

12/14/2005

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

Marcia Rhodes, Harold Rhodes, Individually,  
Harold Rhodes, on Behalf of his Minor Child  
and Next Friend, Rebecca Rhodes  
Plaintiffs,  
v.  
AIG Domestic Claims, Inc. f/k/a AIG Technical  
Services, Inc., National Union Fire Insurance  
Company of Pittsburgh, PA, and Zurich American  
Insurance Company  
Defendants.

Civil Action No.: 05-1360-BLS2  
(Judge Gants)

**MEMORANDUM OF DEFENDANT ZURICH AMERICAN INSURANCE COMPANY  
IN OPPOSITION TO PLAINTIFFS' SECOND MOTION TO COMPEL PRODUCTION  
OF DOCUMENTS**

Defendant Zurich American Insurance Company ("Zurich") hereby opposes Plaintiffs' Second Motion to Compel Zurich to Produce Documents. In opposition to said Motion, Zurich states that the "claim manual" requested by Plaintiff is not relevant to the claim or defense of any party and, as such, is beyond the scope of permissible discovery under Mass. R. Civ. P. 26(b). Accordingly, the Court should deny Plaintiffs' Motion to Compel, as well as their frivolous request for the costs of the motion.

**I. FACTUAL BACKGROUND**

**A. Overview of This Action**

This Chapter 93A action concerns Zurich and defendant National Union Fire Insurance Company of Pittsburgh, PA's ("National Union") handling of negligence and loss of consortium claims that Plaintiffs brought against Zurich's and National Union's insured, Building Materials

Corporation of America d/b/a GAF Materials Corp. ("GAF"), as well as other parties, for injuries Plaintiff Marcia Rhodes sustained in a January 2002 automobile accident. Before commencing the underlying action in July 2002, Plaintiffs and their counsel made no effort to resolve their claims against GAF or the other defendants. Indeed, Plaintiffs waited more than one year (until August 2003) to present a demand for damages against the defendants in the underlying tort action.

In December 2003, fewer than four months after receiving Plaintiffs' settlement demand, Zurich tendered its \$2 million policy limit to National Union, GAF's excess insurer, with the expectation that such funds would be included in a settlement with Plaintiffs. Immediately after National Union rejected Zurich's tender in March 2004, Zurich offered its policy limits to the Plaintiffs. Plaintiffs' counsel immediately and flatly rejected that offer, however, and refused to make any counter-demand. Between April 2004 and the entry of a verdict in September 2004, Plaintiffs rejected settlement offers of \$3.5 million and \$6 million, respectively. Despite having rejected Zurich's policy limits six months before trial, and notwithstanding their subsequent refusal of offers far exceeding the limit of Zurich's primary policy, Plaintiffs assert in this action that Zurich violated Chapter 93A by failing to settle their claims at some earlier point in time.

**B. Nature of Discovery Dispute**

In their Motion to Compel, Plaintiffs ask the Court for an order requiring Zurich to produce copies of all "policies and procedures for adjusting or otherwise processing personal injury and/or motor vehicle accident claims, including but not limited to, any and all claims manuals related to personal injury and/or motor vehicle accident claims." (Plaintiffs' First Request for Production of Documents to Defendant Zurich American Insurance Company, Request No. 3). In response to Request No. 3, and after further investigation and discussions

with Crawford & Company ("Crawford"), the third-party administrator that handled Plaintiffs' underlying claims on behalf of GAF and Zurich, Zurich was provided with a copy of Crawford's liability claim handling guidelines entitled "*Liability Standards of Excellence*." Despite its belief that those guidelines are immaterial to any party's claim or defense in this case, Zurich has agreed to produce them to Plaintiffs, subject to a Confidentiality Agreement (See Letter from G. Varga to M. Pinkham dated December 1, 2005, a true and accurate copy of which is attached as Exhibit 1). Zurich has declined to produce its own claims handling guidelines, entitled "*Liability Best Practices*." A proprietary document created by Zurich, *Liability Best Practices* sets forth in general terms Zurich's aspirations for how Zurich employees will handle liability claims that are directly administered by Zurich, as opposed to a third-party administrator such as Crawford. (Affidavit of Kathleen Fuell, ¶ 6.) *Liability Best Practices* was never shared with Crawford and has absolutely no application to claims administered by Crawford. (Id.)

To fully appreciate Zurich's position, the Court must understand the nature of the relationship among Zurich, GAF and Crawford as it concerns the underlying automobile liability claim. At the time of the subject automobile accident, GAF and Crawford were parties to a contract whereby Crawford was required to administer liability claims brought against GAF valued beneath the \$250,000 deductible of its commercial automobile insurance policy with Zurich (the "Zurich Policy"). (Id. at ¶ 3, Exhibit B.) At that time, Zurich and Crawford were parties to a separate contract pursuant to which Crawford provided claim administration services for liability claims against GAF that exceeded GAF's \$250,000 deductible. (Id. at ¶ 2, Exhibit A.) In administering claims against GAF pursuant to these agreements, Crawford employees would investigate the facts and circumstances of the claims; interface with claimants, claimants' counsel (if applicable), and defense counsel hired to represent GAF (if applicable); otherwise

handle the day-to-day administration of the claims; and report to GAF and Zurich. (Id. at ¶ 4.) Employees of Zurich played no part in the day-to-day administration of liability claims assigned to Crawford. (Id. at ¶ 5.) Rather, employees of Zurich's Major Case Unit provided general oversight of such claims. (Id.) Of course, Zurich retained exclusive authority to settle or otherwise dispose of the claims administered by Crawford. (Id.)

Pursuant to the aforementioned contracts, Crawford performed all day-to-day investigation and administration of Plaintiffs' underlying tort claims and litigation concerning GAF. (Id. at ¶ 4.) Since Crawford administered those claims, Zurich has agreed to produce Crawford's *Liability Standards of Excellence*. Plaintiffs also have been provided with a complete copy of Crawford's claim file and electronic claim notes, with the exception of materials that are clearly privileged. In response to Document Request No. 3, Zurich also produced copies of the third-party administrator contracts between Crawford and GAF and Crawford and Zurich. Because no Zurich employee played a part in the day-to-day administration of the underlying tort claims, however, Zurich contends that its *Liability Best Practices* guidelines have no bearing on the Plaintiff's Chapter 93A claim.

## II. ARGUMENT

### A. The Court should deny Plaintiffs' Motion to Compel because Zurich's *Liability Best Practices* are not relevant to the claim or defense of any party.

Plaintiffs are entitled to discovery of material that is "relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...." Mass. R. Civ. P. 26(b)(1). Rule 26(b) vests a trial court with broad discretion to prevent discovery of material that has no tendency to prove a party's claim or defense. See Assoc. for Reduction of Violence v. Hall, 734

F.2d 63, 67 (1<sup>st</sup> Cir. 1984); see also Hickman v. Taylor, 329 U.S. 495, 507-08 (1947) (explaining that although discovery rules “are to be accorded a broad and liberal treatment . . . limitations come into existence when the inquiry touches upon the irrelevant”);<sup>1</sup> GTE Prods. Corp. v. Stewart, 414 Mass. 721, 725 (1993) (observing that conduct and scope of discovery is within sound discretion of trial judge and he or she should not hesitate to exercise appropriate control to restrict discovery on irrelevant issues). Zurich’s *Liability Best Practices* are not relevant to the claim Plaintiffs have asserted against Zurich.

There can be little doubt that Plaintiffs seek copies of “claims manuals” maintained by Zurich because they believe that if they can show that the handling of Plaintiffs’ underlying tort claims against GAF deviated in some way from guidelines in those manuals, such evidence will bolster their allegations of unfair claim settlement practices. Although no Massachusetts court has squarely addressed such an argument, courts in other jurisdictions have rejected it. See, e.g., Garvey v. National Grange Mut. Ins. Co., 167 F.R.D. 391, 396 (E.D.Pa. 1996) (in insurance bad faith action, district court declined to compel production of insurance claim manuals based on the following reasoning: “The plaintiff’s claims in this case are based upon the actions of the defendant and its employees in handling the plaintiff’s claim for loss....[T]he fact that the defendant may have strayed from its internal procedures does not establish bad faith on the part of the defendant in handling the plaintiff’s loss.”); see also Atlantic Mut. Ins. Co. v. American Academy of Orthopaedic Surgs. & Scoliosis Research Soc’y, 315 Ill. App. 3d 552, 567-568 (Ill. App. Ct. 2000) (trial court did not abuse its discretion in denying defendants’ motion to compel

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<sup>1</sup> In reviewing the instant motion, this Court may consider decisions of the First Circuit and the District of Massachusetts which apply the cognate Federal Rule 26(b)(1). See Cronin v. Strayer, 392 Mass. 525, 534 (Mass. 1984).

production of claims manual); State Farm Fla. Ins. Co. v. Gallmon, 835 So. 2d 389, 390 (Fla. Dist. Ct. App. 2003) (quashing order to compel, holding that a claims manual was irrelevant).

Even if this Court were to conclude that the contents of an insurance claim manual are marginally relevant to Plaintiffs' Chapter 93A/176D claim, the only manual that might be discoverable is the *Liability Standards of Excellence* maintained by Crawford, which actually administered the Plaintiffs' underlying tort claims. By contrast, Zurich's *Liability Best Practices* guidelines have no bearing whatsoever on this matter. As explained above, employees of Zurich did not investigate Plaintiffs' tort claims or otherwise directly participate in day-to-day claim administration functions. Moreover, Zurich's *Liability Best Practices* were not shared with Crawford. Given these facts, even if Plaintiffs could prove that Crawford's claim administration practices deviated in some small way from certain guidelines contained in Zurich's *Liability Best Practices* (of which Crawford was not aware), such evidence would have no tendency to establish Zurich's liability for unfair or deceptive practices.

The cases cited in Plaintiffs' Memorandum in Support of their Motion to Compel lend no support to their request for Zurich's claim manuals. Plaintiffs cite Kaufman v. Nationwide Mut. Ins. Co., 1997 U.S. Dist. LEXIS 18530 (E.D. Pa. 1997) for the proposition that Zurich's claim manual is discoverable and "probative evidence for plaintiff to demonstrate bad faith." (Plaintiff's Memo. at 4.) In their discussion of that case, however, Plaintiffs conveniently neglect to mention that the Kaufman court only ordered the insurer to produce "portions of the manuals or newsletters containing this limited information [instructions concerning procedures used by Nationwide's employees in handling claims], which were sent to the employees who directly handled plaintiff's claims." Id. at \*5 (Emphasis added). The defendant was not required to produce the remaining portions of its claim manuals. Id. Implicit in the district

court's ruling was the conclusion that those portions of the manuals that had not been made available to those who actually handled the underlying claims were irrelevant to the bad faith action. Since the Crawford employees who administered the Plaintiffs' underlying tort claims were never privy to Zurich's *Liability Best Practices*, Kaufman compels the conclusion that that document is not discoverable.

Plaintiffs' reliance on Grange Mut. Ins. Co. v. Trude, 151 S.W.3d 803 (Ky. 2004), is equally misplaced. The claim manual in question was prepared by Grange Mutual. In contrast to this case, however, Grange Mutual, not a third-party administrator, actually investigated and adjusted the plaintiff's underlying liability claim. Id. at 807. In light of that critical distinction, the Trude court's conclusion that the claim manual was relevant is inapposite.

In summary, it is within the sound discretion of the trial judge to control and restrict discovery on irrelevant issues. As demonstrated above, Zurich's *Liability Best Practices* guidelines have no tendency to support any party's claim or defense in this case, and will not lead to the discovery of admissible evidence. Accordingly, the Court should deny Plaintiffs' Motion to Compel that document.

**B. The Court should deny Plaintiffs' frivolous request for costs.**

It appears that Plaintiffs are operating under the mistaken belief that Mass. R. Civ. P. 37 entitles them to sanctions whenever one of the defendants challenges one of their far-reaching discovery requests. The law is otherwise. Indeed, it is well settled that the costs of a motion to compel are not to be awarded if "the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." Mass. R. Civ. P. 37(a)(4). For the reasons articulated above, Zurich has substantial justification for

withholding its *Liability Best Practices* from disclosure, and for opposing the instant Motion to Compel.

Moreover, and contrary to Plaintiffs' misleading presentation of the facts, Zurich has made no "attempts to delay" discovery in this case. In order to fully respond to Request No. 3, Zurich was required to gather and examine its own internal policies and procedures and those of another national corporation, Crawford & Company, and locate responsive records. This was a time-consuming process that required inquiry of numerous people. Plaintiffs' allegations of delay are completely unfounded.

Finally, Plaintiffs' representation that Zurich is "hindering further discovery, such as depositions" is disingenuous at best. As Plaintiffs are well aware, they have not yet noticed a single deposition, and made no request for dates for any deposition until November 22, 2005. Plaintiffs' request for costs should be rejected.

### III. CONCLUSION

For the forgoing reasons, Zurich American Insurance Company respectfully requests that the Court DENY Plaintiffs' Second Motion to Compel and their frivolous request for costs.

DEFENDANT,  
ZURICH AMERICAN INSURANCE  
COMPANY,  
By its attorneys,

  
\_\_\_\_\_  
Gregory P. Varga, BBO # 629227  
Danielle Andrews Long, BBO # 646981  
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Date:

12/14/05



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SUPERIOR COURT DEPARTMENT  
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Marcia Rhodes, Harold Rhodes, Individually,  
Harold Rhodes, on Behalf of his Minor Child  
and Next Friend, Rebecca Rhodes  
Plaintiffs,

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AIG Domestic Claims, Inc. f/k/a AIG Technical  
Services, Inc., National Union Fire Insurance  
Company of Pittsburgh, PA, and Zurich American  
Insurance Company  
Defendants.

Civil Action No.: 05-1360-BLS2  
(Judge Gants)

AFFIDAVIT OF KATHLEEN FUELL

I, Kathleen Fuell, hereby depose and state as follows:

1. Since July 2003, I have been employed by the Zurich American Insurance Company ("Zurich") as a Major Case Unit Consultant, Liability Claims. In that position, I have been responsible for general oversight of liability insurance claims made against Zurich policyholders which were administered by independent third-party administrators pursuant to contract with Zurich.
2. At the time of the automobile accident that gave rise to the Plaintiffs' underlying tort claims against Zurich's insured, Building Materials Corporation of America d/b/a GAF Materials Corp. ("GAF"), Zurich had a contract with third-party administrator Crawford & Company ("Crawford") pursuant to which Crawford administered liability claims made against GAF that exceeded the \$250,000 deductible of GAF's policy with Zurich. A true and accurate

Exhibit 2

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copy of that contract is attached hereto as Exhibit A. The Plaintiffs' tort claims against GAF were among those Crawford administered and for which I have provided oversight.

3. As of January 2002, GAF also had a contract with Crawford wherein Crawford agreed to administer liability claims brought against GAF that were within the \$250,000 policy deductible. A true and accurate copy of that agreement is attached hereto as Exhibit B.

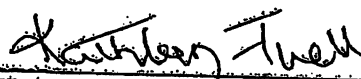
4. Pursuant to its third-party administrator contracts with Zurich and GAF, Crawford performed all of the day-to-day investigation and administration of claims made against GAF, including the tort claims Plaintiffs asserted against GAF. In administering claims made against GAF, Crawford was responsible for investigating the facts and circumstances of those claims; interfacing with claimants, claimants' counsel (where applicable), and defense counsel hired to represent GAF (where applicable); handling the day-to-day administration of the claims; and reporting to GAF and Zurich.

5. Employees of Zurich played no part in the day-to-day administration of the Plaintiffs' underlying tort claims against GAF. I and my predecessors in the Liability Major Case Unit did provide oversight of Crawford's handling of those claims, as well as hundreds of other claims. Zurich retained ultimate authority to settle or otherwise dispose of the claims administered by Crawford.

6. In response to Plaintiffs' request for documents constituting *"policies and procedures for adjusting or otherwise processing personal injury and/or motor vehicle accident claims, including but not limited to, any and all claims manuals related to personal injury and/or motor vehicle accident claims,"* Zurich conducted a thorough search of its records and identified a document entitled "Liability Best Practices," a proprietary document created by Zurich. "Liability Best Practices" sets forth in general terms Zurich's aspirations for the handling and

administration of liability claims that are assigned to Zurich employees, as opposed to third-party administrators under contract with Zurich. Zurich has not shared "Liability Best Practices" with any third-party administrator. Accordingly, "Liability Best Practices" does not apply to third-party administrators. Rather, third-party administrators maintain their own set of claim handling guidelines.

Signed under the pains and penalties of perjury this 14th day of December, 2005.

  
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Kathleen Fuell,  
Zurich American Insurance Company,  
Major Case Unit Consultant, Liability Claims



## Third Party Administrator Agreement Zurich-American Insurance Group (Insured Funded)

- ☐ Zurich Insurance Company, U.S. Branch
- ☐ Zurich American Insurance Company of Illinois
- ☐ American Guarantee and Liability Insurance Company
- ☐ American Zurich Insurance Company
- ☐ Steadfast Insurance Company

Each of the companies designated above, as now or hereinafter constituted, and its successors or assigns, is a party to this Agreement and hereinafter is severally referred to as "Company".

This is an Agreement, between the Company, and [ Crawford & Company (name of Claims Administrator)], a corporation organized under the laws of the State of [ Georgia (state)] (the "Claims Administrator"), collectively hereinafter the "Parties".

### 1. Engagement.

The Company hereby engages the Claims Administrator to provide certain Claims Administration and Adjusting services (hereinafter defined) pertaining to coverages provided by those policies identified in the Addendum hereto (hereinafter defined), which is incorporated by reference as though fully set forth herein (the "Addendum"), which were underwritten by the Company for that Insured identified therein (the "Insured"). The Claims Administrator hereby accepts such engagement, upon the terms and subject to the conditions hereinafter set forth. This Agreement applies solely to Claims (hereinafter defined) for which coverage may be provided under or is alleged to be provided under the policies of insurance identified in the Addendum (the "Policies").

The term of this Agreement shall be that term set out in the Addendum unless earlier terminated or extended in accordance with the terms of this Agreement; provided, however, that the termination of this Agreement shall not waive, limit or diminish the Claims Administrator's obligations with respect to any services commenced by the Claims Administrator or assigned to the Claims Administrator prior to the effective date of such termination, except and to the extent otherwise requested by the Company.

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2. Definitions

As used in this Agreement, the following terms and phrases, when capitalized, shall have the meanings ascribed to them as hereinafter specified.

"Addendum" shall mean that document entitled "Addendum to Third Party Administrator Agreement", which shall be executed separately from this Agreement by authorized representatives of the parties to this Agreement. The Addendum, upon execution by both parties, shall be considered fully incorporated by reference herein as though fully set forth.

"Adjust", "Adjusting" or "Adjustment" shall mean and refer to the process of investigation, evaluation and disposition of Claims.

"Allocated Loss Adjustment Expense" ("ALAE") shall mean an expense directly allocable to a specific claim and shall include but not be limited to all supplementary payments as defined under the Policies, all court costs, fees and expenses, costs for all attorneys, witnesses, experts, depositions, reported or recorded statements, summonses, service of process, legal transcripts or testimony, copies of any public records, alternative dispute resolution, interest, investigative services, non-employee adjusters, medical examinations, autopsies, medical cost containment, declaratory judgment, subrogation and any other fees, costs or expenses reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or a loss under the Policies.

"Claim" or "Claims" shall mean any incident, event or circumstance reported to the Claims Administrator which is asserted by any person and is covered by the Policies, for which the Claims Administrator has established, should establish or should have established a Claim Adjustment File, and set a Reserve, should set a Reserve, or should have set a Reserve in accordance with the terms of this Agreement.

"Claim Administration Services" shall mean and include the performance by the Claims Administrator in compliance with all terms of (1) this Agreement; (2) the Policies; and (3) all applicable laws and in particular, of the functions specified in paragraph 3 of this Agreement with respect to the review, investigation, evaluation, adjustment, processing, negotiation, settlement, defense, reporting and administration of Claims.

"File" shall mean the written documentation of the Claim Adjustment process arising from any single Claim and all relevant activity, records, notices, investigation(s) and payment(s) other than documents protected by the Company's or Claims Administrator's attorney-client privilege.

"Insured" shall mean the named insured under the Policies.

"Loss Fund Account" shall mean a bank account, established by the Claims Administrator in a bank approved by the National Association of Insurance Commissioners, where the Insured shall deposit funds to be held and maintained

throughout the term of the Agreement by the Claims Administrator. The Loss Fund Account shall provide a source of funds for the Claims Administrator to pay obligations under the Policy for Claims and ALAE prior to reimbursement.

**"Policy" or "Policies"** shall mean that policy or those policies listed in the Addendum hereto.

**"Reserve"** shall mean the Claims Administrator's monetary evaluation of the Company's total financial exposure on any Claim.

3. **Claims Administration Services.**

The Claims Administrator shall provide to the Company the following services and shall have the following duties with respect to Claims Administration Services for Claims under the Policies regardless of when any Claim is reported to the Claims Administrator. The Claims Administrator shall be responsible for Claim Administration Services from the date of first report until final resolution other than as provided in Section 11 herein. With respect to Files transferred to Claims Administrator from the prior Claims Administrator, the transfer of a File shall be deemed to be the report of that Claim to Claims Administrator.

The Claims Administrator shall:

- (a) Accept and acknowledge proofs of loss for the Company;
- (b) Establish and maintain Files for each Claim reported to the Claims Administrator under the Policy;
- (c) Investigate all such reported Claims under the Policy to the extent reasonable and customary, to evaluate the merits of such Claims;
- (d) Propose Claim Reserve guidelines, consistent with regulatory requirements, to be mutually agreed upon and to establish timely and adequate loss and Allocated Loss Adjustment Expense Reserves with respect to all Claims in accordance with the approved Claim Reserve guidelines, as set out in the Addendum hereto;
- (e) Promptly and thoroughly review, process, adjust, settle and pay Claims under the Policy in full compliance with (1) this Agreement, (2) the Policy, (3) the Addendum hereto and (4) all applicable legal requirements; provided, however, that no offer, settlement or payment shall exceed the settlement authority of the Claims Administrator without prior written approval of each such offer, settlement or payment by the Company;
- (f) Retain Company approved attorneys to provide assistance in administering or defending Claims in a manner consistent with the Addendum hereto;



- (g) Retain Company approved third party contractors to Adjust Claims on behalf of the Claims Administrator in accordance with the Addendum hereto;
- (h) Furnish all Claim forms necessary for proper Claims Administration as required by the Addendum hereto;
- (i) Take such action as may be necessary to ensure that Claims Administration and Claims Adjustment shall comply in all respects with all applicable laws, regulations, and industry custom;
- (j) Provide monthly loss reports, as mutually agreed at inception of the program, in such format as the Company may reasonably prescribe, showing descriptive data, inception to present experience for each detail of each month's payments, total payments, Reserves and total incurred Claim or loss. Data reporting services under this Agreement is limited to the reporting copies specified in the Addendum hereto. Subsequent changes, including changes in report distribution, will be included in the originally negotiated fees to be paid by the Insured or a new fee mutually agreed upon by the parties following reasonable notice;
- (k) Explore and pursue all reasonable opportunities for subrogation, contribution, indemnity, salvage or other recovery on behalf of the Company and the Insured, in a manner consistent with the Addendum hereto;
- (l) Generate and disseminate requisite 1099 forms for all third-party disbursements on Files, and comply with any comparable reporting documents required by the Internal Revenue Service or state revenue authorities under state revenue laws and regulations, and provide to the Company copies thereof, as the Company may reasonably request. All 1099 and other filings shall indicate Claims Administrator as the payor and reflect Claims Administrator's tax identification number;
- (m) Comply with all statistical reporting requirements as set out in this Agreement and the Addendum hereto and provide all other reports and loss runs as described herein;
- (n) Notify Company of any claim fraud investigations, or internal defalcation, funds diversion, collusion with vendors or providers of Services or any other discovered impropriety that may involve or affect a File and, in any such event, allow Company to participate in any investigation as reasonable and appropriate under the circumstances;
- (o) Provide the services and comply with the procedures as stated by the Company, as set out in this Agreement, all Addenda, Parts, Schedules and Exhibits, attached hereto, and all other instructions as may be provided by the Company from time to time.

4. Certain Limitations Upon the Authority of the Claims Administrator.

Notwithstanding anything herein to the contrary, the Claims Administrator shall not, except with the written consent of the Company:

- (a) Settle or offer to settle any Claim or loss for an amount in excess of the Reserve amount or in violation of other limitations set forth in this Agreement or the Addendum hereto;
- (b) Take any other action prohibited by this Agreement or the Addendum hereto.

5. Loss Fund Account.

- (a) Claims Administrator shall enter into a separate agreement with the Insured as of the effective date of this Agreement, with respect to certain financial obligations, between Claims Administrator and Insured (the "Separate Agreement"). The Separate Agreement shall be attached to the Addendum hereto and made a part hereof. With respect to the Loss Fund Account, the Separate Agreement will outline:
  - (i) The amount of the initial required deposit and what it represents.
  - (ii) The period covered by the initial deposit.
  - (iii) Claims Administrator's bank information.
  - (iv) The paid Claim and Allocated Loss Adjustment Expense billing frequency by the Claims Administrator to Insured.
  - (v) The Loss Fund Account adjustment frequency.
  - (vi) The large Claim amount.
  - (vii) The method of notification to Insured by Claims Administrator of large Claim amounts.
  - (viii) The formula for the Loss Fund Account Adjustment.
- (b) It is expressly agreed that if Claims Administrator terminates the Separate Agreement due to Insured's failure to fulfill any of its financial obligations to Claims Administrator in accordance with the terms and conditions of the Separate Agreement:
  - (i) Claims Administrator shall continue to perform the Claim Administration Services under this Agreement until such reasonable time as an appropriate transfer of the files to the Company or another Claims Administrator may be achieved provided.
    - (a) The Company agrees to fund the Loss Fund Account for all Claim or Allocated Loss Adjustment Expense amount(s) on and after the effective date of termination of the Separate Agreement.

(b) The Company agrees to enter into an agreement with the Claim Administrator with respect to the following within 48 hours of notice of the termination of the Separate Agreement:

- (i) The amount of the initial required deposit and what it represents
- (ii) The period covered by the initial deposit
- (iii) Claims Administrator's bank information
- (iv) The paid Claim and Allocated Loss Adjustment Expense billing frequency by the Claims Administrator to Insured
- (v) The Loss Fund Account adjustment frequency
- (vi) The large Claim amount
- (vii) The method of notification to Insured by Claims Administrator of large Claim amounts
- (viii) The formula for the Loss Fund Account Adjustment

(c) The Claims Administrator shall have no obligation to pay any Claim or Allocated Loss Adjustment Expense amount(s) on and after the effective date of termination of the Separate Agreement, except with funds provided by the Company.

(ii) The Company shall have no obligation to pay Claims Administrator for any Claim Administration Services fees and expense previously unpaid by Insured prior to the effective date of termination of the Separate Agreement.

*Bole*  
1-8-97  
*[Signature]*  
11/2/97

(iii) The Company shall have no obligation to reimburse Claims Administrator for any Loss Fund Account amounts unreimbursed by Insured prior to the effective date of termination of the Separate Agreement.

6. Fees and Expenses.

(a) It is expressly agreed that unless Claims Administrator terminates the Separate Agreement due to Insured's failure to fulfill any of its financial obligations to Claims Administrator in accordance with the terms and conditions of the Separate Agreement.

- (i) The Company shall not have any obligation to pay fees and expense to Claims Administrator for providing Claims Administration Services hereunder.
- (ii) Claims Administrator shall look solely to Insured for payment of its fees and expenses for providing Claims Administration Services hereunder.

(b) It is expressly agreed that if Claims Administrator terminates the Separate Agreement due to Insured's failure to fulfill any of its financial obligations to Claims Administrator in accordance with the terms and conditions of the Separate Agreement:

- (i) Claims Administrator shall continue to perform the Claim Administration Services under this Agreement until such reasonable time as an appropriate transfer of the files to the Company or another Claims Administrator may be achieved provided:
  - (a) The Company shall pay Claims Administrator for all Claims Administration Services provided by Claims Administrator on and after the effective date of termination of the Separate Agreement.
  - (b) The Company agrees to enter into an agreement with the Claim Administrator with respect to the method and basis of the service fee payment within 48 hours of notice of the termination of the Separate Agreement.
  - (c) The Claims Administrator shall have no obligation to provide any claim services on and after the effective date of termination of the Separate Agreement in the absence of mutual agreement with respect to paragraph 6,b,i,b.
- (ii) The Company shall have no obligation to pay Claims Administrator for any Claims Administration Services fees and expenses previously unpaid by Insured prior to the effective date of termination of the Separate Agreement.
- (iii) The Company shall have no obligation to reimburse Claims Administrator for any Loss Fund Account amounts unreimbursed by Insured prior to the effective date of termination of the Separate Agreement.

7. Records.

The Claims Administrator will retain Files for three years following date of closure. Thereafter, on a semiannual basis, Files will be returned to the Company or forwarded to such location as may be designated by the Company for continued storage. The Company will sign appropriate acknowledgment of receipt forms upon delivery of the Files. Upon the Claims Administrator's request, closed Files will be returned for additional administration as may be required. The parties agree that the Claims Administrator may have reasonable access to such files and to make copies and take extracts therefrom.

In the event of termination of the Claims Administrator's Services, and assumption of continuing Administration of Claims by the Company or another person, the Claims Administrator will transfer all open and retained closed Claim Files to the Company, or its designee, as of the effective date of termination. The Company will sign appropriate acknowledgment of receipt forms upon delivery of the Files.

8. Certain Covenants of the Claims Administrator.

The Claims Administrator shall:

- (a) Maintain, during the term of this Agreement, such insurance coverage, in such amounts and with such deductibles as shall be set forth in the Addendum hereto, and furnish to the Company annually evidence of insurance coverage, and shall notify the Company of any changes;
- (b) Keep confidential and, except as provided by this Agreement, not use for any purpose or disclose to any person, any non-public information concerning the business or operations of the Company, including without limitation, all Claims information, even if compiled by the Claims Administrator, any information relating to the Company's electronic data processing system, including its software, or any other information which might reasonably be deemed confidential or proprietary, and the Claims Administrator shall take such action, as may be necessary and proper, to ensure that all such information remains confidential, which obligations shall survive any termination of this Agreement;
- (c) Unless and until otherwise directed by the Company during the term of this Agreement, continue Claims Administration Services which are within the settlement authority of the Claims Administrator in a manner consistent with legal and regulatory claim handling requirements and industry custom and practice;
- (d) Unless and until otherwise directed by the Company during the term of the Agreement, continue Administering Claims which exceed the layer of risk retained by the Company under the Policies, in a manner consistent with legal and regulatory claim handling requirements and industry custom and practice;
- (e) Deliver to the Company such Files relating to Claims as the Company shall request in writing;
- (f) Relinquish control of the Administration of Claims as the Company shall request in writing;
- (g) Permit the Company and its accountants and other representatives, upon reasonable request and during normal business hours, to audit the Claims Administrator's financial records relating to this Agreement; Files, electronic data processing records, and the Loss Fund Account pertaining directly to matters administered by Claims Administrator for the Company and to make extracts therefrom and copies thereof.
- (h) And does represent, covenant and warrant that its performance of the Claim Administration Services and all associated activities and services shall, in all respects, comply with all applicable laws imposed by statutory, regulatory or

judicial authority. Without limiting the generality of the foregoing, Claims Administrator represents and warrants that at all relevant times, Claims Administrator shall remain in compliance with all licensing requirements applicable to its work under this Agreement and that all Adjustment services shall be performed by duly licensed adjusters, Claim investigators and appraisers.

- (i) And does represent, covenant and warrant that it will cooperate fully with Company on any regulatory audit or examination, will attend meetings and hearings with regulators as required by Company; will reimburse Company for any fines or penalties imposed on it for work done by Claims Administrator on Company files; and will participate fully with Company in any action plan or other corrective measures required by any regulatory agency or body.
- (j) Maintain the Loss Fund Account, in order to carry out all its obligations under this Agreement.

9. **Certain Covenants of the Company.**

The Company will cooperate with Claims Administrator with respect to the activities of the Claims Administrator including, but not limited to, responding to Claims Administrator's requests for information; promptly meeting with the Claims Administrator and/or third parties, as may be needed; making decisions on matters which, in the professional opinion of Claims Administrator, should be made by the Company, and performing all its other obligations under this Agreement.

10. **Indemnification.**

- (a) Claims Administrator will defend, indemnify and hold harmless the Company and its successors, employees, agents and affiliates from all claims, demands, losses, costs, expenses, obligations, attorney's fees, court costs, interest, fines, penalties and damages of any and all kinds including but not limited to compensatory, consequential, exemplary and punitive and liability and alleged liability of any and all kinds arising out of, in connection with, or incidental to 1) any alleged or actual negligent or intentional act or omission of Claims Administrator, its employees or agents in connection with work performed under this Agreement; 2) any alleged or actual failure of Claims Administrator to perform or observe any of the agreements, terms, covenants, conditions or obligations to be performed or observed by it under this Agreement; and 3) any alleged negligent or intentional act or omission of the Company, its employees or agents, arising out of or otherwise connected to Claims Administrator's work performed under this Agreement, unless the specific act or omission alleged occurred at the express written direction of the Company.

The Company will defend, indemnify, and hold harmless the Claims Administrator and its successors, employees, agents and affiliates from all claims, demands, losses, costs, expenses, obligations, attorney's fees, court costs, interest, fines,

penalties and damages of any and all kinds including but not limited to compensatory, consequential, exemplary and punitive, and liability and alleged liability of any and all kinds arising from or in connection with 1) any alleged or actual failure of the Company to perform or observe any of the agreements, terms, covenants, conditions or obligations to be performed or observed by it under this Agreement and 2) any alleged negligent or intentional act or omission of Claims Administrator arising out of or otherwise connected to Claims Administrator's work performed under this Agreement, but only in the event the specific act or omission alleged occurred at the express written direction of the Company.

- (b) The provisions of this section shall apply to arbitration and all forms of alternate dispute resolution as well as to litigation.
- (c) Should a party to this Agreement (the "indemnified party") elect to tender its defense to the other party (the "indemnifying party") under the provisions herein, then after receipt of notice of commencement of any action against it, the indemnified party shall give reasonable notice to the indemnifying party of the commencement of said action. The indemnified party shall have the right but not the obligation to participate in decisions relating to its own defense and settlement in the action. Should the indemnified party choose to so participate, then in that event, both the indemnified party and the indemnifying party shall consent and agree to any settlement of such action, except that if the indemnifying party has reached a bona fide settlement agreement with the adverse party and the indemnified party does not consent to such settlement agreement, such settlement agreement shall act as an absolute maximum limit on the indemnification obligation of the indemnifying party to the indemnified party.

If any such action includes both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that its legal defenses in the action are in conflict with the interests of the indemnifying party, then the indemnified party shall have the right to select separate counsel and to control its own defense of such action, and the fees and disbursements of such separate counsel shall be included in the amount to be indemnified, subject to the remaining terms and conditions of this Agreement.

- (d) Each Party hereto agrees to cooperate fully with the other in the event of suit against one, brought by any third party. In the event one Party learns of a suit or legal proceeding involving any aspect of the subject of this Agreement, then that Party shall immediately advise the other of the existence of the suit or proceeding. At the request of the Party named in the suit or proceeding, the other Party shall as soon as practicable provide the other with all documents, records, sworn affidavits and other information reasonable and necessary for the named Party's defense. In the event both Parties are determined to have liability exposure in the suit or proceeding, they will make every reasonable effort to defend in a joint and cooperative manner.

11. Termination.

(a) This Agreement may be terminated:

- (i) By either party by sixty (60) days' prior written notice to the other party; or
- (ii) At the election of the Company, in the event of a material change in ownership of the Claims Administrator, provided, however, that this Agreement may be terminated by either party at any time for "cause" (as hereinafter defined), upon ten (10) days written notice to the other party.

(b) For purposes of this Agreement, "cause" shall be deemed to be:

- (i) Breach of any covenant or obligation under this Agreement which is not cured within ten (10) days after written notice is given to the breaching party;
- (ii) Any party's material and continued failure to perform its obligations hereunder, including but not limited to those obligations described in Section 6 above and in Part C to the Addendum hereto; or
- (iii) Either party's insolvency, general failure to pay or admission in writing of its inability to pay its debts as they become due; or either application for, consent to, or acquiescence in the appointment of a trustee, receiver or other custodian for such party, or any property of such party, or a general assignment for the benefit of creditors; or, in the absence of such an application, consent or acquiescence, the appointment of a trustee, receiver or other custodian for either party or for a substantial part of the property of either party that is not discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or the commencement of any dissolution or liquidation proceeding in respect of either party, and if such case or proceeding is not commenced by either party it is consented to or acquiesced by such party; or remains for thirty (30) days undismissed; or any action taken by either party to authorize, or in furtherance of, any of the foregoing.

(c) Regardless of the time of or reason for termination, and regardless of who effects termination, the Company may require the Claims Administrator to administer and Adjust all or a designated portion of any File subject to Claims Administrator receiving compensation for its services. Anything herein to the contrary notwithstanding, it is understood by the parties hereto that Claims may remain open or be reported after termination and the Claims Administrator's obligations under this paragraph 11(c) shall include all Administration and Adjustment services with respect to such Claims as may be required by law, regulation or industry custom or practice to reasonably facilitate and expedite the termination of this Agreement.

until such reasonable time as an appropriate transfer of the files to the company or another Claims Administrator has been effected,  
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Page 11

and reimbursement of the Loss Fund account as set forth herein.

December 18, 1996

1-8-87



- (d) The indemnification provisions of paragraph 10 and the obligations of the Parties shall remain in full force and effect following the termination of this Agreement.
- (e) The Claims Administrator shall continue to provide statistical reports and magnetic tapes described herein until all Claims under the Policies, regardless of whether reported prior or subsequent to termination of this Agreement, are assumed by the Company or transferred to another administrator.

12. Miscellaneous.

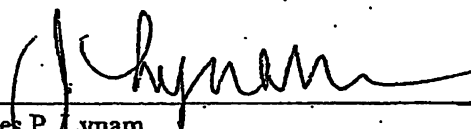
- (a) Relationship of Parties; Expenses. Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the parties hereto; the only relationship between the parties shall be that of independent parties to a contract. Except as expressly provided herein, no party hereto shall have authority or shall hold itself out as having the authority to act for or bind any other party hereto. Except as expressly set forth herein, each party shall bear all expenses it may incur in connection with the execution, delivery and performance of this Agreement.
- (b) Ownership of Files. All Claims and related Files generated by Claims Administrator as a result of its activity under this Agreement shall remain at all times the property of the Company with the exception of any supporting data required by Claims Administrator to make such accountings to the Company or excess insurers as are required in this Agreement.
- (c) Entire Agreement; Amendment. This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements and understandings with respect thereto. This Agreement may be amended, modified or supplemented only in a writing signed by each of the parties hereto. Nothing in this Agreement shall, in any manner, create any obligation or establish any right against the Company in favor of any person not a party to this Agreement.
- (d) Waiver of Breach. Failure of either party hereto to require the performance by the other party hereto of any obligation under this Agreement shall not affect its right subsequently to require performance of that obligation. Any waiver by any party hereto of any breach of any provision of this Agreement shall not be construed as a continuing waiver of any such provision or a waiver of any succeeding breach or modification of any other right under this Agreement.
- (e) No Assignments; Successors. Except for the right to subcontract certain duties as provided by paragraphs 3 (f) and 3 (g), the rights and duties of the Claims Administrator pursuant to this Agreement may not be assigned, delegated or transferred without the prior written consent of the Company, and any attempted assignment, delegation or transfer without such consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

- (f) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given:
- (i) Upon the transmission thereof, if transmitted by telex or telecopy, provided that an executed original of a writing so transmitted shall be mailed by regular United States mail within three (3) days of its electronic transmission; or
  - (ii) Three (3) days after the mailing thereof, if mailed by United States mail, certified mail, return receipt requested, and addressed to the parties hereto at the address set forth Schedule A attached hereto, or such other party shall request by written notice to the other.
- (g) Governing Law. The validity, construction and enforceability of this Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of law principles.

IN WITNESS HEREOF, the parties have executed and delivered this Agreement at the locations set forth below as of the date first set forth above.

- ☐ Zurich Insurance Company, U.S. Branch
- ☐ Zurich American Insurance Company of Illinois
- ☐ American Guarantee and Liability Insurance Company
- ☐ American Zurich Insurance Company
- ☐ Steadfast Insurance Company

By :

  
James P. Lynam,  
Vice President, Customer Services  
Zurich American Insurance Group

Dated:

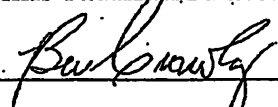
1/22/94

At:

Schaumburg, Illinois

"Claims Administrator"

By:



Title:

Vice President

Dated:

1-5-97

At:

Atlanta, Georgia

C

B



## Third Party Administrator Agreement Zurich-American Insurance Group (Company Funded)

- ☐ Zurich Insurance Company, U.S. Branch  
☐ Zurich American Insurance Company of Illinois  
☐ American Guarantee and Liability Insurance Company  
☐ American Zurich Insurance Company  
☐ Steadfast Insurance Company

Each of the companies designated above, as now or hereinafter constituted, and its successors or assigns, is a party to this Agreement and hereinafter is severally referred to as "Company."

This is an Agreement, between the Company and [Crawford & Company] (name of Claims Administrator)], a corporation organized under the laws of the State of [Georgia] (state)] (the "Claims Administrator") collectively hereinafter referred to as the "Parties".

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### 1. Engagement.

The Company hereby engages the Claims Administrator to provide certain Claims Administration and Adjusting Services (hereinafter defined) pertaining to coverages provided by those policies identified in the Addendum hereto (hereinafter defined), which is incorporated by reference as though fully set forth herein (the "Addendum") which were underwritten by the Company for that Insured identified therein (the "Insured"). The Claims Administrator hereby accepts such engagement, upon the terms and subject to the conditions hereinafter set forth. This Agreement applies solely to Claims (hereinafter defined) for which coverage may be provided under or is alleged to be provided under the policies of insurance identified in the Addendum (the "Policies").

The term of this Agreement shall be that term set out in the Addendum unless earlier terminated or extended in accordance with the terms of this Agreement; provided, however, that the termination of this Agreement shall not waive, limit or diminish the Claims Administrator's obligations with respect to any services commenced by the Claims Administrator or assigned to the Claims Administrator prior to the effective date of such termination, except and to the extent otherwise requested by the Company.

### 2. Definitions

As used in this Agreement, the following terms and phrases, when capitalized, shall have the meanings ascribed to them as hereinafter specified.

"Addendum" shall mean that document entitled "Addendum to Third Party Administrator Agreement", which shall be executed separately from this Agreement by authorized

representatives of the parties to this Agreement. The Addendum, upon execution by both parties, shall be considered fully incorporated by reference herein as though fully set forth.

**"Adjust", "Adjusting" or "Adjustment"** shall mean the process of investigation, evaluation and disposition of Claims.

**"Allocated Loss Adjustment Expense" (or "ALAE")** shall mean an expense directly allocable to a specific claim and shall include but not be limited to all supplementary payments as defined under the Policies, all court costs, fees and expenses, costs for all attorneys, witnesses, experts, depositions, reported or recorded statements, summonses, service of process, legal transcripts or testimony, copies of any public records, alternative dispute resolution, interest, investigative services, non-employee adjusters, medical examinations, autopsies, medical cost containment; declaratory judgment, subrogation and any other fees, costs or expenses reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or a loss under the Policies.

**"Claim" or "Claims"** shall mean any incident, event or circumstance reported to the Claims Administrator which is asserted by any person and is covered by Policies, for which the Claims Administrator has established, should establish or should have established a Claim Adjustment File; and set a Reserve, should set a Reserve, or should have set a Reserve in accordance with the terms of this Agreement.

**"Claim Administration Services"** shall mean the performance by the Claims Administrator, in compliance with all terms of (1) this Agreement; (2) the Policies; and (3) all applicable laws and in particular, of the functions specified in paragraph 3 of this Agreement with respect to the review, investigation, evaluation, adjustment, processing, negotiation, settlement, defense, reporting and administration of Claims.

**"File"** shall mean the written documentation of the Claim Adjustment process arising from any single Claim and all relevant activity, records, notices, investigation(s) and payment(s) other than documents protected by the Company's or Claims Administrator's attorney-client privilege.

**"Insured"** shall mean the named insured under the Policies.

**"Loss Fund Account"** shall mean a bank account, established by the Claims Administrator in a bank approved by the National Association of Insurance Commissioners, where the Company shall deposit funds to be held and maintained throughout the term of the Agreement by the Claims Administrator. The Loss Fund Account shall provide a source of funds for the Claims Administrator to pay the obligations under the Policy for Claims and ALAE prior to reimbursement.

**"Policy" or "Policies"** shall mean that policy or those policies listed in the Addendum hereto.

"Reserve" shall mean the Claims Administrator's monetary evaluation of the Company's total financial exposure on any Claim.

3. Claims Administration Services.

The Claims Administrator shall provide to the Company the following services and shall have the following duties with respect to Claims Administration Services for Claims under the Policies regardless of when any Claim is reported to the Claims Administrator. The Claims Administrator shall be responsible for all Claim Administration services for each Claim from the date of first report until final resolution other than as provided in Section 11 herein. With respect to Files transferred to Claims Administrator from the prior Claims Administrator, the transfer of a File shall be deemed to be the report of that Claim to Claims Administrator.

The Claims Administrator shall:

- (a) Accept and acknowledge proofs of loss for the Company;
- (b) Establish and maintain Files for each Claim reported to the Claims Administrator under the Policy;
- (c) Investigate all such reported Claims under the Policy to the extent reasonable and customary, to evaluate the merits of such Claims;
- (d) Propose Claim Reserve guidelines, consistent with regulatory requirements, to be mutually agreed upon and to establish timely and adequate loss and Allocated Loss Adjustment Expense Reserves with respect to all Claims in accordance with the approved Claim Reserve guidelines; as set out in the Addendum hereto;
- (e) Promptly and thoroughly review, process, adjust, settle and pay Claims under the Policy in full compliance with (1) this Agreement, (2) the Policy, (3) the Addendum hereto and (4) all applicable legal requirements; provided, however, that no offer, settlement or payment shall exceed the settlement authority of the Claims Administrator without prior written approval of each such offer, settlement or payment by the Company;
- (f) Retain Company approved attorneys to provide assistance in administering or defending Claims in a manner consistent with the Addendum hereto;
- (g) Retain Company approved third party contractors to Adjust Claims on behalf of the Claims Administrator in accordance with the Addendum hereto.
- (h) Furnish all Claim forms necessary for proper Claims Administration, as required by the Addendum hereto;

- (i) Take such action as may be necessary to ensure that Claims Administration and Claim Adjustment shall comply in all respects with all applicable laws, regulations, and industry custom;
- (j) Provide monthly loss reports, as mutually agreed at inception of the program, in such format as the Company may reasonably describe, showing descriptive data, inception to present experience for each detail of each month's payments, total payments, Reserves and total incurred Claim, as required by this Agreement, including the Addendum hereto. Subsequent changes, including changes in report distribution, will be included in the originally negotiated fees to be paid by the Company or at a new fee mutually agreed upon by the parties following reasonable notice;
- (k) Explore and pursue all reasonable opportunities for subrogation, contribution, indemnity, salvage or other recovery on behalf of the Company and the Insured, in a manner consistent with the Addendum hereto;
- (l) Generate and disseminate requisite 1099 forms for all third-party disbursements on Files, and comply with any comparable reporting documents required by the Internal Revenue Service or state revenue authorities under state revenue laws and regulations, and provide to the Company copies thereof, as the Company may reasonably request. All 1099 and other filings shall indicate Claims Administrator as the payor and reflect Claims Administrator's tax identification number;
- (m) Comply with all statistical reporting requirements as set out in this Agreement and the Addendum hereto and provide all other reports and loss runs as described herein;
- (n) Notify Company of any claim fraud investigations, or internal defalcation, funds diversion, collusion with vendors or providers of Services or any other discovered impropriety that may involve or affect a File and, in any such event, allow Company to participate in any investigation as Company deems reasonable and appropriate under the circumstances;
- (o) Provide the services and comply with the procedures as stated by the Company, as set out in this Agreement, all Addenda Parts, Schedules and Exhibits attached hereto, and all other instructions as may be provided by the Company from time to time.

4. **Certain Limitations Upon the Authority of the Claims Administrator.**

Notwithstanding anything herein to the contrary, the Claims Administrator shall not, except with the written consent of the Company:



- (a) Settle or offer to settle any Claim or loss for an amount in excess of the reserve amount or in violation of other limitations set forth in this Agreement or the Addendum hereto;
- (b) Take any other action prohibited by this Agreement or the Addendum hereto.

5. **Loss Fund Account.**

An initial amount is deposited by the Company in the Loss Fund Account by electronic funds transfer (EFT). At a minimum, the initial amount deposited will be based on the expected paid Claims and paid ALAE for a specific period stated in the Addendum hereto. The paid Claims and paid ALAE will be paid by Claims Administrator exclusively with the funds deposited in the Loss Fund Account. Claim Administrator acknowledges that by making these payments Company is not estopped from exercising any of its rights nor has it waived any of its rights under this Agreement.

In accordance with the agreed upon frequency stated in the Addendum hereto, Claims Administrator will bill Company for the payments made during such agreed upon period and Company will reimburse the Claim Administrator within thirty (30) days of the billing date by EFT. If at any time Company must pay an amount greater than the balance of the Loss Fund Account or an amount equal to or greater than the large Claim payment amount stated in the Addendum hereto, Claims Administrator will bill the Company for this amount. The amount will be paid by EFT within seventy-two (72) hours of receipt of the request for payment and the appropriate proof of Claim documentation.

The amount held in the Loss Fund Account will be reviewed periodically for adequacy and adjusted for the specific period reviewed. The adjustment will be based on the monthly average of paid Claims and paid ALAE for the adjustment period, excluding any large Claim payments made during the period. Payment by Company to Claims Administrator will be due within thirty (30) days of the adjustment billing date; payment by Claims Administrator to Company will be credited to the subsequent billing for paid Claims and paid ALAE by Claims Administrator.

With respect to the Loss Fund Account, the Addendum hereto specifies the following information:

- (a) The amount of the initial deposit and what it represents.
- (b) The period covered by the initial deposit.
- (c) Claims Administrator's bank information.
- (d) The paid Claim billing frequency by the Claims Administrator to the Company.
- (e) The Loss Fund Account Adjustment frequency.
- (f) The large Claim amount.
- (g) The method of notification to Company by Claims Administrator of large Claim amounts.
- (h) The formula for the Loss Fund Account Adjustment.

Claims Administrator shall exercise ordinary care and due diligence with respect to the maintenance and security of the Loss Fund Account. The Company will not be liable for any loss due to the late reporting of bank and/or payment errors.

The Loss Fund Account shall be maintained in accordance with the terms of this Agreement for so long as Claims Administrator is providing Claim Administration Services. At such time as Claims Administrator is no longer obligated to provide the Claim Administration Services in accordance with the terms of this Agreement, Claims Administrator agrees to make a final reconciliation of the Loss Fund Account and remit within sixty (60) days any closing balance due to the Company.

6. **Fees and Expenses.**

In consideration of the Claim Administration Services to be provided pursuant hereto, Company agrees to pay all Claims Service Fees and Expenses as set out in the Addendum hereto.

7. **Records.**

The Claims Administrator will retain Files for three years following date of closure. Thereafter, on a semiannual basis, Files will be returned to the Company or forwarded to such location as may be designated by the Company for continued storage. The Company will sign appropriate acknowledgment of receipt forms upon delivery of the Files. Upon the Claims Administrator's request, closed Files will be returned for additional administration as may be required. The parties agree that the Claims Administrator may have reasonable access to such files and to make copies and take extracts therefrom.

In the event of termination of the Claims Administrator's Services, and assumption of continuing Administration of Claims by the Company or another person, the Claims Administrator will transfer all open and retained closed Claim files to the Company, or its designee, as of the effective date of termination. The Company will sign appropriate acknowledgment of receipt forms upon delivery of the Files.

8. **Certain Covenants of the Claims Administrator.**

The Claims Administrator shall:

- (a) Maintain, during the term of this Agreement, such insurance coverage, in such amounts and with such deductibles as shall be set forth in the Addendum hereto, and furnish to the Company annually evidence of insurance coverage, and shall notify the Company of any changes;
- (b) Keep confidential and, except as provided by this Agreement, not use for any purpose or disclose to any person, any non-public information concerning the business

or operations of the Company, including without limitation, all Claims information, even if compiled by the Claims Administrator, any information relating to the Company's electronic data processing system, including its software, or any other information which might reasonably be deemed confidential or proprietary; and the Claims Administrator shall take such action, as may be necessary and proper, to ensure that all such information remains confidential, which obligations shall survive any termination of this Agreement;

- (c) Unless and until otherwise directed by the Company during the term of this Agreement, continue Claims Administration Services, which are within the settlement authority of the Claims Administrator in a manner consistent with legal and regulatory claim handling requirements and industry custom and practice;
- (d) Unless and until otherwise directed by the Company during the term of the Agreement, continue Administering Claims, which exceed the layer of risk retained by the Company under the Policies; in a manner consistent with legal and regulatory claim handling requirements and industry custom and practice;
- (e) Deliver to the Company such Files relating to Claims as the Company shall request in writing;
- (f) Relinquish control of the Administration of Claims as the Company shall request in writing;
- (g) Permit the Company and its accountants and other representatives, upon reasonable request and during normal business hours, to audit the Claims Administrator's financial records relating to this Agreement, Files, electronic data processing records, and the Loss Fund Account, pertaining directly to matters administered by Claims Administrator for the Company and to make extracts therefrom and copies thereof;
- (h) And does represent, covenant and warrant that its performance of the Claim Administration Services and all associated activities and services shall, in all respects, comply with all applicable laws imposed by statutory, regulatory or judicial authority. Without limiting the generality of the foregoing, Claims Administrator represents and warrants that at all relevant times, Claims Administrator shall remain in compliance with all licensing requirements applicable to its work under this Agreement and that all Adjustment services shall be performed by duly licensed adjusters, Claim investigators and appraisers;
- (i) And does represent, covenant and warrant that it will cooperate fully with Company on any regulatory audit or examination; will attend meetings and hearings with regulators as required by Company; will reimburse Company for any fines or penalties imposed on it for work done by Claims Administrator on

Company files and will participate fully with Company in any action plan or other corrective measures required by any regulatory agency or body.

- (j) Maintain the Loss Fund Account, in order to carry out all its obligations under this Agreement.

9. **Certain Covenants of the Company.**

The Company:

- (a) Will be responsible for the Loss Fund Account; and
- (b) Will cooperate with Claims Administrator with respect to its activities, such as but not limited to, responding to Claims Administrator's requests for information, promptly meeting with the Claims Administrator and third parties, as may be needed, making decisions on matters which, in the professional opinion of both Claims Administrator and the Company, should be made by the Company and performing all its other obligations under this Agreement.

10. **Indemnification.**

- (a) Claims Administrator will defend, indemnify and hold harmless the Company and its successors, employees, agents and affiliates from all claims, demands, losses, costs, expenses, obligations, attorney's fees, court costs, interest, fines, penalties and damages of any and all kinds including but not limited to compensatory, consequential, exemplary and punitive and liability and alleged liability of any and all kinds arising out of, in connection with, or incidental to 1) any alleged or actual negligent or intentional act or omission of Claims Administrator, its employees or agents in connection with work performed under this Agreement; 2) any alleged or actual failure of Claims Administrator to perform or observe any of the agreements, terms, covenants, conditions or obligations to be performed or observed by it under this Agreement; and 3) any alleged negligent or intentional act or omission of the Company, its employees or agents, arising out of or otherwise connected to Claims Administrator's work performed under this Agreement, unless the specific act or omission alleged occurred at the express written direction of the Company.

The Company will defend, indemnify, and hold harmless the Claims Administrator and its successors, employees, agents and affiliates from all claims, demands, losses, costs, expenses, obligations, attorney's fees, court costs, interest, fines, penalties and damages of any and all kinds including but not limited to compensatory, consequential, exemplary and punitive, and liability and alleged liability of any and all kinds arising from or in connection with 1) any alleged or actual failure of the Company to perform or observe any of the agreements, terms, covenants, conditions or obligations to be performed or observed by it under this Agreement and 2)

any alleged negligent or intentional act or omission of Claims Administrator arising out of or otherwise connected to Claims Administrator's work performed under this Agreement, but only in the event the specific act or omission alleged occurred at the express written direction of the Company.

- (b) The provisions of this section shall apply to arbitration and all forms of alternate dispute resolution as well as to litigation.
- (c) Should a party to this Agreement (the "indemnified party") elect to tender its defense to the other party (the "indemnifying party") under the provisions herein, then after receipt of notice of commencement of any action against it, the indemnified party shall give reasonable notice to the indemnifying party of the commencement of said action. The indemnified party shall have the right but not the obligation to participate in decisions relating to its own defense and settlement in the action. Should the indemnified party choose to so participate, then in that event, both the indemnified party and the indemnifying party shall consent and agree to any settlement of such action, except that if the indemnifying party has reached a bona fide settlement agreement with the adverse party and the indemnified party does not consent to such settlement agreement, such settlement agreement shall act as an absolute maximum limit on the indemnification obligation of the indemnifying party to the indemnified party.

If any such action includes both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that its legal defenses in the action are in conflict with the interests of the indemnifying party, then the indemnified party shall have the right to select separate counsel and to control its own defense of such action, and the fees and disbursements of such separate counsel shall be included in the amount to be indemnified, subject to the remaining terms and conditions of this Agreement.

- (d) Each party hereto agrees to cooperate fully with the other in the event of suit against one, brought by any third party. In the event one Party learns of a suit or legal proceeding involving any aspect of the subject of this Agreement, then that party shall immediately advise the other of the existence of the suit or proceeding. At the request of the Party named in the suit or proceeding, the other Party shall as soon as practicable provide the other with all documents, records, sworn affidavits, and other information reasonable and necessary for the named Party's defense. In the event both Parties are determined to have liability exposure in the suit or proceeding, they will make every reasonable effort to defend in a joint and cooperative manner.

## 11 Termination.

- (a) This Agreement may be terminated:

- (e) The Claims Administrator shall continue to provide statistical reports and magnetic tapes described herein until all Claims under the Policies, regardless of whether reported prior or subsequent to termination of this Agreement, are assumed by the Company or transferred to another administrator.

12. Miscellaneous.

- (a) Relationship of Parties; Expenses. Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the parties hereto; the only relationship among the parties shall be that of independent parties to a contract. Except as expressly provided herein, no party hereto shall have authority or shall hold itself out as having the authority to act for or bind any other party hereto. Except as expressly set forth herein, each party shall bear all expenses it may incur in connection with the execution, delivery and performance of this Agreement.
- (b) Ownership of Files. All Claims and related Files generated by Claims Administrator as a result of its activity under this Agreement shall remain at all times the property of the Company with the exception of any supporting data required by Claims Administrator to make such accountings to the Company or to excess insurers as required by this Agreement.
- (c) Entire Agreement; Amendment. This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements and understandings with respect thereto. This Agreement may be amended, modified or supplemented only in a writing signed by each of the parties hereto. Nothing in this Agreement shall, in any manner, create any obligation or establish any right against the Company in favor of any person not a party to this Agreement.
- (d) Waiver of Breach. Failure of either party hereto to require the performance by the other party hereto of any obligation under this Agreement shall not affect its right subsequently to require performance of that obligation. Any waiver by any party hereto of any breach of any provision of this Agreement shall not be construed as a continuing waiver of any such provision or a waiver of any succeeding breach or modification of any other right under this Agreement.
- (e) No Assignments; Successors. Except for the right to subcontract certain duties as provided by paragraphs 3 (f) and 3 (g), the rights and duties of the Claims Administrator pursuant to this Agreement may not be assigned, delegated or transferred without the prior written consent of the Company, and any attempted assignment, delegation or transfer without such consent shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

- (i) By either party by sixty (60) days prior written notice to the other party; or
- (ii) At the election of the Company in the event of a material change in ownership of the Claims Administrator; provided, however, that this Agreement may be terminated by either party at any time for "cause" (as hereinafter defined), upon ten (10) days written notice to the other party.

(b) For purposes of this Agreement, "cause" shall be deemed to be:

- (i) Breach of any covenant or obligation under this Agreement which is not cured within ten (10) days after written notice is given to the breaching party;
- (ii) Any party's material and continued failure to perform its obligations hereunder, including but not limited to those obligations described in Section 6 above and in Part C to the Addendum hereto; or
- (iii) Either party's insolvency, general failure to pay, or admission in writing of its inability to pay its debts as they become due; or either application for, consent to, or acquiescence in the appointment of a trustee, receiver or other custodian for such party, or any property of such party, or a general assignment for the benefit of creditors; or, in the absence of such an application, consent or acquiescence, the appointment of a trustee, receiver or other custodian for either party or for a substantial part of the property of either party that is not discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or the commencement of any dissolution or liquidation proceeding in respect of either party, and if such case or proceeding is not commenced by either party it is consented to or acquiesced by such party or remains for thirty (30) days undismissed; or any action taken by either party to authorize, or in furtherance of, any of the foregoing.

(c) Regardless of the time of or reason for termination, and regardless of who effects termination, the Company may <sup>request</sup> require the Claims Administrator to administer and Adjust all or a designated portion of any File, subject to Claims Administrator receiving compensation for its services. Anything herein to the contrary notwithstanding, it is understood by the parties hereto that Claims may remain open or be reported after termination and the Claims Administrator's obligations under this paragraph 11(c) shall include all Administration and Adjustment services with respect to such Claims as may be required by law, regulation or industry custom or practice to reasonably facilitate and expedite the termination of this Agreement.

(d) The indemnification provisions in paragraph 10 and the obligations of the Parties shall remain in full force and effect following the termination of this Agreement.

until such reasonable time as an appropriate transfer of the files to the Company or another claims Administrator has been effected

*Paul*  
12/8/96  
12/30/96

10-18-96  
12/30/96

*Paul*  
10/18/96  
12/30/96

and reimbursement of the loss fund account as set forth herein.

(f) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given:

(i) Upon the transmission thereof, if transmitted by telex or telecopy, provided that an executed original of a writing so transmitted shall be mailed by regular United States mail within three (3) days of its electronic transmission; or

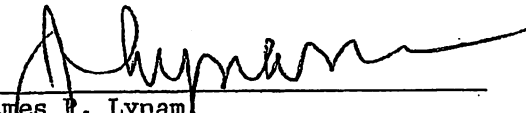
(ii) Three (3) days after the mailing thereof, if mailed by United States mail, certified mail, return receipt requested, and addressed to the parties hereto at the address set forth Schedule A attached hereto, or such other party shall request by written notice to the other.

(g) Governing Law. The validity, construction and enforceability of this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles.

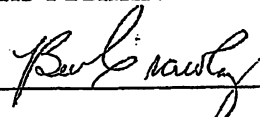


IN WITNESS WHEREOF, the parties have executed and delivered this Agreement at the locations set forth below as of the date first set forth above.

- ☐ Zurich Insurance Company, U.S. Branch
- ☐ Zurich American Insurance Company of Illinois
- ☐ American Guarantee and Liability Insurance Company
- ☐ American Zurich Insurance Company
- ☐ Steadfast Insurance Company

By (SBU):   
James P. Lynam  
Dated: Vice President, Customer Services  
December 30, 1996  
Zurich American Insurance Group  
At: Schaumburg, Illinois

"Claims Administrator"

By:   
Title: VICE PRESIDENT  
Dated: 12-18-96  
At: ATLANTA, GEORGIA

# CRAWFORD & COMPANY

## CASUALTY RISK MANAGEMENT SERVICES

### SPECIFIC INSTRUCTIONS FOR

### BUILDING MATERIALS CORPORATION OF AMERICA (GAF)

### \*DENOTES CHANGE

### RENEWAL PROGRAM

REVISION DATE: 02/15/2001

PROGRAM #11751 (S)(C)

### 1. ACCOUNT:

Building Materials Corporation of America (GAF)  
1361 Alps Road  
Wayne, NJ 07470-2201  
Mr. Robert Fingert, Vice President, Risk Management  
Telephone: (973) 628-4162  
Mr. Robert Manning, Manager, Casualty Claims  
Telephone: (973) 628-3148  
Mr. Dale Smith, Manager, Risk Management  
Telephone: (973) 628-4163

### Program Business Type: Chemicals and Building Materials

Subsidiaries:  
GAF Insulation Products, Inc. (added 07/20/95)  
GAF Premium Products, Inc.  
Leatherback Industries

Broker:  
Willis Corroon Corporation  
Morris Plains, NJ

Contract Principal/Insurance Company:

Zurich American Insurance Company  
American Guarantee and Liability Insurance Company

### 2.

EFFECTIVE DATES: November 1, 1996 through October 31, 2001.

Canadian claims with dates of accident prior to 11/01/96 are handled under program #02299. USA claims with dates of accident prior to 11/01/96 are handled under program #02856.

### 3.

SCOPE: USA and Canada

Complete Consolidation with Exceptions: Claims will be referred to and handled by the Claims Management Centers (except branches #24, #86, #113, #368, and #678) and the following Claims Services branches:

Branch #005 - Savannah, GA  
Branch #008 - Mobile, AL  
Branch #107 - Riversville, IN  
Branch #177 - Evansville, IN  
Branch #183 - Erie, PA  
Branch #233 - San Jose, CA

NOTE: Leatherback Industries with location codes #1601, #1602, #1603, should be handled by Br. #233.

No other branch offices are authorized to accept and handle assignments, except on a referral basis from these branches.

### 4.

ASSIGNMENT: This program utilizes XpressLink Claims Reporting Services. All assignments will originate from the insured's locations directly to the XpressLink Center (formerly Customer Service Center), which will make assignment to our branch offices.

### \*5.

COVERAGE: Statutory workers' compensation, occupational disease, U.S. Longshoremen and Harborworkers Act, automobile liability, automobile medical payments (limits=\$10,000/occurrence), automobile physical damage, general liability, and products liability. Policy numbers:

Effective 11/01/1999 through 10/31/2000:

Zurich American Insurance Company:

Workers' compensation (MA, OR, WI) - WC84116933-03 (BMC)  
Workers' compensation (All other states) - WC2165693-03 (BMC)  
Automobile liability (TX) - TAP2165691-03 (BMC)  
Automobile liability (MA) - MA2165692-03 (BMC)  
Automobile liability (All other states) - BAP2165690-03 (BMC)  
General liability - GLO2165695-03 (BMC)

Effective 11/01/2000 through 10/31/2001:

Zurich American Insurance Company:

Workers' compensation - WC2165693-03 (BMC)  
Automobile liability (TX) - BAP2165690-01 (BMC)  
Automobile liability (MA) - BAP2165692-03 (BMC)  
Automobile liability (All other states) - BAP2165690-03 (BMC)  
General liability - GLO2165695-03 (BMC)

Workers' compensation coverage in the state of Maine is not handled under this program.

Claims for International Specialty Products were handled under this program until November 1, 1998. Claims with dates of accident on/after November 1, 1998 should be handled under program #13207.

Any claim involving a coverage question, including possible reservation of rights, non-waiver agreement, or coverage denial, must be immediately referred to MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9.

6. CASE CREATION: Program #11751.

Assignment Codes	Reason	Origin	Type
Workers' Compensation	3	4/5**	7/8
Auto/General/Products	3	4/5**	1
Subrogation*	4	3	1/8
Appraisals*	4	3	5/6
Referral Branches Use		(3)	

\*Standard procedures (Standard Instructions, I.E.1. and I.F.2.).

\*\*Utilize origin code "4" on all claims originating from the XPressLink Center to your branch.

7. HANDLING REQUIREMENTS:

A. Special Claims:

1) Incident Reports: Screen out those accidents/occurrences where no injury/damage was sustained, no expense incurred, no investigation is required, and/or no liability exists, nor a claim anticipated or asserted, and create file under the appropriate incident business classification code. Complete standard SISDAT new case input and if no activity results, close file after 30 days. If element of claim later surfaces, reopen file and change business classification code to appropriate exposure, and proceed to handle.

2) Subrogation: Must have prior approval for subrogation from Mr. Robert Flugger, address in paragraph 1. Subrogation recovery should be sent to Loss Fund Adjustments, Home Office, with recovery form LF002 for credit to loss fund. Subrogation activity will be handled at the flat rate amount as outlined on the branch client parameter file page and will be included in the monthly consolidated billing.

Subrogation disputes should be handled by arbitration whenever the adverse party/carrier is signatory to the appropriate arbitration agreement or will agree to be bound by arbitration.

\* 3) Publicity and Claims Involving Public Figures: Do not provide information on such claims to the media, consumer groups or anyone else who has no vested interest or direct involvement in the claims. Direct such communications and/or inquiries to Zurich Head Office Communications Department (312/605-6372 or 312/605-6385) and immediately notify MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, of such claims.

\* 4) Workers' Compensation:

- a) Advise MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, of proposed settlements above branch authority.
- b) Liaison: Designate one individual in each branch to handle WORKERS' Compensation claims and to act as liaison.

5) Automobile Physical Damage: Apply deductibles as follows:

Collision: \$500.00  
Comprehensive: \$250,000

Make checks payable to: Building Materials Corporation of America.

NOTE: Collision claim is only to be paid if the claim presents a viable subrogation potential for Building Materials Corporation of America. If the accident was caused by Building Materials Corporation of America, the collision claim should not be paid. If there is confusion on whether or not a claim should be paid, contact Mr. Robert Flugger or Mr. Dale Smith, addresses in paragraph 1, directly to resolve.

B. Special Handling:

- \* 1) Advance Payments: Where liability is reasonably clear, advance payments are encouraged and should be made as circumstances warrant. If amount of advance payment exceeds your branch authority, contact MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, for approval. Payment of third party property damage claims before settlement on associated bodily injury claims is not considered advance payment; do not withhold third party property damage claim settlements pending settlement of injury claims.

- 2) Medical Payments: Where medical payments coverage is afforded by the involved policy, medical payments should not be delayed in any case.

- \* 3) Appeal and Appeal Bonds: No appeal is to be undertaken without first securing approval FROM MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9. Consult with MR. ROBERT MANNING before procuring appeal and other court bonds, provided time permits.

- 4) Appraisals: Perform appraisal on auto third party property damage claims where anticipated damages are \$750 or greater, unless adverse party's carrier is handling the loss. If damages do not exceed \$750, two competitive estimates will suffice. An appraisal may be obtained on losses under \$750 if there is a marked dispute or significant question as to damages and additional competitive estimates and/or other documentation cannot resolve the dispute/question.

Complete appraisal assignments within 72 hours of receipt of a claim where practical. Supplementals should be documented by a photograph and invoice copy. Subrogation claims by adverse carriers must be fully substantiated by copies of payments, Proof of Loss where applicable, etc.

Appraisals should be accompanied by photographs whenever possible.

Labor discounts on both parts and labor are to be taken where permitted. LKQ parts should be used wherever possible except in the case of safety items such as brakes, suspension or steering mechanisms, which should be new or warranted rebuilt parts.

Use appraisers specializing in heavy equipment on losses involving heavy equipment, including tractors, snow removal road vehicles, farm equipment, etc.

- \* 5) Arbitration: Zurich Insurance Company and American Guarantee & Liability Insurance Company are members of Nationwide Inter-Company Arbitration and all other arbitration agreements/forums with Arbitration Forums, Inc. Alternative dispute resolution should be utilized whenever possible.

Contact MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, if there are any questions on Zurich's participation.

- 6) The Index System: Index System filings are required on all Bodily injury and personal injury claims except workers' compensation medical only claims. Workers' compensation medical only claims involving head, eyes, back or knee injuries should also be indexed. Semi-annual re-indexing is required on pending claims. Complete index filing as follows:

- a) Insured block: Building Materials Corporation of America
- b) Code number block: 187-12-110Y
- c) Electronic number block: 060000601680
- d) Name/address of subscriber block:

Zurich Insurance Company  
c/o Crawford & Company  
1900 E. Golf Road, Suite 700  
Schaumburg, IL 60173

- e) Case File No.: Show your branch and file number.

Submit index filing to the Index System. Responses will be sent to MWASC which will forward relevant responses to your branch.

DO NOT ISSUE A CRAWFORD & COMPANY #9119/#9104 (NM: #9114) CHECK. THIS IS A ZURICH INSURANCE COMPANY INDEX SYSTEM NUMBER, NOT CRAWFORD & COMPANY'S INDEX NUMBER.

\* 7) Cost Containment:

- a) On-Site Case Management: All catastrophic injuries and all other than medical only files in excess of 15 days will be reviewed by the nearest Crawford Care Management Services location.

If on-site case management is recommended, proceed as follows:

- 1) The adjuster is to instruct Care Management Services to complete a Medical Severity Review Form.
- 2) The adjuster will forward the Medical Severity Review Form, along with his/her recommendation, to Mr. Robert Flugger, address in paragraph 1, for approval.
- 3) If approval is given, ALL On-Site Case Management invoices should be sent to Mr. Robert Flugger, Building Materials Corporation of America, address in paragraph 1, for approval prior to payment.

- b) Vocational Rehabilitation: On files where the employee is unable to return to work in 15 days, and Vocational Rehabilitation is recommended, proceed as follows:

- 1) The adjuster is to instruct Care Management Services to complete a Medical Severity Review Form.
- 2) The adjuster will forward the Medical Severity Review Form, along with his/her recommendation to Mr. Robert Flugger, address in paragraph 1, for approval.
- 3) If approval is given, ALL Vocational Rehabilitation invoices should be sent to Mr. Robert Flugger, Building Materials Corporation of America, address in paragraph 1, for approval prior to payment.

- c) Hospital Bill Audits: All hospital bills at/over \$5,000 will be screened either by the local Crawford Care Management Services office or the Navigator office, and audited if necessary.

NOTE: Also see Preferred Provider Organization (PPO) instructions in this section for states where this is available.

- d) Mandatory Provider Bill (Navigator): Every provider bill must be sent to Navigator for audit.

NOTE: Do not send medical bills for California and Texas to Navigator. Medical bills and hospital bills for California and Texas should be audited by:

EOS Group/Reviewco  
One Hamden Center  
2319 Whitney Avenue  
Hamden, CT 06518  
Attn: Ms. Jennifer Manzi

- e) Armada/Preferred Provider Organization (PPO): Mail all workers' compensation in-patient and out-patient hospital bills directly to the appropriate Navigator office in states where PPO network is available. Branches will be notified that the PPO network can be utilized in their state as the network is expanded.
- f) Mandatory Workers' Compensation Utilization Review: All pending hospitalizations or admissions to the Hospital, all outpatient surgeries, and all high cost diagnostics (e.g. C-T scans, MRI's, myelograms) for any illness/injury must be referred immediately to Crawford's Care Management Services office. This includes all hospital stays regardless of reason.

NOTE: Also see Telephonic Case Management (TCM) instructions in this section.

- 1) Send a "PRE-ADMISSION REVIEW NOTICE" postcard\* to the physician/hospital immediately upon opening the file in the claims branch. Send a follow up postcard immediately upon becoming aware of treating physician, new treating physician, hospital involvement, outpatient surgery, and/or high cost diagnostics. Any time there is a change in physicians or any indication of hospital involvement, outpatient surgery, or high cost diagnostics, the Pre-Admission Review Notice must be sent. This applies to both new and open other than medical only files.

\*Crawford & Company adjusters can order these postcards from Wallace. If not a Crawford adjuster, contact Hazel Dorsey at (770) 350-6700.

- 2) Upon notification that hospitalization is being requested, if you are speaking with the hospital or doctor, remember to state the following:
- "Review by our Utilization Management Company is required on this account. You should contact Crawford Care Management Services and a Utilization Review Nurse will discuss with you information needed to certify length of stay. You can contact Crawford Care Management Services at 1-800-535-4220 (inside Georgia) or 1-800-541-5975 (outside Georgia)."
- 3) On all new other than medical only claims, send the "Preadmission Review Notice" postcard to the attending physician advising of utilization review requirements.
- 4) Care Management Services will keep you advised of certification for stay, pending discharge, and the need for referring to Care Management Services offices for on-site case management when indicated.
- 5) Service bills will be paid as an allocated expense or medical expense as mandated by state law.
- g) Modified Duty for Early Return-to-Work: Insured has a modified duty for early return-to-work program in place. Evaluate the benefit of placing the injured employee in a temporary modified work position on all other than medical

only cases and discuss placement with the employer and treating physician.

- h) Managed Care Arrangement (MCA): An MCA is currently being utilized in the following state:

State	Provider
Florida	Medview

- i) Telephonic Case Management (TCM): All claims will be reviewed by TCM for possible contact with treating physician/employee. TCM will advise branch office of recommendations.

Delivery office(S):

The Wayne, NJ HCM office will handle TCM for claims originating from Sacramento, CA, Wayne, NJ, and Nashville, TN. The Houston, TX HCM Office will handle TCM for claims originating from Houston, TX. **THE DALLAS, TX HCM OFFICE WILL HANDLE TCM FOR CLAIMS ORIGINATING FROM DALLAS, TX.**

- 8) Defense Counsel Billing: Legal service invoices must be itemized as to work performed, hourly rate per activity, and time and expenses. Billed amounts should be checked with adding machine tapes attached to the bills and totals verified before payment is issued. Interim billing by defense is required at least every six months and/or when billing total approaches \$5,000.
- \* 9) Ex Gratia Payments: Do not make any type of extra-contractual, gratuitous type payment unless specifically authorized to do so BY MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9.
- \* 10) Experts: Contact MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, before selecting/employing experts on losses reserved over \$10,000-WC/AL; \$15,000-GI, or on Catastrophic or Exceptional losses (see Appendices A & B).
- 11) Hearings/Trials Attendance: Crawford personnel may attend hearings or trials on behalf of Zurich and its policyholder in conformity with the jurisdictional requirements in each state. Open separate referral file for such activity, under business classification code #311.
- \* 12) I.M.E.'s: Independent medical exams should be considered in cases of extended disability for workers' compensation and on liability injury claims as circumstances warrant. If the claim involves a reportable file, contact MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, to secure name of an independent medical examiner and approval to proceed. If claim is within branch authority, branch may select examiner and proceed within its own discretion.
- 13) Releases: Releases are required on settlements of \$2,500 or more. Releases may be taken in recorded form for losses under \$2,500 or waived. A decision to waive a release for losses under \$2,500 requires approval of a supervisor, Assistant Manager or Manager.
- 14) Salvage: The rule of thumb for salvage value is 20% of the stated or actual cash value. Salvage yards or pools are the preferred means for disposing of salvage. Vehicle owner permission is required before vehicles can be moved. State laws/regulations concerning salvage and preservation of evidence must be strictly adhered to.
- \* 15) Structured Settlements: NOT AUTHORIZED. Any exceptions to this policy requires written authorization from MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, before undertaking any related activities.
- \* 16) Surveillance/Undercover Investigation or Special Investigation: Secure authority from MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, prior to employing any surveillance, undercover or other special investigative firm. Activity checks

conducted in the normal course of claims handling do not require special authority.

- 17) Outside Investigation: All outside investigation must be approved by Mr. Robert Manning, address in paragraph 9, prior to handling.

- \* 18) Americans with Disabilities Act (ADA): Upon receipt of any claim that involves an action under the Americans with Disabilities Act, immediately contact MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9 for direction/instructions.

**\*8. AUTHORITY LIMITS**: Apply per claimant. Secure all additional authority over branch threshold from MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9.

- A. Check: \$0-PL; \$5,000-GL; \$10,000-WC & AL. Loss Fund account established on behalf of Zurich American Insurance Company and American Guarantee and Liability Insurance Company for benefit of Building Materials Corporation of America. Check account code #9119 if automated, #9104 if manual/referral, or #9114 if NM.
- B. Settlement: \$0-PL; \$5,000-GL; \$10,000-WC & AL.
- C. Reserve: \$0-PL; \$5,000-GL; \$10,000-WC & AL.

Reserve Changes: Reserve Changes in the Aggregate of \$10,000 or more on all files, in either direction, need to be discussed with MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, prior to making the change.

**\*9. SUPERVISION AND REPORTING**:

Any file, regardless of authority level, which involves one of the following is a reportable file:

- Litigation (Note: Always contact MR. ROBERT MANNING to identify appropriate defense counsel.)
- Ten or more claimants from a single occurrence
- Insurance department regulatory agency complaints and/or complaints from other interested parties
- Coverage question, including possible reservation of rights, non-waiver agreement and/or coverage denial (see paragraph 5)
- Penalties/assessments/fines/interest (Send details to MR. ROBERT MANNING with necessary attachments and continue reporting only as required by MR. ROBERT MANNING.)
- All Catastrophic Injury or Exceptional type claims, as defined in Appendices A & B.

On all files where each per claimant reserve is less than \$0-PL; \$5,000-GL; \$10,000-WC & AL, and where none of the items listed above or in paragraph 7 is involved, no external supervision or reporting is required. Fully document your file and supervise internally.

On all files reserved at/over \$0-PL; \$5,000-GL; \$10,000-WC & AL, report in duplicate with two copies of enclosures. Direct reports to:

MR. ROBERT MANNING, MANAGER, CASUALTY CLAIMS  
BUILDING MATERIALS CORPORATION OF AMERICA (GAF)  
1361 ALPS ROAD  
WAYNE, NJ 07470-2201  
TELEPHONE: (973) 628-3148  
FAX: (973) 628-3581

Also send one copy of report with one copy of enclosures to Mr. Robert Flugger, address given in paragraph 1, for informational purposes only.

All subrogation activity must be approved by and reported to Mr. Robert Flugger, address in paragraph 1.

First reports are to be submitted per RMS Service Standards and subsequent status reports on 30 day intervals. All original file documentation must remain in originating branch's file.



Should a question or problem arise involving other than claims related issues, contact the Account Manager responsible for the account as shown on the Branch Client Parameter File page.

10. SISDAT:

- \* A. New Case Input: Standard procedures (Standard Instructions, II B.1.).

Auto Losses: Per standard SISDAT procedures, enter state where vehicle is principally garaged in state code field on SISDAT new case input. Enter state of occurrence in client injury code field on SISDAT new case input.

Multiple Claimants (Liability): Do not enter more than 99 claimants on any single file; if a situation arises where 100 or more claimants are involved in a single file, contact MR. ROBERT MANNING, ADDRESS IN PARAGRAPH 9, for instructions.

- B. Location Coding: For assistance in determining correct codes, contact Accounts Administration/Location Unit.

Service Calls: Regular contact should be maintained with the insured location, at least by telephone, with further regularly scheduled PERSONAL meetings scheduled at intervals no more than quarterly and to alternate, if the insured desires, between their location and the Crawford office.

- C. Checks: Standard procedures (Standard Instructions, I C.1.).

- D. NCCI Codes: Standard procedures (Standard Instructions, II B.1.{c}). See Appendix "N" for classification codes.

- E. Claim Number: Branch/File number.

11. BILLING/CLOSING: Standard procedures (Standard Instructions, II D.1., I.{a} through I.{e}, and I.{g}).

- A. Subrogation: Billing for subrogation file will be included in the monthly consolidated billing. Enter flat-rate amount as outlined on the branch client parameter file page utilizing expense code "SV". Do not submit billing directly to client. Do not pay subrogation as an allocated expense.

- B. File Retention & Closed File Handling: Every closed file must be marked with the appropriate destruction date clearly and consistently reflected on the file jacket in a format resembling the following:

DO NOT DESTROY UNTIL MM/DD/YY (as applicable)\*  
or  
DO NOT DESTROY -- INDEFINITE (if applicable)\*

\*Refer to Zurich's File Retention Policy distributed with memo dated 6/6/89 for guidelines for determining this destruction date or determining if indefinite storage by Zurich is required.

Maintain closed files for a period of two years from the "closing date" (date activity has ceased and the claim file is closed, or the date of last activity on a closed claim). At the two year anniversary of the "closing date", ship all closed files with file materials intact to:

Zurich Insurance Company  
Head Office Claim Department, 14th Floor  
1400 American Lane  
Schaumburg, Illinois 60196-1056

Include a list with the files shipped to Zurich, to include claim number, policyholder name, date of accident and claimant name for each file being shipped.

## APPENDIX A

### Catastrophic Losses/Injuries

#### Fatalities

Major amputations (arm or any portion thereof, leg or any portion thereof, two or more fingers or toes)

Paralysis or alleged paralysis (i.e., paraplegia, quadriplegia)

Any spinal cord injury involving allegations of serious functional impairment

Brain damage or any serious head injury where there is an indication or allegation of residual loss of function due to brain damage or alleged behavioral disorders, personality disorientation or changes, seizures or unconsciousness affecting mentality

Serious burns covering 25% or more of body surface, severe facial scarring, severe scarring resulting in loss of function of a major limb or portion thereof, or third degree burns covering 10% of body surface or more

Crushing type injuries to major limbs, major joints or trunk

Multiple fractures involving more than one member, malunion or significant shortening of limbs

Injuries requiring fusion or total joint replacement involving a major member including wrist, elbow, shoulder, knee, hip or ankle

Fracture of both heel bones

Hip fractures

Nerve damage causing paralysis or loss of sensation to major limbs, joints or trunk

Serious nervous system disorders.

Serious internal injuries, especially those affecting a body organ or organs

Injuries involving artificial joints of major limbs

Serious eye injuries involving loss of sight in one eye or both eyes, or

serious partial loss of sight impairing vision by 50% or more

Back injuries requiring surgery or alleging disc involvement, or where disability extends one year or more

Any workers' compensation disability greater than one year

Permanent total disability workers' compensation claims

Claims involving extensive medical specials; other than medical only and/or a large workers' compensation lien regardless of whether amounts appear justified

Myocardial infarctions or other cardiovascular injuries

Hearing losses where alleged hearing impairment is 50% or more

Claims involving allegations of loss of sense of smell

Any other serious injury, condition, disease or property damage not described

## APPENDIX B

### Exceptional Claims

All claims involving questions of coverage.

AIDS claims

Toxic Shock Syndrome claims

Herpes claims or other serious sexually transmitted disease claims

Claims involving rapes or other alleged sexual abuse

Cancer or other serious disease claims

Drug claims including DES, Benediction and other

Toxic chemical claims

Other toxic tort claims involving exposure to products

Welding Rod fume claims

Claims involving formaldehyde

Claims involving silica

Claims involving asbestos

Other serious occupational disease claims

Employers' Liability claims

Age discrimination claims

Wrongful termination claims

Claims involving public figures

Claims occurring outside of the U.S.

Claims-made coverage claims

Claims involving umbrella or excess coverage

Environmental pollution and hazardous waste claims, including EPA/CERCLA clean up matters

Class action suits

Suits involving allegations of bad faith arising out of claims under

Zurich policies, or in which Zurich is a named defendant or potential defendant, except for

- direct action suits where Zurich is named due to a statute allowing the Company to be added or substituted for the Policyholder
- Workers' Compensation files where the only relief is for statutory benefits under the applicable W.C. Act
- subrogation suits brought by Zurich which do not involve counter claims or cross claims against Zurich

Any claim with an ad damnum in excess of policy limits or which has potential exposure in excess of policy limits

Claims involving 10 or more claimants

APPENDIX N

NCCI CODES

<u>NCCI CODE</u>	<u>DESCRIPTION</u>	<u>STATES</u>
4741	BMCA	AL, FL, GA, IN, MD, MA & MN
8810	BMCA	AL, CA, FL, GA, IN, KY, MD, MA & MN
4283	BMCA	CA
8742	BMCA	CA, FL, GA, MA & MN
4263	BMCA	KY
8742	U.S. INTEC	AL, AZ, CA, CT, FL, GA, ID, IL, LA, MD & MI
4283	U.S. INTEC	CA, GA
8810	U.S. INTEC	CA, GA, IL & MI
7380	U.S. INTEC	GA