



Diana Ungerleider <dianaunger3@gmail.com>

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**FW: Del Colliano Litigation - Federal Insurance Company's Supplemental & Amended Written Coverage Position**

1 message

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Francine Kirkpatrick <DrFKirk@verizon.net>

Mon, Mar 28, 2016 at 11:08 AM

To: David Schultz <DSchultz@polsinelli.com>, Clay Robbins <clayrobbinsiii@yahoo.com>

FYI  
Francine

**Francine Kirkpatrick, MA, PhD, PsyD**

Clinical Psychology and Psychoanalysis

16050 Anoka Drive

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310-454-3478

[DrFKirk@verizon.net](mailto:DrFKirk@verizon.net)

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**From:** "Burkholder, Donn M" <[dburkholder@chubb.com](mailto:dburkholder@chubb.com)>

**Date:** Monday, March 28, 2016 at 11:04 AM

**To:** ">" <[drfkirk@verizon.net](mailto:drfkirk@verizon.net)>, "Iserota@kuluva.com" <[Iserota@kuluva.com](mailto:Iserota@kuluva.com)>

**Cc:** "[rkovach@mcgowanprograms.com](mailto:rkovach@mcgowanprograms.com)" <[rkovach@mcgowanprograms.com](mailto:rkovach@mcgowanprograms.com)>, "[mblogna@mcgowancompanies.com](mailto:mblogna@mcgowancompanies.com)" <[mblogna@mcgowancompanies.com](mailto:mblogna@mcgowancompanies.com)>, "Belvedere, Donna A" <[dbelvedere@chubb.com](mailto:dbelvedere@chubb.com)>

**Subject:** RE: Del Colliano Litigation - Federal Insurance Company's Supplemental & Amended Written Coverage Position

[Plisair Home Owners Association](#)

Claim No. 326413

Mediation Date: March 30, 2016 in Los Angeles

Thanks Francine. Federal Insurance Company will consent to Palisair's retention of Mr. Robbins as Cumis counsel, subject to our reservation of rights and reasonable hourly rates paid on similar matters within the community. I'll contact Mr. Robbins to discuss.

I'll let Lori respond to your litigation questions.

Best regards, Donn

**CHUBB**

**Donn M. Burkholder**

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ACE and Chubb are now one.

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**From:** Francine Kirkpatrick [<mailto:DrFKirk@verizon.net>]

**Sent:** Thursday, March 24, 2016 8:46 AM

**To:** Burkholder, Donn M <[dburkholder@chubb.com](mailto:dburkholder@chubb.com)>; [lserota@kuluva.com](mailto:lserota@kuluva.com)

**Cc:** [rkovach@mcgowanprograms.com](mailto:rkovach@mcgowanprograms.com); [mblogna@mcgowancompanies.com](mailto:mblogna@mcgowancompanies.com);

Belvedere, Donna A <[dbelvedere@chubb.com](mailto:dbelvedere@chubb.com)>

**Subject:** Re: Del Colliano Litigation - Federal Insurance Company's Supplemental & Amended Written Coverage Position

Dear Donn and Lori,

Thank you Donn for your responses below to our questions. I've chosen to first respond to your request regarding independent counsel. Then I'd like have a conference call.

Please be advised that the Palisair HOA board would like to retain Clay Robbins of Magana, Cathcart & McCarthy as cumin counsel. Mr. Robbins is an exceptionally well qualified and experienced attorney. He is AV-rated, with 35 years of trial and appellate experience, and has 15 published decisions to his credit. His CV, which details his experience, is attached. Please advise if you approve of our choice.

In follow up to the emails below, we have significant concerns about the status of the litigation and would like to arrange a conference call with you two and Mr. Robbins at your earliest convenience. Among the issues that we would like you to advise us about is (1) what discovery has been completed and what discovery remains to be completed, (2) what experts have been retained on our behalf and by Plaintiffs, (3) what has been done to preclude or limit Plaintiffs' claimed damages, and (4) what efforts have been undertaken to mediate this case and when will the mediation take place. I have not received any update concerning these matters, yet the trial date is apparently set in April and we still don't know if Lori has or will be moving to continue the trial date. Can you please send us an email to advise us about these issues, which we can then discuss during our conference call.

We are concerned about the issues above because the trial date is fast approaching, we have not received an update about the matters above and there are many questions that were left for Lori to answer but we have not heard back about them. We also need to have sufficient time for cumin counsel to work with you in defending and protecting our interests.

When you provide answers to the issues above, please let us know a date/time for a conference call hopefully next week.

Very truly yours,

Francine Kirkpatrick, President

*Palisair Home Owners Association*

310-454-3478

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**From:** "Burkholder, Donn M" <[dburkholder@chubb.com](mailto:dburkholder@chubb.com)>  
**Date:** Thursday, February 25, 2016 at 3:44 PM  
**To:** ">" <[drfkirk@verizon.net](mailto:drfkirk@verizon.net)>, "[lserota@kuluva.com](mailto:lserota@kuluva.com)" <[lserota@kuluva.com](mailto:lserota@kuluva.com)>  
**Cc:** "[rkovach@mcgowanprograms.com](mailto:rkovach@mcgowanprograms.com)" <[rkovach@mcgowanprograms.com](mailto:rkovach@mcgowanprograms.com)>, "[mblogna@mcgowancompanies.com](mailto:mblogna@mcgowancompanies.com)" <[mblogna@mcgowancompanies.com](mailto:mblogna@mcgowancompanies.com)>, "[lserota@kuluva.com](mailto:lserota@kuluva.com)" <[lserota@kuluva.com](mailto:lserota@kuluva.com)>, "Belvedere, Donna A" <[dbelvedere@chubb.com](mailto:dbelvedere@chubb.com)>  
**Subject:** RE: Del Colliano Litigation - Federal Insurance Company's Supplemental & Amended Written Coverage Position

Palisair Home Owners Association

Claim No. 326413

Thanks Francine – what's a good time to call?

Please see my responses to your issues below, in blue.

Best regards, Donn

**CHUBB®****Donn M. Burkholder**

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E [dburkholder@chubb.com](mailto:dburkholder@chubb.com)

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**From:** Francine Kirkpatrick [<mailto:DrFKirk@verizon.net>]**Sent:** Wednesday, February 24, 2016 8:15 AM**To:** Burkholder, Donn M <[dburkholder@chubb.com](mailto:dburkholder@chubb.com)>; [lserota@kuluva.com](mailto:lserota@kuluva.com)**Subject:** Re: Del Colliano Litigation - Federal Insurance Company's Supplemental & Amended Written Coverage Position

Dear Mr. Burkholder and Ms. Serota:

Thank you for Chubb's most recent letter, dated February 11, 2016, which advises that Chubb will be accepting coverage and defense against Mr. Del Colliano's Third Amended Complaint. I have a few questions concerning that letter and the last status update I received from Ms. Serota, and am requesting that we have a conference call to address these questions. Can you please call me to arrange a call within the next week?

First, I would like to receive confirmation that the individual board members are not included as defendants. Ms. Serota's email update in June of 2015 advised us that the court did not allow Mr. Del Colliano to add the individual board members as defendants, and we want to confirm that this is still the case.

You're correct – the individual defendants are not named in the Third Amended Complaint. Since we previously agreed to accept coverage as to those individual defendants, subject to a reservation of rights, that coverage position remains

intact, regardless of the state of the currently-operative pleading.

Second, Ms. Serota's last email update advised that she was intending to schedule a mediation in January, after completing several discovery items. Has a mediation been scheduled? What steps are being taken to resolve the matter before trial?

We're currently working on arranging a mediation in March. If it's your intention to attend, can you provide us with some available dates? It will likely be held here in Los Angeles, in Lori's offices. As previously discussed, we need to have a conversation about certain parts of the plaintiffs' claims that are not covered Loss under Federal Insurance Company's Policy. While we certainly plan to partner with Palisair in any settlement discussions, any such settlement will require a contribution by Palisair in light of the non-covered matters.

Third, Ms. Serota previously advised us that the trial date was moved to April of 2016? Is the trial going to proceed then or be continued again?

I'll let Lori respond to this question.

Fourth, has Chubb and Ms. Serota performed an evaluation of Mr. Del Colliano's claimed damages, and can you provide us with an update on the activities performed since Ms. Serota's last email to defend against this claim?

Del Colliano has previously claimed the following elements of damages: (1) \$42,000 for additional living expenses of having to maintain two residences for about 8 months; (2) \$1.2 million in lost value of the home; (3) \$250,000 in loss of square feet usage; (4) \$116,500 in additional fees to re-design the house to move the second story to another side of the house; (5) \$170,000 in attorneys' fees; (6) emotional distress and physical injuries related to Mr. Del Colliano's depression, increase in blood pressure, weight gain, etc.; (7) \$500,000 in lost business as a result of Mr. Del Colliano having to focus on this litigation rather than his own business; (8) \$500,000 in loss of business valuation.

It's not clear why the plaintiffs would ever be entitled to recover \$42,000 for loss of use of their residence. It has no apparent relationship to the allegedly wrongfully denied application for renovation. In addition, when the Board simply asked the plaintiff for revised plans, their response was to commence this litigation, rather than complying with the Board's request. Loss in value of the home and "square feet usage" is lacking in any apparent supportive evidence, and is too speculative to be a reasonable consideration in settlement discussions. As for the "re-design fees," it's completely incumbent on the plaintiffs to produce acceptable designs. If they were unable to do so, then that's a cost they must personally bear. I don't see any basis for the plaintiffs' alleged entitlement to attorneys' fees and costs, but perhaps Lori can enlighten us. The emotional distress claims are questionable,

but remain at issue. Bodily injury and loss of use of the property are not covered under Federal's Policy as a covered Loss, as previously addressed in our coverage correspondence to Palisair. Del Colliano's "loss of business" claims lack any proximal relationship to the plaintiffs' allegations of misconduct. Del Colliano elected to commence this litigation, at his own risk.

Finally, in response to a letter from Mr. Burkholder, which advised that we could retain independent counsel that Chubb would pay for, I wrote an email on December 1, 2015 in which I accepted Chubb's offer to pay for independent counsel to assist in defending us along with Ms. Serota. But, I did not receive a response from Chubb concerning that issue. When we talk, we can provide you with the name of an attorney to have assigned as independent counsel.

Federal can't retain independent counsel, because to do so would be violative of the term "independent." As we stated in our October 26, 2015 letter to you, we stated the following in page 3:

*"California Civil Code §2860(a) provides, in relevant part, that "(i)f the provisions of a policy of insurance impose a duty to defend upon an insurer and a conflict of interest arises which creates a duty on the part of the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to represent the insured unless, at the time the insured is informed that a possible conflict may arise or does exist, the insured expressly waives, in writing the right to independent counsel." In accordance with this section, the **Insured** has the right to select independent counsel to represent its interests. Please advise us whether Palisair elects to appoint independent counsel to defend their interests in this matter."*

That's a reference to Palisair's rights to (a) replace defense counsel assigned by Federal with defense counsel of Palisair's choice, or (b) retain independent counsel of Palisair's choice to monitor the litigation on its behalf, at Federal's cost. I apologize if I misunderstood your December 1, 2015 e-mail. I took your message as a written waiver of any rights to independent counsel, and have attached a form addressing the issue to this e-mail. Please let me know if Palisair now elects to retain defense counsel of its choice to replace Lori in defending this matter.

Please contact me at your earliest convenience, so that we can set up a conference call within the next week to discuss this matter.

Please let us know your availability – thanks, regards, Donn

Very truly yours,

Francine Kirkpatrick, President

*Palisair Home Owners Association*

310-454-3478

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**From:** "Burkholder, Donn M" <[dburkholder@chubb.com](mailto:dburkholder@chubb.com)>

**Date:** Thursday, February 11, 2016 at 10:50 AM

**To:** ">" <[drfkirk@verizon.net](mailto:drfkirk@verizon.net)>

**Cc:** "[mwilcox@allenlawrence.com](mailto:mwilcox@allenlawrence.com)" <[mwilcox@allenlawrence.com](mailto:mwilcox@allenlawrence.com)>, "[rkovach@mcgowanprograms.com](mailto:rkovach@mcgowanprograms.com)" <[rkovach@mcgowanprograms.com](mailto:rkovach@mcgowanprograms.com)>, "[lserota@kuluva.com](mailto:lserota@kuluva.com)" <[lserota@kuluva.com](mailto:lserota@kuluva.com)>, "Belvedere, Donna A" <[dbelvedere@chubb.com](mailto:dbelvedere@chubb.com)>

**Subject:** Del Colliano Litigation - Federal Insurance Company's Supplemental & Amended Written Coverage Position

Insured: Palisair Home Owners Association

Policy No.: 8227-6754

Claim No.: 326413

Plaintiffs: Gerard del Colliano, *et al.*

Company: Federal Insurance Company

Francine:

Please see the attached correspondence from Federal Insurance Company, that's also being sent to you via First Class Mail.

Let me know if you care to discuss.

Best regards, Donn

**CHUBB**

**Donn M. Burkholder**

D&O Examiner, North America Financial Lines Claims

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