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IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 15-003338 (25)

ROBERT LEVERETT,

Plaintiff,

v.

CAPACITY INSURANCE COMPANY, a Florida Corporation, MILLS MEHR & ASSOCIATES, INC., a Florida Corporation, SHAWN STARBUCK, KEITH BOLEN, FOCUS CLAIM MANAGERS, LLC, a Florida Limited Liability Company and ORION WHITLOCK

Defendants.

PLAINTIFF'S RESPONSE TO AMENDED MOTION FOR SUMMARY JUDGMENT

Plaintiff Robert Leverett hereby responds to the Amended Motion For Summary Judgment filed by defendant Capacity Insurance Company (Capacity), and defendant Keith Bolen's Supplemental Memorandum of Law (collectively referenced as the Defendants).

INTRODUCTION

This action arises from the Defendants' referral of Plaintiff Robert Leverett to the Department of Financial Services, Division of Insurance Fraud (the Department) and the State's Attorney's Office, following an umpire-appraisal process. Capacity's insured, Sai Jal, LLC d/b/a Red Carpet Inn (Red Carpet), suffered a fire, reported a claim, and hired Leverett as a public adjuster. Defendants, unhappy with Leverett's valuation of the damage caused by the fire and the water damage associated with putting out the fire, referred Leverett to the Department and the State's Attorney's Office. Leverett was arrested and charged with insurance fraud, but the State's Attorney determined to *nolle prose* because the Defendants had provided it with incomplete, false and mischaracterized information to obtain the arrest and charges. *Nolle pross* memo attached hereto as Exhibit "A". (Exhibit 5 to Browning's depo. at 2)

The Defendants have both moved, and adopted each other's motion, for summary judgment. They contend that there exists no dispute of fact regarding the existence of probable cause, and no dispute that they did not act with malice in their actions that led Leverett to be charged with insurance fraud. The court's review, however, will find that contrary to suggestion, that Plaintiff does not rely or contend that the decision not to prosecute Leverett is itself sufficient evidence to oppose summary judgment. Rather, there exists strong record evidence that the Department did not conduct an independent investigation, and that the Defendants conducted the investigation on the Department's behalf! Moreover, with regard to malice, the

sheer amount of misleading and false evidence transmitted by the Defendants to the Department provides an ample basis upon which a jury could determine the Defendants to have acted with malice and therefore outside the safe harbor provisions of § 626.989, Fla. Stat. (2020).

The law is clear that in reviewing a motion for summary judgement, all of the evidence must be viewed in the light most favorable to the opposing the party…In it's motion, Defendants asks this court to weigh the heavily-disputed facts (which they consistently spin in their favor), rather than the jury, as required by law.

I. THE SUMMARY JUDGMENT STANDARD.

On December 31, 2020, the Florida Supreme Court adopted the Federal summary judgment standard to be applicable after May 20, 2021. *In Re. Amendments to Fla. R. Civ. P. 1.510*, 309 So.3d 192, 192-94 (Fla. 2020). The purpose of the amendment is to render the Florida summary judgment standard aligned with the Federal standard such that the standard is akin to the directed verdict standard in which a non-moving party must show "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id*. at 192 (citation omitted).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of persuasion to demonstrate an absence of disputed material facts.

Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). When that burden is met, the burden shifts to the non-moving party to demonstrate a material factual issue that precludes summary judgment. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991).

Notwithstanding the new standard, familiar concepts continue to be applicable. The Court is to "view the evidence and draw all reasonable inferences from it in the light most favorable to the nonmoving party …." *Davis v. Legal Servs. Ala. Inc.*, -- F.4th --, 2021 WL 5711043, *1 n.1 (11th Cir. Dec. 2, 2021). "A disputed fact is material if it might affect the outcome of the suit under the governing law." *Phillips v. Delta Airlines*, 2021 WL 5584193, *1 (S.D. Fla. Nov. 30, 2021) (citations and internal quotations omitted). "A dispute over a material fact is genuine if it could lead a reasonable jury to return a verdict in favor of the nonmoving party. *Id*. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge at summary judgment." *Id*.

To be sure, the mere existence of an alleged factual dispute will not stave off a summary judgment, and only facts from which a reasonable jury could return a verdict for the non-moving party will avoid the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Thus, the non-moving party "may not rest upon the mere allegations or denials of his pleadings,

but … must set forth specific facts showing that there is a genuine issue for trial." *Id*. at 248.

II. LEVERETT HAS SET FORTH SUFFICIENT EVIDENCE FROM WHICH A JURY COULD DETERMINE THAT PROBABLE CAUSE WAS MANUFACTURED BY THE DEFENDANTS, SUCH THAT NO INDEPENDENT INVESTIGATION EVER WAS UNDERTAKEN.

The only fact that is not disputed is that Leverett estimated the Red Carpet's damages as about $350,000 more than an umpire eventually awarded. From this thin reed, the Defendants contend that this differential is *per se* probable cause to initiate a fraud investigation and to instigate a prosecution. The Defendants, however, fail to mention that the amount awarded by the Umpire was almost $200,000 more than the Defendants estimated. These facts do not rise to the level of probable cause to initiate a fraud investigation on their own.

For the Motion to be granted, however, the Court would be required to find that delta as sufficient, by itself, for probable cause. That is so because the plethora of evidence shows that a trier of fact could find that the Defendants hijacked the investigation by providing the Department with false and misleading information.

The investigation summary report prepared by the Department which formed the basis for probable cause determinations, contains numerous pillars for which the facts are disputed. Not only are the facts disputed, but also it is disputed whether the Defendants provided misleading, false, and incomplete information to manufacture probable cause, thereby forcing the authorities to arrest and prosecute the Plaintiff.

The evidence is sufficient for a jury to find there was no independent investigation conducted by the Department. In his *nolle pross* memo, States Attorney Browning wrote that upon a site view with the lead detective "[i]t became clear upon arriving at the hotel that Harmon had never actually been to the scene of the fire despite being the lead detective." Exhibit "A". Moreover, Browning concluded that "very little actual work was done by [the Department]. There were no witness statements generated through [Department] investigative work. In fact, there is little evidence actually generated through [Department] investigation" *Id*.

Most critically, Browning determined that "it appears this case was put together by Capacity and sent through [the Department] for the [State's Attorney] to prosecute." *Id*. Indeed, Orion Whitlock testified that he made the decision to refer Leverett because he felt the claim was exaggerated. Whitlock Dep. at 11-12. But Browning wrote that "it was clear that the documents provided to the SAO undersold the damage done to the hotel and only provided one side of the story, which would be Capacity's point of view." Exhibit "A". This evidence alone is sufficient for a jury to find that probable cause for the investigation was manufactured by the Defendants and that such was done willfully. But there is a mountain of further evidence that would support a jury's findings on probable cause and willfulness.

Scott Kiso, a detective in the Department's fraud division, and a detective assigned to Leverett's case, testified that in a case like this one it is important to be able to rely upon the documents provided to the Department. Kiso Mar. 15 Dep. at 9-10, 21, lns. 2-12. In conducting his investigation, Kiso relied on documents

provided by Keith Bolen, a Capacity employee. *Id*. at 22, lns 6-14. Indeed, Kiso "for the most part, pretty much totally" relied on documents provided by Bolen, Sharome Wolfe (Capacity's agent) or some other Capacity representative. *Id*. at 22, lns. 15-23; 60, lns. 8-15; 61, lns. 1-2. Kiso remembers driving by the Red Carpet, but not entering it. *Id*. at 33, lns. 3-7; 46, lns. 5-24. Neither Kiso, nor the Department, secured or obtained independent testimony or affidavits from witnesses. *Id*. at 90, lns. 7-20. "[A]ll the information would have come from Capacity or representatives of Capacity." *Id*. at 91, lns. 1-3.

State's Attorney Stephen Browning testified that it was clear that Detective Harmon never visited the hotel during the Department's purported investigation. Browning Dep. at 58, lns. 9-11. Indeed, Browning came to the conclusion that "very little actual work was done by the Department of Financial Services." *Id*. at 58, lns. 9-11. "There were no witness statements generated through" the Department. *Id*. at 58, lns. 14-16. "In fact, there is little evidence actually generated through the [D]epartment's" investigation at all." *Id*. at 58, lns. 16-19.

The site view caused Browning to look deeper into the file provided by the Department. Browning Dep. at 60, lns. 6-21; 61, lns. 6-16. Although he cannot be certain, he did not "know where else everything would have come from that was given to [the Department] if it did not come from Capacity." *Id*. 61, lns. 6-16. Browning went so far as to testify that "of course Capacity was the driving force because my impression is, they felt Mr. Leverett was attempting to overcharge them." *Id*. at 63, lns. 15-17.

A. The Florida Supreme Court Holds That Where Facts As to Probable Cause Are Disputed, Summary Judgment Is Not Appropriate.

Regarding the element of a lack of probable cause in a malicious prosecution lawsuit, the Florida Supreme Court holds:

> In an action for malicious prosecution, the question of probable cause is a mixed question of law and fact. When the facts relied on to show probable cause are in dispute, their existence is a question of fact for the determination of the jury; but their legal effect when found or admitted to be true, is for the court to decide as a question of law.

Mem'l Hosp.-W. Volusia, Inc. v. News–Journal Corp., 729 So.2d 373, 381 (Fla.1999) (*quoting Alamo Rent–A–Car, Inc. v. Mancusi*, 632 So.2d 1352, 1357 (Fla. 1994).

B. There Are Sufficient Facts Surrounding Probable Cause And Whether The Department Conducted An Independent Investigation Are Disputed to Require Submission to a Jury.

The Defendants present their argument as if the only basis Leverett relies upon for a lack of probable cause is the fact that the state's attorney eventually dropped charges. Not so. Below are six critical pieces of evidence the Defendants provided to the Department, for which the facts are in dispute.

In presenting this argument, the Defendants rely heavily on *Saenz v. State Farm Fire & Cas. Co.*, 861 So. 2d 64 (Fla. 3d DCA 2003). But in *Saenz*, it was undisputed that the Department conducted an independent investigation. *Id*. at 66-67. Thus, the fact that the state's attorney eventually dropped charges was irrelevant. *Id*. at 68.

The Defendants' reliance on *Pearce v. U.S. Fid & Guar. Co.*, 476 So. 2d 750, 753 (Fla. 4th DCA 1985), fares no better. In *Pearce*, the Plaintiff argued that only formal submissions are immune from liability. *Id*. Leverett makes no such argument here. Rather Leverett contends that six key pieces of evidence are sufficient to demonstrate that probable cause was manufactured by the Defendants.

(1) The Amount of Water Used to Put Out the Fire.

The Investigative Summary Report (the Report) states that the Orlando Fire Department was able to put out the fire using only 150 gallons of water. Report at 1. This information came from an affidavit from Bolen, which affidavit states that "No more than 150 gallons of water were reportedly used by the responding fire department personnel to extinguish the fire in room 207, according to LTPM, Felix A. Benitez." Bolen Affidavit at 2. Report attached hereto as Exhibit "B".

That statement was false. Bolen testified that he learned this statement was false but never corrected it. Bolen Dep. at 257-61. As State's Attorney Browning testified, the fire report shows that although only 150 gallons came off the truck, hotel guests used fire extinguishers, and the fire department tapped into fire hydrants, using thousands of gallons of water. Browning Dep. at 33, lns. 14-24. This one factual inaccuracy was the strongest basis for Browning's decision to charge Leverett. *Id*. at 30, lns. 20-25; 31, lns. 1-12.

Indeed, Browning testified he also made his charging decision based upon the fact that many items claimed to have been damaged by water, such as toilets and bathtubs, "are intended to hold water and it seemed impossible for them to be

damaged by water." Browning Dep. at 30, lns 20-25; 31, lns. 1-4. Moreover, "it was claimed that the Orlando Fire Department only used 150 gallons of water" and it would be "impossible" for so little water to cause so much damage. *Id*. at 31, lns. 5-12.

Kiso testified that his knowledge regarding the amount of water used to put out the fire came from Bolen. Kiso May 29 Dep. Vol. 1 at 27, lns. 11-25. If Kiso had known that much more than 150 gallons were used, then he would have looked closer at the facts asserted by Bolen. *Id*. at 28, lns. 15-22. "But you know, like I said, my determination was based on their investigation, for the most part." *Id*.

Contrary to suggestion, Defendants had provided the Department an affidavit, which in turn provided the affidavit to Browning, stating that only 150 gallons of water were used to put out the fire. Bolen Affidavit at 2. After indicting Leverett, however, Browning travelled with Lead Detective Kurt Harmon to view the Red Carpet. Browning Dep. at 25, lns. 11-24. Upon conducting the site view, "it became very obvious that way more than 150 gallons of water were used." *Id*. at 33, lns.12-14.

It was during the site view that Browning learned that Red Carpet guests had used a fire hose before the Orlando Fire Department arrived, and that the fire department tapped into a nearby fire hydrant and utilized "thousands upon thousands" of gallons of water to put out the fire. Browning Dep. at 33, lns. 14-24. The amount of water used was significant to the charging decision, and upon learning that much more water had been used than had been told to him, and that the

bathrooms and sinks had to be replaced because they were attached to drywall that had to be replaced, he dropped charges. *Id*. at 34-57. If Browning had known the true extent of the damage to the hotel, and the amount of water actually used, "*it's very unlikely*" he would have filed charges. *Id*. at 57, lns. 24-25; 58, lns. 1-5 (emphasis added).

(2) The Number of Rooms Asserted To Have Been Damaged.

The Report indicates that Leverett included more damaged rooms than exist at the hotel and for rooms that were occupied in the weeks after the fire. Report at 2. That is an inaccurate description as Leverett was writing how many rooms were in the hotel and his damage assessment came through in his report with an accurate number of rooms affected by the fire. Defendants represented that certain rooms being claimed by Plaintiff as damaged were, in fact, in use and therefore the inclusion of said rooms was insurance fraud. Kiso May 29 Dep. Vol. 1 at 32-34. In particular, Capacity asserted to the Department that Leverett claimed damage to room 203, when he had not. Leverett Dep. at 163-64.

Kiso was presented with documentary evidence that Plaintiff was not claiming these rooms as damaged. Kiso Mar. 15 Dep. at 32-34. Kiso stated that if he had accurate information, "the case probably might not have gotten filed" and Kiso may not have presented the case to the State's Attorney's office. *Id*. at 34, lns. 13-23; 56, lns. 1-7.

(3) Capacity Pressured Roy Marshall to Sign a False Affidavit.

Roy Marshall, the principal of MIT Restoration, LLC (MIT), a general contractor hired by the Red Carpet to perform emergency services and demolition services after the fire, signed an affidavit that the Defendants submitted to the Department. Marshall First Affidavit at 1. At the Defendants' insistence, Mr. Marshall signed an affidavit, referenced in the Report at p.2, stating that "any other items not otherwise included in the emergency services and demolition outline were included in the building repair/replacement estimate solely at the request of the Public Adjuster and/or the engineer retained by Robert Leverett." *Id*. at 3.

The affidavit, and thus the Report at 2-3, makes it seem as if Marshall submitted a report containing false information at Leverett's insistence. *Id*. Mr. Marshall now states that Capacity's attorney-representative sent the first affidavit, insisted that Marshall sign, and made him believe that his invoice would not be paid if he did not sign. Marshall Second Affidavit at 2-3.

Presented with the recanted information, Kiso acknowledged that if he had known Mr. Marshall felt pressured to sign the affidavit in order to be paid for work performed, Kiso would not have relied on it in the investigation. Kiso May 29 Dep. Vol. 1 at 56-64. And rely extensively on the affidavit submitted by Capacity, he did, because the original affidavit made it appear that Leverett was asking Marshall to exaggerate damage. *Id*. at 58, lns. 10-23; Report at 2-3. Indeed, Kiso was under the impression Marshall had prepared the affidavit, when, in fact, Capacity had prepared it for Marshall's signature. *Id*. at 61, lns. 19-21; 70, lns. 8-10.

(4) Capacity Manipulated Grant Renne's Affidavit Testimony.

The Report notes that Leverett tried to buy Renne's opinion. Report at 3. Mr. Renne's affidavit, submitted to the Department by the Defendants, states that "During the September 4, 2012 site inspection I was asked by Mr. Leverett if I wanted to join him at Rachel's for a meal with adult entertainment. I declined and advised him my opinion could not be bought." Exhibit C at 3. This line makes it appear as if Leverett tried to bribe Renne for a different engineering opinion, and that insinuation provided a pillar for the finding of probable cause. Report at 3. Grant Renne's affidavit attached hereto as Exhibit "C".

Just as with Marshall, however, Renne has now testified that this was a "lighthearted conversation", that Leverett never tried to buy an opinion, but that Renne was merely uncomfortable discussing a gentleman's club and the possibility of any potential impropriety associated with spending time with Leverett. Renne Dep. at 37, lns. 1-25; Renne Sworn Statement at 11. Renne further testified that there was "no indication" that Leverett had "intention to get [Renne] to be more favorable to him on this claim." *Id*. at 38, lns. 19-25. Indeed, had Renne taken the exchange seriously he would have been required to report the conversation to his superiors, which he did not do. *Id*. at 42, lns. 7-12.

And yet, the affidavit is written in a manner so as to make it seem as if Leverett tried to bribe Renne. Renne told Ms. Wolfe, Capacity's agent, the exchange was a joke. Renne Dep. at 45, lns. 7-12. Wolfe asserted that the information should be in

the affidavit so Renne could protect himself from purported allegations Leverett made against his professionalism. *Id*. at 46, lns. 6-11.

Moreover, Wolfe "wanted to clean it up to a more professional level at the sacrifice of accuracy." Renne Sworn Statement at 16. Renne testified that if he had been told that the affidavit was going to be submitted as part of a criminal investigation, "I would have made her make it more accurate." Renne Dep. at 51, lns. 7-19. Indeed, Renne felt "coerced into modifying" the paragraph on Rachel's and "pressured to sign" the affidavit. *Id*. at 62, lns. 11-20; 63, lns. 13-18; Renne Sworn Statement at 18. Indeed, Renne testified that Wolfe was not acting professionally. *Id*. at 86.

Kiso was not aware the affidavit was drafted by Capacity, that Renne was not told the affidavit was to be used in a fraud investigation, or that Renne did not actually believe Leverett had tried to bribe him. Kiso May 29 Dep. Vol. 1 at 70, lns. 8-10; 71, lns. 21-25; 73, lns. 2-4. Had Kiso known such discrepancies existed, the discrepancies would have altered the investigation. *Id*. at 73, lns. 5-12.

Moreover, Renne testified as to Leverett's behavior during the insurance process. Renne "didn't see any type of behavior that could be interpreted as being fraudulent," and would have reported it if he had. Renne depo. at 52-54. During the process, however, Renne felt Bolen was not acting professionally and was biased against Leverett. *Id*. at 84-86.

(5) The Report Contains Inaccurate Information Regarding Leverett Improperly Cancelling a Site View.

The Report, based on Bolen's affidavit, states that Leverett cancelled a site view purportedly because the Red Carpet's principal was unavailable. Report at 4. The Report further reflects that surveillance showed the principal on the property. *Id*. The Defendants submitted affidavits to suggest Leverett was purposefully trying to prohibit Defendants from inspecting the property. This charge, in light of the allegations of fraud, would lead an investigator to believe there was some type of cover-up being engaged in. However, the Defendants failed to provide evidence to the Department that it was simply a scheduling hang-up and that there was no nefarious purpose. Kiso May 29 Dep. Vol. 1 at 79-8. Indeed, Bolen testified that that if there is no E-mail or testimony that the motel owners were unavailable then his affidavit was untruthful. Bolen Dep. at 275-76.

Kiso testified that Capacity's claim that Leverett had tried to prevent it from inspecting the Red Carpet was important because that information made it appear Leverett was trying to hide something. Kiso May 29 Dep. Vol. 1 at 79, lns. 7-19. Kiso was then presented with an E-mail trail that showed Capacity's assertion to be false, and that Leverett had merely asked that a Friday inspection be moved to the following Monday or Tuesday to accommodate a last-minute travel to Dade County for work purposes. *Id*. at 81, lns. 8-24. Kiso was not provided that E-mail by Capacity during his investigation. *Id*. at 81, lns. 14-16. After reviewing the E-mail,

Kiso acknowledged that several paragraphs of Bolen's affidavit were "misleading." *Id*. at 84, lns. 14-25.

(6) The Umpire's Appraisal Award.

The Report, again based upon Bolen's affidavit, asserts that Leverett proposed a $750,000 loss and Capacity assessed that loss at about $100,000. Report at 4-5. The Defendants never told Kiso that a neutral umpire found Capacity to have underpaid the claim by nearly $200,000.

III. THERE IS SUFFICIENT EVIDENCE FOR A JURY TO FIND THAT DEFENDANTS ACTED WITH MALICE.

"Malicious prosecution is a 'very ancient' cause of action, one that has long been recognized by the Florida Supreme Court." *Fischer v. Debricant*, 169 So. 3d 1204, 1206 (Fla. 4th DCA 2015), *citing, Tatum Bros. Real Estate & Inv. Co. v. Watson*, 109 So. 623, 626 (Fla. 1926). "To prevail in a malicious prosecution action, a plaintiff must establish the following six elements":

> 1) an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued; (2) the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant, and (6) the plaintiff suffered damage as a result of the original proceeding.

Id. (*citing, Alamo Rent–A–Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1355 (Fla. 1994).

Moreover, there is no need for Leverett to prove actual malice (although Leverett believes he would clear this tougher hurdle based on the facts), but only legal malice. As the Supreme Court has held:

> Likewise, the trial judge properly denied Alamo's request for a directed verdict on the issue of malice. In an action for malicious prosecution it is not necessary for a plaintiff to prove actual malice; legal malice is sufficient and may be inferred from, among other things, a lack of probable cause, gross negligence, or great indifference to persons, property, or the rights of others. *Adams*. In this case, the issue of probable cause is in dispute and Mancusi produced evidence from which a jury could infer that Alamo's employees intentionally provided false information to authorities.

Mancusi, 632 So. 2d at 1357.

Regarding legal malice, Grant Renne, through his sworn statement, indicated malice on the part of Bolen and Capacity. Bolen told Renne to pay close attention to Leverett because he believed, based on prior claims, that Leverett would overestimate the claim. Renne Sworn Statement at 6-7. Indeed, Bolen, prior to receiving any estimate from Leverett, told Renne that Leverett was conspiring with Indian hotel owners to overestimate their claims. *Id*. at 7. Renne found this conversation "peculiar" because never before, in working on 900 claims, had any insurance company specifically "target[ed]" or singled out a specific public adjuster. *Id*. Indeed, it was Renne's impression that Bolen "had some kind of personal vendetta against Mr. Leverett." Renne Sworn Statement at 20.

After being presented with evidence that Capacity's affidavit and information were misleading or untruthful, Detective Kiso testified that "there's information that

you bring to light that was never given to me or passed to me that they [Capacity] were aware of would indicate that they weren't being completely truthful in their affidavit." Kiso May 29 Dep. Vol. 1 at 96-97. Moreover, it is Kiso's opinion that Capacity "had some ill intent" with how information was presented to the Department and Kiso. *Id*. at 97, lns. 14-15.

The mere fact that the Defendants provided the Department with misleading and incomplete information constitutes at a minimum, a dispute of fact as to whether the Department acted with legal malice. Throughout his investigation, Kiso relied heavily on the information provided by Bolen and Capacity. *Id*. at 72-73. Indeed, during the investigation, Kiso requested an affidavit from Bolen to "outline the facts of the case" for Kiso, and Bolen did so. Kiso May 29 Dep. Vol. 1 at 8, lns. 4-11.

Bolen's affidavit was "a key piece of information" in the investigation, such that Kiso "relied heavily on it in coming to some of the conclusions" he came to. Kiso Mar. 15 Dep. at 74, lns. 2-16. And the investigative summary report that Kiso provided to Browning, was derived entirely from information provided by "Mr. Bolen and Capacity." Kiso May 29 Dep. Vol. 1 at 17, lns. 9-23. In fact, Kiso testified that Bolen assisted in the investigation. Kiso Mar. 15 Dep. at 93-94. Bolen's affidavit was important to Kiso, "because … for the most part he had conducted the investigation on behalf of Capacity Insurance, and we were relying on his expertise and information to present the case …, so we relied heavily on his information or totally on his information." Kiso May 29 Dep. Vol. 1 at 19, lns. 3-9. It was Kiso's impression that Capacity was motivated to try and secure charges and

a conviction against Leverett. Kiso Mar. 15 Dep. at 88, lns. 2-14. Moreover, it is Kiso's opinion that Capacity "had some ill intent" with how information was presented to the Department and to Kiso. *Id*. at 97, lns. 14-15.

CONCLUSION

Based on the foregoing, there is sufficient evidence from which a jury could determine that probable cause was manufactured by the Defendants and that the Defendants acted willfully. Defendants set forth their motion as if all facts and evidence should be reviewed in the light most favorable to the moving party. Not so. As detailed above, even under the new summary judgment standard all evidence and inferences therefrom must be viewed in the light most favorable to the non-moving party. There is more than sufficient evidence to submit this action to a jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email this December 27, 2021 to: Thomas J. McCausland, Esq., and Michael K. Wilensky, Esq., Conroy, Simberg, Ganon, Krevans, Abel, Lurvey, Morrow & Schefer, P.A., 3440 Hollywood Boulevard Second Floor, Hollywood, Florida 33021, Emails: mwilensky@conroysimberg.com, eservicehwd@conroysimberg.com, ddemarais@conroysimber.com, and tmccausland@conroysimberg.com; Daniel M. Samson, Esq., Samson Appellate Law, 201 South Biscayne Boulevard, Suite #2700, Miami, Florida 33131, Emails: dan@samsonappellatelaw.com and leah@samsonappellatelaw.com; and D. David Keller, Esq., Jose Riguera, Esq., Keller Landsberg, P.A., Broward Financial Centre, 500 East Broward Boulevard, Suite 1400, Fort Lauderdale, Florida 33394, Emails: david.keller@kellerlandsberg.com, jose.riguera@kellerlandsberg.com, and Laura.Kelly@kellerlandsberg.com.

/s/Daniel B. Caine
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EXHIBIT
"A"

This is a case about a fire at a hotel on West Colonial and the subsequent insurance claim. The defendant, Robert Leverett ("D"), was hired by the hotel owners as a general contractor to make an appraisal on the damages and help with the insurance claim. The claim presented by D was significantly higher than what Capacity Insurance ("Capacity") believed was appropriate. Capacity did pay out about $210,223.70 as a result of the claim. This amount was more than $500,000.00 lower than what D appraised the damage at. Capacity presented the case to the Department of Insurance Fraud ("DIF") as they believed D acted criminally.

Prior to filing charges, I spent hours upon hours going over the case. I met multiple times with the lead detective, Kurt Harmon ("Harmon") and also met with an attorney representing Capacity, Sharome Wolfe. Eventually, I felt comfortable filing charges based upon the claims made on a few specific rooms. The basis for my charging decision was that D requested complete renovations of bathrooms in hotel rooms where there was zero evidence of water damage. Basically, it appeared that D was claiming that sinks, toilets, bathtubs, etc. were damaged by water and that Capacity needed to pay for them to be replaced. After all, sinks, toilets, tubs, etc. are intended to hold water and it seems impossible for them to be damaged by water. Further, it was claimed that the Orlando Fire Dept. only used 150 gallons of water to put out the fire. It would be impossible for so little water to cause so much damage. At the time, this seemed to clearly be fraud based upon the evidence presented to the SAO by DIFD and Capacity.

I sat down with Bradford Fisher and discussed the case for a couple of hours both with him and with Harmon. The three of us all went out to the scene of the fire and toured the hotel. One of the owners, V. Patel, allowed me and Bradford to view the rooms for which D's claims seemed dubious and into the narrow breezeway between the rooms. V. Patel answered any questions we had about the fire, the damage, and any subsequent repairs.

First, it became very obvious that way more than 150 gallons were used to put out the fire. Hotel guests used a fire hose on the first floor to spray water from the ground floor onto the fire on the second floor. Also, there was a fire hydrant that Orlando Fire Department tapped into to put out the fire. While 150 gallons of water may have been used from the fire truck itself, there is no way to gauge how much water came from the water main. Thousands upon thousands of gallons likely were used and with so much water being used, it is likely to get into many of the rooms.

Second, upon touring the breezeway it was quite clear how the water could have spread quickly to other rooms. Most of the drywall was new and it was obvious that it had to have been replaced after the fire. The breezeway is so narrow that it was easy to see how the water would go through the drywall on one side of the building and into the drywall on the other. Also, there were numerous points in the breezeway that would have allowed water to make its way to the first floor. Further, V. Patel pointed out how water was sprayed into the attic and once in the attic it was easier to get to the other side of the hotel and into the drywall.

The ease with which the water could have gotten into the drywall is critical in explaining away my theory for filing the case. We went into the bathrooms in multiple rooms and the bathrooms were very cramped. V. Patel explained that the contractors needed to remove the drywall in the bathrooms and the in order to do that the sinks, tubs, toilets, etc. needed to be removed first. The

Explanation for NPP

contractors explained to him that it would be impossible to remove the sinks, tubs, toilets, etc. in one piece before removing the drywall. That would explain why all of those items would need to be replaced in rooms without obvious water damage.

Third, V. Patel explained to us how the smell of smoke and mold had gotten into many of the rooms and guests were complaining about it after the fire. He said that they tried to wash the sheets, towels, etc. but could not get the smell out. Items like the mattresses could obviously not be washed and needed to be replaced.

Fourth, the damage to the hotel was much larger in scope in person that it was made out to be in the reports. Evidence of fire and smoke damage was extensive both in the breezeway and on the outside of the hotel. While some of the damage may have been intentionally left there by the hotel owners and D in order to sway a possible jury, it was still powerful evidence. If the defense took a jury out to the hotel to view the damage and provided them with an explanation for why D submitted the claim that he did, there's no chance a jury would have found the D guilty.

It became clear upon arriving at the hotel that Harmon had never actually been to the scene of the fire despite being the lead detective. Further, upon reviewing the file it was also clear very little actual work was done by DIFD. There were no witness statements generated through DIFD investigative work. In fact, there is little evidence actually generated through DIFD investigation. Upon further examination, it appears this case was put together by Capacity and sent through DIFD for the SAO to prosecute.

In the end, there is no chance that the SAO would be able to prove this case beyond a reasonable doubt. The defense has a reasonable explanation for any theory presented by the SAO. Upon going to the scene, it was clear that the documents provided to the SAO undersold the damage done to the hotel and only provided one side of the story, which would be Capacity's point of view. If the jury saw the hotel there is no way they would convict D. While it's likely that D did attempt to overbill Capacity for damage, the evidence is insufficient to prove any sort fraud beyond a reasonable doubt. It's not even close. This is a civil case and any dispute should be handled between D and Capacity in the civil courts.

EXHIBIT "B"

I. INVESTIGATION SUMMARY REPORT

Synopsis: Capacity Insurance Company initiated a fraud referral with the Division of Insurance Fraud in regards to an inflated insurance claim submitted by Robert Eugene Leverett II on behalf of the owners of Sai Jal, LLC d/b/a Red Carpet Inn located at 3956 West Colonial Drive, Orlando Florida.

On August 26, 2012, a guest of the Red Carpet Inn left a lit cigarette burning in room number 207 causing a fire. The Orlando Fire Department (OFD) responded and within a short period of time the fire was extinguished. The owners of Sai Jal, LLC retained Public Adjuster, Robert Eugene Leverett II to assist in presenting a claim for benefits to Capacity Insurance Company. On or about August 30, 2012, Leverett demanded reserves for 64 rooms he was claiming as being damaged in the fire including the attic and roof of the building as well as all of the contents of the rooms. Capacity Insurance Company hired Expert General Contractor John Crist of BRC, as well as Engineer Grant Renne of Donan Engineering and Independent Adjuster George Turnbull of Mills Mehr to inspect the property. All of the experts hired by Capacity Insurance Company determined that the loss was limited to nine to twelve rooms with little or no damage to the attic and no damage to the roof. Statements of loss submitted by Leverett on behalf of Sai Jal, LLC are claiming in excess of $750,000.00 in damages. While adjusting the claim, Capacity Insurance Company developed evidence to believe that Robert Eugene Leverett II knowingly and willfully submitted false and fraudulent material information in support of the insurance claim. After conducting an investigation, SIU/Claims Manager Keith Bolen forwarded his findings to the Division of Insurance Fraud for a criminal investigation into the claim. The Division of Insurance Fraud conducted a Criminal Investigation to determine if Robert Eugene Leverett II committed any criminal violations.

Narrative: As part of this investigation, documents were reviewed related to Capacity Insurance Company, tip number T13-14997 submitted to the Division of Insurance Fraud on or about February 28, 2013. The following was noted.

On Sunday, August 26, 2012, at approximately 2135 hours, the OFD responded to the Red Carpet Inn located at 3956 West Colonial Drive, Orlando in reference to a structure fire. Upon arrival, the OFD personnel located the fire in Room 207 of the Red Carpet Inn at which time they encountered heavy smoke, but minimal fire. The OFD was able to extinguish the fire with approximately 150 gallons of water. Once the fire was extinguished, Lt. Felix Benitez of the OFD interviewed the occupant of Room 207, Mark Green. Green advised that he left the room to get ice and that when he returned he saw smoke coming from around and under the door. Green told Lt. Benitez that he grabbed a portable fire extinguisher and attempted to extinguish the fire but was forced out of the room by the smoke and heat. OFD Arson/Bomb Squad Investigator Lt. John Jockin responded and conducted an investigation, where upon completion, it was determined that the fire was accidental, caused by the lit cigarette left burning by the room occupant, Mark Green. OFD incident report number 2012-0034751 is attached. **Exhibit 1**

On August 28, 2012, Licensed Adjuster, George Turnbull of Mills, Mehr and Associates was retained by Capacity Insurance and began his inspection of the Red Carpet Inn. Turnbull provided a sworn affidavit, and a three part estimate for demolition, drying/water extraction and repairs of the Red Carpet Inn dated October 2, 2012. Turnbull's 27 page estimate for demolition totaled $13,397.63 which included rooms 106, 107, 108, 206, 207, 208, 220 and 221. Turnbull's 18 page estimate for cleaning, water extraction and remediation totaled $5,222.44 which was for rooms 106, 107, 108, 206, 207 and 208. Turnbull's 31 page estimate totaling $55,412.95 which included the repairs of the aforementioned rooms. **Exhibit 2, 3, 4, 5**

Licensed Adjuster, Shawn Starbuck of Mills Mehr & Associates became involved with this matter on or about September 27, 2012 while George Turnbull was on assignment in England. Starbuck provided the attached sworn affidavit regarding his findings and observations. Starbuck stated that on October 26, 2012, while on the property of the Red Carpet Inn, he noted that room number 203 that was previously reported as being damaged from the fire was occupied and in use. Hasan Arouri of TLC Engineering who had been hired by Leverett had listed room number 203 in his report as being uninhabitable. Starbuck stated that on October 28, 2012 he met with Greg Boling of BRC Restoration who conducted an inspection on behalf of Capacity Insurance Company. Starbuck stated that while on the property of the Red Carpet Inn, he noted four additional rooms, 118, 119, 204 and 205 that were previously reported by Leverett and Arouri to have been damaged by the fire were occupied and in use. **Exhibit 6**

On August 27, 2012, Public Adjuster Robert Eugene Leverett II was hired by the owners of Sai Jal, LLC d/b/a Red Carpet Inn to represent them in submitting claims to Capacity Insurance Company. Leverett provided an Agreement for Representation that entitled him to 10% of the total claim and damages recovered as well as a Notice to Insurance Companies of Representation and Assignment.

On August 30, 2013, Leverett sent a letter to SIU Bolen stating the following;

"As you know, the insured suffered a fire loss on August 26, 2012. The General Contractor has estimated the period of restoration will exceed 6 months. Based on a review of the loss, it appears the Contents Loss will exceed the $50,000.00 coverage limit and the Business Income w/Extra Expense will exceed the $50,000.00 coverage limit. With respect to the building, ***64 rooms*** *have sustained either fire, smoke/soot or water damage. The truss trails have sustained fire damage and an engineer is inspecting the trusses to determine the extent of the damage. I would recommend a reserve of $750,000.00 for the building at this time."* ***It should be noted that the building damaged by the fire has 56 Rooms.***

Leverett submitted an initial Demand Package on behalf of Sai Jal, LLC to Capacity Insurance that included a Sworn Statements of Loss for fire damage to the building totaling $691,416.51 and for business personal property totaling $69,146.71 signed by one of the owners, Vasantlal "Wayne" Patel. Leverett also included a 71 page repair and replacement estimate dated September 24, 2012. The estimate included the exterior of the building, roof, stairs and rooms 101, 102, 103, 104, 105, 106, 107, 108, 109, 118, 119, 120, 121, 122, 123, 124, 205, 206, 207, 208, 209, 221, 222 and 223. **Exhibit 7, 8, 9, 10**

Roy Marshall of MIT Restoration, LLC d/b/a MIT Construction and Restoration, Inc. on behalf of Sai Jal, LLC d/b/a Red Carpet Inn provided a sworn affidavit, an authorization of repairs and a 53 page estimate for emergency services and restoration dated 09/13/2012 which included cleaning, demolition, electrical, flooring, water extraction and labor for the following rooms damaged by the fire, smoke and/or water; 105, 106, 107, 108, 109, 206, 207, 208, 121,122, 123, 221, 222 and 223 totaling $49,109.50. ***Marshall stated in his sworn affidavit that he also included an additional 34 page repair and replacement estimate dated 10/12/2012 for rooms 101, 102, 103, 104, 205, 209, 220 and roof trusses which totaled an additional $255,197.03 solely at the request of Public Adjuster Robert Leverett and the Engineer Hasan Arouri.*** **Exhibit 11, 12, 13, 14**

Hasan Arouri of TLC Engineering for Architecture, Inc. was hired by Robert Leverett and Sai Jal, LLC to conduct an inspection of the Red Carpet Inn. Upon completion Arouri provided a report of his findings from his inspection which took place on September 3, 2012 and September 11, 2012 which included 16 photographs of reported damage. Arouri also provided a summary of costs for business personal property replacement totaling $69,146.74 for rooms 101,102, 103, 104, 105, 106, 107, 108, 109, 110, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213 and 214 (15 pages). Arouri stated that there was evidence of charring over the window opening of room 207 as well as evidence of charring on six wood trusses above the window opening. Arouri stated there was evidence of charred and twisted wood trusses and damaged joints at the truss end. Arouri stated that there was evidence of nails being pulled out at the hurricane strap anchor and observed evidence of water damaged roof plywood sheathing above the fire damaged room. Arouri concluded by stating that it was his opinion that the temperature during the fire could have reached between 300 to 500 degrees for 30 – 60 minutes causing six wood trusses above the fire location to lose tensile strength causing them to be structurally unstable. Arouri stated that in his professional opinion, the removal and replacement of the six wood trusses, roof sheathing and roofing above the fire damaged room needed to be replaced. Arouri stated in his finding that his inspection was visible in nature, and that no special tools or instruments were used, nor did he perform any testing or analysis. **Exhibit 15, 16**

On September 25, 2012, Grant Renne who is a Forensic Engineer for Donan Engineering, Inc. was retained by Capacity Insurance to conduct an inspection of the Red Carpet Inn to determine the extent, if any, of structural damage caused by the fire in room 207 and determine the extent of moisture damage to room 207 and to any other rooms. Renne stated that based on his findings and observations, the pre-engineered trusses, top plates and bond beams were not structurally damaged by the fire and associated temperatures from the reported loss. Renne stated that water damage from firefighting efforts was confined to rooms 206, 207, 208, 106, 107 and 108. Renne stated that the stained, discolored and deteriorated pre-engineered truss ends were caused by a long-term exposure to moisture from a roof leak and were present multiple years prior to the reported date of loss. Renne took in excess of 340 photographs during the course of his inspection. On September 4, 2102 this joint inspection was completed and Renne located an un-melted, undamaged plastic wrap used in wrapping bundles of shingles in the attic space directly above the exterior wall of room 207 where the fire originated. Renne stated that with consent of the property owner, the plastic wrap was secured and placed in an air-tight container for future testing. Renne stated that he has maintained chain of custody of the plastic wrap. ***Renne stated that during the inspection, he was asked by Robert Leverett if he would like to accompany him to Rachel's Strip Club for a meal with adult entertainment. Renne stated that he told Leverett that his opinion could not be bought.*** **Exhibit 17**

On October 16, 2012, Examinations Under Oath (EUO) were taken of Sai Jal, LLC owners; Bhaga "Brian" Patel, Navinchandra "Nick" Patel, Virenkumar "V" Patel and Vasantlal "Wayne" Patel. During the EOU's there were reports of limited damage to the property. In contrast to the testimony provided by the owners of Sai Jal, LLC, Wayne Patel testified that Robert Eugene Leverett's original estimate was an accurate representation of the actual damage to the property despite the fact that eight rooms for repair had no supporting documentation by any licensed contractor or engineer. In Nick Patel's EOU, he alleged that he did not know about the property damage even though he lives on the property, is the daily maintenance person for the property and performs housekeeping services in and out of all rooms. During V Patel's statement, he reported damage to only fourteen rooms caused by the fire. V. Patel also stated that some of the contents of the rooms reported as being damaged by the fire were actually damaged or destroyed due to mold. V. Patel later recanted this statement. **Exhibit 18, 19, 20, 21**

On October 26, 2012, Capacity Insurance Company's General Contractor, John Crist of BRC Restoration attempted to coordinate additional inspections of the property with Robert Leverett, but was told that none of the owners were available to give access to the property.

On this same date, a private investigator from EBS Investigations hired by Capacity Insurance Company was conducting video surveillance. During the surveillance, Nick Patel was observed on the property contrary to Robert Leverett's previous statement to John Crist. The private investigator also advised that housekeeping services were being performed on at least six rooms claimed by the insured to have been damaged by the fire and unusable. **Exhibit 22, 23**

On October 28, 2012, John Crist BRC Restoration was allowed onto the property only after statutory demand for access was made. Crist determined that only nine rooms sustained damages as a result of the fire. Crist was also able to confirm that the three additional rooms that sustained damage by the fire department were minimal. Crist found no permanent damage to the attic space or roof caused by the fire.

A letter from Mr. Leverett was received by Capacity Insurance on November 2, 2012 stating that despite the testimony during the Examinations Under Oath and the professional report received, that the total claim for Sai Jal, LLC remained at $760,563.25. **Exhibit 24**

On or about June 5, 2013, Claims Manager, Keith Bolen provided a sworn affidavit regarding his investigation into this matter. The following is a brief synopsis of Bolen's affidavit;

Bolen stated that the owners of Sai Jal, LLC obtained a policy for commercial property coverage effective May 31, 2012 to May 31, 2013. The policy was for the motel d/b/a Red Carpet located at 3956 West Colonial Drive, Orlando, Florida. Bolen stated that after the fire, Sai Jal, LLC contracted with Roy Marshall of MIT Restoration, LLC to begin emergency services, demolition and rebuild work at the Red Carpet. Sai Jal, LLC also contracted with an engineer, Hasan Arouri of TLC Engineering to inspect the roof structure. Bolen stated that upon notification of the claim, Capacity Insurance Company coordinated for with Sai Jal, LLC to have a representative on the property. Capacity Insurance contracted with Mills Mehr and Associates for Independent Adjuster, George Turnbull to be on-site. Bolen stated that Turnbull responded to the property and made contact with the representatives of the Red Carpet as well as guests. Bolen stated that Turnbull also inspected the rooms purportedly damaged from the fire. Bolen stated that Turnbull prepared an estimate of the damages related to the fire, including drying, emergency services, demolition and repair work in twelve rooms and the hallway totaling $74,033.02. Bolen stated that on August 30, 2012, Capacity Insurance received a letter from Robert Leverett who had been retained as a Public Adjuster representing the owners of Sai Jal, LLC d/b/a the Red Carpet Inn. Leverett claimed in the letter that the damage would exceed policy limits and demanded a reserve of $750,000.00 for the damage to 64 rooms, even though the building contains only 56 rooms.

Bolen stated that on September 4, 2012, Forensic Engineer Grant Renne who had been retained by Capacity Insurance conducted an inspection of the attic space and roof. During the inspection, Renne found a piece of plastic wrap used to wrap shingles, directly above room 207 where the fire occurred. Renne reported that the plastic was undamaged by the fire. Renne took possession of the plastic wrap for further testing if needed. Bolen stated that Engineer Renne agreed with the findings of

George Turnbull that only nine rooms sustained damage directly from the fire and three additional rooms sustained damage caused by the OFD when confirming no extension into the attic. Bolen stated that Renee's opinion was that the attic space and roof sustained no fire related damage.

Bolen stated that on October 1, 2012, Wayne Patel signed a sworn Proof of Loss and demand for payment for $686,416.51 for damage to the structure and a second sworn Proof of Loss for $69,146.74 for reported damages to contents. **Exhibit 25**

Contact was made with Robert Leverett who agreed to respond to the Division of Insurance Fraud on September 11, 2013 for questioning regarding this investigation. I was later contacted by Attorney Mike Snure who stated that he was been retained by Leverett therefore, at this time he was not allowing Leverett to answer any questions regarding this investigation.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has developed probable cause to believe that beginning on August 27, 2012, at 3956 West Colonial Drive, Orlando, FL 32808, ROBERT EUGENE LEVERETT II did engage in a scheme to defraud and attempt to obtain property by causing Sworn Proof of Loss statements to be submitted to Capacity Insurance on behalf of the owners of Sai Jal, LLC d/b/a Red Carpet Inn, knowing at the time of submission that the Proof of Loss statements were not accurate and overly inflated. Leverett also presented repair and replacement estimates and Proof of Loss statements in excess of $750,000.00. Leverett did this with the intent to defraud Capacity Insurance thereby violating FS 817.034, Organized Scheme to Defraud, which is a felony of the 1st degree.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has also developed probable cause to believe that on or about October 1, 2012, at 3956 West Colonial Drive, Orlando, FL 32808, ROBERT EUGENE LEVERETT II did commit insurance fraud by knowingly and willfully providing false information in support of the insurance claim, i.e. repair and replacement estimates and Proof of Loss statements in excess of $750,000.00. In doing so, Leverett violated FS 817.234(1)(a)1, which is a felony of the 1st degree.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has also developed probable cause to believe that ROBERT EUGENE LEVERETT II did commit attempted theft by knowingly and willfully providing false information in support of the insurance claim, i.e. repair and replacement estimates and Proof of Loss statements in excess of $750,000.00 as well as additional demands for full payment even after Capacity Insurance paid the insured $138,768.40. In doing so, Leverett violated FS 812.014(2)(a)1, which is a felony of the 1st degree.

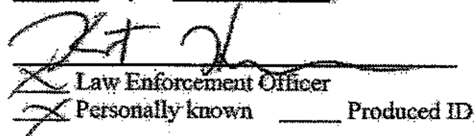
I swear/affirm the above attached statements are true and correct.	State of Florida, County Of Orange Sworn to and subscribed before me this __11__ day of __September__, 2013
 Detective	 X Law Enforcement Officer X Personally known _____ Produced ID

EXHIBIT
"C"

72251-1/2032959

In Re: SAI JAL LLC d/b/a: Red Carpet
Inn
______________________________/

AFFIDAVIT OF GRANT RENNE

STATE OF FLORIDA
COUNTY OF VOLUSIA

BEFORE ME, the undersigned notary, personally appeared GRANT RENNE, who, after being duly sworn, deposes and states that the following is true:

1. My name is GRANT RENNE. I am over the age of eighteen (18) and otherwise competent to testify.

2. At all times material, I have been employed with, and am a member of Donan Engineering, Co., Inc.

3. I am a licensed profession engineer in the State of Florida and have been so, for the last twenty two (22) years.

4. I have personal knowledge of the information contained herein.

5. The information contained herein was derived from my personal knowledge and the business records of Donan Engineering which were maintained in the ordinary course of business.

6. In Claim No. 20120098C a loss reportedly occurred on August 26, 2012 involving a fire in room 207 at 3956 West Colonial Dr. Orlando, Florida, owned by Sai Jal, LLC.

7. As requested by Capacity Insurance Company, I coordinated with George Turnbull of Mills Mehr for access to the property.

8. On August 29, 2012 I begin a site inspection of the Sai Jal property, doing business as Red Roof. I took 192 photographs.

9. On August 31, 2012 I continued my site inspection of the Sai Jal property. I took 149 photographs.

10. I wanted to complete a joint inspection of the property with the insured's engineer and public adjuster based on the claims of attic and roof damage. I left numerous voicemail messages and texts to 407-793-9470 and 407-370-2171. A date of September 3, 2012 was eventually coordinated.

11. During the coordination of the joint site inspection, I asked if an interpreter was needed for the insured representative or the engineer. I was advised none was needed.

12. I attempted to visit the property on September 3, 2012 and meet with the insured's public adjuster, Robert Leverett and engineer, H. Arouri. Although the inspection was coordinated, neither Sai jal representative showed up. Another date of, September 4, 2012 was coordinated.

13. On September 4th, 2012, I completed a joint inspection of the Sai Jal property. I took 59 photographs.

14. During the three above dates of inspection I accessed numerous hotel rooms, the roof, and the plumbing chase between the rooms on the first floor. I documented all areas of inspection.

15. During the September 4, 2012 inspection, I noticed and photographed (in situ) an un-melted plastic shingle bundle wrap in the attic space directly above room 207's exterior wall. With written consent from the property owner/representative, the plastic wrap from the attic was secured and placed in an air-tight container for future testing or evidence in any further claim of fire damage to the attic space or exterior wall. I continue to maintain the chain of evidence as to this plastic wrap.

16. During the September 4, 2012 site inspection I was asked by Mr. Leverett if I wanted to join him at Rachel's for a meal with adult entertainment. I declined and advised him my opinion could not be bought.

17. Mr. Leverett's later claim that an Engineer did not inspect the insured property on behalf of Capacity Insurance Company is inaccurate.

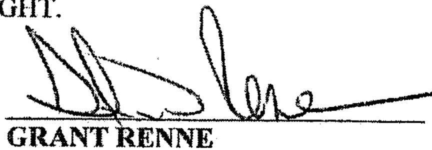
18. Mr. Leverett's later claim that I did not complete a site inspection with the insured engineer is inaccurate.

19. Mr. Leverett's later claim that my request for clarification on the need of an interpreter was an expression of bias is inaccurate. My question was only to ensure clear communication during the joint inspection between all parties present.

20. My testimony has not been stricken by a Court of law to my knowledge. I have not been convicted of a felony. I have not been charged with any misdemeanors of moral turpitude.

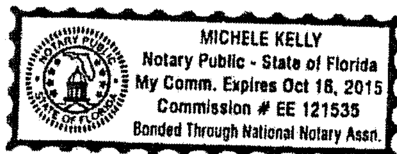
21. Donan Engineering and I will assist and cooperate with all state and federal investigations in this fire loss.

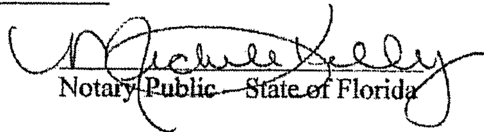
FURTHER AFFIANT SAITH NAUGHT.



GRANT RENNE

Sworn to (or affirmed) and subscribed before me this 6 day of Feb, 2013, by Grant Renne.





Notary Public – State of Florida

(Print, Type, Stamp, or Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification ✓

Type of Identification Produced: Florida Driver License