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9 Attorneys for Plaintiffs

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11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA BARBARA**

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

NOV - 5 2003

GARY M. BLAIR, EXEC. OFFICER

By JEFF HITE
Deputy Clerk

13
14 JAMES FLETCHER, and MIKE
15 BUSTANCHURY on behalf of themselves
and all other similarly situated and in their
representative capacity,

16 Plaintiffs,

17 vs.

18 BROWN & BROWN OF CALIFORNIA, a
19 California corporation; BROWN &
BROWN, INC., a Florida corporation;
20 WHILT, FATCH AND PERRY,
INSURANCE SERVICES, a California
21 company; UNITED RESTAURANT
INSURANCE SERVICES, an unknown
22 entity; CALIFORNIA RESTAURANT
SPECIALTY COOPERATIVE, INC., a
23 California corporation; SURPLUS LINES
INC., a New York corporation; HERITAGE
24 AGENCY, an unknown entity; IAN
STEWART, a Canadian citizen; DOES 1
25 through 100, inclusive,

26 Defendants.

Case No. _____

01131631

CLASS ACTION

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
(2) BREACH OF IMPLIED IN FACT
CONTRACT;
(3) NEGLIGENCE;
(4) VIOLATION OF THE UNFAIR
BUSINESS PRACTICES ACT; and
(5) BREACH OF FIDUCIARY DUTY

DEMAND FOR JURY TRIAL

PLAN 7

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1 All allegations made in this Complaint are based upon information and belief except
2 those allegations that pertain to Plaintiffs, which are based on personal knowledge. Plaintiffs'
3 information and belief are based upon, *inter alia*, Plaintiffs' own investigation and the
4 investigation conducted by Plaintiffs' attorneys. Each allegation in this Complaint either has
5 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
6 further investigation or discovery.

7 NATURE OF THE ACTION

8 1. This is a consumer class action and representative action for, *inter alia*,
9 violations of common law arising out of Defendants' unfair, deceptive and misleading business
10 practices of billing their insurance customers for restaurant/bar liability insurance that did not
11 exist. Plaintiffs bring this action in their own right, on behalf of the Class defined herein of other
12 consumers similarly situated, wherever located.

13 2. Plaintiffs also bring the Fourth and Fifth Causes of Action of this Complaint in
14 their own right and on behalf of the California Class defined herein in their representative
15 capacity pursuant to California Business and Professions Code section 17204, and for Breach of
16 Fiduciary Duty.

17 JURISDICTION AND VENUE

18 3. This Court has jurisdiction over this action pursuant to California Code of Civil
19 Procedure § 410.10.

20 4. Venue is proper in this Court pursuant to California Code of Civil Procedure §§
21 395 and 395.5 and California Civil Code section 1780(c) because one or more of the Defendants
22 is registered to do business in the State of California and doing business within the County of
23 Santa Barbara.

24 5. There are no federal claims alleged in this action, nor is relief sought under any
25 federal law. The individual amount in controversy as to Plaintiffs and each class member is not
26 greater than \$75,000.00, including interest and a pro rata share of any award of attorneys' fees
27 and costs, restitution or exemplary damages.

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1 **PARTIES**

2 6. Plaintiff JAMES FLETCHER ("Mr. FLETCHER" or "Plaintiff") is, and at all
3 times relevant hereto was, a resident of Santa Barbara County.

4 7. Plaintiff MIKE BASTANCHURY ("Mr. BASTANCHURY" or "Plaintiff") is,
5 and at all times relevant hereto was, a resident of Santa Barbara County.

6 8. Defendant BROWN & BROWN OF CALIFORNIA ("BROWN & BROWN") is,
7 and at all times relevant hereto was, a California corporation and subsidiary of defendant
8 BROWN & BROWN, INC., a Florida corporation. BROWN & BROWN has offices throughout
9 California where liability policies were sold to owners of bars and restaurants.

10 9. Defendant BROWN & BROWN, INC., is, and at all times relevant hereto was, a
11 Florida corporation and the parent of BROWN & BROWN. BROWN & BROWN, INC. has
12 offices and/or subsidiaries throughout the continental United States.

13 10. Defendant WHILT, FATCH & PERRY INSURANCE SERVICES ("WHILT,
14 FATCH & PERRY"), was a licensed California entity selling insurance in Santa Barbara.
15 Plaintiffs are informed and believe WHILT, FATCH & PERRY was acquired in February 2003
16 by BROWN & BROWN and is now doing business as a division of BROWN & BROWN.

17 11. Defendant UNITED RESTAURANT INSURANCE SERVICES ("URIS") is,
18 and at all times relevant hereto was, licensed by California Department of Insurance to do
19 business in California (CDI License #0d18880). URIS' principal place of business is Las Vegas,
20 Nevada.

21 12. Defendant CALIFORNIA RESTAURANT SPECIALTY COOPERATIVE,
22 INC. ("CRSC") is, and at all times relevant hereto was, a California corporation, now suspended
23 (Corporate number C1835192). CRSC's principal place of business was San Francisco County.

24 13. Defendant SURPLUS LINES INC. ("SURPLUS LINES") is, and at all times
25 relevant hereto was, a New York corporation. SURPLUS LINES' principal place of business is
26 Richmond Hill, Ontario, Canada.

27 14. Defendant HERITAGE AGENCY ("HERITAGE") is, and at all times relevant
28 hereto was, an Ontario, Canada company. HERITAGE'S principal place of business is

1 Richmond Hill, Ontario, Canada.

2 15. Defendant IAN STEWART ("STEWART") is, and at all times relevant hereto
3 was, a foreign citizen. Upon information and belief, STEWART resides in Richmond Hill,
4 Ontario, Canada.

5 16. The true names and capacities, whether individual, corporate, associate, or
6 otherwise of the Defendants named herein under the fictions names of DOES 1 through 100,
7 inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names.
8 Plaintiffs will ask leave of court to amend this complaint and insert the true names and capacities
9 of said Defendants when ascertained. Plaintiffs are informed and believe, and on that basis
10 alleges, that each of the Defendants designated herein as a "DOE" is legally responsible in some
11 manner for the events and happenings herein alleged, and that Plaintiffs' damages as alleged
12 herein were proximately caused by such Defendants.

13 AGENCY ALLEGATIONS

14 17. Plaintiffs are informed and believe that at all times relevant hereto, each
15 Defendant was the agent, servant, and employee of each of the remaining Defendants, acting
16 within the purpose, scope and course of said agency, service and employment, with the express
17 and/or implied knowledge, permission, and consent of the remaining Defendants, and each of
18 them, and each of said Defendants ratified and approved the acts of the other Defendants.

19 18. Plaintiffs are informed and believe that at all relevant times hereto, the agents
20 and employees of Defendants who took the actions alleged herein were authorized by
21 Defendants' officers, directors, and managing agents to act as alleged herein, and that
22 Defendants ratified the acts of their agents and employees by accepting the benefits of those acts
23 with knowledge of them.

24 FACTUAL BACKGROUND

25 19. Plaintiff JAMES FLETCHER owns Jimboz, a tavern in Santa Barbara. In
26 November of 1999, Mr. FLETCHER requested a bar/restaurant liability insurance quote from
27 WHILT, FATCH & PERRY.

28 20. WHILT, FATCH & PERRY offered Mr. FLECHER a competitive quote from

1 Certain Underwriters at Lloyd's (hereinafter "Lloyd's") through CRSC in policy years 1999 to
2 2000 and 2000 to 2001, which Mr. FLETCHER accepted. A true and correct copy of the
3 insurance proposal prepared for Jimboz is attached as Exhibit "A" and incorporated herein by
4 this reference.

5 21. The quote was to provide Mr. FLETCHER with liability insurance which
6 WHILT, FATCH & PERRY represented would be issued by Lloyd's for a term between
7 November 1999 through November 2000. The cost for that policy was \$2,335.05. A true and
8 correct copy of the Certificate of Liability Insurance is attached as "Exhibit "B" and incorporated
9 herein by this reference.

10 22. At the expiration of the first policy year, WHILT, FATCH & PERRY provided
11 Mr. FLETCHER'S liability insurance for the upcoming year, which they represented, had been
12 issued by Lloyd's for a term of November 2000 through November 2001. The cost for that
13 policy was \$2,477.68. A true and correct copy of the cover sheet for Plaintiffs' liability
14 insurance policy is attached as Exhibit "C" and incorporated herein by this reference.

15 23. At the expiration of the second policy year, WHILT, FATCH & PERRY through
16 URIS provided Mr. FLETCHER'S liability insurance, which they represented, had been issued
17 by Lloyd's for a term between November 1, 2001 through November 1, 2002. The cost for that
18 policy was \$2,628.23. A true and correct copy of the cover sheet for Plaintiffs' liability
19 insurance policy is attached as Exhibit "D" and incorporated herein by this reference.

20 24. WHILT, FATCH & PERRY and URIS provided Mr. FLETCHER'S liability
21 insurance that they represented had been issued by Lloyd's for a term between November 1,
22 2002 through November 1, 2003. The cost for that policy was \$3,113.50. A true and correct
23 copy of the cover letter and cover sheet for Plaintiffs' liability insurance policy is attached as
24 Exhibit "E" and incorporated herein by this reference.

25 25. In July of 2003, Mr. Fletcher received a letter from Cindy Van Mols, Account
26 Manager for BROWN & BROWN thanking him for continuing the insurance relationship with
27 BROWN & BROWN and enclosing the policy purportedly from Lloyd's. A true and correct
28 copy is attached as Exhibit "F" and incorporated herein by this reference.

1 26. In October 2003, Mr. FLETCHER received a letter from Malcolm Woolgar,
2 Regulatory Liaison for Lloyd's, dated October 17, 2003, informing him that based on its
3 inquiries, Lloyd's did not believe that it had underwritten his bar liability insurance through
4 URIS, SURPLUS LINES, and/or STEWART of HERITAGE AGENCY. A true and correct
5 copy of that letter is attached as Exhibit "G" and incorporated herein by this reference.

6 27. On October 24, 2003, Mr. FLETCHER received a letter from BROWN &
7 BROWN, informing him that his restaurant policy with Lloyd's, underwritten by URIS, did not
8 exist to provide coverage for his business. The letter alleges that the Lloyd's syndicate for the
9 insurance program ceased to exist. A true and correct copy of that letter is attached as Exhibit
10 "H" and incorporated herein by this reference.

11 28. Plaintiff BASTANCHURY owns the Tiburon Tavern, a tavern in Santa Barbara.
12 In 2001, Mr. BASTANCHURY requested a quote for liability insurance for the Tiburon Tavern
13 from WHILT, THATCH & PERRY.

14 29. Mr. BASTANCHURY received a competitive quote from Defendants WHILT,
15 THATCH & PERRY and URIS for liability insurance through Lloyd's that he accepted and paid.
16 His first year of coverage, which started on July 18, 2002 through July 18, 2003, was for
17 \$2,853.31. A copy of that alleged Lloyd's policy's cover sheet is attached as Exhibit "I".

18 30. Mr. BASTANCHURY's second year of alleged coverage obtained through
19 BROWN & BROWN and URIS started on July 18, 2003 and was to expire July 18, 2004.

20 31. On October 24, 2003, Mr. BASTANCHURY received a letter from BROWN &
21 BROWN, informing him that his restaurant policy with Lloyd's, underwritten by URIS, did not
22 exist to provide coverage for his business. The letter alleges that the Lloyd's syndicate for the
23 insurance program ceased to exist. A true and correct copy of that letter is attached as Exhibit
24 "J" and incorporated herein by this reference.

25 32. BROWN & BROWN provided no explanation for why Lloyd's was now
26 disavowing underwriting restaurant liability insurance through URIS, SURPLUS LINES and
27 HERITAGE. Plaintiffs are informed and believe BROWN & BROWN utilized CRSC and/or
28 URIS to underwrite restaurant/bar liability insurance policies, and CRSC and/or URIS utilized

1 STEWART and his brokerage house, HERITAGE, to underwrite restaurant/bar liability
2 insurance for restaurants and bars – through SURPLUS LINES, which was to obtain the liability
3 policies through Lloyd’s.

4 33. Based on information and belief, STEWART, SURPLUS LINES and
5 HERITAGE represented that they had arranged a Lloyd’s syndicate to underwrite bar and
6 restaurant liability insurance for businesses throughout the United States.

7 34. Based on information and belief, STEWART, SURPLUS LINES and
8 HERITAGE failed to arrange a Lloyd’s syndicate to underwrite bar and restaurant liability
9 insurance for businesses throughout the United States.

10 35. Plaintiffs are informed and believe Defendants continued to accept payments from
11 Plaintiffs and other bar and tavern owners for bar liability insurance coverage, when in fact there
12 were no valid policies of insurance issued by Lloyd’s.

13 **CLASS ACTION ALLEGATIONS**

14 36. Plaintiffs bring this action, on behalf of themselves and all others similarly
15 situated, wherever located, as a class action. Plaintiffs identify and define the following class
16 which Plaintiffs seek to represent (“the Class”): all bar and restaurant owners doing business in
17 the United States of America which, at any time within the four-year period of time predating the
18 filing of this action, contracted for liability insurance through WHILT, FATCH & PERRY and
19 BROWN & BROWN with Lloyd’s through URIS and/or CRSC and/or STEWART and/or
20 HERITAGE and/or SURPLUS LINES, and who did not receive valid or authorized policies of
21 insurance from Lloyd’s.

22 37. Plaintiffs also have identified and defines the following subclass which Plaintiffs
23 seek to represent pursuant to *California Code of Civil Procedure* section 382 and *California*
24 *Civil Code* section 1781 (“the Subclass”): all bar and restaurant owners doing business in the
25 State of California which, at any time within the four-year period of time predating the filing of
26 this action, contracted through WHILT, FATCH & PERRY and BROWN & BROWN for
27 liability insurance with Lloyd’s through URIS and/or CRSC and/or STEWART and/or
28 HERITAGE and/or SURPLUS LINES, and who did not receive valid or authorized policies of

1 insurance through Lloyd's.

2 38. While the exact number of members of the Class and Subclass is unknown to
3 Plaintiffs at this time and can only be determined by further discovery, membership the Class
4 and Subclass is ascertainable through records maintained by Defendants. Plaintiffs believe that
5 the Class likely includes at least many hundreds of members, of which the California subclass
6 likely includes approximately 300–400 members. Therefore, the Class is sufficiently numerous
7 that joinder of all members of the Class and/or the Subclass in a single action is impracticable
8 and the resolution of the claims alleged through the procedure of a class action will be of benefit
9 to the parties and the Court.

10 39. Plaintiffs will fairly and adequately represent and protect the interests of the
11 members of the Class and Subclass. Plaintiffs are adequate representatives of the Class and
12 Subclass, as they have no interests that are adverse to the interests of the members of the Class or
13 Subclass. Plaintiffs are committed to the vigorous prosecution of this action and, to that end,
14 Plaintiffs have retained counsel who are competent and experienced in handling class action
15 litigation.

16 40. Plaintiffs' claims are typical of the claims of the other members of the Class and
17 Subclass because Plaintiffs and each member of the Class and Subclass have been subjected to
18 the same improper practices and have been damaged in the same manner thereby.

19 41. Common questions of fact exist as to all members of the Class and Subclass and
20 predominate over the questions, if any, affecting only individual members of the Class and
21 Subclass. The common questions include, but are not limited to, the following:

22 **Common Questions of Fact**

- 23 a. Whether class members were charged for insurance policies purportedly
24 issued by Lloyd's, which policies did not exist;
- 25 b. Whether the insurance agents at WHILT, FATCH & PERRY and
26 BROWN & BROWN, who purported to obtain liability insurance for class
27 members, conducted reasonable due diligence to ascertain if Lloyd's had
28 authorized defendants URIS, CRSC, SURPLUS LINES, HERITAGE

1 AGENCY, and STEWART, or any of them, to issue policies of liability
2 insurance to class members;

3 c. Was there ever an authorized Lloyd's syndicate authorized to issue
4 policies of liability insurance to class members, and if so, when did the
5 authorized Lloyd's syndicate underwriting class members' policies
6 dissolve; and

7 d. Whether class members who were charged for insurance policies but who
8 were not covered by valid and authorized insurance policies issued by
9 Lloyd's are entitled to restitution or payment for the premiums that they
10 paid.

11 42. Common questions of law exist as to all members of the Class and Subclass and
12 predominate over the questions, if any, affecting only individual members of the Class and
13 Subclass. The common questions include, but are not limited to, the following:

14 **Common Questions of Law – National Class**

15 a. Whether the actions and conduct of Defendants in failing to obtain valid or
16 authorized insurance policies from Lloyd's constituted a breach of
17 contract with the Class members;

18 b. Whether the actions and conduct of Defendants constituted a breach of
19 contract in fact with the Class members;

20 c. Whether the actions and conduct of Defendants URIS, CRSC, SURPLUS
21 LINES, HERITAGE, and STEWART, or any of them, converted
22 insurance premiums paid by the Class members; and

23 d. Whether the actions and conduct of the insurance agents with whom class
24 members contracted exercised the duty of care which said Defendant
25 agents owed to the Class members and thereby constituted negligence on
26 the part of the Defendant agents.

27 **Common Questions of Law – California Subclass**

28 43. With regard to the proposed California Subclass,

- 1 a. Whether the actions and conduct of the Defendant agents constituted a
2 breach of their fiduciary duties to obtain the specific type of insurance
3 which class members contracted to obtain;
4 b. Whether the actions and conduct of Defendants have violated one or more
5 provisions of the California Insurance Code; and
6 c. Whether Class members are entitled to restitution pursuant to California
7 Business and Professions Code § 17200.

8 44. A class action is superior to available methods for the fair and efficient
9 adjudication of the claims asserted in this action. Because the damages sustained by individual
10 Class and Subclass members may be relatively small, the expense and burden of individual
11 litigation make it economically unfeasible for the members of the Class and Subclass to seek
12 redress. Were separate actions brought individually by members of the Class and Subclass, the
13 resulting duplication of lawsuits would cause undue hardship and expense to the Court and the
14 litigants. The prosecution of separate individual actions would also create a risk of inconsistent
15 rulings. Absent a class action, Defendants would likely retain the benefits of their wrongdoing
16 and there would be a failure of justice.

17 45. Plaintiffs know of no difficulty that will be encountered in the management of
18 this litigation that would preclude its maintenance as a class action.

19 46. Plaintiffs have incurred and, during the pendency of this action, will incur
20 attorney's fees and expenses. Such attorneys' fees and expenses are necessary for the
21 prosecution of this action and will result in a benefit to the Class.

22 47. The names and addresses of the persons who are members of the Class are
23 available from the business records the individual insurance agents are required to maintain, and
24 are therefore known to Defendants. Notice can be provided to the members of the Class by
25 mailing a notice of class action and by using techniques and a form of notice similar to those
26 customarily used in class actions, including newspaper advertisements and internet postings.

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1 Plaintiffs have duly performed each condition of the agreement, including payment of annual
2 premiums, which they were obligated to perform. Specifically, Plaintiffs have paid their
3 insurance premium to Defendants in full to obtain liability insurance policies issued by Lloyd's.

4 54. Defendants, and each of them, have breached and continue to breach the contract
5 in that they failed to obtain the commercial liability insurance coverage for Plaintiffs which
6 Plaintiffs contracted to obtain through the Defendants.

7 55. As a direct and proximate result of Defendants' breach of their contractual duties,
8 Plaintiffs, and the other members of the Class, have been damaged in an amount according to
9 proof at trial in excess of the minimum jurisdictional requirements of this court. Plaintiffs have
10 also incurred attorney's fees and costs in prosecuting the underlying action and in obtaining valid
11 liability insurance. Additionally, as a direct and proximate result of Defendants' breach,
12 Plaintiffs have been exposed to undetermined levels of personal liability for claims made against
13 their business establishments for which they will not have any valid liability insurance.

14 **SECOND CAUSE OF ACTION**

15 **(Breach of Implied In Fact Contract)**

16 **(As to Defendants WHILT, FATCH & PERRY and BROWN & BROWN)**

17 56. Plaintiffs repeat and incorporate herein by reference each allegation in
18 paragraphs 1, 3-36 and 44-48 as though fully set forth herein.

19 57. Plaintiffs bring this cause of action on behalf of themselves and the members of
20 the Class defined herein.

21 58. Plaintiffs requested Defendants provide a competitive quote for liability
22 insurance for their businesses. Defendants gave Plaintiffs the quote of liability insurance through
23 either CRSC and/or URIS to obtain liability insurance from Lloyd's.

24 59. Plaintiffs accepted the quotes for liability insurance provided by Defendants and
25 have paid their premiums for each year of coverage from Lloyd's.

26 60. Defendants delivered at the commencement of each policy year to Plaintiffs a
27 written document that was purportedly an insurance policy issued by Lloyd's to provide the
28 insurance coverage for which Plaintiffs contracted.

1 Lloyd's syndicate.

2 67. Defendants' negligence was a substantial factor in causing the damages to
3 Plaintiffs and the other members of the Class as complained of herein.

4 68. As a direct and proximate result of Defendants' negligence, Plaintiffs and the
5 other members of the Class have been damaged in the amount of premiums that were paid for
6 unauthorized insurance policies, and the cost to obtain replacement liability insurance to replace
7 the unauthorized policies.

8 **FOURTH CAUSE OF ACTION**

9 **(Violations of the Unfair Business Practices Act**

10 **California Business & Professions Code § 17200, et seq.)**

11 **(Against All Defendants)**

12 **(California Subclass only)**

13 69. Plaintiffs repeat and incorporate herein by reference each allegation in
14 paragraphs 1 through 48 as though fully set forth herein.

15 70. Plaintiffs bring this cause of action in its representative capacity on behalf of the
16 Subclass of business owners in the State of California who contracted to purchase policies of
17 liability insurance issued by Lloyd's for their bar and restaurant establishments.

18 71. Defendants' acts, as alleged herein, violated and continue to violate *California*
19 *Business and Professions Code* §17200 and *California Insurance Code* § 675 et seq. which
20 prohibit unlawful, unfair, or fraudulent business practices, by virtue of the following facts:

- 21 a. Plaintiffs purchased liability insurance through Defendants;
- 22 b. Defendants presented liability insurance policies purportedly issued to
23 Class members by Lloyd's to Plaintiffs, which Plaintiffs are
24 informed and believe were not valid in that they were not authorized by
25 Lloyd's; and
- 26 c. As a result, Plaintiffs' insurance policies were "canceled" and Defendants
27 failed to renew Plaintiffs' insurance policies without providing proper
28 grounds or adequate notice pursuant to *California Insurance Code* §§ 676,

1 676.2, 677 & 677.2,

2 72. Defendants' acts, as alleged herein, violated and continue to violate *California*
3 *Business and Professions Code* §17200 and *California Insurance Code* §790.03 *et seq.*, which
4 prohibits unlawful, unfair, or fraudulent business practices, by virtue of the following facts:

- 5 a. Plaintiffs purchased liability insurance policies purportedly issued by
6 Lloyd's from Defendants;
- 7 b. Defendants represented that said bar liability insurance policies
8 purportedly issued by Lloyd's existed;
- 9 c. The liability insurance policies purportedly issued by Lloyd's never
10 existed;
- 11 d. Defendants have acknowledged the non-existence of the liability insurance
12 policies purportedly issued by Lloyd's for the last policy year; and
- 13 e. Defendants did not refund Plaintiffs' premiums for the non-existent
14 insurance policies that were not in fact issued by Lloyd's.

15 73. Defendants' acts, as alleged herein, violated and continue to violate *California*
16 *Business and Professions Code* §17200 and *California Insurance Code* §790.03 *et seq.*, which
17 prohibits unlawful, unfair, or fraudulent business practices, by virtue of the following facts:

- 18 a. Defendants acknowledged the non-existence of the liability insurance
19 policies for only the latest policy year, without disclosing whether there
20 were valid insurance policies issued by Lloyd's to Class members for prior
21 years; and
- 22 b. Defendants failed to refund Plaintiffs and Class members premiums paid
23 for those invalid insurance policies purchased but never authorized by
24 Lloyd's.

25 74. Defendants' practices have deceived and are likely to deceive members of the
26 public who purchase insurance policies for their business establishments through Defendants'
27 insurance brokerage services.

28 75. Unless Defendants are enjoined from continuing to engage in these unfair,

1 unlawful and deceptive business practices, Plaintiffs and other residents of the State of California
2 will continue to be injured by the wrongful actions and conduct of Defendants.

3 76. So as not to be unjustly enriched by their own wrongful actions and conduct,
4 Defendants should be required to disgorge and restore to Plaintiffs and all other affected
5 residents of the State of California all monies wrongfully obtained and retained by Defendants as
6 a result of their unfair, unlawful and deceptive business practices, together with interest thereon.

7 **FIFTH CAUSE OF ACTION**

8 **(Breach of Fiduciary Duty)**

9 **(As to Defendants WHILT, FATCH & PERRY and BROWN & BROWN)**

10 **(California Subclass only)**

11 77. Plaintiffs repeat and incorporate herein by reference each allegation in
12 paragraphs 1 through 48 as though fully set forth herein.

13 78. Plaintiffs bring this cause of action in its representative capacity on behalf of the
14 Subclass – the business owners who are or were residents of the State of California affected by
15 Defendants’ wrongdoing.

16 79. Plaintiffs contracted with Defendant agents and brokers to receive a competitive
17 quote for liability insurance for their business establishments. Defendants are agents or brokers
18 for many different insurers and were able to select from a variety of insurance companies that
19 offered restaurant and bar liability insurance in the State of California.

20 80. By selecting URIS and/or CRSC, Defendant agents and brokers became agents of
21 Plaintiffs and members of the California Subclass.

22 81. Defendant agent and brokers provided Plaintiffs and class members with
23 “quotes” for obtaining the liability insurance through Lloyd’s – without exercising adequate due
24 diligence and due care in investigating and selecting Defendants URIS, CRSC, SURPLUS
25 LINES, HERITAGE AGENCY, and STEWART, to determine if these defendants were
26 authorized by Lloyd’s to issue liability insurance policies to restaurant and bar owners in the
27 State of California.

28 82. As a direct and proximate result of Defendant agents and brokers’ breach of their

1 fiduciary duties, Plaintiffs and the other members of the Subclass have been damaged in an
2 amount according to proof at trial in excess of the minimum jurisdictional requirements of this
3 court. Plaintiffs have also incurred attorney's fees and costs in prosecuting the underlying action
4 and finding liability insurance in order to remain in business.

5 83. In engaging in the acts alleged herein, Defendant agents and brokers had a
6 limited fiduciary duty to Plaintiffs and all members of the California Subclass to use due care in
7 selecting the intermediaries to actually procure the requested policies of liability insurance.
8 Instead, the agents and brokers in conscious disregard for the rights of the Class members and in
9 breach of their limited fiduciary duty, caused Plaintiffs and other Class members to purchase
10 invalid and unauthorized policies of liability insurance, and with knowledge that their actions
11 and conduct would substantially be likely to vex, annoy and injure Plaintiffs and the other
12 members of the Subclass if the policies were not valid. As a result, Plaintiffs and the other
13 members of the Subclass are entitled to an award of punitive damages against Defendant agents
14 and brokers, in an amount according to proof at trial.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs prays for judgment as follows:

17 **On the First Cause of Action**

18 1. For compensatory damages in an amount according to proof at trial.

19 **On the Second Cause of Action**

20 1. For compensatory damages in an amount according to proof at trial.

21 **On the Third Cause of Action**

22 1. For compensatory damages in an amount according to proof at trial.

23 **On the Fourth Cause of Action**

- 24 1. For disgorgement and restitution to Plaintiffs and each effected resident of the
25 State of California of all monies wrongfully obtained and retained by Defendants;
26 2. For prejudgment interest on the monies wrongfully retained from the date of
27 nonpayment of the monies through the date of entry of judgment in this action;
28 and

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- 3. For the reasonable attorneys' fees and expenses incurred by Plaintiffs in connection with the commencement and prosecution of this action pursuant to California Code of Civil Procedure §1021.5 and/or the applicable provisions of the California Business and Professions Code.

On the Fifth Cause of Action

- 1. For compensatory damages in an amount according to proof at trial;
- 2. For prejudgment interest commencing on the date of nonpayment of the amounts due; and
- 3. For punitive and exemplary damages in an amount according to proof at trial.

On All Causes of Action

- 1. For all attorneys' fees, expenses and recoverable costs reasonably incurred in connection with the commencement and prosecution of this action;
- 2. Prejudgment interest in states in which Class members reside which allow for the recovery of prejudgment interest; and
- 3. For such other and further relief as the Court deems just and proper.

DATED: November 4, 2003

Respectfully Submitted,

FOLEY & BEZEK, LLP

By: *Philip G. Foley, Jr.* for
Thomas G. Foley, Jr.
Attorneys for Plaintiffs

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable in this action.

DATED: November 5, 2003

Respectfully Submitted,

FOLEY & BEZEK, LLP

By: *Philip G. Foley, Jr.* for
Thomas G. Foley, Jr.
Attorneys for Plaintiffs

G:\Jimbozi\Complaint.110503.doc

Exhibit A

**AN INSURANCE PROPOSAL
PREPARED FOR:**

~~JIMBOZ~~
~~FREEMAN'S LOUNGE~~
JAMES R. FLETCHER
2711 DE LA VINA STREET
SANTA BARBARA, CA 93105

PRESENTED BY:

MARK ANTHONY DISPENZA
WHILT, FATCH & PERRY INSURANCE
P.O. BOX 30340
SANTA BARBARA, CA 93130

OCTOBER 29, 1999

DISCLAIMER - The abbreviated outlines of coverages used throughout this proposal are not intended to express any legal opinion as to the nature of coverage. They are only visuals to a basic understanding of coverages. Please read your policy for specific details of coverages.

EXHIBIT A

COMMERCIAL PACKAGE POLICY OUTLINE
for
FREEMAN'S LOUNGE

INSURER: California Restaurant Specialty Coop

PROPERTY:

Special Form, 90% Coinsurance, Replacement Cost, \$500 deductible

Contents	\$ 10,000
Business Income	\$200,000 includes extra expense

LIABILITY:

General Aggregate	\$2,000,000
Products/Co Aggregate	\$1,000,000
Personal/Adv Injury	\$1,000,000
Each Occurrence	\$1,000,000
Liquor Liability	\$1,000,000
Fire Damage	\$ 100,000
Medial Payments	\$ 5,000
Deductible	\$ 500

TOTAL PREMIUM INCLUDING ALL TAXES AND FEES:
\$2,535.05

CALIFORNIA RESTAURANT SPECIALTY COOP, INC. -- COVERAGE HIGHLIGHTS --

✓ CUSTOMER PROPERTY	\$ 1,000 PER CUSTOMER
✓ VALUABLE PAPERS & RECORDS	\$ 5,000
✓ FIRE PROTECTIVE EQUIPMENT	DISCHARGE: \$ 5,000
✓ ACCOUNTS RECEIVABLE	\$5,000
✓ EXTERIOR SIGNS	\$2,500
PERSONAL PROP. OFF PREM	\$10,000 ADDITIONAL
✓ EXTENDED LOSS OF INCOME	UP TO 60 DAYS
✓ FOOD SPOILAGE	\$10,000
✓ COMPREHENSIVE GLASS	UP TO \$2,500
✓ ROBBERY AND SAFE BURGLARY	\$2,500 INSIDE & OUTSIDE
✓ INCLUDES CREDIT CARD SLIPS	\$ 5,000
* TREES, SHRUBS, PLANTS	\$5,000
✓ NON-OWNED AUTO	UP TO \$ 1,000,000
✓ EMPLOYEE DISHONESTY	\$ 5,000
✓ FINE ARTS	\$ 5,000

IN ADDITION, EACH MEMBER AUTOMATICALLY RECEIVES EQUIPMENT BREAKDOWN COVERAGE EXCLUSIVELY PROVIDED BY HARTFORD STEAM BOILER INSURANCE COMPANY FOR CALIFORNIA RESTAURANT SPECIALTY COOP MEMBERS.

* EQUIPMENT BREAKDOWN LIMIT:	\$2,500,000 PER ACCIDENT INCLUDED
* PROPERTY DAMAGE:	ACTUAL UP TO \$150,000
* BUSINESS INCOME:	COMBINED WITH BUS. INC.
* EXTRA EXPENSES/SERVICE INTERRUPTION:	\$25,000
* PERISHABLE FOODS:	\$10,000
* COMPUTER EQUIPMENT:	\$50,000
* DEMOLITION AND INC. COST OF CONST.:	\$10,000
* EXPEDITING EXPENSES:	\$10,000
* HAZARDOUS SUBSTANCES:	\$25,000
* CFC REFRIGERANTS:	\$100,000
* NEWLY ACQUIRED LOCATIONS:	

ALSO INCLUDES: ERRORS IN DESCRIPTION, DEFENSE, BRANDS AND LABELS LOSS ADJUSTMENT AGREEMENT, EXTENDED BUSINESS INCOME DAYS, NEWLY ACQUIRED LOCATIONS

SEE POLICY FOR COMPLETE DETAILS AND DEDUCTIBLES, THIS INFORMATION IN NO WAY, MODIFIES THE POLICY

Subject to:

Satisfactory Inspection within 30 Days

To Bind:

Fax and Mail your trust check for 25% of the premium and 100% of the fees to the number and address shown.

Thank you for the opportunity to be of service to you. Please call if you have any questions.

COMMERCIAL PROPERTY COVERAGE OUTLINE

Property Insurance is any type of insurance that indemnifies an insured party who suffers a financial loss because property has been damaged or destroyed. Property is considered to be any item that has a value. Property can be classified as real property or personal property. Real property is land and the attachments to the land, such as buildings. Personal Property is all property that is not real property. The Building and Personal Property coverage form is the form used to insure almost all types of commercial property. The insuring agreement in the Building and Personal Property coverage form promises to pay for direct physical loss or damage to covered property at the premises described in the policy when caused by or resulting from a covered cause of loss. The following is a brief outline of coverages and how they are used within the Commercial Building And Personal Property coverage form.

Buildings and Business Personal Property

Coverage for the building includes the building and structures, completed additions to covered buildings, outdoor fixtures, permanently installed fixtures, machinery and equipment. The building material used to maintain and service the insured's premises is also insured. Business Personal Property owned by the insured and used in the insured's business is covered for direct loss or damage. The coverage includes furniture and fixtures, stock, and several other similar business property items when not specifically excluded from coverage. The policy is also designed to protect the insured against loss or damage to the personal property of others while in the insured's care, custody or control.

Coverage Extensions and Additional Coverages

In addition to the limits stated in the Building and Personal Property coverage form, the policy has a coverage extensions section and an additional coverages section. The coverage extensions section provides limited coverage for newly acquired or constructed property, property of others, certain outdoor property, and the cost to research and reconstruct information on destroyed records. When coverage is placed on the all risk form, two additional extensions are added for property in transit and coverage for certain repair costs related to damage caused by water. The two additional extensions are covered by certain perils only. The additional coverage section provides coverage for indirect losses that result from a direct loss. The coverage applies to removal of debris, preservation of property, fire department service charges and pollutant cleanup and removal. The coverage extensions and the additional coverages have limitations and are subject to certain conditions.

Limit of Insurance

The most the insurer will pay for loss or damage in any one occurrence is the limit of insurance stated in the policy declarations.

Deductible

The standard deductible is \$250. However, other deductible amounts are available and the deductible applies only once per loss.

Causes of Loss

The term peril is used when discussing losses. A peril is a cause of loss. Basic property insurance policies are written to cover the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft or vehicle damage, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action. Other property insurance policies, often referred to as the broad form policy, add coverages for water damage, weight of snow, ice or sleet, breakage of glass and coverage for falling objects. The broadest coverage is the special form, which is best known as the all risk form. All risk covers all causes of loss, except those specifically excluded from coverage. It is possible for a commercial property policy to have more than one cause of loss form.

Replacement Cost and Actual Cash Value

Property can be valued in several different ways. Insurance companies commonly use two approaches to determine value, which also determines how a loss will be paid; the replacement cost method and the actual cash value method. Insurers consider replacement cost of a property item to be the cost to replace it with new property of like kind. Actual cash value is replacement cost, minus the accumulated depreciation for age and condition.

Agreed Value

When the agreed value option is used the coinsurance requirement is removed and the insurer agrees to cover losses for its agreed value. As an example, the insured has property insured for \$100,000 and the agreed value is also \$100,000, if a loss occurs, any loss up to \$100,000 is covered at 100%. When this option is used the insured and the insurance company agree on the value of the property before the policy is issued. This option is usually assigned to one-of-a-kind property.

Coinsurance

Most building and business personal property policies have a coinsurance clause which requires the insured to carry insurance equal to at least a specified percentage of the actual cash value of the property. If a loss occurs, and it is determined that the amount of insurance carried is less than the amount required, a penalty could be placed on the insured.

Inflation Guard

An insured can insure a building for its full value at the beginning of the policy year, but, at the end of the year, it might not be covered for its full value. This problem can be corrected by adding inflation guard coverage. With inflation guard, the policy limit increases gradually during the policy term so that the total increase amounts to the desired percentage increase at the end of the policy term.

Earthquake Coverage

This endorsement extends your cause of loss to include damage that results directly from an earthquake. Coverage is provided for replacement of buildings only. All earthquake shocks that occur within a 168 hour period (one week) are considered to be a single occurrence. A separate deductible applies and is determined by the value of the insured property.

COMMERCIAL GENERAL LIABILITY COVERAGES

The Commercial General Liability Policy provides the insurance protection needed to pay damages for bodily injury or property damages for which the insured is legally responsible. The policy provides coverage for liability arising from personal injury and advertising injury. Coverage for medical expense is also provided. The policy also covers accidents occurring on the premises or away from the premises. Coverage is provided for injury or damages arising out of goods or products made or sold by the named insured. The insured is the named insured and the employees of the named insured. However, several individuals and organizations, other than the named insured, may be covered, depending upon certain circumstances specified in the policy. In addition to the limits, the policy provides supplemental payments for attorney fees, court costs and other expenses associated with a claim or the defense of a liability suit.

There are two commercial general liability coverage forms available, the occurrence form and the claims-made form. Both forms are somewhat identical in the coverages offered. The main difference is in the way claims are handled under the two forms. The occurrence form covers bodily injury or property damage claims that occur during the policy term, regardless of when the claim is reported. The claims-made policy form only covers claims made against the insured during the policy term. A claim made after the policy expires is not covered by a claims-made policy unless the claim is covered by an extended reporting period. The claims-made policy will only have the extended reporting period. The following terms reflect both forms.

General Aggregate

The General Aggregate Limit is the most money the insurer will pay under a certain coverage for all claims occurring during the policy term.

Premises/Operations

Coverage is provided for damages arising out of ownership or occupancy of the insured premises when not maintained in a reasonable manner. This also covers damages arising out of operations performed by the insured business.

Products/Completed Operations

Products coverage is provided for damages arising out of products manufactured, sold, handled or distributed by the insured. Completed Operations covers damages occurring after operations have been completed or abandoned, or after an item is installed or built and released for its intended purpose.

Medical Expense Limit

Medical payments coverage pays medical expenses resulting from bodily injury caused by an accident on premises owned or rented by the insured, or locations next to such property, or when caused by the insured's operations. These payments are made without regard to the liability of the insured.

Fire Damage Limit

The fire damage limit provides coverage for fire damage caused by negligence on the part of the insured to premises rented to the named insured. If a fire occurs because of negligence of the insured and causes damage to property not rented to the insured, coverage would be provided under the occurrence limit.

Personal Injury

Personal Injury means injury other than bodily injury. Coverage is provided for injury resulting from offenses such as false arrest, malicious prosecution, detention or imprisonment, the wrongful entry into, wrongful eviction from and other acts of invasion, or rights of private occupancy of a room. Coverage for libel and slander is also provided in the policy.

Advertising Injury

This coverage pays for damages done in the course of oral or written advertisement that disparages, libels or slanders a person's or organization's goods, products or services. Coverage for these offenses is provided under advertising injury coverage only if they occur during the course of advertising the named insured's own goods, products or services.

Each Occurrence

Each occurrence is considered to be an accident, which could include continuous or repeated exposure to the same harmful conditions. An occurrence can also be a sudden event, or a result of a long term series of events.

Claims Made Form Only

Basic Extended Reporting Period (Basic Tail)

This coverage is provided automatically without an additional premium charge if coverage is canceled, not renewed, or the insurer renews with a later retroactive date. The basic extended reporting period starts at the end of the policy period and last for five years for claims made against the insured within the five year period and reported to the insurer within 60 days after the end of the policy period.

Supplemental Extended Reporting Period (Supplemental Tail)

The supplemental extended reporting period is available under the same circumstances as the basic one. However, it becomes effective only if the named insured makes a written request within 60 days after termination of the policy period and the additional premium is paid. The supplemental extended reporting begins when the basic one ends, and it continues forever. It cannot be canceled by the insured or insurer. The supplemental tail endorsement would provide coverage for claims reported to the insurer within sixty days after the end of the policy period but did not result in a claim being made against the insured until after the end of the five year policy period.

Other types of occurrence or offenses that are unknown by the insured and therefore not reported within the sixty days after the end of the policy period could also be covered by the supplemental tail. When the tail is purchased the policies general aggregate limit and the products/completed operations aggregate limit is reinstated.

Retroactive Date

The retroactive date shown in the policy declarations is the same as the inception date, or the retroactive date can be a date prior to the inception date. A policy can also be written with no retroactive date.

Exhibit B

ACORD

CERTIFICATE OF LIABILITY INSURANCE

BSR LC
JIMBO-1

DATE (MM/DD/YY)
12/13/99

PRODUCER
Whilt, Fatch & Perry Insurance
California License #0532728
P.O. Box 30340
Santa Barbara CA 93130
Phone: 805-687-1326 Fax: 805-563-6328

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

Jimboz
James R. Fletcher
2711 De La Vina Street
Santa Barbara CA 93105

INSURER A: Lloyd's of London
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFFECTIVE DATE (MM/DD/YY), POLICY EXPIRATION DATE (MM/DD/YY), LIMITS. Includes sections for General Liability, Automobile Liability, Garage Liability, Excess Liability, Workers Compensation, and Other.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

*10 day notice of cancellation for nonpayment of premium

It is hereby agreed and understood that the Certificate Holder is named as an Additional Insured as respects property located at 2711 De La Vina Street, Santa Barbara, Ca. 93105

CERTIFICATE HOLDER

N ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

Sima Management Corporation
Attn: Christine McCullough
115 W. Canon Perdido
Santa Barbara CA 93101

SIMAM-1

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT EXCEPT AS SO SHOWN SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

Lola E. Chapman

EXHIBIT B

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Exhibit C

LLOYD'S LONDON
1 Lime Street
London, EC3M 7HA

COMMERCIAL PACKAGE DECLARATIONS

POLICY NO: HER50225

PRODUCER: WHILT, FATCH & PERRY

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, AND SUBJECT TO THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

NAMED INSURED AND MAILING ADDRESS:

JAMES ROBERT FLETCHER
JIMBOZ
2711 DE LA VINA STREET
SANTA BARBARA CA 93105

DESCRIPTION OF OPERATIONS: RESTAURANT/BAR

The Named Insured is: Individual Partnership Corporation Other _____

Policy Period: From November 01, 2000 to November 01, 2001

At 12:01 A.M. Standard Time at your mailing address shown above.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIUM
Commercial Auto/Garage Coverage Part	N/A
Commercial Crime Coverage Coverage Part	INC
Commercial General Liability Part Coverage Part	\$821
Commercial Inland Marine Coverage Part	INC
Commercial Professional Liability Coverage Part	N/A
Commercial Property Coverage Part	\$1,020
Other Charges Fees, Taxes fully earned	\$636.68
Grand Total	\$2,477.68

Audit Period: Annual, unless otherwise stated

Forms and Endorsements:
F2 8/96

Countersigned:

By: *Robert James*

EXHIBIT C

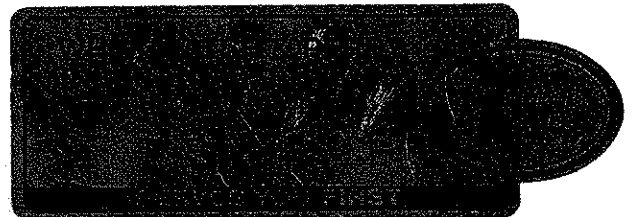
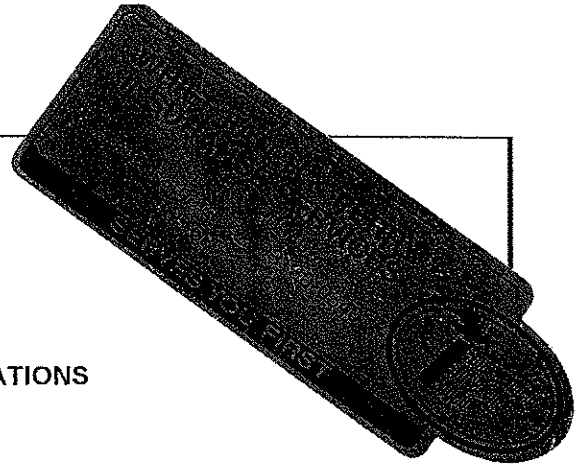


Exhibit D

LLOYD'S LONDON
1 Lime Street
London, EC3M 7HA



COMMERCIAL PACKAGE DECLARATIONS

HOLDER **BER60336**
NO: **WHILT,FATCH & PERRY**
PRODUCER

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, AND SUBJECT TO THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

NAMED INSURED AND MAILING ADDRESS:

JAMES ROBERT FLETCHER
JIMBOZ
2711 DE LA VINA STREET
SANTA BARBARA CA 93105

DESCRIPTION OF OPERATIONS: RESTAURANT/BAR

The Named Insured is: Individual Partnership Corporation Other _____
Policy Period: From November 01, 2001 To November 01, 2002
At 12:01 A.M. Standard Time at your mailing address shown above.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIU
Commercial Auto/Garage Coverage Part	N/A
Commercial Crime Coverage Coverage Part	INC
Commercial General Liability Part Coverage Part	\$1,356
Commercial Inland Marine Coverage Part	INC
Commercial Professional Liability Coverage Part	N/A
Commercial Property Coverage Part	\$1,020
Other Charges Fees, Taxes fully earned	\$252.23
Grand Total	\$2,628.23

Audit Period: Annual, unless otherwise stated

Forms and Endorsements:
F2 8/96

Countersigned:

By: *Robert James*

Exhibit E

Whilt, Fatch & Perry

INSURANCE SERVICES

"Solving your insurance puzzle"

January 6, 2003

Mr. James R. Fletcher
Jimboz
2711 De La Vina Street
Santa Barbara, CA 93105

Dear Mr. Fletcher:

Enclosed please find your Commercial Package insurance policy number BER60336A, underwritten by the California Restaurant Specialty program of Lloyd's of London. The policy is effective from 11/01/02 to 11/01/03. Please review it carefully to familiarize yourself with the coverages and any exclusions which may apply.

In particular, **please note the following very important warranties:**

1. No firearms belonging to you, your agents or employees are permitted on premises.
2. You warrant that your liquor license has never been suspended or revoked.
3. Your closing time is no later than 2:00 am.
4. There is no live entertainment on premises.
5. There are no events or business promotions held by your business that were not disclosed to the insurer.

It is important to note that violation of any of the above warranties may result in the denial of a claim against your policy. If you wish to add live entertainment or promote any special events, please contact us as soon as possible, so that we may obtain the approval of the insurer.

If you have any questions, wish to make any changes or need to report a loss, please be sure to contact our office. We will be happy to assist you.

We appreciate your business and look forward to servicing your account!

Sincerely,

WHILT, FATCH & PERRY



Mark A. Dispenza, LUTCF
Account Manager

Mail To: P.O. Box 30340 • Santa Barbara, CA 93130-0340
55 Hitchcock Way, Suite 101 • Santa Barbara, CA 93105
Internet Address: www.whiltfatchperry.com
(805) 687-1326 Fax (805) 563-6328 Lic. 0532728

EXHIBIT E

LLOYD'S LONDON
1 Lime Street
London, EC3M 7HA

COMMERCIAL PACKAGE DECLARATIONS

HOLDER **BER60336A**
NO: **WHILT, FATCH & PERRY**

PRODUCER

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, AND SUBJECT TO THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

NAMED INSURED AND MAILING ADDRESS:

JAMES ROBERT FLETCHER
JIMBOZ
2711 DE LA VINA STREET
SANTA BARBARA CA 93105

DESCRIPTION OF OPERATIONS: RESTAURANT/BAR

The Named Insured is: Individual Partnership Corporation Other _____

Policy Period: From November 01, 2002 to November 01, 2003
At 12:01 A.M. Standard Time at your mailing address shown above.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIUM
Commercial Auto/Garage Coverage Part	N/A
Commercial Crime Coverage Coverage Part	INC
Commercial General Liability Part Coverage Part	\$1,826
Commercial Inland Marine Coverage Part	INC
Commercial Professional Liability Coverage Part	N/A
Commercial Property Coverage Part	\$1,020
Other Charges Fees, Taxes fully earned	\$267.50
Grand Total	\$3,113.50

Audit Period: Annual, unless otherwise stated

Forms and Endorsements:

F2 8/96

Countersigned:

By:

Robert James

Exhibit F



July 24, 2003

MFC&V Insurance Services
Whilt, Fatch & Perry Insurance Services
DSD Insurance Agency
Brown & Brown Companies

Jimboz
2711 De La Vina Street
Santa Barbara CA 93105

RE: Policy Type: Commercial Package Policy / Boiler & Machinery
Carrier: Lloyds of London & The Hartford Steam Boiler
Policy Number: BER60336A & FBP2246791
Policy Term: 11/1/2002 to 11/1/2003

Dear Robert:

I would like to take this opportunity to thank you for your confidence in letting Brown & Brown of California, Inc. continue to meet your insurance needs. Enclosed are your policies.

I recommend that you carefully read your policy to ensure it meets with your need for coverage. Please give close attention to the policy's conditions, exclusions and limitations. In the event of a loss, your rights to insurance coverage will be controlled by these set forth in the policy.

Higher limits of liability are available to you as well as other insurance coverages. The enclosed listing of Optional Insurance Coverages are a few that may be of interest to you, for your business.

I look forward to hearing from you with any questions you may have regarding your insurance program.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Cindy Van Mols'.

Cindy Van Mols
Account Manager
Direct Line: 805-690-1642
cvanmols@bbsbins.com
Santa Barbara Branch

CV/amo

Mail To: P.O. Box 1469 • Santa Barbara, CA 93102-1469
1025 Chapala St. • Santa Barbara, CA 93101
Internet Address: www.bbsbins.com
(805) 965-0071
Lic. 0B02587

Fax (805) 963-6898

EXHIBIT F

Important Optional Coverages To Be Considered

(IF NOT ALREADY PROPOSED)

Prepared For:

PROPERTY

- o Earthquake
- o Earthquake Sprinkler Leakage
- o Signs
- o Glass
- o Building Ordinance
- o Flood
- o Peak Season Endorsement
- o Selling Price Endorsement/Market Value Endorsement

o PRODUCTS LIABILITY

o BOILER & MACHINERY

o WORKERS' COMPENSATION

o UMBRELLA/EXCESS LIABILITY

o DIRECTORS & OFFICER LIABILITY

o EMPLOYEE BENEFIT LIABILITY

o FOREIGN SALES vs. DOMESTIC SALES – ANY TRAVEL OUT-OF-COUNTRY?

EMPLOYEE BENEFITS

- o Group Medical/Dental/Disability
- o Group Life/Accidental Death & Dismemberment
- o Pension/Profit Sharing
- o Long Term Care

o PERSONAL LINES

EMPLOYMENT PRACTICES/SEXUAL HARASSMENT

- o Defense Only
- o Discrimination

- o Cost of Inventory & Appraisal
- o Patterns, Tools & Dies
- o Contingent Liability
- o EDP - Computer
- o Transit
- o Business Interruption
- o Vacancy Permit
- o Customer Goods

o PRODUCTS RECALL

o CRIME INSURANCE

o SURETY BONDS

- o Key Man Coverage
- o Cafeteria Plans
- o Self Funding

- o Defense & Indemnity
- o Wrongful Termination

This is only a partial listing. If you are interested in any other coverages, please contact us for further information.

Our ref: MDW/kb[MrgLtrRests1]
Direct line: (020) 7327 5613
Direct fax: (020) 7327 5417
e-Mail address: Malcolm.d.woolgar@lloyds.com

LLOYD'S

17 October 2003

Jimboz
2711 De La Vina Street
Santa Barbara, CA 93105
USA

One Lime Street London EC3M 7HA
Telephone 020 7327 1000
Facsimile 020 7626 2389
Web www.lloyds.com

Dear Sir or Madam

ALLEGED INSURANCE WITH UNDERWRITERS AT LLOYD'S

Lloyd's has been advised that you may have purchased a restaurant liability insurance policy that has Lloyd's name on it, which may have been obtained through United Restaurant Services Corporation, Surplus Lines Inc, Ian Stewart of Heritage Agency. Based on our enquiries of the Lloyd's market we do not believe that Underwriters at Lloyd's have underwritten this insurance. We have not been able to trace the coverage. Further, we have sent letters to United Restaurant Services Corporation, Surplus Lines Inc and Heritage Agency and have not been able to verify coverage in the Lloyd's market from them either.

We write to alert you to this issue and to tell you that, based on the above referenced enquiries, you should not rely on the alleged Lloyd's insurance policy. We are continuing our investigation and if there is any information that you have that might assist us, we would appreciate your contacting me at the e-mail address at the top of the letter. We are working closely with William Meader, Senior Investigator with the California Department of Insurance on this investigation whom we are copying in on this letter and list below his address.

In the meantime, we urge you to take steps to protect your interests.

Yours faithfully



Malcolm Woolgar
Regulatory Liaison

cc: William Meader
Senior Investigator
California Department of Insurance
1100 Rose Drive, Suite 100
Benecia, California 94510
United States of America

EXHIBIT G

Exhibit H



MFC&V Insurance Services
Whilt, Fatch & Perry Insurance Services
Brown & Brown Companies
License # 0B02587

October 23, 2003

DOWNWARD FINANCIAL RATING

Jimboz
2711 De La Vina Street
Santa Barbara CA 93105

RE: Policy Type: Commercial Package Policy
Carrier: Lloyds of London
Policy Number: BER60336A
Policy Term: 11/1/2002 to 11/1/2003

The captioned policy for your business with Lloyds of London and underwritten by United Restaurants Services ("URS") is no longer providing coverage in this program. The Lloyds syndicate for this program has ceased to exist and is currently being investigated by the proper authorities. We were very disappointed and concerned to learn about the Lloyds program. On Monday, October 13th when we learned of the demise of your current insurance and that URS was unsuccessful in obtaining replacement coverage with another carrier, we immediately contacted insurance companies to obtain alternative coverage.

Pursuant to our conversations with you this past week, we have obtained a quotation for replacement coverage. Enclosed is the full proposal for your review. As we discussed, the pricing reflects substantial increases over what you are currently paying. We are continuing to look for other options but felt that we must present you with an immediate option now.

We urge you to consider purchasing replacement coverage now and we can effect that for you upon receipt of the signed application and deposit premium for financing or full payment.

Stop making any payments to United Restaurant Services, Lloyds of London or Premium Finance Services. We do not know at this time how any return premiums will be handled by this company if you have pre-paid your account but will continue to monitor this as information develops.

We are eager to meet with you when you are ready.

Sincerely,

Cindy Van Mols
Account Manager
Santa Barbara Branch

Name Date

Mailing: P.O. Box 1469 • Santa Barbara, CA 93102-1469
1025 Chapala St. • Santa Barbara, CA 93101
Phone: (805) 965-0071
Fax: (805) 963-6898

Santa Barbara • Camarillo • Lompoc • Santa Maria • Atascadero

EXHIBIT H

Exhibit I

LLOYD'S LONDON
1 Lime Street
London, EC3M 7HA

COMMERCIAL PACKAGE DECLARATIONS

HOLDER **BER60555**
NO: **WHILT, FATCH & PERRY**
PRODUCER

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, AND SUBJECT TO THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

NAMED INSURED AND MAILING ADDRESS:

TIBURON TAVERN
TIBURON TAVERN
3116 STATE STREET
SANTA BARBARA CA 93105

DESCRIPTION OF OPERATIONS: RESTAURANT/BAR

The Named Insured is: Individual Partnership Corporation Other _____
Policy Period: From July 18, 2002 To July 18, 2003
At 12:01 A.M. Standard Time at your mailing address shown above.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

	PREMIUM
Commercial Auto/Garage Coverage Part	N/A
Commercial Crime Coverage Coverage Part	INC
Commercial General Liability Part Coverage Part	\$2,024
Commercial Inland Marine Coverage Part	INC
Commercial Professional Liability Coverage Part	N/A
Commercial Property Coverage Part	\$570
Other Charges Fees, Taxes fully earned	\$259.31
Grand Total	\$2,853.31

Audit Period: Annual, unless otherwise stated

Forms and Endorsements:
F2 8/96

Countersigned:

By:

Robert James

Exhibit J



MFC&V Insurance Services
Whilt, Fatch & Perry Insurance Services
Brown & Brown Companies
License # 0B02587

October 23, 2003

DOWNWARD FINANCIAL RATING

Tiburon Tavern
3116 State Street
Santa Barbara CA 93105

RE: Policy Type: Commercial Package Policy
Carrier: Lloyds of London
Policy Number: BER60555A
Policy Term: 7/18/2003 to 7/18/2004

The captioned policy for your business with Lloyds of London and underwritten by United Restaurants Services ("URS") is no longer providing coverage in this program. The Lloyds syndicate for this program has ceased to exist and is currently being investigated by the proper authorities. We were very disappointed and concerned to learn about the Lloyds program. On Monday, October 13th when we learned of the demise of your current insurance and that URS was unsuccessful in obtaining replacement coverage with another carrier, we immediately contacted insurance companies to obtain alternative coverage.

Pursuant to our conversations with you this past week, we have obtained a quotation for replacement coverage. Enclosed is the full proposal for your review. As we discussed, the pricing reflects substantial increases over what you are currently paying. We are continuing to look for other options but felt that we must present you with an immediate option now.

We urge you to consider purchasing replacement coverage now and we can effect that for you upon receipt of the signed application and deposit premium for financing or full payment.

Stop making any payments to United Restaurant Services, Lloyds of London or Premium Finance Services. We do not know at this time how any return premiums will be handled by this company if you have pre-paid your account but will continue to monitor this as information develops.

We are eager to meet with you when you are ready.

Sincerely,

Raquel Carmona
Account Manager
Santa Barbara Branch

Name Date

Mailing: P.O. Box 1469 • Santa Barbara, CA 93102-1469
1025 Chapala St. • Santa Barbara, CA 93101
Phone: (805) 965-0071
Fax: (805) 963-6898

Santa Barbara • Camarillo • Lompoc • Santa Maria • Atascadero

EXHIBIT J