

IN RE:)		2009 AUG 12 PM 3:38
)	Chapter 11	
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹)	Case No. 09-12074 (KJC)	CLERK
)		US BANKRUPTCY COURT
Debtors.)	Jointly Administered	DISTRICT OF DELAWARE
)		

I, Haneefah Morehead, declare under penalty of perjury:

1. I am a **an Associate** of the Las Vegas, Nevada branch of **Bremer Whyte Brown & O'Meara, LLP**, located at **7670 W. Lake Mead Blvd., Suite 225, Las Vegas, Nevada, 89128** (the "**Firm**").
2. Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**") have requested that the Firm provide **construction defect legal defense representation** to the Debtors, and the Firm has consented to provide such services.
3. If the Firm is a law firm, I state that the Firm **did** represent the Debtors prior to their bankruptcy filings.
4. The Firm may have performed services in the past, may currently perform services and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in these chapter 11 cases. The Firm does not perform

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services for any such person in connection with these chapter 11 cases, or have any relationship with any such person, their attorneys or accountants that would be adverse to the Debtors or their estates. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, the Firm is a "disinterested person" under 11 U.S.C. § 101(14), such that the Firm:

- (a) is not a creditor, an equity security holder, or an insider of any of the Debtors;
- (b) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of any of the Debtors; and
- (c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors, or for any other reason.

5. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties-in-interest in the Debtors' chapter 11 cases.

6. Neither I nor any principal, partner, director, officer, etc. of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

7. In the ordinary course of its business, **the Firm maintains a database for purposes of performing "conflicts checks."** The Firm's database contains information regarding the Firm's present and past representations. Pursuant to Federal Rule of Bankruptcy Procedure 2014(a), I obtained a list of the entities identified in Rule 2014(a) from counsel to the Debtors for purposes of searching the aforementioned database and determining the

connection(s) which the Firm has with such entities. The Firm's **search of the database** identified the following connections:

a. ***Donald and Frances Cifelli v. Greystone Nevada, LLC, et al***

(Invoice #5-\$1342.95; Invoice Date 3/31/09, Dates of service 12/11/08-3/20/09 and Invoice #6-\$974.32, Invoice Date 6/30/09, Date of Service 4/2/09-6/8/09)

b. ***Spring Mountain Ranch (Hernandez, et al.) v. Greystone***

Homes, Inc. (Invoice #5-\$1064.42; Invoice Date 3/31/09, Dates of service 12/29/08-3/31/09 and Invoice #6-\$1272.50, Invoice Date 6/30/09, Date of Service 4/1/09-6/30/09)

c. ***Finn, et al. v. Pulte Homes Corporation*** (No Outstanding

Invoices)

8. Neither I nor **any principal, partner, director, officer, associate** of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Firm is to be employed. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, I state that neither I nor **any principal, partner, director, officer, associate**, of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors.

9. The Debtors owe the Firm \$5,926.69 for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. § §101-1532. If the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtors prior to their bankruptcy filings, my signature below acknowledges that the Firm understands that any and all pre-petition claims that it has against the Debtors will be deemed waived if the Firm's employment is authorized.

10. As of June 16, 2009, which was the date on which the Debtors commenced these chapter 11 cases, the Firm was party to an engagement or services agreement with the Debtors. **A copy of such agreement is attached as *Exhibit A* to this Declaration.**

11. As of June 16, 2009, the Firm was **not** party to an agreement for indemnification with certain of the Debtors.

12. If the Firm is not a law firm, the following is a list of all payments which the Firm received from the Debtors during the year prior to the Debtors' bankruptcy filings:

13. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing

is true and correct.

Date: 8/12, 2009



[DECLARANT]



AIG Domestic Claims, Inc.
Construction Defect Claims
P. O. Box 3780
Alpharetta, GA 30023-3780
(702) 940-3568-Direct line
(866) 866-503-3196

January 23, 2008

Ms. Maureen Thomas
9832 Coledale Ct.
White Lake, MI 48386

RE: Spring Mountain Ranch Homeowners v. Greystone Nevada, LLC, et al
NRS Chapter 40 Notice of Claim

Insured: BMHC, Inc. / KBI Construction
Insurer: National Union Fire Insurance Company
Policy #: 9332902 (11-11-03/04)
6946010 (11-11-04/05)
Claim No.: 683-186663
Adjuster #: Q813

Dear Ms. Thomas:

This letter will serve to acknowledge receipt of notice of the above referenced claim and the tender of defense and potential indemnity of Building Materials Holding Co./KBI Construction, Inc.. We received this tender from co-carrier Federated Insurance. Please be advised that the undersigned claims specialist has taken responsibility for the continued handling of this matter. I can be reached at the direct phone line noted in this letter or via email at Anthony.romano2@aig.com.

As you are aware, AIG Claim Services is the adjusting company for National Union Fire Insurance Company which provided general liability insurance coverage to Building Materials Holding Co under the above captioned policies.

This claim arises out of allegations of construction defects in a number of single family homes located in the Spring Mountain Ranch community located in Las Vegas, Nevada. The original close of escrow dates of the homes range from November 30, 1999 to April 30 2004. All but one of the homes was completed during 1999, 2000 and 2001. The Developer of the project was Greystone Homes.

The purpose of this letter is to advise you that National Union Fire Insurance Company will agree to participate in the defense of KBI Construction along with all other liable carriers with counsel assigned to protect the interests of KBI.

The text of the Insuring Agreement under the above referenced policy numbers as set forth in Form CG-0001 10-01 edition reads:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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" for 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 LIMITS OF INSURANCE (SECTION III); 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 "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that take place in the "coverage territory;" and

(2) The "bodily injury" or "property damage" occurs during the policy period.

(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" has 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.

The insuring agreement further contains the following:

- 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.

Please be advised that any cause of action for breach of warranty or breach of contract without resultant property damage and/or bodily injury, fraud, deceit or intentional misrepresentation or concealment do not constitute the requisite "occurrence". Thus, to the extent that any liability stems from said causes of action, there can be no coverage for the same. Further, such claims may result in recovery of economic losses. Economic losses, such as diminution in value, loss of investment, lost profits, etc. are not "property damage" as this term is defined in the policy.

The homeowners in this case complain of defective design and workmanship. Please be advised that a defect does not constitute "property damage." Therefore, to the extent that it is necessary to repair or replace a defective element of the project, there would be no coverage for the same.

The policies also contain additional exclusionary language that may be applicable to this case. The exclusions as stated on form GL 0001 10-01 in the above referenced policies are as follows:

EXCLUSIONS

This insurance does not apply to:

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;

(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 property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack 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.

**Endorsement For Continuing or Progressive Bodily Injury,
Personal Injury or Property Damage – Form 69186 (10-01)**

This endorsement modifies insurance under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. SECTION 1. - COVERAGE, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 1. Insuring Agreement, a. is amended to add the following paragraph:

(3) In the event of continuing or progressive "bodily injury" or "property damage" over any length of time, we will have no duty to defend or investigate any "occurrence", claim or "suit" unless such "bodily injury" or "property damage" first commenced during the policy period.

2. SECTION 1. - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 1. Insuring Agreement, b. (3), c., d., d.(1), d.(2), d.(3), and e. are deleted from the policy.

3. Section 1 - Coverages, Coverage A - Bodily Injury and Property Damage Liability, 2. - Exclusions, is amended to add"

p. "bodily injury" or "property damage" which is continuing or progressive and which first commenced prior to the inception date of the policy. This exclusion shall apply whether or not the insured's legal obligation to pay for damages for "bodily injury" or "property damage" was established before the inception date of this policy.

4. SECTION 1. - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY, Paragraph 1. Insuring Agreement, a. is amended to add the following"

(3) In the even of continuing or progressive "personal and advertising injury" over any length of time, we will have no duty to defend or investigate any offense, claim or "suit" unless such "personal and advertising injury" first commenced during the policy period.

With respect to such continuing or progressive "personal or advertising injury", such "personal or advertising injury" shall be deemed to be one offense, and shall be deemed to occur or be committed only when such "personal and advertising injury" first commenced.

5. Section I. - Coverages, Coverage B. - Personal and Advertising Liability, 2. - Exclusion is amended to add the following exclusion:

o. Continuous or Progressive "personal and Advertising Injury"

"Personal and advertising injury" which is continuing or progressive and which first commenced prior to the inception date of this policy. This exclusion shall apply whether or not the insured's legal obligation to pay for damages for "personal and advertising injury" was established before the inception date of this policy.

6. Section V. - Definitions, Paragraph 13. Occurrence is deleted in its entirety and replaced by the following:

13. "Occurrence" means an accident, including continuous our repeated exposure to substantially the same general harmful conditions.

In the event of continuing or progressive "bodily injury" or "property damage" over any length of time, such "bodily injury" or "property damage" shall be deemed to be one "occurrence", and shall be deemed to occur only when such "bodily injury" or "property damage" first commenced.

7. Section IV. CONDITIONS is amended to add the following conditions:

10. Obligations of Other Insurers

Nothing herein shall be interpreted to relieve any other insurer from obligations under policies issued to any insured which provide coverage for all or part of any continuing or progressive "bodily injury", "property damage" or "personal and advertising injury".

11. Defects with Deficiencies in Buildings and Property

With respect to any alleged defects and deficiencies in buildings or real property, this Endorsement applies separately to each alleged defect or deficiency.

All other terms, conditions, and exclusions shall remain the same.

By setting forth the above, National Union Fire Insurance Company does not intend to waive any of the terms, conditions or defenses available to it under the above policy of insurance, or pursuant to law. You should understand that we may rely on additional or different exclusionary terms or provisions contained in the policy referenced above if, in the course of subsequent investigation, we discover facts which would make other terms of the policy applicable.

This letter is not intended as a comprehensive statement of each and every potential applicable term, condition, exclusion, limitation, defense or right that National Union Fire Insurance may have under the policy or in law. You are encouraged to review the policy and call our attention to all additional facts, policy language, legal authority or other information you wish us to consider in the evaluation of the coverage issues in this case.

Again, National Union Fire Insurance Company will agree to participate in KBI Construction, Inc.'s defense along with other insurers through The Law Offices of Bremer, Whyte, Brown & O'Meara. You may contact Peter Brown at 702-258-6665.

If you have any questions regarding the above, please do not hesitate to contact the undersigned at 702-940-3568.

Very truly yours,
AIG Domestic Claims, Inc.

Anthony J. Romano
Claim Specialist III
Construction Defect Unit

cc

Stacy Giron
KBI Construction, LLC
4339 Corporate Center Dr. #108
N. Las Vegas, NV 89030



11030 White Rock Road, Suite 200 * Zip 95670
PO Box 3150 * Rancho Cordova, CA 95741
Phone: (916) 631-0345 * (800) 423-1842 * Fax: (866) 636-8660
E-mail: p&cclaims@fedins.com

February 22, 2007

MICHAEL KEARNY
KNIPP BROTHERS INDUSTRIES, LLC
6840 W. FRIER DRIVE
GLENDALE, AZ 85303

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Finn, et al. v Pulte Homes
Insured: Knipp Brothers Industries, LLC
Claim No.: 85X-9518
Policies No.: 0625832
Policy Terms: 10/01/96-10/01/01

Dear Mr. Kearny:

Federated Service Insurance Company (hereinafter "Federated") was the general liability insurance carrier for Knipp Brothers Industries, LLC (hereinafter "the insured") through policy 0625832 effective from 10/01/96 through 10/01/01. . A claim file has been established under policy year 10/01/96 through 10/01/97.

This letter confirms notice of the above-captioned claim as identified above. Based on notice of this action, Federated has completed a limited research its defense and indemnity obligation to the insured pursuant to the terms and conditions of this policy as issued by Federated. Federated will provide a full and complete legal defense and have referred the file to the Law Offices of Bremer, Whyte, Brown, & O'Meara to defend Knipp Brothers Industries, LLC. Mr. Peter Brown can be contacted at (702) 258-6665.

Plaintiffs allege construction defects and resultant property damage. The allegations are based on contentions that various forms of property damage have resulted from alleged defective framing installation.

Please be advised that our Company is specifically reserving all of its rights with respect to the policies and applicable law.

MICHAEL KEARNY
KNIPP BROTHERS INDUSTRIES, LLC
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This litigation involves 17 single-family residences located in Henderson, Nevada. Your company did allegedly contract as a framing subcontractor. Our investigation will seek the job file. Should you have the job file and contract, we ask that you supply us with these documents.

Federated has had an opportunity to carefully consider the allegations encompassed within the above referenced in the facts surrounding the loss and the insurance coverage as provided. We will be conducting a full and complete investigation of this matter on behalf of Knipp Brothers Industries, LLC

The plaintiffs are alleging defects in the work resulted in property damage. It is based on this potential exposure for damages, allegedly resulting from your work that we have agreed to investigate this matter further.

Policy 0625832 provides general liability coverage pursuant to form CG 00 01 (01/96). The insuring language of those forms states:

SECTION I – COVERAGE
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 any "suit" seeking those damages. 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 LIMITS OF INSURANCE (SECTION III); 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 under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

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KNIPP BROTHERS INDUSTRIES, LLC
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- 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," and
 - (2) The "bodily injury" or "property damage" occurs during the policy period.
- c. 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) 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; or
 - (2) That the insured would have in the absence of the contract or agreement.
- j. **Property Damage**
"Property damage" to:
 - (1) Property you own, rent, or occupy;
 - (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 your care, custody or control;
 - (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on

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- 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.

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 Damage claimed for any loss, cost or expense incurred by you or others for the losses 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

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defect, deficiency, inadequacy or dangerous condition in it.

SECTION III - LIMITS OF INSURANCE

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".

The Limit 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 purpose of determining the Limit of Insurance.

SECTION V - DEFINITIONS

7. "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:
 1. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 2. Your fulfilling the terms of the contract or agreement.
8. "Insured contract" means:
- f. 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.

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Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. a. "Products-completed operations hazard" 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.
- b. "Your work" will be deemed completed at the earliest of the following times:
 - (1) When all of the work called for in your contract has been completed.
 - (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
 - (3) 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 completed, will be treated as completed.
- c. This hazard 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 created by the "loading or unloading" of it;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
 - (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.
15. "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

MICHAEL KEARNY
KNIPP BROTHERS INDUSTRIES, LLC
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- c. occur at the time of the physical injury that caused it; or
Loss of use of tangible property that is not physically injured.
All such loss shall be deemed to occur at the time of the
"occurrence" that caused it.

17. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or
 - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

19. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work;" and
- b. The providing of or failure to provide warnings or instructions.

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We bring your attention to form **CG-F-61 Prior Damage and Injury Exclusion**, which is applicable for the period 10/01/96 through 10/01/97 and 10/1/98 through 10/1/00. It reads as follows:

PRIOR DAMAGE AND INJURY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to Coverage A. Bodily Injury and Property Damage Liability, this policy does not apply to, and the Company shall have no duty to defend, any claim seeking "bodily injury" or "property damage" that occurred before the policy period, or that the insured knew or should have known occurred before the policy period, regardless of whether that "bodily injury" or "property damage" is also deemed to have occurred during the policy period of this policy.

We also draw your attention to form **CG-F-68** applicable to the period 10/01/00 through 10/01/01. It reads as follows:

COVERAGE LIMITATION - CONTINUOUS OR PROGRESSIVE INJURY OR DAMAGE

Paragraph 1. **Insuring Agreement**, subparagraph c. of Form CG 00 57 (09-99), CG 00 60 (09-99) and CG 00 61 (09-99) **AMENDMENT OF INSURING AGREEMENT - KNOWN INJURY OR DAMAGE**, is deleted, and replaced with the following:

- c. This policy does not apply to, and the Company shall have no duty to defend, any claim seeking "bodily injury" or "property damage" that occurred before the policy period, regardless of whether that "bodily injury" or "property damage" is also deemed to have occurred during the policy period of this policy.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN
UNCHANGED.**

(CG 00 57)

AMENDMENT OF INSURING AGREEMENT - KNOWN INJURY OR DAMAGE

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Paragraph 1. Insuring Agreement of Section I – Coverage A – Bodily Injury and Property Damage Liability is replaced by the following:

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 end when we have used up the applicable limit of insurance in the payment of judgements 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 or 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

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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".

Since it is possible that all or part of the damages claimed might not be covered by your policy because of the exclusions listed above, we reserve our right to disclaim coverage for such damages. We also reserve the right to disclaim indemnity coverage should it be determined that there is no resultant damage arising from Knipp Brothers Industries, LLC's work. We reserve the right to assert other policy defenses at a later date as additional information provided may warrant.

We wish to advise you that Federated Service Insurance must deny coverage for any damages to your work pursuant to the above quoted exclusions. Therefore, any judgment or settlement for

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replacement and/or repair to Knipp Brothers Industries, LLC's work will be the responsibility of Knipp Brothers Industries, LLC for cost to repair and/or replace Knipp Brothers Industries, LLC's work, as this is not covered by your policy.

We reserve the right to seek reimbursement of any moneys spent in settlement or satisfaction of judgment and to file a declaratory relief action to secure a resolution of any coverage issues.

The limit of liability under your policies is \$1,000,000 occurrence and \$2,000,000 aggregate with a \$1,000 property damage deductible. Our obligation is to pay for only those damages covered by the policies and even then only up to the limit of liability stated in each of the policies. The damages for which you are allegedly responsible are uncertain and, even if covered, may or may not exceed the limit of your policies. We advised should you have any excess coverage that those carriers be placed on notice. If your excess coverage is with Federated, we reserve the right to address coverage under those policies should evidence be presented that would indicate this matter exceeds primary policy limits.

Once you have had an opportunity to review this position, please do not hesitate to call me with any questions.

Sincerely,



Bradley J. Whitman
Claims Supervisor
Federated Service Insurance Company

CC Mr. Peter Brown, Esq.