
25

1 Flournoy's business in Augusta, Georgia and the relationship between Epsilon and Cottage  
2 Hospital by his wrongful acts as alleged herein.

3 129. The wrongful acts of Mr. Wood did in fact result in the complete loss of Flournoy's  
4 business in Augusta, Georgia in that Mr. Wood put Access in Flournoy's place, and caused a  
5 disruption of the relationship between Epsilon and Cottage Hospital in that Cottage Hospital ceased  
6 using Epsilon as a vendor of medical implants and associated hard goods but, instead, used Access  
7 for that purpose and has purported to interrupt or end its long-standing and mutually beneficial  
8 relationship with Epsilon.  
9

10 130. The wrongful acts of Mr. Wood has resulted in injury to the personal and business  
11 reputation and financial condition of Flournoy through the loss of all Augusta, Georgia business  
12 and the income Flournoy would have likely derived from that business, and through the sudden and  
13 unreasonable loss of Epsilon's long-standing business relationship with Cottage Hospital and the  
14 income that Flournoy would likely have derived from the continuation of that relationship. The  
15 exact amount of economic harm caused to Flournoy by the wrongful acts of Mr. Wood is unknown  
16 to Mr. Switzer at this time and is subject to proof at trial, but estimated to exceed \$9,000,000.00.  
17

18 131. The wrongful acts of Mr. Wood were malicious and were done with the intent to  
19 injure Flournoy's professional and business well-being and with a conscious disregard of Flournoy's  
20 rights, therefore warranting the imposition of punitive damages against cross-defendants, and each  
21 of them, in an amount according to proof sufficient to punish this conduct and to deter the  
22 occurrence of similar conduct in the future.  
23

24 ///

SEVENTEENTH CAUSE OF ACTION

Breach of Manager's Duty -- Derivative claim on behalf of Flournoy against Mr. Wood and ROES 11-25 and 36-50

132. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 47 through 53, and 125 through 131 above as though fully set forth by this reference.

133. As Flournoy's sole managing member from and after May 2011, Mr. Wood owed a duty of good faith to Flournoy.

134. Mr. Wood breached his duty to Flournoy by, among other things: Mr. Wood did not keep full or accurate books and records concerning Flournoy's business activities; Mr. Wood did not file tax returns on behalf of Flournoy; Mr. Wood usurped the business opportunities of Flournoy in Augusta, Georgia; Mr. Wood usurped the business relationships and opportunities of Flournoy, through Epsilon, at Cottage Hospital; Mr. Wood took in income of at least \$606,000.00 or otherwise according to proof that should have been delivered to Flournoy, but deposited less than \$200,000.00 or otherwise according to proof of that money into Flournoy's bank account; Mr. Wood deposited into Flournoy's bank account over \$402,000.00 or otherwise according to proof of income provided by Epsilon and business entities associated with Mr. Switzer, but distributed less than \$85,000.00 from Flournoy's bank account to Epsilon, Mr. Switzer or business entities associated with Mr. Switzer, while at the same time paying \$485,000.00 or otherwise according to proof to Mr. Wood's business, Access, from Flournoy's bank account despite the fact that Epsilon and Mr. Switzer, through business entities associated with him, had paid expenses properly reimbursable by Flournoy of at least \$293,000.00 or otherwise according to proof and despite the fact that, exclusive of the \$485,000 payment from Flournoy, Access received and deposited into its bank account income of \$1,417,235.76, or

1 otherwise according to proof, during the period from May 1, 2011 through August 31, 2011; Mr.  
2 Wood received income that should have been delivered to Flournoy of over \$545,000.00 or  
3 otherwise according to proof in the form of hospitals' payments of invoices, but deposited none  
4 of that money into Flournoy's bank account; Mr. Wood received income that should have been  
5 delivered to Flournoy of at least \$216,000.00 or otherwise according to proof in the form of  
6 checks from Epsilon and business entities associated with Mr. Switzer, but deposited none of that  
7 money into Flournoy's bank account; Mr. Wood caused Flournoy to fail to make any required  
8 distributions to its members of profits from Flournoy's own sales, which profits and sales were  
9 unrelated to the Partnership Agreement; Mr. Wood caused Flournoy to refuse, without legitimate  
10 reason or justification, to allow Mr. Switzer access to Flournoy's records for inspection and  
11 copying in response to Mr. Switzer's written request under the California Corporations Code;  
12 Mr. Wood caused Flournoy to respond to Mr. Switzer's civil action to obtain access to  
13 Flournoy's records for inspection and copying with legally insufficient, frivolous, malicious, self-  
14 serving and conflict ridden answers, unauthorized cross-complaints, motions, discovery and  
15 discovery responses.

16  
17  
18 135. The multiple breaches by Mr. Wood of his duty to Flournoy has resulted in actual  
19 damage to Flournoy in an amount according to proof, but estimated to be in excess of  
20 \$10,000,000.00 and includes, but is not limited to, the past and future income lost to Flournoy,  
21 the inability to reimburse Epsilon, Mr. Switzer, and entities associated with him, for expenses  
22 that should have been reimbursed by Flournoy under the Partnership Agreement, the inability to  
23 make appropriate and required distributions to Mr. Switzer of profits from sales both subject to  
24 and not subject to the Partnership Agreement, as well as any attorney's fees, costs and litigation  
25

1 expenses that Flournoy is required to pay to Mr. Switzer in Mr. Switzer's action and to Mr.  
2 Switzer, Dixie Switzer, Jean Holmes, or any of the other cross-defendants in Flournoy's  
3 unauthorized cross-action, as well as any attorney's fees, costs and other litigation expenses that  
4 Flournoy incurs in defending against Mr. Switzer's action and in prosecuting its cross-action.

#### 5 EIGHTEENTH CAUSE OF ACTION

6 Accounting – Derivative claim on behalf of Flournoy against Mr. Wood, Access and ROES  
7 11-25 and 36-50

8 136. Mr. Switzer incorporates the allegations of paragraphs 1 through 15 and 132  
9 through 135 above as though fully set forth by this reference.

10 137. As the sole managing member of Flournoy from and after May 1, 2011, Mr.  
11 Wood had a duty to exercise good faith toward Flournoy and is obligated to account to Flournoy  
12 for all income received, expenditures made, and any secret profits, gifts, and other benefits  
13 received in his management and operation of Flournoy and in any undertaking that conflicted  
14 with or constituted a breach of his duty to Flournoy.

15 138. There is presently due a balance from Mr. Wood to Flournoy that can only be  
16 ascertained by an accounting which determines, lists and values the assets, liabilities, income,  
17 expenditures and the secret profits, gifts and other benefits wrongfully obtained by Mr. Wood.

#### 19 NINETEENTH CAUSE OF ACTION

20 Unjust Enrichment – Derivative claim on behalf of Flournoy against Mr. Wood, Access and  
21 ROES 11-25 and 36-50

22 139. Mr. Switzer incorporates the allegations of paragraphs 1 through 15 and 132  
23 through 135 above as though fully set forth by this reference.

1 140. Mr. Wood received benefits from or belonging to Flournoy having an aggregate  
2 value in excess of \$10,000,000.00, or otherwise according to proof, and has unjustly retained  
3 those benefits at the expense of Flournoy.

4 TWENTIETH CAUSE OF ACTION

5 Fraud – Derivative claim on behalf of Flournoy against Mr. Wood, Access and ROES 11-25  
and 36-50

6 141. Mr. Switzer incorporates the allegations of paragraphs 1 through 15 and 132  
7 through 135 above as though fully set forth by this reference.

8 142. As the sole managing member of Flournoy from and after May 2011, Mr. Wood  
9 was obligated to disclose to Flournoy by, among other means, disclosure to Flournoy's only other  
10 member, Mr. Switzer, the fact that Mr. Wood had been, and continues to be, committing acts of  
11 defalcation and self-dealing as alleged herein.

12 143. Mr. Wood did not disclose these facts to Flournoy, thus representing that the  
13 perfidious acts and omissions had not occurred and that Mr. Wood was faithfully and fully  
14 performing his duties as the sole manager of Flournoy and was not engaging in acts of  
15 defalcation and self-dealing to the prejudice, detriment and damage of Flournoy.

16 144. The multiple acts of defalcation and self-dealing by Mr. Wood have resulted in  
17 actual damage to Flournoy in an amount according to proof, but estimated to be in excess of  
18 \$10,000,000.00 and includes, but is not limited to, the past and future income lost to Flournoy,  
19 the inability to reimburse Epsilon, Mr. Switzer, and entities associated with him, for expenses  
20 that should have been reimbursed by Flournoy, the inability to make appropriate and required  
21 distributions to Mr. Switzer, as well as any attorney's fees, costs and litigation expenses that  
22 Flournoy is required to pay to Mr. Switzer in Mr. Switzer's action and to Mr. Switzer, Dixie  
23  
24  
25



1 Switzer, Jean Holmes, or any of the other cross-defendants in Flournoy's unauthorized cross-  
2 action, as well as any attorney's fees, costs and other litigation expenses that Flournoy incurs in  
3 defending against Mr. Switzer's action and in prosecuting its cross-action.

4 145. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
5 was undertaken and accomplished with a conscious and intentional disregard for the rights of  
6 Flournoy, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk  
7 of serious and irreparable damage to Flournoy, thus authorizing the imposition of punitive  
8 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
9 and discouraging him and others facing similar circumstances from engaging in similar conduct  
10 in the future.

12 **TWENTY-FIRST CAUSE OF ACTION**

13 **Negligence – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and**  
14 **36-50**

15 146. Mr. Switzer incorporates the allegations of all of paragraphs 1 through 15 and 47  
16 through 53 above as though fully set forth by this reference.

17 147. In or about November 2010, Mr. Wood and Mr. Switzer discussed forming a  
18 business to market and sell medical implants and associated hard goods in markets apart from  
19 Mr. Wood's market in Nevada and Mr. Switzer's markets in California and Oregon.

20 148. As a result of this discussion, Flournoy was formed in December 2010, and Mr.  
21 Switzer contributed his time, efforts and his own existing inventory to enable Flournoy to begin  
22 conducting business in Chattanooga, Tennessee and Augusta, Georgia with additional marketing  
23 efforts in those markets being undertaken by Mr. Wood's brother, Zach Wood, for a monthly fee.  
24  
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26

1 149. In or about May 2011, Mr. Wood and Mr. Switzer orally agreed to form a  
2 partnership for the purpose of selling medical implants and associated hard goods (referred to  
3 herein as the "Partnership Agreement") in the markets previously reserved to Mr. Wood and Mr.  
4 Switzer, and not serviced by Flournoy.

5 150. The essential terms of the Partnership Agreement are set out in Paragraph 41,  
6 above, and incorporated herein by this reference.  
7

8 151. Mr. Switzer contributed in excess of \$1 million to the operation of the partnership  
9 in the form of his money, time, industry, talents, and inventory previously purchased by him for  
10 use by the business entities associated with him.

11 152. Mr. Wood owed Mr. Switzer a duty to not unreasonably interfere with Mr.  
12 Switzer's existing business relationships, his property rights, his partnership interest, his interests  
13 in Flournoy and his ability to conduct medical implant business in the future.  
14

15 153. Mr. Wood negligently caused damage to Mr. Switzer by, among other things: Mr.  
16 Wood took in income of at least \$606,000.00 or otherwise according to proof that should have  
17 been delivered to Flournoy, but deposited less than \$200,000.00 or otherwise according to proof  
18 of that money into Flournoy's bank account; Mr. Wood deposited into Flournoy's bank account  
19 over \$402,000.00 or otherwise according to proof of income provided by business entities  
20 associated with Mr. Switzer, but distributed less than \$85,000.00 from Flournoy's bank account  
21 to Mr. Switzer or business entities associated with Mr. Switzer, while at the same time paying  
22 \$485,000.00 or otherwise according to proof to Mr. Wood's business, Access, from Flournoy's  
23 bank account despite the fact that Mr. Switzer, through business entities associated with him, had  
24 paid expenses properly reimbursable by Flournoy of at least \$293,000.00 or otherwise according  
25

1 to proof and despite the fact that, exclusive of the \$485,000 payment from Flournoy, Access  
2 received and deposited into its bank account income of \$1,417,235.76, or otherwise according to  
3 proof, during the period from May 1, 2011 through August 31, 2011; Mr. Wood received income  
4 that should have been delivered to Flournoy of over \$545,000.00 or otherwise according to proof  
5 in the form of hospitals' payments of invoices, but deposited none of that money into Flournoy's  
6 bank account; Mr. Wood received income that should have been delivered to Flournoy of at least  
7 \$216,000.00 or otherwise according to proof in the form of checks from business entities  
8 associated with Mr. Switzer, but deposited none of that money into Flournoy's bank account; Mr.  
9 Wood took away from Mr. Switzer and kept for himself the lucrative business relationships and  
10 income Mr. Switzer had developed and enjoyed with hospitals previously serviced by the  
11 business entities associated with Mr. Switzer, which hospitals include, but are not limited to Alta  
12 Bates in Oakland, California, Alameda in Oakland, California, Hollywood Presbyterian in Los  
13 Angeles, California, and Cottage Hospital in Santa Barbara, California; Mr. Wood caused  
14 Flournoy to refuse, without legitimate reason or justification, to allow Mr. Switzer access to  
15 Flournoy's records for inspection and copying in response to Mr. Switzer's written request under  
16 the California Corporations Code; Mr. Wood caused Flournoy to not make required distributions  
17 to Mr. Switzer and caused Flournoy to respond to Mr. Switzer's civil action to obtain access to  
18 Flournoy's records for inspection and copying with legally insufficient, frivolous and malicious  
19 answers, unauthorized cross-complaints, motions, discovery and discovery responses.  
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22 154. Mr. Wood's negligence has caused Mr. Switzer to suffer damages in an amount  
23 according to proof, but estimated to be in excess of \$10,000,000.00, for, among other things, the  
24 amounts due to Mr. Switzer as distributions from Flournoy's profits, for reimbursement and  
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1 compensation under the Partnership Agreement, for the loss of his inventory, business relationships  
2 and the income reasonably anticipated to be derived therefrom in the future, for the damage to his  
3 ability to do business and derive income from the business entities associated with him, for the  
4 expense of defending himself and others from frivolous and malicious claims and litigation tactics,  
5 and for the embarrassment, annoyance and worry caused to him by Mr. Wood's negligent acts.

6  
7 155. In addition to compensation for the actual damage caused to Mr. Switzer by the  
8 multiple negligent acts of Mr. Wood, Mr. Switzer is also entitled to obtain from Mr. Wood all  
9 attorney's fees, costs and other litigation expenses incurred by Mr. Switzer for having to  
10 commence a civil action against Flournoy to obtain access to Flournoy's records for inspection  
11 and copying and for having to defend himself and others against the retaliatory and malicious and  
12 unauthorized cross-action Mr. Wood caused Flournoy to institute and prosecute.

13  
14 156. Mr. Wood's acts constitute a conscious disregard for the rights of Mr. Switzer,  
15 thus authorizing the imposition of punitive damages against Mr. Wood in an amount according to  
16 proof for the purpose of punishing him and discouraging him and others facing similar  
17 circumstances from engaging in similar conduct in the future.

18 **TWENTY-SECOND CAUSE OF ACTION**  
19 **Negligence -- Derivative claim on behalf of Flournoy against Mr. Wood, Access and ROES**  
20 **11-25 and 36-50**

21 157. Mr. Switzer incorporates the allegations of all of paragraphs 1 through 15 and 47  
22 through 53 above as though fully set forth by this reference.

23 158. As Flournoy's sole manager from and after May 2011, Mr. Wood owed Flournoy a  
24 duty to act reasonably in the operation and management of Flournoy's business activities.

159. Mr. Wood negligently caused damage to Flournoy by, among other things, the acts and omissions set out in Paragraph 134, above, which are incorporated herein by this reference.

160. The multiple negligent acts of Mr. Wood have resulted in actual damage to Flournoy in an amount according to proof, but estimated to be in excess of \$10,000,000.00 and includes, but is not limited to, the past and future income lost to Flournoy, the inability to reimburse Epsilon, Mr. Switzer and entities associated with him for expenses that should have been reimbursed by Flournoy, the inability to make required distributions to Mr. Switzer, as well as any attorney's fees, costs and other litigation expenses that Flournoy is required to pay to Mr. Switzer in Mr. Switzer's action and to Mr. Switzer, Dixie Switzer, Jean Holmes, or any of the other cross-defendants in Flournoy's cross-action, as well as any attorney's fees, costs and other litigation expenses that Flournoy incurs in defending against Mr. Switzer's action and in prosecuting its unauthorized cross-action.

161. Mr. Wood's acts constitute a conscious disregard for the rights of Flournoy, thus authorizing the imposition of punitive damages against Mr. Wood in an amount according to proof for the purpose of punishing him and discouraging him and others facing similar circumstances from engaging in similar conduct in the future.

**TWENTY-THIRD CAUSE OF ACTION**  
**Dissolution of Flournoy – Direct claim by Mr. Switzer against Mr. Wood**

162. Mr. Switzer incorporates the allegations of all of paragraphs 1 through 161 above as though fully set forth by this reference.

163. It is not reasonably practicable to carry on the business of Flournoy in conformity with the operating agreement of Flournoy.

164. Dissolution is reasonably necessary for the protection of Mr. Switzer.

1 165. The acts of Mr. Wood have resulted in the abandonment of the business of  
2 Flourmoy.

3 166. The management of Flourmoy is deadlocked and subject to internal dissention.

4 167. The person in control of Flourmoy, Mr. Wood, has been guilty of, or has knowingly  
5 countenanced persistent and pervasive fraud, mismanagement, and abuse of authority.

6 168. Flourmoy should be dissolved, its business and affairs wound up by Mr. Switzer, and  
7 its remaining assets distributed to its members.

8  
9 **TWENTY-FOURTH CAUSE OF ACTION**  
10 **Unfair Competition (Business & Professions Code §17200) – Direct claim by Mr. Switzer**  
11 **against Mr. Wood, Access and ROES 11-25 and 36-50**

12 169. Mr. Switzer incorporates the allegations of all of paragraphs 1 through 161 above  
13 as though fully set forth by this reference.

14 170. The business acts and practices of Mr. Wood as alleged herein were and are  
15 unlawful and unfair and thus constitute unfair competition in violation of Business & Professions  
16 Code §17200.

17 171. Mr. Switzer has suffered injury in fact and has lost money and property as a result of  
18 Mr. Wood's unfair competition.

19 172. Mr. Wood's unfair competition should be enjoined, a receiver should be appointed  
20 at Mr. Wood's expense to oversee Mr. Wood's business activities in California to ensure that Mr.  
21 Wood ceases and engages in no further unfair competition in this State, and Mr. Wood should be  
22 ordered to disgorge to Mr. Switzer all of the money and property that Mr. Wood obtained by means  
23 of unfair competition.  
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TWENTY-FIFTH CAUSE OF ACTION

Unfair Competition (Business & Professions Code §17200) – Derivative claim on behalf of Flournoy against Mr. Wood, Access and ROES 11-25 and 36-50

173. Mr. Switzer incorporates the allegations of all of paragraphs 1 through 161 above as though fully set forth by this reference.

174. The business acts and practices of Mr. Wood as alleged herein were and are unlawful and unfair and thus constitute unfair competition in violation of Business & Professions Code §17200.

175. Flournoy has suffered injury in fact and has lost money and property as a result of Mr. Wood's unfair competition.

176. Mr. Wood's unfair competition should be enjoined, a receiver should be appointed at Mr. Wood's expense to oversee Mr. Wood's business activities in California to ensure that Mr. Wood ceases and engages in no further unfair competition in this State, and Mr. Wood should be ordered to disgorge to Flournoy all of the money and property that Mr. Wood obtained by means of unfair competition.

TWENTY-SIXTH CAUSE OF ACTION

Unfair Competition (Business & Professions Code §17200) – Derivative claim on behalf of Flournoy against McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald, Mr. Schnitzer and ROES 1-10 and 26-35

177. Mr. Switzer incorporates the allegations of all of paragraphs 1 through 161 above as though fully set forth by this reference.

178. The business acts and practices of cross-defendants, and each of them, as alleged herein were and are unlawful and unfair and thus constitute unfair competition in violation of Business & Professions Code §17200.

1 179. Flournoy has suffered injury in fact and has lost money and property as a result of  
2 the cross-defendants' unfair competition.

3 180. The cross-defendants' unfair competition should be enjoined, a receiver should be  
4 appointed at cross-defendants' expense to oversee cross-defendants' business activities in  
5 California to ensure that cross-defendants cease and engage in no further unfair competition in this  
6 State, and cross-defendants should be ordered to disgorge to Flournoy all of the money and property  
7 that cross-defendants obtained by means of unfair competition.  
8

9 **TWENTY-SEVENTH CAUSE OF ACTION**  
10 **Conversion -- Derivative claim on behalf of Flournoy against Mr. Wood, Access and ROES**  
11 **11-25 and 36-50**

12 181. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 40 and 41  
13 above as though fully set forth by this reference.

14 182. At all times mentioned herein, Flournoy was entitled to the possession and use of  
15 the sum of \$27,721.88, which sum represented payment by University Healthcare (Augusta,  
16 Georgia) for Access invoice numbers 1123, 1125, 1126 and 1128.

17 183. On or about July 21, 2011, University Healthcare sent Mr. Wood and Access its  
18 check number 1167732 in the amount of \$27,721.88 made payable to Access as payment for said  
19 invoices.

20 184. Mr. Wood thereafter deposited said check into the checking account of Access  
21 and wrongfully exercised dominion and control over the \$27,721.88 by refusing, and continuing  
22 to refuse, to deliver the \$27,721.88, or any part of it, to Flournoy and, in fact, has denied receipt  
23 of any payment for said invoices.  
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1           185. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
2 was undertaken and accomplished with a conscious and intentional disregard for the rights of  
3 Flournoy, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk  
4 of serious and irreparable damage to Flournoy, thus authorizing the imposition of punitive  
5 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
6 and discouraging him and others facing similar circumstances from engaging in similar conduct  
7 in the future.

9                           **TWENTY-EIGHTH CAUSE OF ACTION**

10           **Conversion – Derivative claim on behalf of Flournoy against Mr. Wood, Access and ROES**  
  **11-25 and 36-50**

11           186. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 40 and 41  
12 above as though fully set forth by this reference.

13           187. At all times mentioned herein, Flournoy was entitled to the possession and use of  
14 the sum of \$733,551.10, which sum represented payments by University Healthcare (Augusta,  
15 Georgia), University Medical Center Southern Nevada, Spring Valley Hospital, Southern Hills  
16 Hospital, Centennial Hills Hospitals and other hospitals for Access invoices generated and paid  
17 during the term of, and pursuant to, the Partnership Agreement.

18           188. Mr. Wood received full payment for said for said invoices from the hospitals and  
19 deposited those payments into the checking account of Access.

20           189. Mr. Wood thereafter wrote two checks totaling \$349,752.70 on the checking  
21 account of Access, made payable to Flournoy, and deposited said checks into Flournoy's  
22 checking account on or about August 11, 2011 and September 8, 2011, and has thereafter  
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1 wrongfully exercised dominion and control over the remaining \$383,798.40 by refusing, and  
 2 continuing to refuse, to deliver the remaining \$383,798.40, or any part of it, to Flourmoy.

3 190. The conduct of Mr. Wood was fraudulent, malicious, oppressive, despicable and  
 4 was undertaken and accomplished with a conscious and intentional disregard for the rights of  
 5 Flourmoy, and for the purpose of maximizing Mr. Wood's financial gain despite the known risk  
 6 of serious and irreparable damage to Flourmoy, thus authorizing the imposition of punitive  
 7 damages against Mr. Wood in an amount according to proof for the purpose of punishing him  
 8 and discouraging him and others facing similar circumstances from engaging in similar conduct  
 9 in the future.

#### 11 TWENTY-NINTH CAUSE OF ACTION

12 Treble Damages and Attorney's Fees (Penal Code §496) – Derivative claim on behalf of  
 13 Flourmoy against Mr. Wood, Access and ROES 11-25 and 36-50

14 191. Mr. Switzer incorporates the allegations of paragraphs 1 through 15, 132 through  
 15 135, 139 through 145 and 181 through 190 above as though fully set forth by this reference.

16 192. The acts of Mr. Wood constitute a violation of Penal Code §496(a), thus entitling  
 17 Flourmoy to recover from Mr. Wood treble the amount of actual damages sustained by Flourmoy,  
 18 along with Flourmoy's costs of suit and reasonable attorney's fees pursuant to Penal Code  
 19 §496(c).

#### 20 THIRTIETH CAUSE OF ACTION

21 Treble Damages and Attorney's Fees (Penal Code §496) – Derivative claim on behalf of  
 22 Flourmoy against McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald, Mr.  
 Schnitzer and ROES 1-10 and 26-35

23 193. Mr. Switzer incorporates the allegations of paragraphs 1 through 38, 132 through  
 24 135, 139 through 145 and 181 through 190 above as though fully set forth by this reference.

194. The breach of fiduciary duty by McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer aided Mr. Wood in concealing and withholding the property stolen by Mr. Wood from Flournoy, and thus constitutes a violation of Penal Code §496(a) entitling Flournoy to recover from McCormick, Kravitz, Mr. Park, Ms. Denno, Ms. Fitzgerald and Mr. Schnitzer treble the amount of actual damages sustained by Flournoy, along with Flournoy's costs of suit and reasonable attorney's fees pursuant to Penal Code §496(c).

#### THIRTY-FIRST CAUSE OF ACTION

Treble Damages and Attorney's Fees (Penal Code §496) – Direct claim by Mr. Switzer against Mr. Wood, Access and ROES 11-25 and 36-50

195. Mr. Switzer incorporates the allegations of paragraphs 1 through 15 and 46 through 97 above as though fully set forth by this reference.

196. The acts of Mr. Wood constitute a violation of Penal Code §496(a), thus entitling Mr. Switzer to recover from Mr. Wood treble the amount of actual damages sustained by Mr. Switzer, along with Mr. Switzer's costs of suit and reasonable attorney's fees pursuant to Penal Code §496(c).

#### PRAYER

Wherefore, Mr. Switzer prays judgment against cross-defendants, and each of them, and:

1) For an order commanding a full and complete accounting by defendants, and each of them, for the period from December 1, 2010 through and including the date of entry of judgment in this action, which determines, lists and values the assets and liabilities of Flournoy, the income received and expenditures made by cross-defendants, and the secret profits, gifts and other benefits wrongfully obtained by cross-defendants;

2) For a decree that Flournoy is dissolved, and ordering the winding up of Flournoy's business and affairs by Mr. Switzer and the payment to Mr. Switzer of reasonable compensation for his efforts in winding up the business and affairs of Flournoy, and ordering the distribution of Flournoy's remaining assets to Flournoy's members in accordance with law and equity;

3) For a decree enjoining cross-defendants' unfair competition, appointing a receiver at cross-defendants' expense to oversee cross-defendants' business activities in California to ensure that cross-defendants cease and engage in no further unfair competition in this State, and ordering cross-defendants to disgorge to Flournoy and Mr. Switzer all of the money and property that cross-defendants obtained by means of unfair competition;

4) For compensatory damages and disgorgement in an amount according to proof, but believed to be in excess of \$14,000,000.00;

5) For treble the amount of actual damages found and for reasonable attorney's fees;

6) For prejudgment interest at the legal rate on the compensatory damages;

7) For punitive or exemplary damages in an amount sufficient to punish the cross-defendants, and each of them, for their fraudulent, faithless and despicable conduct and to deter the occurrence of similar conduct by them and others similarly situated in the future;

8) For reimbursement of the reasonable expenses incurred by Mr. Switzer in connection with this action, including attorneys' fees, in an amount according to proof;

9) For costs of suit herein incurred; and,

10) For such other and further relief as the Court may deem just and proper.

Dated: June 3, 2013

GREGORY L. ALFOUNIAN  
Attorney for Plaintiff, Cross-defendant,  
and Cross-complainant, Ted Switzer

58

*Switzer v. Flournoy Management, LLC*  
Case No. 11 CE CO 04395 JH  
Cross-Complaint of Ted Switzer

PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am a resident of/employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 295 West Cromwell Avenue, Suite 104, Fresno, California 93711. On June 3, 2013, I served:

CROSS-COMPLAINT OF TED SWITZER FOR LEGAL AND EQUITABLE RELIEF ON INDIVIDUAL CLAIMS ON HIS BEHALF AND DERIVATIVE CLAIMS ON BEHALF OF NOMINAL DEFENDANT FLOURNOY MANAGEMENT, LLC

on the parties listed below in this action by placing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid, in the United States mail at Fresno, California, addressed as follows:

Gordon M. Park, Esq.  
McCormick, Barstow  
5 River Park Place East  
Fresno, CA 93720

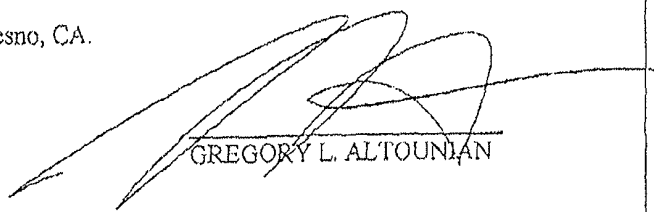
Counsel for: Flournoy Management, LLC and  
Robert "Sonny" Wood

Jordan P. Schnitzer, Esq.  
Kravitz, Schnitzer  
8985 S. Eastern Avenue, Suite 200  
Las Vegas, NV 89123

Counsel for: Flournoy Management, LLC and  
Robert "Sonny" Wood

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Fresno, CA.

Dated: June 3, 2013

  
GREGORY L. ALTOUNIAN

## **EXHIBIT 2**



## NAUTILUS INSURANCE COMPANY

A Stock Company

### COMMERCIAL LINES POLICY

THIS POLICY IS NOT OBTAINED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

THIS POLICY CONSISTS OF:

- Declarations;
- Common Policy Conditions; and
- One or more Coverage Parts. A Coverage Part consists of:
  - One or more Coverage Forms; and
  - Applicable Forms and Endorsements.

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Secretary

President and CEO

Administrative Office

7233 East Butherus Drive Scottsdale, Arizona 85260 Telephone (480) 951-0905 Facsimile (480) 951-9730



A BERKLEY COMPANY

ED01J (1/06)

(Page 1 of 1)

COMMERCIAL LINES POLICY - COMMON POLICY DECLARATIONS  
**NAUTILUS INSURANCE COMPANY**

Scottsdale, Arizona

Transaction Type: Renewal

Policy No. BN952426

Renewal of Policy # BN949078

Inspection Ordered:

Rewrite of Policy # \_\_\_\_\_

☒ Yes ☐ No

Cross Ref. Policy # \_\_\_\_\_

NIC Quote # \_\_\_\_\_

**Named Insured and Mailing Address**

(No., Street, Town or City, County, State, Zip Code)

Access Medical

8550 W Charleston Blvd Ste 102-355  
Las Vegas NV 89117-

**Agent and Mailing Address**

Agency No. 00461 - 01

(No., Street, Town or City, County, State, Zip Code)

Neil Clem Wholesale Insurance  
Brokerage, Inc.  
7440 North Figueroa Street  
Los Angeles, CA 90041

**Policy**

**Period:** From 01/15/2011 to 01/15/2012 at 12:01 A.M. Standard Time at your mailing address shown above.

**Business Description:** Wholesaler of spine and joint implants

**Tax State** NV

**Form of Business:** ☐ Individual ☐ Partnership ☐ Joint Venture ☐ Trust ☐ Limited Liability Company (LLC)

☒ Organization, including a Corporation (but not including a Partnership, Joint Venture or LLC)

Countersigned: Los Angeles, CA  
02/16/11 JC

By \_\_\_\_\_

Countersignature or Authorized Representative, whichever is applicable

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

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E001 (04/09)

HOME OFFICE



(Page 1 of 2)

POLICY NUMBER: BN952426

Named Insured: Access Medical

**SCHEDULE OF FORMS AND ENDORSEMENTS**

CG0001	(11/98)	Common Policy Conditions
CG0010	(11/06)	Nautilus Policy Jacket
CG013	(07/09)	Minimum Earned Premium Endt
CG150	(07/09)	CGI Coverage Part Declarations
CG0001	(12/04)	Comm: General Liability Cvg Form
CG0067	(03/05)	Excl - Violation of Statutes
CG2136	(03/05)	Exclusion - New Entities
CG2147	(07/98)	Excl-Employmt-Related Practices
CG2173	(01/08)	Excl of Certified Acts of Terror
CG2196	(03/05)	Silica/Silica-Related Dust Excl
IL0021	(07/02)	Nuclear Energy Liab Exclusion
L216	(07/09)	Amend of Defins-Insd Contract
L217	(06/07)	Excl-Punitive Exemplary Dmgs
L223	(06/07)	Exclusion - Total Pollution
L226	(06/06)	Excl-Contag Infect Trans Disease
L228	(06/06)	Excl - Communicable Disease
L236	(06/07)	Excl-Subsdnce/Mvmt of Land/Earth
L238	(06/07)	Exclusion - Toxic Metals
L240	(06/07)	Limit Cvg to Designated Ops
L241	(07/09)	Excl-Micro/Bio Organisms/Contam
L601	(12/09)	Amend of Conditions - Prem Audit
L650	(05/09)	Deductible Liab Insurance
S038	(07/09)	Amendment of Liquor Liab Excl
S074	(04/97)	Excl-Prod/Co Ops Hrd - Designtd
S222	(07/09)	Excl - Intellectual Prop Rights
S261	(07/09)	Exclusion - Asbestos
IL0115	(01/10)	NV Changes - Domestic Partner

The forms and endorsements shown on this Schedule constitute the entire policy at the time of issuance.

S902 (07/09)

Page 1 of 2

(Page 2 of 2)

SCHEDULE OF FORMS AND ENDORSEMENTS {Continued}

ADDITIONAL FORMS APPLICABLE:

The forms and endorsements shown on this Schedule constitute the entire policy at the time of issuance.  
S902 (07/09)

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IL 00 17 11 98

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions

- a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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POLICY NUMBER: BN052426

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**MINIMUM EARNED PREMIUM ENDORSEMENT**

If this policy is cancelled at your request, there will be a minimum earned premium retained by us of  
\$ \_\_\_\_\_ or 25 % of the premium for this insurance, whichever is greater.

Non-payment of premium is considered a request by the first Named Insured for cancellation of this policy.

If a policy fee, inspection fee or expense constant is applicable to this policy, they will be fully earned and no refund will be made.

All other terms and conditions of this policy remain unchanged.

SD13(E7109)

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(Page 1 of 1)

**COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS**POLICY NUMBER: **BN952426**☐ Extension of Declarations is attached.Effective Date: **01/15/2011 12:01 A.M. Standard Time**

<b>LIMITS OF INSURANCE</b>		<input type="checkbox"/> If box is checked, refer to form S132 Amendment of Limits of Insurance.
General Aggregate Limit (Other Than Products/Completed Operations)	\$ <u>1,000,000</u>	
Products/Completed Operations Aggregate Limit	\$ <u>1,000,000</u>	
Personal and Advertising Injury Limit	\$ <u>1,000,000</u>	Any One Person Or Organization
Each Occurrence Limit	\$ <u>1,000,000</u>	
Damage To Premises Rented To You Limit	\$ <u>100,000</u>	Any One Premises
Medical Expense Limit	\$ <u>5,000</u>	Any One Person
<b>RETROACTIVE DATE (CG 00 02 ONLY)</b>		
This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" which occurs before the Retroactive Date, if any, shown here: <u>NONE</u> (Enter Date or "NONE" if no Retroactive Date applies)		
<b>BUSINESS DESCRIPTION AND LOCATION OF PREMISES</b>		
BUSINESS DESCRIPTION: wholesaler of spine and joint implants		
LOCATION OF ALL PREMISES YOU OWN, RENT, OR OCCUPY: <input checked="" type="checkbox"/> Location address is same as mailing address.		
1. 8550 W Charleston Blvd Ste 102-355		
Las Vegas NV 89117		
2.		
Additional locations (if any) will be shown on form S170, Commercial General Liability Coverage Part Declarations Extension.		
LOCATION OF JOB SITE (If Designated Projects are to be Scheduled):		

**FORMS AND ENDORSEMENTS** (other than applicable Forms and Endorsements shown elsewhere in the policy)

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:

Refer to Schedule of Forms and Endorsements

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD

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S150 (07/09)

COMMERCIAL GENERAL LIABILITY  
CG 00 01 12 04

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period, and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
2. Exclusions
- This insurance does not apply to:
- a. **Expected Or Intended Injury**
- "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. **Contractual Liability**
- "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
- (1) That the insured would have in the absence of the contract or agreement; or
  - (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
    - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
    - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.
- c. **Liquor Liability**
- "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
- (1) Causing or contributing to the intoxication of any person;
  - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
  - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.
- This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.
- d. **Workers' Compensation And Similar Laws**
- Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- e. **Employer's Liability**
- "Bodily injury" to:
- (1) An "employee" of the insured arising out of and in the course of:
    - (a) Employment by the insured; or
    - (b) Performing duties related to the conduct of the insured's business; or
  - (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.
- This exclusion applies:
- (1) Whether the insured may be liable as an employer or in any other capacity; and
  - (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- This exclusion does not apply to liability assumed by the insured under an "insured contract".

## f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".



## (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

## (5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a side-track agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## 2. Exclusions

This insurance does not apply to:

### a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

### c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period

### d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

### e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

### h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

### i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

### j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

### k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

### l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**COVERAGE C MEDICAL PAYMENTS****1. Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations: provided that:
  - (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

- a. **Any Insured**  
To any insured, except "volunteer workers".
- b. **Hired Person**  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**  
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers Compensation And Similar Laws**  
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**  
To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.
- f. **Products-Completed Operations Hazard**  
Included within the "products-completed operations hazard".
- g. **Coverage A Exclusions**  
Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.
  - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  - e. All costs taxed against the insured in the "suit".
  - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- These payments will not reduce the limits of insurance.
- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
    - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
    - b. This insurance applies to such liability assumed by the insured;
    - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
    - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
    - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
    - f. The indemnitee:
      - (1) Agrees in writing to:
        - (a) Cooperate with us in the investigation, settlement or defense of the "suit";

- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
  - (c) Notify any other insurer whose coverage is available to the indemnitee; and
  - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and
    - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.



- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
      - (d) Arising out of his or her providing or failing to provide professional health care services.
    - (2) "Property damage" to property:
      - (a) Owned, occupied or used by:
        - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

##### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part.

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

##### a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

##### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

##### c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.



**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means
  - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in a. above;
  - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

- b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
- A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - A sidetrack agreement;
  - Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - An elevator maintenance agreement.
  - That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. does not include that part of any contract or agreement:
- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - While it is in or on an aircraft, watercraft or "auto"; or
  - While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - Vehicles maintained for use solely on or next to premises you own or rent;
  - Vehicles that travel on crawler treads;
  - Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

#### 16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

#### 17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

COMMERCIAL GENERAL LIABILITY  
CG 00 67 03 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – VIOLATION OF STATUTES THAT GOVERN  
E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF  
SENDING MATERIAL OR INFORMATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN  
VIOLATION OF STATUTES**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

- B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN  
VIOLATION OF STATUTES**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COMMERCIAL GENERAL LIABILITY  
CG 21 36 03 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION – NEW ENTITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph 3. of Section II – Who Is An Insured does  
not apply.

COMMERCIAL GENERAL LIABILITY  
CG 21 47 07 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2.,  
Exclusions of Section I – Coverage A – Bodily  
Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph 2.,  
Exclusions of Section I – Coverage B – Personal  
And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.



COMMERCIAL GENERAL LIABILITY  
CG 21 73 01 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

**TERRORISM**

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.



COMMERCIAL GENERAL LIABILITY  
CG 21 96 03 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## SILICA OR SILICA-RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

**Silica Or Silica-Related Dust**

- a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".
- b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

**Silica Or Silica-Related Dust**

- a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
  - b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.
- C. The following definitions are added to the Definitions Section
1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
  2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF DEFINITIONS - INSURED CONTRACT  
(Limited Form)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

Definition 9. "insured contract" of the Definitions section is **replaced** by the following:

9. "Insured contract" means any written:
- a. Contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" to premises while rented or loaned to you, or temporarily occupied by you with permission of the owner, is not an "insured contract";
  - b. Sidetrack agreement;
  - c. Easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. Obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. Elevator maintenance agreement; or
  - f. Part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- An "insured contract" does not include that part of any contract or agreement:
- a. That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
  - b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (1) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs, drawings, or specifications; or
    - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
  - c. Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in b.(1) or b.(2) above and supervisory, inspection, architectural or engineering activities; or
  - d. That indemnifies any person or organization for "bodily injury" or "property damage" arising from the ownership, maintenance, or use of any aircraft.

All other terms and conditions of this policy remain unchanged.

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COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following exclusion is added to 2. Exclusions of Section I:

This insurance does not apply to punitive or exemplary damages.

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - TOTAL POLLUTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Exclusion f, Pollution of 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:**

This insurance does not apply to:

**f. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "suit" by or on behalf of any authority, governmental or otherwise, for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants"; or
  - (c) Requirements by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any similar State or Federal environmental act(s).

**B. The definition of "Pollutants" in the Definitions section is replaced by the following:**

"Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - CONTAGIOUS, INFECTIOUS OR TRANSMISSIBLE DISEASE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability, and Coverage C - Medical Payments:

**Contagious, Infectious or Transmissible Disease**

1. This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" or medical payments arising out of claims or "suits" for actual or alleged damages caused by or arising out of:
  - a. Direct or indirect contact with or exposure to any human, mammal, reptile, insect, bird, fish, parasite, or any sub-species thereof infected with or carrying any "infectious agent" that may result in the contracting or transferring of any "contagious, infectious or transmissible disease"; or
  - b. Direct or indirect exposure to any "contagious, infectious or transmissible disease"; or
  - c. Use of, contact with, or exposure to, any product or object allegedly infected with, exposed to or contaminated by any "infectious agent" whether or not such product or object was handled, inspected, distributed, manufactured or processed by any insured or any other person.
2. This exclusion applies regardless of culpability or intent, including whether or not such damages were caused by or arising out of:
  - a. Allegations of negligent hiring, placement, training, or supervision; or
  - b. Any premises owned or occupied by, rented or leased to any insured; or
  - c. Any act, error or omission relating to negligent maintenance of premises where the insured allegedly knew or should have known that exposure to any "infectious agent" may result in the contracting or transferring of any "contagious, infectious or transmissible disease"; or
  - d. Any act, error or omission relating to negligent handling, inspection, distribution, manufacturing or processing of any product or object where the insured allegedly knew or should have known that exposure to any "infectious agent" may result in the contracting or transferring of any "contagious, infectious or transmissible disease"
3. This exclusion also applies to any:
  - a. Claims or "suits" brought by any other person, firm or organization asserting rights derived from, contingent upon, or arising out of a "contagious, infectious or transmissible disease" and specifically excludes from coverage, claims or "suits" for:
    - (1) Emotional distress;
    - (2) Loss of society, services, consortium or income;
    - (3) Reimbursement for expenses including, but not limited to, medical expenses, hospital expenses, or wages, paid or incurred, by such other person, firm or organization; or
    - (4) Legal expenses, costs or fees associated with any claim or "suit".
  - b. Obligation to share damages with or repay someone who must pay damages arising out of any claim or "suit".

- c. Any loss, cost or expense arising out of any:
    - (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of any "contagious, infectious or transmissible disease"; or
    - (2) Claim or "suit" by or on behalf of any authority, governmental or otherwise, for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of any "contagious, infectious or transmissible disease".
  - 4. We will have no duty to defend or indemnify any insured in any action or proceeding alleging damages arising out of any "contagious, infectious or transmissible disease".
- B. For the purpose of this endorsement, the following definitions are added to the Definitions Section:
- 1. "Contagious, infectious or transmissible disease" means a disease or condition caused by or arising out of direct or indirect contact with or exposure to any form of "infectious agent".  
"Contagious, infectious or transmissible diseases" include, but are not limited to, Anthrax, Avian Influenza Viruses including all Influenza A viruses and H5N1 Influenza, Botulism, Bovine Spongiform Encephalopathy, Cat Scratch Fever, Cholera, Chronic Wasting Disease, Diphtheria, Dysentery, E. coli, Fifth Disease, Foot-and-Mouth Disease, Group A Streptococcal Disease, Group B Streptococcal Disease, Hantavirus Infections, Hepatitis A, Hepatitis B, Hepatitis C, Influenza, Legionellosis (Legionnaires' Disease or Pontiac Disease), Lyme Disease, Malaria, Meningitis, Necrotizing Fasciitis, New Variant Creutzfeldt-Jakob Disease, Pertussis, Pneumococcal Disease, Rabies, Ringworm, Rocky Mountain Spotted Fever, Scrapie, Shingles, Staphylococcus, Tetanus, Transmissible Spongiform Encephalopathy, Variant Creutzfeldt-Jakob Disease, West Nile Virus, Yellow Fever or Zoonoses.
  - 2. "Infectious agent" means any one or more pathogens such as, but not limited to, bacterium, fungus, marker, microbial agent, microorganism, organism, protozoa, virus, or any other source, variant or mutation thereof, capable of transmission by any means from any source to any other source that can potentially infect, contaminate, cause, contribute or lead to the development of a "contagious, infectious or transmissible disease".

All other terms and conditions of this policy remain unchanged



COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - COMMUNICABLE DISEASE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability, and Coverage C - Medical Payments:

**Communicable Disease**

1. This insurance does not apply to "bodily injury", "personal and advertising injury" or medical payments arising out of claims or "suits" for actual or alleged damages caused by or arising directly or indirectly from any "communicable disease."
2. This exclusion applies regardless of whether such actual or alleged damages are caused by any:
  - a. Insured;
  - b. "Employee";
  - c. Patron; or
  - d. Any other person;whether or not such actual or alleged damages occurred at any premises owned or occupied by any insured regardless of culpability or intent including, but not limited to:
  - a. Allegations of negligent hiring, placement, training, or supervision; or
  - b. Any act, error or omission relating to negligent maintenance of premises where the insured allegedly knew or should have known that exposure to any "communicable disease" may occur; or
  - c. Any act or omission in connection with the prevention or suppression of any action that may result in the contracting or transferring of any "communicable disease" including, but not limited to, the alleged failure to provide adequate security.
3. This exclusion also applies to any:
  - a. Claims or "suits" brought by any other person, firm or organization asserting rights derived from, contingent upon, or arising out of a "communicable disease" and specifically excludes from coverage, claims or "suits" for:
    - (1) Emotional distress;
    - (2) Loss of society, services, consortium or income;
    - (3) Reimbursement for expenses including, but not limited to, medical expenses, hospital expenses, or wages, paid or incurred, by such other person, firm or organization; or
    - (4) Legal expenses, costs or fees associated with any claim or "suit".
  - b. Obligation to share damages with or repay someone who must pay damages because of the injury.
  - c. Any loss, cost or expense arising out of any:
    - (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, treat, or in any way respond to, or assess the effects of any "communicable disease"; or
    - (2) Claim or "suit" by or on behalf of any authority, governmental or otherwise, for damages because of testing for, monitoring, treating, or in any way responding to, or assessing the effects of any "communicable disease".
4. We will have no duty to defend or indemnify any insured in any action or proceeding alleging damages arising out of any "communicable disease"

B. For the purpose of this endorsement, the following definitions are **added** to the **Definitions** Section:

1. "Communicable disease" means a disease or condition contracted through direct or indirect contact with or exposure to any form of "infectious agent" generally spread or passed through physical contact with the epidermis or bodily fluids including, but not limited to, blood, saliva, or semen of an infected host.  
"Communicable diseases" include, but are not limited to, Acquired Immune Deficiency Syndrome (AIDS), Ano-genital warts, Chancoid, Chlamydia, Garduerella Vaginitis, Genital Herpes Simplex, Gonorrhea, Human papilloma virus (HPV), Non-gonococcal Cervicitis, Non-gonococcal Urethritis (NGU), Syphilis or Yeast Vaginitis.
2. "Infectious agent" means any one or more pathogens such as, but not limited to, bacterium, fungus, marker, microbial agent, microorganism, organism, protozoa, virus, or any other source, variant or mutation thereof, capable of transmission by any means from any source to any other source that can potentially infect, contaminate, cause, contribute or lead to the development of a "communicable disease"

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL EXCLUSION - SUBSIDENCE OR MOVEMENT OF SOIL, LAND,  
BEDROCK OR EARTH**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability and Coverage C - Medical Payments:

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" or medical payments directly or indirectly arising out of, resulting from, contributed to, aggravated or concurrently caused by "subsidence or movement of soil, land, bedrock or earth", whether natural, manmade or otherwise.

We have no duty to defend any insured against any loss, claim, "suit", or other proceeding alleging damages arising out of or related to "bodily injury", "property damage", "personal and advertising injury" or medical payments to which this exclusion applies.

- B. For the purpose of this endorsement, the following is added to the Definitions section:

"Subsidence or movement of soil, land, bedrock or earth" includes, but is not limited to settling, bulging, shaking, sinking, slipping, shifting, eroding, rising, tilting, expanding, contracting, shrinking, instability, falling away, caving in, landslide, mudflow, flood, sinkhole, earthquake, volcano, or avalanche.

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - TOXIC METALS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to 2. Exclusions of Section 1 - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury and Coverage C - Medical Payments:

This insurance does not apply to:

1. "Bodily injury", "property damage", "personal and advertising injury" or medical payments arising out of direct or indirect contact with, any exposure to, or the ingestion, inhalation, or absorption of any "toxic metals" in any form; or
2. Any loss, cost, or expense arising out of any:
  - a. Request, demand, order, or requirement by or on behalf of any authority, governmental or otherwise, that any insured or others abate, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of any "toxic metals"; or
  - b. Claim or "suit" by or on behalf of any authority, governmental or otherwise, for damages because of abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of any "toxic metals".

We will have no duty to investigate, defend or indemnify any insured in any action or proceeding alleging damages arising out of direct or indirect contact with, any exposure to, or the ingestion, inhalation, or absorption of any "toxic metals" in any form.

- B. For the purpose of this endorsement, the following definitions are added to the Definitions section:

1. "Toxic metals" are individual metals and metal compounds that negatively affect people's health. "Toxic metals" include, but are not limited to, arsenic, beryllium, "heavy metals", or hexavalent chromium.
2. "Heavy metals" are a group of elements between copper and bismuth on the periodic table of the elements having specific gravities greater than 4.0. "Heavy metals" include, but are not limited to, cadmium, cobalt, copper, lead, manganese, mercury, molybdenum, strontium, vanadium, or zinc.

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITATION OF COVERAGE TO DESIGNATED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability and Coverage C - Medical Payments:

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" or medical payments arising out of, or in any way related to, operations performed by any insured or any person or organization for whom any insured may be legally or contractually responsible, unless such operations are "designated operations".

- B. For the purpose of this endorsement, the following definition is added to the Definitions section:

"Designated operations" means only those operations performed by any insured that are described on the General Liability Coverage Part Declarations, the endorsements, or supplements of this insurance.

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - MICROORGANISMS, BIOLOGICAL ORGANISMS,  
BIOAEROSOLS OR ORGANIC CONTAMINANTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusions are added to 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability and Coverage C - Medical Payments.

This insurance does not apply to:

1. "Bodily injury", "property damage", "personal and advertising injury", or medical payments arising out of, related to, caused by or in any way connected with the exposure to, presence of, formation of, existence of or actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any microorganisms, biological organisms, bioaerosols or organic contaminants including, but not limited to, mold, mildew, fungus, spores, yeast or other toxins, mycotoxins, allergens, infectious agents, wet or dry rot or rust, or any materials containing them at any time, regardless of the cause of growth, proliferation or secretion.
2. Any loss, cost or expense arising out of any:
  - a. Request, demand, order, or requirement by or on behalf of any authority, governmental or otherwise, that any insured or others abate, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, remediate or dispose of, or in any way respond to, or assess the effects of microorganisms, biological organisms, bioaerosols or organic contaminants including, but not limited to, mold, mildew, fungus, spores, yeast, or other toxins, mycotoxins, allergens, infectious agents, wet or dry rot or rust, or any materials containing them at any time, regardless of the cause of growth, proliferation or secretion; or
  - b. Claim or "suit" by or on behalf of any authority, governmental or otherwise, for damages because of abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of microorganisms, biological organisms, bioaerosols or organic contaminants including, but not limited to, mold, mildew, fungus, spores, yeast, or other toxins, mycotoxins, allergens, infectious agents, wet or dry rot or rust, or any materials containing them at any time, regardless of the cause of growth, proliferation or secretion.

We shall have no duty to investigate, defend, or indemnify any insured in any action or proceeding alleging damages arising out of direct or indirect contact with, any exposure to, or the ingestion, inhalation or absorption of any microorganisms, biological organisms, bioaerosols, or organic contaminants including, but not limited to, mold, mildew, fungus, spores, yeast or other toxins, mycotoxins, allergens, infectious agents, wet or dry rot or rust, or any materials containing them at any time, regardless of the cause of growth, proliferation or secretion.

This exclusion does not apply to any fungi, bacteria, microorganisms or biological organisms that are, are on, or are contained in, a good or product intended for bodily consumption.

All other terms and conditions of this policy remain unchanged.

(Page 2 of 5)

POLICY NUMBER: BN952426

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### AMENDMENT OF CONDITIONS - PREMIUM AUDIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART

A. The Premium Audit Condition under Section IV - Conditions is replaced by the following:

**Premium Audit**

1. We will compute all premiums for this Coverage Part in accordance with our rules and rates. Premium shown in this Coverage Part as advance premium is a minimum and deposit premium.

The rates for each classification shown in the Declarations are multiplied by the estimated premium bases of that classification for the term to determine the advance premium.

We may conduct an audit of your books to determine the actual premium bases developed during the policy period. To calculate the actual premium developed during the policy period we will use one, or a combination, of the following premium bases: payroll, admissions, gross sales, total cost, area, each exposure unit, units or total operating expenditures.

2. If we determine, whether by audit of your books and records or otherwise, that you are conducting operations not scheduled on this policy, we may add the appropriate classifications and compute the rates and premiums in accordance with our rules and rates in effect on the inception date of this policy, unless coverage has been restricted to "designated operations".

3. **Premium Bases.**

The premium bases are defined in accordance with our rules and the following additional definitions:

- a. **Payroll** (premium basis symbol p): Remuneration paid to "employees", "casual laborers", "temporary workers", day laborers, statutory workers, seasonal workers or "leased workers", including but not limited to:

(1) Money or substitutes for money; commissions; bonuses; overtime; payments to statutory insurance or pension plans; profit sharing or incentive plans; pay for holidays, vacation or sickness; and fees paid to employment agencies for temporary personnel provided to you.

(2) If your operations consist of a number of separate operations classified individually in the Declarations, the payroll will be allocated to each classification where you have maintained records for each separate operation. Any such operation for which separate records are not maintained by you will be assigned to the highest rated classification.

(3) For premium computation purposes, the payroll of executive officers, individual insureds and co-partners is subject to a minimum annual payroll per person of:

\$

(If no entry is made, the minimum payroll as established by our rating rules will apply.)

The rates apply per \$1,000 of Payroll.

- b. **Admissions** (premium basis symbol m): The total number of persons, other than your "employees", admitted to the insured event or to events conducted on the premises whether on paid admissions, tickets, complimentary tickets or passes.

The rates apply per 1,000 Admissions.

(Page 3 of 5)

- c. **Gross Sales** (premium basis symbol s): The gross amount charged by you, your concessionaires or by others trading under your name for:
    - (1) All goods or products, sold or distributed;
    - (2) Operations performed during the policy period; and
    - (3) Rentals; or
    - (4) Duos or fees.The rates apply per \$1,000 of Gross Sales.
  - d. **"Total Cost"** (premium basis symbol c) means the total cost of all work let or sublet in connection with each specific project including:
    - (1) The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work including the cost of finished equipment installed whether or not furnished by the contractor, or subcontractor, or by you; and
    - (2) All fees, bonuses or commissions made, paid or due.The rates apply per \$1,000 of Total Cost.
  - e. **Area** (premium basis symbol a): The total number of square feet of floor space at the insured premises. The rates apply per 1,000 square feet of Area.
  - f. **Each** (premium basis symbol t): This basis of premium involves units of exposure, and the quantity comprising each unit of exposure is indicated in the Declarations, such as "per person". The rates apply per each unit of exposure.
  - g. **Units** (premium basis symbol u): A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together, or by a person living alone. The rates apply per Unit.
  - h. **Total Operating Expenditures** (premium basis symbol o): Total expenditures (including grants, entitlements and shared revenue) without regard to source of revenue during the policy period including accounts payable. The rates apply per \$1,000 of Total Operating Expenditures.
- 4. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request. Failure to supply such records upon request will be deemed a breach of condition and subject this policy, and may subject any in force policy of yours, to cancellation for breach of conditions.
  - 5. We reserve the right to examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.
  - 6. Premium shown in this Coverage Part as advance premium is a minimum and deposit premium. Advance premium includes any payments identified as premium paid prior to policy expiration. At the close of each audit period, we will compute the earned premium for that period. Audit premium is due and payable upon notice to the first Named Insured. Failure to pay the audit premium due will be deemed a breach of contract and subject this policy, and may subject any in force policy of yours, to cancellation for non-payment of premium.
    - a. If the actual earned premium generated as a result of an audit for the policy period is less than the advance premium, such advance premium is the minimum premium for the policy period indicated and is not subject to adjustment.
    - b. If the actual earned premium generated as a result of an audit for the policy period is greater than the advance premium, then a final premium adjustment endorsement will be issued. The additional premium amount shown on the final premium adjustment endorsement is due and payable to us upon notice to the first Named Insured.
  - 7. **Estimated Annual Audit Procedure:**
    - If, after three documented attempts, we are unable to examine your books and records to obtain the information necessary to complete the audit, we may implement our estimated audit procedure as outlined below:
      - a. An Estimated Audit Endorsement will be issued reflecting a fifty percent (50%) increase in your reported premium basis. This increase is an estimate based on information we have on file, or your business operations.



(Page 4 of 5)

- b. The Estimated Audit Endorsement will include a copy of the Unproductive Audit Report that outlines the documented attempts made to collect the required information
  - c. If you agree with the Estimated Audit Endorsement, you must remit payment for the full amount of the estimated audit; or
  - d. If you dispute the Estimated Audit Endorsement, you must provide the requested audit information so we can calculate the proper earned premium developed for the policy period.
- B. Cancellation Audit Procedure.
- a. If the policy is canceled prior to the expiration date the first Named Insured retains the unearned premium; we will retain the earned premium developed by:
    - (1) Multiplying the advance premium by the applicable pro-rata factor, short-rate factor, or minimum earned premium percentage; or
    - (2) An audit of your books and records for the period the policy was in force, whichever is greater.
  - b. If the actual earned premium generated as a result of an audit is greater than the advance premium paid at issuance, then a final premium adjustment endorsement will be issued. The additional premium amount shown on the final premium adjustment endorsement is due and payable to us upon notice to the first Named Insured.
- B. The following definitions are added to the Definitions section:
- 1. "Casual laborers" are persons who provide services that are performed in the course of the employing unit's trade or business regardless of the amount of remuneration received or the length of time the services are provided.
  - 2. "Designated operations" means only those operations performed by any insured that are described on the Common Policy Declarations, the General Liability Coverage Part Declarations, or the endorsements or supplements of this insurance.

All other terms and conditions of this policy remain unchanged.

(Page 1 of 2)

POLICY NUMBER: BN952426

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DEDUCTIBLE LIABILITY INSURANCE**  
**(Including Allocated Loss Adjustment Expense)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Coverage	Amount And Basis Of Deductible		
	PER CLAIM	PER OCCURRENCE	PER ITEM
Bodily Injury Liability	\$ 1,000	- OR - \$	Not Applicable
- OR -			
Property Damage Liability	\$ 1,000	- OR - \$	- OR - \$
- OR -			
Bodily Injury Liability and Property Damage Liability Combined	\$	- OR - \$	Not Applicable

- A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule as applicable to such coverages.
- B. You may select a deductible amount on either a per claim, a per "occurrence" or per item basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule. The deductible amount stated in the Schedule applies as follows:
1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule is on a per claim basis, that deductible applies as follows:
    - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
    - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
    - c. Under Bodily Injury and Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
      - (1) "Bodily injury";
      - (2) "Property damage"; or
      - (3) "Bodily injury" and "property damage" combined
 as the result of any one "occurrence".
- If damages are claimed for care, loss of services, loss of support or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.
- With respect to "property damage", person includes an organization.

(Page 2 of 2)

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule is on a per "occurrence" basis, that deductible amount applies as follows:
- Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
  - Under Property Damage Liability Coverage, to all damages because of "property damage"; or
  - Under Bodily Injury and Property Damage Liability Coverage Combined, to all damages because of:
    - "Bodily injury";
    - "Property damage"; or
    - "Bodily injury" and "property damage" combinedas the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".
3. **PER ITEM BASIS.** If the deductible amount indicated in the Schedule is on a per item basis, that deductible amount applies under Property Damage Liability Coverage, to each item damaged because of "property damage" sustained by one person or organization as the result of any one "occurrence".
- C. The deductible amount stated in the Schedule applies to loss, legal expense, and our "Allocated Loss Adjustment Expense" incurred, whether or not payment is made to the claimant, compromise settlement is reached or the claim is denied.
- D. The terms of this insurance, including those with respect to:
- Our right and duty to defend the insured against any "suits" seeking those damages; and
  - Your duties in the event of an "occurrence", claim or "suit"
- apply irrespective of the application of the deductible amount.
- E. We may, at our sole election and option, either:
- Pay any part or all of the deductible amount to effect settlement of any claim or "suit" and upon notification of the action taken, you will promptly reimburse us for such part of the deductible amount as has been paid by us; or
  - Upon our receipt of notice of any claim or at any time thereafter, request you to pay and deposit with us all or any part of the deductible amount, to be held and applied according to the terms of this policy.
- F. The following is added to the Definitions section:
- "Allocated Loss Adjustment Expense" will include all costs and expenses incurred by us in investigating and adjusting any loss, with the exception of salary and overhead.

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF LIQUOR LIABILITY EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion c. Liquor Liability under Paragraph 2. Exclusions of Section 1 - Coverage A - Bodily Injury and Property Damage Liability is replaced by the following:

This insurance does not apply to:

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you:

- (1) Are an owner or lessor of premises used for activities described in (2), (3) or (4) below whether such activities are performed with or without your knowledge;
- (2) Manufacture, sell or distribute alcoholic beverages;
- (3) Serve or furnish alcoholic beverages for a charge where the activity:
  - (a) Requires a license; and
  - (b) Is for the purpose of financial gain or livelihood; or
- (4) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

All other terms and conditions of this policy remain unchanged.

(Page 5 of 5)

NAUTILUS INSURANCE COMPANY

POLICY NUMBER: BN952426

LIABILITY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION — PRODUCTS/COMPLETED OPERATIONS HAZARD  
(DESIGNATED PRODUCTS EXCEPTED)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Covered Product Description

Brand or Trade Name

Spine & joint implants

Alphatec

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE A. Bodily Injury and Property Damage Liability (Section I - Coverages):

This insurance does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard". But this exclusion does not apply to "your products" designated in the Schedule above.

All other Terms and Conditions of this Insurance remain unchanged.

S 074 (04/97)

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - INTELLECTUAL PROPERTY RIGHTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to "bodily injury" or "property damage" arising out of the infringement, use, or violation of another's "intellectual property rights".

- B. Exclusion i. in 2. Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability is replaced by the following:

This insurance does not apply to:

- i. **Infringement Of Intellectual Property Rights**

"Personal and advertising injury" arising out of the infringement, use, or violation of "intellectual property rights", including the infringement, use, or violation of another's "intellectual property rights" in your "advertisement".

- C. The following definition is added to the Definitions section:

"intellectual property rights" means exclusive rights pertaining to the creations of the mind, both artistic and commercial, that have potential commercial value and may have a right to protection. "Intellectual property rights" include, but are not limited to, copyrights, domain names, industrial design rights, patents, trademarks, trade dress, trade names, or trade secrets.

All other terms and conditions of this policy remain unchanged.

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - ASBESTOS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability and Coverage C - Medical Payments:

This insurance does not apply to:

1. "Bodily injury", "property damage", "personal and advertising injury", medical payments or "reduction in value" related to the actual, alleged, or threatened presence of, or exposure to "asbestos" in any form, or to harmful substances emanating from "asbestos". This includes ingestion, inhalation, absorption, contact with, existence or presence of, or exposure to "asbestos". Such injury from or exposure to "asbestos" also includes, but is not limited to:
  - a. The existence, installation, storage, handling or transportation of "asbestos";
  - b. The removal, abatement or containment of "asbestos" from any structures, materials, goods, products, or manufacturing process;
  - c. The disposal of "asbestos";
  - d. Any structures, manufacturing processes, or products containing "asbestos";
  - e. Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage; or
  - f. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above.
2. Any loss, cost or expense, including, but not limited to payment for investigation or defense, fines, penalties and other costs or expenses, arising out of any:
  - a. Claim, "suit", demand, judgment, obligation, order, request, settlement, or requirement by or on behalf of any authority, governmental or otherwise, that any insured or any other person or entity test for, monitor, clean up, remove, contain, mitigate, treat, neutralize, remediate, or dispose of, or in any way respond to, or assess the actual or alleged effects of "asbestos"; or
  - b. Claim, "suit", demand, judgment, obligation, request, or settlement due to any actual, alleged, or threatened injury or damage from "asbestos" or testing for, monitoring, cleaning up, removing, containing, mitigating, treating, neutralizing, remediating, or disposing of, or in any way responding to or assessing the actual or alleged effects of, "asbestos" by any insured or by any other person or entity; or
  - c. Claim, "suit", demand, judgment, obligation, or request to investigate which would not have occurred, in whole or in part, but for the actual or alleged presence of or exposure to "asbestos".

This exclusion applies regardless of who manufactured, produced, installed, used, owned, sold, distributed, handled, stored or controlled the "asbestos".

- B. The following definitions are added to the Definitions section:

1. "Asbestos" means any type or form of asbestos, asbestos fibers, asbestos products, or asbestos materials, including any products, goods, or materials containing asbestos or asbestos fibers, products or materials and any gases, vapors, scents or by-products produced or released by asbestos.
2. "Reduction in value" means any claim, demand or "suit" that alleges diminution, impairment or devaluation of tangible property.

All other terms and conditions of this policy remain unchanged.

S251 (07/09)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEVADA CHANGES – DOMESTIC PARTNERSHIP

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE PART  
FARM COVERAGE PART  
FARM UMBRELLA LIABILITY POLICY  
LIQUOR LIABILITY COVERAGE PART  
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCT WITHDRAWAL COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

- A. All references to spouse shall include an individual who is in a domestic partnership recognized under Nevada law.
- B. Under the Commercial Auto Coverage Part, the term "family member" is replaced by the following:  
"Family member" means a person related to the:
1. Individual Named Insured by blood, adoption, marriage or domestic partnership recognized under Nevada law, who is a resident of such Named Insured's household, including a ward or foster child; or
  2. Individual named in the Schedule by blood, adoption, marriage or domestic partnership recognized under Nevada law, who is a resident of the individual's household, including a ward or foster child, if the Drive Other Car Coverage – Broadened Coverage For Named Individual Endorsement is attached.
- C. With respect to coverage for the ownership, maintenance, or use of "covered autos" provided under the Commercial Liability Umbrella Coverage Part, the term "family member" is replaced by the following:  
"Family member" means a person related to you by blood, adoption, marriage or domestic partnership recognized under Nevada law, who is a resident of your household, including a ward or foster child.



(Page 1 of 1)

NAUTILUS INSURANCE COMPANY

POLICY NUMBER: BN052426

ENDORSEMENT # 1

Named Insured: Access Medical  
Flournoy Management LLC.

Agency #: 00461-01

Endorsement Effective Date: 06/01/2011

WeitClem Wholesale Insurance  
Brokerage, Inc.  
7440 North Figueroa Street  
Los Angeles, CA 90041

STANDARD CHANGE ENDORSEMENT

It is understood and agreed that:

- ☐ 1. Name of the Insured
- ☐ 2. Mailing address of Insured
- ☐ 3. Inception Date
- ☐ 4. Expiration Date
- ☐ 5. Policy Is Cancelled Effective

(Attach cancellation evidence)

- ☐ 6. Limit of ☐ Liability ☐ Property
- ☒ 7. Classification, Premium Basis or Rating  
(Complete Schedule below)
- ☐ 8. Location # \_\_\_\_\_
- ☐ 9. Endorsement # \_\_\_\_\_
- ☐ 10. Other \_\_\_\_\_

- ☐ Is added and made a part of the policy.
- ☐ Is deleted from the policy.

- ☒ Is corrected or changed to read as follows:

This Endorsement is to Increase Sales to \$1,300,000. An Increase of \$300,000.

This Endorsement also adds the Named Insured "Flournoy Management LLC"

- ☐ The Schedule below is added to the Declarations:

All other terms and conditions of this policy remain unchanged.

Los Angeles, CA  
06/06/11 JW

5080 (07/09)

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Authorized Representative

**United States District Court  
District of Nevada (Las Vegas)  
CIVIL DOCKET FOR CASE #: 2:15-cv-00321-JAD-GWF**

Nautilus Insurance Company v. Access Medical, LLC et al  
Assigned to: Judge Jennifer A. Dorsey  
Referred to: Magistrate Judge George Foley, Jr  
Demand: \$75,000

Date Filed: 02/24/2015  
Date Terminated: 09/27/2016  
Jury Demand: Plaintiff  
Nature of Suit: 110 Insurance  
Jurisdiction: Diversity

Case: 2:17-cv-02393-MMD-CWH  
Case in other court: Ninth Circuit, 17-16273  
Ninth Circuit, 17-16840  
Ninth Circuit, 17-16842  
Cause: 28:1332 Diversity-Declaratory Judgement

**Plaintiff**

**Nautilus Insurance Company**

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**TERMINATED: 06/02/2016**  
**PRO HAC VICE**

V.

**Defendant**

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**Defendant****Flournoy Management, LLC**

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**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
02/24/2015	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$400 receipt number 0978-3568876), filed by Nautilus Insurance Company. Certificate of Interested Parties due by 3/6/2015. Proof of service due by 6/24/2015. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (Jakobson, Galina) (Entered: 02/24/2015)
02/24/2015	<u>2</u>	CIVIL COVER SHEET re <u>1</u> Complaint,, filed by Nautilus Insurance Company. Related document: <u>1</u> Complaint, filed by Nautilus Insurance Company. (Jakobson, Galina) (Entered: 02/24/2015)
02/24/2015	<u>3</u>	Certificate of Interested Parties re <u>1</u> Complaint, ; by Plaintiff Nautilus Insurance Company. (Jakobson, Galina) <u>Incorrect event selected by counsel. Corporate parents Admiral Insurance Company, Berkley Insurance Company, and W.R. Berkley Corporation added.</u> (Entered: 02/24/2015)
02/24/2015	<u>4</u>	PROPOSED SUMMONS to be issued , filed by Plaintiff Nautilus Insurance Company. (Jakobson, Galina) (Entered: 02/24/2015)
02/24/2015		Case assigned to Judge Jennifer A. Dorsey and Magistrate Judge George Foley, Jr. (EDS) (Entered: 02/24/2015)
02/24/2015	<u>5</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> . <b>AO 85 Consent forms should NOT be electronically filed.</b> Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.)  NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> . If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take three (3) days or less, the

		parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2).  (no image attached) (EDS) (Entered: 02/24/2015)
02/24/2015	6	<b>NOTICE: Attorney Action Required to 4</b> Proposed Summons to be issued. <b>ERROR:</b> Summons not issued as multiple defendants are listed on summons. <b>CORRECTION:</b> Pursuant to FRCP 4 summons are issued for each named defendant to be served. Attorney <b>Galina Kletser Jakobson</b> advised to download and complete updated "AO 440 (Rev. 06/12/) Summons in a Civil Action" form from Court's Website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> , listing only one defendant per summons and refile as a separate event using "Proposed Summons to be Issued" event. Please contact the Court at 464-5402 for any assistance pertaining to the filing of Summons form. (no image attached)(EDS) (Entered: 02/24/2015)
02/24/2015	7	PROPOSED SUMMONS to be issued to <i>Robert Clark Wood, II</i> , filed by Plaintiff Nautilus Insurance Company. (Jakobson, Galina) (Entered: 02/24/2015)
02/24/2015	8	PROPOSED SUMMONS to be issued To <i>Flournoy Management, LLC</i> , filed by Plaintiff Nautilus Insurance Company. (Jakobson, Galina) (Entered: 02/24/2015)
02/24/2015	9	PROPOSED SUMMONS to be issued To <i>Access Medical, LLC</i> , filed by Plaintiff Nautilus Insurance Company. (Jakobson, Galina) (Entered: 02/24/2015)
02/25/2015	10	Summons Issued as to All Defendants. (MAJ) (Entered: 02/25/2015)
03/23/2015	11	ORDER for Certificate of Interested Parties. IT IS ORDERED that counsel for Plaintiff shall have a period of 10 calendar days from the filing date of this order within which to fully comply with the provisions of Local Rule 7.1-1. Certificate of Interested Parties due by 4/1/2015. Signed by Magistrate Judge George Foley, Jr on 3/20/15. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 03/23/2015)
03/23/2015	12	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge George Foley, Jr, on 3/23/2015. By Judicial Assistant: Julia Wright. RE: <u>11</u> Order for Certificate of Interested Parties, <b>IT IS HEREBY VACATED.</b> (no image attached) (Copies have been distributed pursuant to the NEF - JBW) (Entered: 03/23/2015)
04/06/2015	13	WAIVER OF SERVICE Returned Executed by Nautilus Insurance Company. Access Medical, LLC waiver sent on 3/23/2015, answer due 5/22/2015. (Jakobson, Galina) (Entered: 04/06/2015)
04/06/2015	14	WAIVER OF SERVICE Returned Executed by Nautilus Insurance Company. Robert Clark Wood, II waiver sent on 3/23/2015, answer due 5/22/2015. (Jakobson, Galina) (Entered: 04/06/2015)
04/06/2015	15	WAIVER OF SERVICE Returned Executed by Nautilus Insurance Company. Flournoy Management, LLC waiver sent on 3/23/2015, answer due 5/22/2015. (Jakobson, Galina) (Entered: 04/06/2015)
04/13/2015	16	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Linda Wendell Hsu and DESIGNATION of Local Counsel Galina Kletser Jakobson (Filing fee \$ 250 receipt number 0978-3626793) filed by Plaintiff Nautilus Insurance Company. (Jakobson, Galina) (Entered: 04/13/2015)
04/13/2015	17	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Quyen Thi Le and DESIGNATION of Local Counsel Galina Kletser Jakobson (Filing fee \$ 250 receipt number 0978-3626825) filed by Plaintiff Nautilus Insurance Company. (Jakobson, Galina) (Entered: 04/13/2015)
04/14/2015	18	ORDER Granting <u>16</u> Verified Petition for Permission to Practice Pro Hac Vice for Attorney Linda Wendell Hsu and approving Designation of Local Counsel Galina Kletser Jakobson for Nautilus Insurance Company. Signed by Judge Jennifer A. Dorsey on 4/14/15. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/14/2015)
04/14/2015	19	ORDER Granting <u>17</u> Verified Petition for Permission to Practice Pro Hac Vice for Attorney Quyen Thi Le and approving Designation of Local Counsel Galina Kletser Jakobson for Nautilus Insurance Company. Signed by Judge Jennifer A. Dorsey on 4/14/15. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - MMM) . (Entered: 04/14/2015)
05/22/2015	20	ANSWER to <u>1</u> Complaint, filed by Flournoy Management, LLC. Certificate of Interested Parties due by 6/1/2015. Discovery Plan/Scheduling Order due by 7/6/2015.(Harper, James) (Entered: 05/22/2015)
05/22/2015	21	ANSWER to <u>1</u> Complaint, filed by Access Medical, LLC.(Schnitzer, Jordan) (Entered: 05/22/2015)
06/12/2015	22	ORDER for Certificate of Interested Parties. ORDERED that Defendant Flournoy Management, LLC shall file its Certificate as to Interested Parties, which fully complies with LR 7.1-1 no later than June 22, 2015. Failure to comply may result in the issuance of an order to show cause why sanctions should not be imposed. Signed by Magistrate Judge George Foley, Jr on 6/12/15. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 06/12/2015)
06/22/2015	23	CERTIFICATE of Interested Parties filed by Flournoy Management, LLC. There are no known interested parties other than those participating in the case. (Harper, James) (Entered: 06/22/2015)
07/06/2015	24	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiff Nautilus Insurance Company ( <i>JOINT</i> ). (Le, Quyen) (Entered: 07/06/2015)
07/07/2015	25	SCHEDULING ORDER re <u>24</u> Proposed Discovery Plan/Scheduling Order. Discovery due by 11/18/2015. Motions due by 12/18/2015. Proposed Joint Pretrial Order due by 1/18/2016. Signed by Magistrate Judge George Foley, Jr on 7/7/15. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 07/08/2015)
08/03/2015	26	ERRATA re: Discovery; filed by Defendants Access Medical, LLC, Robert Clark Wood, II. (Schnitzer, Jordan) (Entered: 08/03/2015)
08/17/2015	27	STIPULATION to Continue re: Discovery; filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 08/17/2015)

08/18/2015	<u>28</u>	ORDER ON STIPULATION Granting <u>27</u> STIPULATION to Continue Expert Disclosure and Expert Discovery Deadlines Only re <u>25</u> SCHEDULING ORDER. Signed by Magistrate Judge George Foley, Jr on 7/7/15. (Copies have been distributed pursuant to the NEF - MMM). Signed by Magistrate Judge George Foley, Jr on 8/18/15. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 08/19/2015)
09/21/2015	<u>29</u>	Interim STATUS REPORT ( <i>Joint</i> ) by Plaintiff Nautilus Insurance Company. (Le, Quyen) (Entered: 09/21/2015)
12/11/2015	<u>30</u>	STIPULATION FOR EXTENSION OF TIME (Second Request) re <u>25</u> Scheduling Order, by Plaintiff Nautilus Insurance Company. (Le, Quyen) (Entered: 12/11/2015)
12/14/2015	<u>31</u>	ORDER ON STIPULATION Granting <u>30</u> Stipulation to Continue Scheduling Order Deadlines (Second Request). Motions due by 1/18/2016. Proposed Joint Pretrial Order due by 2/17/2016. Signed by Magistrate Judge George Foley, Jr on 12/14/2015. (Copies have been distributed pursuant to the NEF - NEV) (Entered: 12/14/2015)
01/15/2016	<u>32</u>	MOTION for Partial Summary Judgment by Plaintiff Nautilus Insurance Company. Responses due by 2/8/2016. (Hsu, Linda) (Entered: 01/15/2016)
01/15/2016	<u>33</u>	DECLARATION of Dennis Curran re <u>32</u> Motion for Partial Summary Judgment; by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 01/15/2016)
01/15/2016	<u>34</u>	DECLARATION of Linda Wendell Hsu re <u>32</u> Motion for Partial Summary Judgment by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 01/15/2016)
01/15/2016	<u>35</u>	REQUEST for Judicial Notice re <u>32</u> Motion for Partial Summary Judgment ; by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 01/15/2016)
01/15/2016	<u>36</u>	EXHIBIT(s) to <u>32</u> Motion for Partial Summary Judgment ; filed by Plaintiff Nautilus Insurance Company. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11)(Hsu, Linda) (Entered: 01/15/2016)
01/29/2016	<u>37</u>	THIRD STIPULATION FOR EXTENSION OF TIME re: <u>32</u> Summary Judgment Motion and Discovery Deadlines; filed by Plaintiff Nautilus Insurance Company. (Le, Quyen) (Entered: 01/29/2016)
02/01/2016	<u>38</u>	ORDER ON STIPULATION Granting <u>37</u> THIRD STIPULATION FOR EXTENSION OF TIME to Respond re: <u>32</u> Summary Judgment Motion and Suspend Deadline for Joint Pre-Trial Order. Responses due by 4/8/2016. Signed by Magistrate Judge George Foley, Jr on 2/1/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 02/02/2016)
04/07/2016	<u>39</u>	FOURTH STIPULATION FOR EXTENSION OF TIME to Respond to Summary Judgment Motion, Suspend Deadline for Joint Pre-Trial Order by Defendant Access Medical, LLC. (Green, L.) (Entered: 04/07/2016)
04/11/2016	<u>40</u>	ORDER ON STIPULATION Granting <u>39</u> FOURTH STIPULATION FOR EXTENSION OF TIME (Second Request) to Respond to Summary Judgment Motion and Suspend Deadline for Joint Pre-Trial Order. Responses due by 5/9/2016. Signed by Judge Jennifer A. Dorsey on 4/11/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 04/11/2016)
05/09/2016	<u>41</u>	EXHIBIT(s) Index of Exhibits to <u>42</u> Response to <u>32</u> Motion for Partial Summary Judgment ; filed by Defendant Access Medical, LLC., <b>Robert Clark Wood, II</b> (Attachments: # <u>1</u> Exhibit Ted Switzer's original Complaint dated Dec. 27, 2011, # <u>2</u> Exhibit Flournoy's Second Amended Cross-Complaint dated Nov. 16, 2012, # <u>3</u> Exhibit Sonny Wood's Second Amended Cross Complaint dated March 14, 2013, # <u>4</u> Exhibit Ted Switzer's Cross-Complaint daed June 3, 2013, # <u>5</u> Exhibit Email from Jacque Weide dated July 25, 2011, # <u>6</u> Exhibit Ms. Weide's Declaration, # <u>7</u> Exhibit Nautilus Policy, # <u>8</u> Exhibit Nautilus's letter dated Jan. 8, 2014, # <u>9</u> Exhibit Email dated March 25, 2014, # <u>10</u> Exhibit Email dated Jan. 23, 2014, # <u>11</u> Exhibit February 7, 2014 correspondence from Flounoy's counsel, # <u>12</u> Exhibit February 10, 2014 email, # <u>13</u> Exhibit Letter dated February 18, 2014, # <u>14</u> Exhibit Email dated February 20, 2014 Access received from Nautilus, # <u>15</u> Exhibit February 20, 2014 email Access sent to Nautilus, # <u>16</u> Exhibit February 21, 2014 email, # <u>17</u> Exhibit February 24, 2014 email, # <u>18</u> Exhibit February 25, 2014 email, # <u>19</u> Exhibit Letter dated March 25, 2014 Nautilus sent to insured, # <u>20</u> Exhibit Leter dated March 17, 2014 from Access, # <u>21</u> Exhibit Declaration in Support of Continuing Further Discovery, # <u>22</u> Exhibit Declaration of Jordan P. Schnitzer, Esq.)(Green, L.) <u>Modified on 5/10/2016 to add filing party and docket entry relationship (DKJ)</u> . (Entered: 05/09/2016)
05/09/2016	<u>42</u>	RESPONSE to <u>32</u> Motion for Partial Summary Judgment, filed by Defendant Access Medical, LLC. Replies due by 5/19/2016. (Green, L.) (Entered: 05/09/2016)
05/09/2016	<u>43</u>	RESPONSE to <u>32</u> Motion for Partial Summary Judgment, filed by Defendant Flournoy Management, LLC. Replies due by 5/19/2016. (Harper, James) (Entered: 05/09/2016)
05/10/2016	<u>44</u>	NOTICE: Attorney Action Required to <u>42</u> Response to Motion.  ERROR: Documents should have been filed as a separate entries by attorney L. Green pursuant to LR IC 2-2(b):  "For each type of relief requested or purpose of the document, a separate document must be filed and a separate event must be selected for that document".  CORRECTION: Attorney is advised to file the additional Motion contained in document <u>42</u> Response as a separate Motion for Summary Judgment using the appropriate event found under the MOTIONS category pursuant to LR IC 2-2(b). (no image attached) (DKJ) (Entered: 05/10/2016)
05/10/2016	<u>45</u>	Counter MOTION for Partial Summary Judgment by Defendant Access Medical, LLC. Responses due by 6/3/2016. (Green, L.) (Entered: 05/10/2016)
05/10/2016	<u>46</u>	NOTICE: Attorney Action Required to <u>43</u> Response to Motion.  ERROR: Documents should have been filed as separate entries by attorney James Harper pursuant to LR IC 2-2(b):  "For each type of relief requested or purpose of the document, a separate document must be filed and a separate event must be selected for that document".



		CORRECTION: Attorney is advised to file the additional Joinder contained in document <u>43</u> Response as a separate entry using the appropriate event found under the "Other Documents" category pursuant to LR IC 2-2(b). (no image attached)(DKJ) (Entered: 05/10/2016)
05/10/2016	<u>47</u>	RESPONSE to <u>32</u> Motion for Partial Summary Judgment, filed by Defendant Flournoy Management, LLC. Replies due by 5/20/2016. (Harper, James) (Entered: 05/10/2016)
05/10/2016	<u>48</u>	JOINDER to <u>42</u> Response to Motion, <u>45</u> Motion for Partial Summary Judgment filed by Defendant Flournoy Management, LLC. (Harper, James) <u>Modified on 5/11/2016 to add docket entry relationships (DKJ)</u> . (Entered: 05/10/2016)
05/11/2016	<u>49</u>	<b>FIRST NOTICE: of Non-Compliance with Local Rule IC 5-1 that <u>James Harper</u> is in violation of Local Rule LR IC 5-1</b>  The signatory must be the attorney or pro se party who electronically files the document.  No action is required at this time. Attorney advised in the future to file documents in accordance with Local Rules governing <i>Electronic Case Filing</i> . <b>(no image attached)</b> (DKJ) (Entered: 05/11/2016)
05/11/2016	<u>50</u>	CERTIFICATE of Interested Parties filed by Access Medical, LLC. <b>Robert Clark Wood, II</b> There are no known interested parties other than those participating in the case. (Green, L.) <u>Modified on 5/11/2016 to add other filing party (DKJ)</u> . (Entered: 05/11/2016)
05/11/2016	<u>51</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>32</u> , <u>45</u> Motions for Partial Summary Judgment by Plaintiff Nautilus Insurance Company. (Hsu, Linda) <u>Modified on 5/11/2016 to add docket entry relationships (DKJ)</u> . (Entered: 05/11/2016)
05/12/2016	<u>52</u>	ORDER ON STIPULATION Granting <u>51</u> STIPULATION FOR EXTENSION OF TIME (First Request) to Reply re <u>32</u> MOTION for Partial Summary Judgment; Replies due by 6/3/2016; and to Respond/Reply re <u>45</u> Counter MOTION for Partial Summary Judgment; Responses due by 6/3/2016. Replies due by 6/10/2016. Signed by Judge Jennifer A. Dorsey on 5/12/16. (Copies have been distributed pursuant to the NEF - JM) (Entered: 05/13/2016)
05/25/2016	<u>53</u>	<b>FIRST NOTICE: of Non-Compliance with Local Rule IC 4-1: that <u>Quyen T. Le</u> is in violation of LR IC 4-1(a). VIOLATION :</b> Turning off the email notification.  <i>1. Pursuant to Local Rule IC 4-1(a): Registration as a filing user constitutes consent to receive service through the Electronic Filing System.</i>  <b>CORRECTION :</b> The Court reactivated your email notification and retransmitted documents # <u>52</u> ORDER ON STIPULATION.  Attorney advised <u>in the future</u> to comply with Local Rules governing <i>Electronic Case Filing</i> . <b>(no image attached)</b> (RFJ) (Entered: 05/25/2016)
05/26/2016	<u>54</u>	NOTICE of Appearance by Nautilus Insurance Company. (Hsu, Linda) <u>Modified on 5/27/2016 to reflect correct event (DKJ)</u> . (Entered: 05/26/2016)
05/27/2016	<u>55</u>	NOTICE: Attorney Action Required to <u>54</u> Notice (Other). <b>ERROR:</b>  (1) Wrong event selected by attorney. Court modified entry to reflect Notice of Appearance.  (2) Request is not in compliance with LR IA 11-6(b)  "No attorney may withdraw after appearing in a case except by leave of the court after notice has been served on the affected client and opposing counsel.  (3) Document should have been filed as a separate entry pursuant to LR IC 2-2(b).  <b>CORRECTION:</b> Attorney Linda W. Hsu advised to refile request pursuant to LR IA 11-6(b).  <b>(no image attached)</b> (DKJ) (Entered: 05/27/2016)
06/01/2016	<u>56</u>	MOTION to remove attorney(s) Quyen Thi Le from the Electronic Service List in this case, by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 06/01/2016)
06/02/2016	<u>57</u>	ORDER granting <u>56</u> Motion to Remove Attorney Quyen Thi Le from Electronic Service List. Signed by Magistrate Judge George Foley, Jr on 6/2/2016. (Copies have been distributed pursuant to the NEF - AF) (Entered: 06/03/2016)
06/03/2016	<u>58</u>	STIPULATION FOR EXTENSION OF TIME (Second Request) re <u>32</u> , <u>45</u> Motions for Partial Summary Judgment by Plaintiff Nautilus Insurance Company. (Hsu, Linda) <u>Docket entry relationships added on 6/3/2016 (DKJ)</u> . (Entered: 06/03/2016)
06/06/2016	<u>59</u>	ORDER ON STIPULATION Granting <u>58</u> STIPULATION FOR EXTENSION OF TIME (Second Request) to Respond/Reply re <u>32</u> MOTION for Partial Summary Judgment (Replies due by 6/24/2016); and <u>45</u> Counter MOTION for Partial Summary Judgment (Responses due by 6/24/2016. Replies due by 7/25/2016). Signed by Judge Jennifer A. Dorsey on 6/6/16. (Copies have been distributed pursuant to the NEF - JM) (Entered: 06/06/2016)
06/24/2016	<u>60</u>	RESPONSE to <u>45</u> Motion for Partial Summary Judgment, filed by Plaintiff Nautilus Insurance Company. Replies due by 7/4/2016. (Hsu, Linda) (Entered: 06/24/2016)
06/24/2016	<u>61</u>	REQUEST for Judicial Notice to <u>60</u> Response re <u>45</u> Motion for Partial Summary Judgment ; by Plaintiff Nautilus Insurance Company. (Hsu, Linda) <u>Modified on 6/27/2016 to add docket entry relationship (DKJ)</u> . (Entered: 06/24/2016)
06/24/2016	<u>62</u>	EXHIBIT(s) 12 to Index of Exhibits In Support of 'Nautilus' to <u>60</u> Response to <u>45</u> Motion for Partial Summary Judgment ; filed by Plaintiff Nautilus Insurance Company. (Attachments: # <u>1</u> Exhibit 12)(Hsu, Linda) <u>Modified on 6/27/2016 to add docket entry relationship (DKJ)</u> . (Entered: 06/24/2016)
06/24/2016	<u>63</u>	REPLY to Response to <u>32</u> Motion for Partial Summary Judgment filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 06/24/2016)

06/24/2016	<u>64</u>	REPLY to Response to <u>32</u> Motion for Partial Summary Judgment filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 06/24/2016)
07/25/2016	<u>65</u>	REPLY to Response to <u>45</u> Motion for Partial Summary Judgment filed by Defendant Access Medical, LLC. (Green, L.) (Entered: 07/25/2016)
07/25/2016	<u>66</u>	REQUEST for Judicial Notice re <u>60</u> Response to Motion ; by Defendant Access Medical, LLC. (Green, L.) (Entered: 07/25/2016)
07/25/2016	<u>67</u>	DECLARATION of Jordan P. Schnitzer, Esq. by Defendant Access Medical, LLC. (Green, L.) (Entered: 07/25/2016)
07/25/2016	<u>68</u>	EXHIBIT(s) filed by Defendant Access Medical, LLC. (Attachments: # <u>1</u> Exhibit A- Order, # <u>2</u> Exhibit Emails)(Green, L.) (Entered: 07/25/2016)
07/26/2016	<u>69</u>	REPLY to Response to <u>45</u> Motion for Partial Summary Judgment filed by Defendant Access Medical, LLC. (Green, L.) (Entered: 07/26/2016)
09/27/2016	<u>70</u>	ORDER that <u>32</u> Nautilus's Motion for Summary Judgment is GRANTED and that <u>45</u> defendants' Motion for Summary Judgment is DENIED. The Clerk of Court is instructed to enter judgment for Nautilus and against defendants accordingly and CLOSE THIS CASE. Signed by Judge Jennifer A. Dorsey on 9/27/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 09/27/2016)
09/27/2016	<u>71</u>	CLERK'S JUDGMENT in favor of plaintiff Nautilus Insurance Company against defendants Access Medical, LLC, Flournoy Management, LLC, and Robert Clark Wood, II. Signed by Clerk of Court, Lance S. Wilson on 9/27/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 09/27/2016)
10/11/2016	<u>72</u>	BILL OF COSTS by Plaintiff Nautilus Insurance Company. Objection to Bill of Costs due by 10/28/2016. Tax Bill of Costs by 11/4/2016. (Jakobson, Galina) (Entered: 10/11/2016)
10/25/2016	<u>73</u>	FIRST MOTION for Relief re <u>71</u> Clerk's Judgment, filed by Plaintiff Nautilus Insurance Company. Responses due by 11/11/2016. (Hsu, Linda) (Entered: 10/25/2016)
10/25/2016	<u>74</u>	DECLARATION of Richard Conrad re <u>73</u> FIRST MOTION for Relief re <u>71</u> Clerk's Judgment; filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 10/25/2016)
10/25/2016	<u>75</u>	DECLARATION of Linda Wendell Hsu re <u>73</u> FIRST MOTION for Relief re <u>71</u> Clerk's Judgment; filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 10/25/2016)
10/25/2016	<u>76</u>	DECLARATION of Kenneth Richard re <u>73</u> FIRST MOTION for Relief re <u>71</u> Clerk's Judgment; filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 10/25/2016)
10/25/2016	<u>77</u>	EXHIBIT(s) to <u>73</u> FIRST MOTION for Relief re <u>71</u> Clerk's Judgment; filed by Plaintiff Nautilus Insurance Company. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6 - Part 1, # <u>7</u> Exhibit 6 - Part 2, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11 - Part 1, # <u>13</u> Exhibit 11 - Part 2, # <u>14</u> Exhibit 12, # <u>15</u> Exhibit 13, # <u>16</u> Exhibit 14, # <u>17</u> Exhibit 15)(Hsu, Linda) (Entered: 10/25/2016)
10/25/2016	<u>78</u>	NOTICE of In Camera Review Submission re: <u>73</u> FIRST MOTION for Relief re <u>71</u> Clerk's Judgment; filed by Nautilus Insurance Company. (Hsu, Linda) (Entered: 10/25/2016)
10/25/2016	<u>79</u>	ERROR: Document filed in error, wrong event selected by attorney. CORRECTION: Attorney correctly refiled document as Objection <u>80</u> . Document <u>79</u> terminated as filed in error.  MOTION for Magistrate Judge to Reconsider Magistrate Judge Order; filed by Defendants Access Medical, LLC, Robert Clark Wood, II. Responses due by 11/11/2016. (Green, L.) Modified on 10/27/2016 (RFJ). (Entered: 10/25/2016)
10/25/2016	<u>80</u>	OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider Order by Defendants Access Medical, LLC, Robert Clark Wood, II. Responses due by 11/11/2016. (Attachments: # <u>1</u> Exhibit Exhibit A - Access's First Set of Form Interrogatories, # <u>2</u> Exhibit Exhibit B - Access's First Set of Requests for Admission, # <u>3</u> Exhibit Exhibit C - Mr. Wood's First Set of Form Interrogatories, # <u>4</u> Exhibit Mr. Wood's First Set of Requests for Admission)(Green, L.) (Entered: 10/25/2016)
10/27/2016		NOTICE: of Docket Correction to <u>79</u> Motion:  ERROR: Wrong Motion event selected by Attorney <u>L. Renee Green</u> .  CORRECTION: Motion was correctly refiled as <u>80</u> OBJECTIONS. Motion <u>79</u> was terminated as filed in error. (no image attached) (RFJ) (Entered: 10/27/2016)
10/27/2016	<u>81</u>	OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider Order; filed by Defendant Flournoy Management, LLC. Responses due by 11/13/2016. (Harper, James) (Entered: 10/27/2016)
10/27/2016	<u>82</u>	OBJECTION to <u>72</u> Bill of Costs ; filed by Defendants Access Medical, LLC, Robert Clark Wood, II. Response to Objection to Bill of Costs due by 11/6/2016. (Green, L.) (Entered: 10/27/2016)
10/27/2016	<u>83</u>	MOTION to Stay by Defendants Access Medical, LLC, Robert Clark Wood, II. (Green, L.) (Entered: 10/27/2016)
11/02/2016	<u>84</u>	JOINDER to <u>82</u> Objection to Bill of Costs, <u>83</u> Motion to Stay ; filed by Defendant Flournoy Management, LLC. (Harper, James) (Entered: 11/02/2016)
11/04/2016	<u>85</u>	REPLY to <u>72</u> Bill of Costs ; filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 11/04/2016)
11/04/2016	<u>86</u>	RESPONSE to <u>83</u> Motion to Stay, filed by Plaintiff Nautilus Insurance Company. Replies due by 11/14/2016. (DKJ) (Entered: 11/07/2016)
11/07/2016		NOTICE of Docket Correction to <u>85</u> Reply - Other: ERROR: Document should have been docketed as a separate entry pursuant to LR IC 2-2(b) which states:  "For each type of relief requested or purpose of the document, a separate document must be filed and a separate event must be selected for that document". .

		<b>CORRECTION:</b> Court docketed the additional cause of action as <u>86</u> RESPONSE to <u>83</u> Motion to Stay. (no image attached)(DKJ) <u>Modified docket text on 11/7/2016 (DKJ)</u> . (Entered: 11/07/2016)
11/11/2016	<u>87</u>	RESPONSE to <u>80</u> Objections re LR IB 3-1 or Motion for District Judge to Reconsider Order,, filed by Plaintiff Nautilus Insurance Company. Replies due by 11/21/2016. (Hsu, Linda) (Entered: 11/11/2016)
11/11/2016	<u>88</u>	DECLARATION of Linda Wendell Hsu re <u>80</u> Objections re LR IB 3-1 or Motion for District Judge to Reconsider Order, filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 11/11/2016)
11/11/2016	<u>89</u>	EXHIBIT(s) to <u>87</u> Response to Motion ; filed by Plaintiff Nautilus Insurance Company. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Hsu, Linda) (Entered: 11/11/2016)
11/14/2016	<u>90</u>	RESPONSE to <u>81</u> Objections re LR IB 3-1 or Motion for District Judge to Reconsider Order, filed by Plaintiff Nautilus Insurance Company. Replies due by 11/24/2016. (Hsu, Linda) (Entered: 11/14/2016)
11/14/2016	<u>91</u>	RESPONSE to <u>73</u> Motion, filed by Defendants Access Medical, LLC, Robert Clark Wood, II. Replies due by 11/24/2016. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Green, L.) <u>Modified docket entry relationship on 11/15/2016 (DKJ)</u> . (Entered: 11/14/2016)
11/14/2016	<u>92</u>	DECLARATION of Jordan Schnitzer by Defendants Access Medical, LLC, Robert Clark Wood, II. (Green, L.) (Entered: 11/14/2016)
11/14/2016	<u>93</u>	<b>ERROR</b> Incorrect event selected by attorney. <b>CORRECTION:</b> Attorney advised to refile using the appropriate event. <u>RESPONSE to 73 Motion, filed by Defendants Access Medical, LLC, Robert Clark Wood, II. Replies due by 11/24/2016. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(Green, L.) (Entered: 11/14/2016)</u>
11/14/2016	<u>94</u>	DECLARATION of Jordan Schnitzer by Defendants Access Medical, LLC, Robert Clark Wood, II. (Green, L.) (Entered: 11/14/2016)
11/14/2016	<u>95</u>	REPLY to Response to <u>83</u> Motion to Stay filed by Defendants Access Medical, LLC, Robert Clark Wood, II. (Green, L.) (Entered: 11/14/2016)
11/15/2016	<u>96</u>	NOTICE: Attorney Action Required to <u>93</u> Response to Motion. <b>ERROR</b> Incorrect event selected by attorney. <b>CORRECTION:</b> Attorney L. Renee Green advised to refile using the appropriate event "Motion for Reconsideration". (no image attached)(DKJ) (Entered: 11/15/2016)
11/15/2016	<u>97</u>	RESPONSE to <u>73</u> FIRST MOTION for Relief filed by Defendants Access Medical, LLC, Robert Clark Wood, II. Replies due by 11/25/2016. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Declaration)(Green, L.) <u>Modified docket entry relationship on 11/15/2016 (DKJ)</u> . (Entered: 11/15/2016)
11/15/2016	<u>98</u>	RESPONSE to <u>81</u> Objections re LR IB 3-1 or Motion for District Judge to Reconsider Order, filed by Defendants Access Medical, LLC, Robert Clark Wood, II. Replies due by 11/25/2016. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Declaration)(Green, L.) (Entered: 11/15/2016)
11/21/2016	<u>99</u>	REPLY to Response to <u>80</u> Objections re LR IB 3-1 or Motion for District Judge to Reconsider Order filed by Defendants Access Medical, LLC, Robert Clark Wood, II. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Declaration)(Green, L.) <u>Modified docket entry relationship on 11/22/2016 (DKJ)</u> . (Entered: 11/21/2016)
11/22/2016	<u>100</u>	JOINDER re: <u>99</u> REPLY to Response to <u>80</u> Objections; filed by Defendant Flournoy Management, LLC. (Harper, James) <u>Court Modified entry to properly establish docket entry relationship pursuant to LR IC 2-2(d) on 11/22/2016 (RFJ)</u> . (Entered: 11/22/2016)
11/23/2016	<u>101</u>	REPLY to Response to <u>73</u> Motion filed by Plaintiff Nautilus Insurance Company. (Hsu, Linda) (Entered: 11/23/2016)
05/18/2017	<u>102</u>	ORDER. IT IS HEREBY ORDERED, ADJUDGED, and DECREED that <u>80</u> , <u>81</u> the defendants' motions for reconsideration are DENIED. IT IS FURTHER ORDERED that <u>73</u> Nautilus's motion for relief is DENIED. IT IS FURTHER ORDERED that <u>83</u> defendants' motion to stay is DENIED as moot. Signed by Judge Jennifer A. Dorsey on 5/18/17. (Copies have been distributed pursuant to the NEF - ADR) (Entered: 05/18/2017)
06/02/2017	<u>103</u>	COSTS TAXED in amount of \$420.00 against Defendants re <u>72</u> Bill of Costs. (AF) (Entered: 06/02/2017)
06/02/2017	<u>104</u>	CLERK'S MEMORANDUM regarding taxation of costs - <u>103</u> Costs Taxed, <u>72</u> Bill of Costs. (AF) (Entered: 06/02/2017)
06/16/2017	<u>105</u>	NOTICE OF APPEAL as to <u>102</u> ORDER, filed by Plaintiff Nautilus Insurance Company. Filing fee \$ 505, receipt number 0978-4653309. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Hsu, Linda) (Entered: 06/16/2017)
06/16/2017	<u>106</u>	NOTICE of Association of Counsel by Jordan P Schnitzer on behalf of Defendants Access Medical, LLC, Robert Clark Wood, II. (Schnitzer, Jordan) (Entered: 06/16/2017)
06/19/2017	<u>107</u>	NOTICE OF APPEAL as to <u>102</u> ORDER, filed by Defendants Access Medical, LLC, Robert Clark Wood, II. Filing fee \$ 505, receipt number 0978-4655488. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Kravitz, Martin) (Entered: 06/19/2017)
06/19/2017	<u>108</u>	NOTICE OF APPEAL as to <u>102</u> ORDER, filed by Defendant Flournoy Management, LLC. Filing fee \$ 505, receipt number 0978-4655719. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Harper, James) (Entered: 06/19/2017)
06/19/2017	<u>112</u>	USCA ORDER for Time Schedule as to <u>105</u> Notice of Appeal filed by Nautilus Insurance Company. <b>USCA Case Number 17-16265.</b> (MR) (Entered: 06/28/2017)
06/20/2017	<u>109</u>	USCA ORDER for Time Schedule as to <u>105</u> Notice of Appeal filed by Nautilus Insurance Company, <u>108</u> Notice of Appeal filed by Flournoy Management, LLC, <u>107</u> Notice of Appeal filed by Access Medical, LLC, Robert Clark Wood, II. <b>USCA Case Number 17-16265, 17-16272 Cross Appeals.</b> (JM) (Entered: 06/21/2017)
06/20/2017	<u>114</u>	USCA ORDER for Time Schedule as to <u>105</u> <u>107</u> <u>108</u> Notices of Appeal/Cross-Appeals. <b>USCA Case Numbers 17-16273 and 17-16265.</b> (MMM) (Entered: 06/30/2017)
06/21/2017	<u>110</u>	TRANSCRIPT DESIGNATION by Defendants Access Medical, LLC, Robert Clark Wood, II re <u>107</u> Notice of Appeal. Transcripts are <b>NOT</b> required for this appeal. (Kravitz, Martin) (Entered: 06/21/2017)



06/27/2017	<u>111</u>	TRANSCRIPT DESIGNATION by Defendant Flournoy Management, LLC re <u>108</u> Notice of Appeal. Transcripts are <b>NOT</b> required for this appeal. (Harper, James) (Entered: 06/27/2017)
06/29/2017	<u>113</u>	TRANSCRIPT DESIGNATION by Plaintiff Nautilus Insurance Company re <u>105</u> Notice of Appeal. Transcripts are <b>NOT</b> required for this appeal. (Hsu, Linda) (Entered: 06/29/2017)
08/08/2017	<u>115</u>	Emergency MOTION APPLICATION AN ORDER DIRECTING NINTH CIRCUIT TO GRANT OR ENTERTAIN MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b)(2) by Defendants Access Medical, LLC, Robert Clark Wood, II. Responses due by 8/22/2017. (Green, L.) <b>Corrected image <u>116</u> attached on 8/8/2017 (DKJ).</b> (Entered: 08/08/2017)
08/08/2017	<u>116</u>	NOTICE of Corrected Image/Document re <u>115</u> Motion, by Defendants Access Medical, LLC, Robert Clark Wood, II. (Service of corrected image is attached). (Attachments: # <u>1</u> Declaration L. Renee Green, # <u>2</u> Exhibit A - Ltr from Linda Hsu dated 11/7/2016, # <u>3</u> Exhibit B - Ltr from Renee Green dated 7/28/17, # <u>4</u> Exhibit C - Emails, # <u>5</u> Exhibit D- Ltr from Linda Hsu dated 7/6/17)(Green, L.) (Entered: 08/08/2017)
08/08/2017	<u>117</u>	MOTION Application for Order Directing or Indicating to the United States Court of Appeals for the 9th Circuit that the District Court Will Grant or Entertain Motion for Relief From Judgment Pursuant to Rule 60(b)(2) by Defendants Access Medical, LLC, Robert Clark Wood, II. Responses due by 8/22/2017. (Attachments: # <u>1</u> Declaration L. Renee Green, # <u>2</u> Exhibit A - Motion for Relief from Judgment, # <u>3</u> Exhibit A - Ltr from Linda Hsu dated 11/7/2016, # <u>4</u> Exhibit B- Ltr from Renee Green dated 7/28/2017, # <u>5</u> Exhibit C - Emails, # <u>6</u> Exhibit D - Ltr from Linda Hsu dated 7/6/2017)(Green, L.) (Entered: 08/08/2017)
08/11/2017	<u>118</u>	ORDER that <u>117</u> Application for an order indicating that the district court will entertain a motion for relief from judgment is DENIED. FURTHER ORDERED that <u>115</u> Motion for emergency order shortening time is DENIED. Signed by Judge Jennifer A. Dorsey on 8/11/17. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 08/14/2017)
08/14/2017	<u>119</u>	JOINDER to <del>116</del> <u>115</u> Emergency MOTION APPLICATION AN ORDER DIRECTING NINTH CIRCUIT TO GRANT OR ENTERTAIN MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b)(2), filed by Defendant Flournoy Management, LLC. (Harper, James) <b>Modified docket entry relationship on 8/15/2017 (TR).</b> (Entered: 08/14/2017)
09/08/2017	<u>120</u>	NOTICE OF APPEAL as to <u>118</u> Order on Motion,,,,, by Defendants Access Medical, LLC, Robert Clark Wood, II. Filing fee \$ 505, receipt number 0978-4766302. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Kravitz, Martin) (Entered: 09/08/2017)
09/11/2017	<u>121</u>	NOTICE OF APPEAL as to <u>118</u> Order on Motion,,,,, by Defendant Flournoy Management, LLC. Filing fee \$ 505, receipt number 0978-4767543. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Harper, James) (Entered: 09/11/2017)
09/12/2017	<u>122</u>	USCA ORDER for Time Schedule as to <u>121</u> Notice of Appeal filed by Flournoy Management, LLC. <b>USCA Case Number 17-16842.</b> (JM) (Entered: 09/12/2017)
09/12/2017	<u>123</u>	USCA ORDER for Time Schedule as to <u>120</u> Notice of Appeal, filed by Access Medical, LLC, Robert Clark Wood, II. <b>USCA Case Number 17-16840.</b> (MR) (Entered: 09/13/2017)
09/15/2017	<u>124</u>	NOTICE of Appearance by attorney Eric Sebastian Powers on behalf of Plaintiff Nautilus Insurance Company. (Powers, Eric) (Entered: 09/15/2017)
09/15/2017	<u>125</u>	NOTICE OF RELATED CASES 2:17-cv-02393 by Plaintiff Nautilus Insurance Company. (Powers, Eric) (Entered: 09/15/2017)

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10/20/2017 11:40:34			
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Billable Pages:	12	Cost:	1.20

**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2017, I electronically filed Nautilus Insurance Company's Excerpts of Record (Volumes 1 through 4) to the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

DATED: October 25, 2017

Selman Breitman LLP

By: s/ Pamela Smith  
Pamela Smith

## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SELMAN BREITMAN LLP and on the 20<sup>th</sup> day of November, 2019, a true and correct copy of the above and foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system and by United States First-Class mail to all unregistered parties as listed below:

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*/s/ Bonnie Kerkhoff Juarez*  
**BONNIE KERKHOFF JUAREZ**  
An Employee of Selman Breitman LLP