

**UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

LONNIE POOL, an individual,)	
and TERRY POOL, an individual,)	CIVIL NO. _____
)	
Plaintiffs,)	
)	
v.)	
)	COMPLAINT AND
ORKIN, INC. f/k/a ORKIN)	JURY DEMAND
EXTERMINATING COMPANY, INC.,)	
a wholly-owned subsidiary of)	
ROLLINS, INC., and ROLLINS, INC.,)	
a foreign corporation,)	
)	
Defendants.)	
)	

COME NOW the Plaintiffs, Lonnie Pool and Terry Pool, individually, and for their causes of action against the Defendants, Orkin, Inc. f/k/a Orkin Exterminating Company, Inc. and Rollins, Inc., state as follows:

PARTIES, JURISDICTIONAL ALLEGATIONS, AND VENUE

1. Plaintiffs, Lonnie Pool and Terry Pool, were and continue to be husband and wife and, at all material times hereto, resided at 7020 Valley Drive, Bettendorf, Iowa 52722.
2. At all material times hereto, Plaintiffs, Lonnie and Terry Pool, were residents of Scott County, Iowa.
3. Defendant, Orkin, Inc., f/k/a Orkin Exterminating Co., Inc., at all material times hereto, was a duly licensed Delaware Corporation, incorporated in the State of Delaware. Said entity was registered to do business in the State of

Iowa and was, in fact, doing business in and out of branch offices in Davenport, Scott County, Iowa, Cedar Rapids, Linn County, Iowa, Des Moines, Polk County, Iowa, and West Des Moines, Iowa.

4. The principal place of business of Defendant Orkin, Inc., f/k/a Orkin Exterminating Co., Inc., is in a state other than the State of Iowa.

5. Defendant, Rollins, Inc., at all material times hereto, was a duly licensed Delaware Corporation, incorporated in the State of Delaware. At all material times hereto, Rollins, Inc., was the parent company and owner of Orkin, Inc., f/k/a Orkin Exterminating Co., Inc. Like Orkin, Inc., f/k/a Orkin Exterminating Co., Inc., at all material times hereto, Defendant Rollins, Inc., through the activities of its wholly owned subsidiary, Orkin, Inc., f/k/a Orkin Exterminating Co., Inc., was doing business in the State of Iowa in and out of branch offices located in Davenport, Scott County, Iowa, Cedar Rapids, Linn County, Iowa, Des Moines, Polk County, Iowa, and West Des Moines, Iowa.

6. The principal place of business of Defendant Rollins, Inc., is in a state other than the State of Iowa.

7. The Plaintiffs, Lonnie and Terry Pool, do hereby seek judgment against the Defendants herein in an amount which exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. §1332.

8. The causes of action set forth in this Complaint and Jury Demand arose from acts that occurred in Scott County, Iowa.

FACTUAL ALLEGATIONS

1. On or about June 30, 1989, Lonnie and Terry Pool purchased the residence at 7020 Valley Drive, in Bettendorf, Iowa, from Ray Baumbach on contract for \$24,500.00.

2. Because this house was an older house, Lonnie and Terry Pool had purchased the residence with the intention of completely remodeling the house. Accordingly, the Pools dismantled the house down to the studs, and completely remodeled the home. The Pools worked on the house from June 30, 1989 until September 1990, refurbishing the home. This refurbishing of the home, during this time, included the removal of all of the lath and plaster walls and ceilings, and replacement with dry wall. In addition, all of the exterior walls had blown-in insulation that was removed and replaced with fiberglass and plastic vapor lining. Furthermore, the home was completely rewired and all of the existing wiring was removed. A new furnace and central air, and new plumbing, was installed also.

3. Around October 1991, Lonnie and Terry Pool sold two properties to pay off the entire remaining contract balance owed to Ray Baumbach for their residence at 7020 Valley Drive in Bettendorf, Iowa. Also in October 1991, Lonnie and Terry Pool borrowed \$44,000.00 from First Star Mortgage Company to re-sheet and re-roof the entire house. At this same time, Mr. and Mrs. Pool built a porch around two sides of the house, and dug and added the last room in the basement of the house. And, Mr. and Mrs. Pool tiled the basement to a sump pump before completely pouring the floor.

4. In November 1991, a new bank appraisal was done on the residence at 7020 Valley Drive in Bettendorf, Iowa. At this point in time, Lonnie and Terry Pool have seen every piece of woodwork and studs in the entire home (both inside and under the entire home structure), as the house had been completely gutted to the studs in the process of completely remodeling the home. And, there was no evidence of any termite activity or damage.

5. It was not until around July 1997 that Lonnie and Terry Pool first discovered any evidence of termite activity. At that time, Mr. and Mrs. Pool found mud/sand trails on the inside of the house on the west basement walls. These trails were located under the three bay windows that are on the first floor of the home. Lonnie and Terry, concerned by this discovery and the significant investment they had put into the home, conducted a physical search throughout the entire home structure to determine whether there were any other indications of termite activity. No other signs of termite activity or damage were found.

6. Lonnie and Terry Pool contacted Orkin¹, and on July 28, 1997, Orkin came out to the Pool residence, and after inspecting the entire home, Orkin reported to Mr. and Mrs. Pool that there was an active termite infestation in their home. Orkin represented that the termites were only found on the west side of the house at or around the three bay windows. Orkin then offered to treat the Pool home for subterranean termites. At that point in time, and at Orkin's suggestion, recommendation, and urging, Lonnie and Terry Pool accepted Orkin's offer and entered into a written contract for subterranean termite

¹ Orkin, Inc., f/k/a Orkin Exterminating Co., Inc., together with Rollins, Inc., will hereinafter be referred to as "Orkin" or "Defendants".

treatment with Orkin Exterminating Company, Inc. This contract was called the Orkin Exterminating Company, Inc. Residential Single Family Dwelling Lifetime Subterranean Termite Retreatment Agreement (hereinafter referred to as "**Subterranean Termite Agreement**").² This pre-printed standard form Subterranean Termite Agreement was presented that very day to the Pools by a representative of Orkin. Mr. and Mrs. Pool signed the contract that day.

7. Pursuant to the Subterranean Termite Agreement, Lonnie and Terry Pool paid \$1,073.72 to Orkin for Orkin's initial treatment of their home, located at 2070 Valley Drive, Bettendorf, Iowa, for the extermination and control of subterranean termites.

8. Additionally, the Subterranean Termite Agreement included a Limited Lifetime Renewable Subterranean Termite Retreatment Guarantee ("**Retreatment Guarantee**"), which was renewable for life, so long as an annual renewal payment was made to Orkin on or before each anniversary date of the Subterranean Termite Agreement.³ This Guarantee was a pre-printed form in the nature of an insurance contract, which provided coverage for and protection of the Devine's home against termite reinfestation and damage therefrom.⁴

9. After the initial treatment in 1997, Lonnie and Terry Pool elected to pay additional money (an annual renewal premium) for the Retreatment

² A copy of the Orkin Exterminating Company, Inc. Residential Single Family Dwelling Lifetime Subterranean Termite Agreement that was executed by Orkin and the Pools is attached hereto and incorporated herein by this reference.

³ A copy of the Limited Lifetime Renewable Subterranean Termite Retreatment Guarantee paid for by the Pools is attached hereto and incorporated herein by this reference.

⁴ This Subterranean Termite Agreement and Retreatment Guarantee were issued out of Orkin's Davenport branch office, located at 501 West 76th Street, Davenport, Iowa.

Guarantee, beginning in 1997 and continuing through 2005.⁵ Lonnie and Terry Pool made an annual renewal payment to Orkin for each of the above listed years to keep the Guarantee in effect for those years⁶, and to keep their home protected from termite reinfestation and damage therefrom by eliminating and/or controlling any termite reinfestation.

10. In exchange for the annual renewal fee, Orkin was obligated, **at no extra cost** to the Pools, to apply **any necessary additional treatment** to the premises (Pools' residence) if an infestation of subterranean termites was found on or in the treated premises during the effective period of the Guarantee.

11. On or about August 13, 1997, after the execution of the above-discussed Subterranean Termite Agreement and the Pools' payment of \$1,073.72 to Orkin, Orkin performed its initial treatment at the Pool home located at 7020 Valley Drive, Bettendorf, Iowa 52722. Orkin applied pesticide/fumigant and also foam treatment to address the termite infestation. This treatment allegedly included 243 gallons of Dagnet FT, and 53 gallons of foam, applied at the rate of 4 gallons per 10 linear feet.

12. In connection with this initial treatment, the Pools removed deck boards for outside access, so that Orkin could insert probes for treatment. The Pools also removed any obstacles in the basement, so that Orkin could drill holes in the concrete walls and floor for treatment.

⁵ The first annual renewal payment made in 1997 was for \$119.00. These annual renewal payments increased each year. And, by August 2006, the annual renewal payment was up to \$179.15.

⁶ The final annual renewal payment was made by Mr. and Mrs. Pool on August 1, 2005 for coverage for the period August 1, 2005 through July 31, 2006.

13. On September 10, 1997, less than one (1) month after Orkin's initial treatment, Orkin returned to retreat the Pool residence, after the Pools discovered additional tunnels on the inside of the east basement block walls and contacted Orkin for retreatment. On this date, Orkin provided a **spot retreatment** of the home by applying 31.4 gallons of Dragnet FT at a rate of 4 gallons per 10 linear feet.

14. On September 27, 1997, after the Pools found additional tunnels located again on the west basement wall under the three bay windows, Orkin returned to the Pool home for another retreatment. At this time, Orkin provided another **spot retreatment** of the home by applying 37 gallons of Dragnet FT at a rate of 4 gallons per 10 linear feet. In connection with this retreatment, a hole was cut in the living room floor of the Pool home, so that Orkin could put a hose down the hole to pour liquid treatment. This was done, and the entire 37 gallons of chemical were poured at this one site. The Orkin representative represented that this retreatment would completely resolve the termite problem under the bay windows on the west side of the house, and the Pools trusted that it would.

15. Around May 1998, Lonnie and Terry Pool found new termite tunnels located at the north end of the house under the kitchen sink. The Pools contacted Orkin, and on June 1, 1998, Orkin came out to the Pool home and again provided a **spot retreatment** to the home by application of 22 gallons of Premise 75 at a rate of 4 gallons per 10 linear feet and by application of Tim-Bor.

16. On September 15, 1998, Orkin again retreated the north kitchen area of the Pool home with a **spot retreatment**, which consisted of the

application of 47 gallons of Premise 0.5SC at a rate of 4 gallons per 10 linear feet.

17. On June 25, 1999, Orkin conducted its annual reinspection of the Pool home, and reported that no retreatment was needed, as **no termite activity was discovered**.

18. On June 30, 2000, Orkin again conducted its annual reinspection of the Pool home, and reported that no retreatment was needed, as **no termite activity was discovered**. This annual reinspection was performed by Orkin while the Pools were at work. The Pools' seventeen year-old daughter, Ashley, was the only one home, and she signed the Orkin service report that date.

19. A short time later, on July 26, 2000, Orkin returned to the Pool home and again provided a **spot retreatment** by applying 15.79 gallons of Premise 0.5SC at varying rates in different structures, after the Pools contacted Orkin for another retreat.

20. On July 25, 2001, Orkin conducted its annual reinspection of the Pool home, and reported that no retreatment was needed, as **no termite activity was discovered**. Again, the Pools' daughter, Ashley, signed the Orkin service report this date.

21. In the fall of 2001, drywall was removed in a section of the basement at the Pool home with limestone walls. There was no evidence of termite activity behind the drywall, at the time it was removed. The limestone walls were then covered with concrete for appearance and to prevent any termite infestation.

22. On June 3, 2002, Orkin conducted its annual reinspection of the Pool home, and reported that no retreatment was needed, as **no termite activity was discovered**. The Pools' daughter, Chelsi, signed the Orkin service report this date.

23. Around August 2003, after Orkin had not been out to conduct its annual reinspection, and after Lonnie and Terry Pool had noticed some settling around the chimney in the north side of the house, Mr. and Mrs. Pool contacted Orkin. On August 29, 2003, Orkin conducted an inspection of the Pool home. This time Orkin reported that activity had been found. Orkin indicated, at this time, that they would install foam treatment in the kitchen walls to take care of the termite problem.

24. Then, on September 2, 2003, Orkin returned to the Pool home to retreat it. Orkin provided another **spot retreatment**, applying 74.6 gallons of Premise 2.

25. On June 14, 2004, Orkin conducted its annual reinspection of the Pool home, and reported **no termite activity**. It was at about this same time, however, the Pools began noticing that the kitchen was sinking some into the basement.

27. In July, 2005, the Pools returned home from vacation, and a neighbor, who had been watching the house for them, reported that the kitchen and dining room were filled with flying bugs coming through the light sockets and wallpaper in the kitchen. The neighbor had vacuumed up a majority of the bugs, but some remained in the house.

28. On August 1, 2005, the Pools made their final annual renewal payment to Orkin under the Retreatment Guarantee for retreatment and protection from August 1, 2005 through July 31, 2006.

29. On August 24, 2005, Orkin came out to the Pool home and conducted its annual reinspection. Orkin reported that **no termite activity was found.**

30. On November 10, 2005, after noticing further and significant settling of the kitchen into the basement, Lonnie and Terry Pool removed the north and east walls in the kitchen to investigate. The Pools discovered significant termite damage throughout the wood structures in the walls.

31. On January 26, 2006, Mr. and Mrs. Pool received an estimate from a contractor for the cost of rebuilding the north side of the house where the termite damage that they had discovered had been done. The contractor indicated that the replacement of the kitchen only would cost as much as what the house was worth. So, to improve the value of the home and to get some equity back into the home, the contractor suggested adding a second story over the replaced kitchen and garage.

32. On March 20, 2006, Mr. and Mrs. Pool received their bank approval for the proposed renovations to the home. The Pool family moved out of the home and into a 30-foot trailer, so that demolition could begin and so they would have running water and sewer.

33. Beginning on March 28, 2006, the damaged wood structures in the kitchen, bathroom, and porch on the north side of the house were removed. The

old existing foundation was removed and the rebuilding started from scratch. The demolition and rebuilding of the structure of the Pool home continued through August 18, 2006. And, the finishing on the home (painting, woodwork, etc.) occurred from August 18, 2006 through September 10, 2006.

34. Finally, on September 10, 2006, the Pool family was able to move back into their home.

35. On September 19, 2006, Lonnie and Terry Pool were notified by Orkin that it had not received their August 2006 annual renewal payment under the Retreatment Guarantee. Lonnie and Terry had decided not to make this payment to Orkin and terminated the agreement.

36. From 1997 through 2005, Orkin performed annual reinspections at the Pool home and applied **spot or partial retreatments** to the home when active termite infestation was found. The termite activity was usually discovered by Mr. and Mrs. Pool themselves.

37. During this time, while the Retreatment Guarantee was in effect, Orkin consistently responded to the termite infestations within the Pool home by providing **spot applications** of chemicals/pesticides to only the area immediately around the spot where the infestation/(s) was/were found.

38. Throughout the period of time that the Subterranean Termite Agreement and Retreatment Guarantee were in effect on the Pool home, Orkin was managing the ongoing termite problem from its branch office in Davenport, Iowa.

39. The various Orkin representatives assigned to deal with the ongoing termite problem in the Pool home were also assigned an extensive geographical area of the State of Iowa for which they were responsible, thereby minimizing the time available to physically come to the Pool home for reinspection and fully, completely, and correctly retreating any infestation.

40. The chemicals utilized by Orkin, during the effective period of the Subterranean Termite Agreement and Retreatment Guarantee at the Pool home, in response to the ongoing termite problem within the home, were minimally effective in controlling termites, according to former employees who were working at Orkin during that time frame.

41. Between 1997 and 2005, during the time the Pool home was under Orkin's Guarantee to provide **any necessary additional treatment** to any termite infestation within the home, Orkin consistently responded to termite reinfestations by **spot retreatments**, or **spot application** of chemicals on the premises only to the places where active termites were visibly found. At no point in time did Orkin ever retreat the Pool home with a **complete retreatment**.

42. Not only did Orkin consistently underplay the seriousness of the ongoing termite problem at the Pool home, but it also consistently represented to the Pools that the treatment approach being taken at their home, the **spot retreatment** of chemicals only where visible evidence of termite infestation was found and the immediate surrounding area, was an accepted and effective approach. Never was it emphasized to the Pools that in order to effectively control a termite infestation problem, it was necessary to cover every square inch

of the home and establish a **complete chemical barrier** around the home.

43. Orkin's initial treatment of the Pool home in 1997, the purpose of which was to create a **complete chemical barrier** around the house, was either inadequate, as it was incorrectly applied, or ineffective, as there had been a breakdown of the chemical applied. This is demonstrated by the fact that there was evidence of active termite infestation in the Pool home on multiple occasions within one (1) year of the initial treatment. If the initial treatment is correctly applied, a complete chemical barrier is made, and if there is, otherwise, no unnatural breakdown of the chemical, there should be no evidence of termite activity for at least five (5) years after the initial treatment

44. At no time, after the initial treatment of the Pool residence in 1997, did Orkin attempt to recreate or, in fact, recreate a **complete chemical barrier** around the house, despite evidence that the initial treatment was either improperly applied or had chemically broken down.

45. At all material times hereto, Orkin's obligation under the Retreatment Guarantee was to provide **any necessary additional treatment** to the premises to effectively control and/or eliminate a termite infestation in the Pool home.

46. At all material times hereto, Orkin knew that a **complete chemical barrier** had to be installed and maintained to effectively control and/or eliminate a termite infestation in the Pool home.

47. At all material times hereto, Orkin knew that if there was evidence of termite activity in the Pool home within 5 years of the initial treatment, then the

barrier had been inadequately applied or had been ineffective due to an unnatural chemical breakdown. Accordingly, the only way to then establish or reestablish a **complete chemical barrier** was to provide a/another **full/complete treatment** around the whole house just as it had done or was supposed to do in the initial treatment.

48. During the period in which the Pool home was under the Retreatment Guarantee with Orkin, Orkin had in place a Retreatment Credit Program, which provided for a “funny money” credit entry on an Orkin branch office’s books for every retreatment that particular branch office performed, no matter what the actual cost of the retreatment was. This created a financial incentive for Orkin branch office managers to direct and/or approve only **limited or spot retreatments** be provided to customers, so as to artificially increase the profitability of the branch office (and ultimately the profitability of the regional and national office). Orkin’s compensation system directly tied the branch manager’s (and regional manager’s) bonus to the profitability of the branch office (and regional office).

49. From 1997 through 2005, during the effective period of the Retreatment Guarantee between Orkin and the Plaintiffs, Lonnie and Terry Pool, for which Pools had paid money to Orkin, Orkin consistently represented to the Pools that its efforts at controlling and/or eliminating the termite problem had been successful; that the approach it had taken in response to the termite infestation problem was effective; and that the Pools had no reason to be

concerned about the possibility of ongoing significant damage being caused to the home by the termite infestation and reinfestation problem.

50. Orkin's representations to the Pools continued from 1997 to 2005. Specifically, Plaintiffs Lonnie and Terry Pool were consistently told by Orkin that the termite problem was under control and/or the treatment Orkin was providing was adequate and effective.

51. Moreover, during this period of time, Orkin continually represented to the Pools that, as the "World's Best" with over 90 years of experience, they were the experts in termite detection and extermination, who could be trusted to provide the best treatment and protection for their home.

52. And, during this period of time, Orkin continually represented to the Pools that it was using the most recent and best materials for treating termites, and that it was providing top-notch training to its technicians/treaters for the latest and best techniques for treating termites; and, therefore, the Pools could trust Orkin to provide the best treatment and protection for their home.

53. The misrepresentations of Orkin throughout the time period in question were in the nature of affirmative misleading statements as to the effectiveness of its treatment and in the form of misleading omissions and concealment about the additional steps it knew it should be taking to completely control the problem. In other words, Orkin overstated its ability to eliminate or control the termite problem in the Pool home and the effectiveness of its treatments, while also understating the significance of the termite problem in the

Pool home and the additional treatment needed to properly remedy the termite problem within the home.

54. Lonnie and Terry Pool had no reason to know or discover the misrepresentations of Orkin, until such time as the extensive damage was discovered in November 2005, when they removed the north and east walls in the kitchen to investigate the reason for the kitchen settling into the basement and discovered major termite damage to the internal wood structures of the home.

55. The Pools relied on the affirmative misrepresentations and/or omissions/concealments of Orkin, as to the effectiveness of their treatment and their control of the termite infestation problem in the home, in not discovering the extensive termite damage until November 2005, and in not discovering the ongoing and ever increasing nature of the termite damage until November 2005.

56. Because of the extensive termite damage done to the internal wood structures of the Pool home, Mr. and Mrs. Pool had to borrow money to perform repairs and rebuild the damaged portions of their home.

57. And, due to the prolonged duration of time during which the active termite infestation continued in the Pool home, despite representations by Orkin to the contrary, and because of the extensive damage to the interior wood structures of the home, the fair market value of the Pool home has been substantially reduced.

58. Furthermore, had the Pools known of the false and inaccurate representations of Orkin, as it relates to the effectiveness of Orkin's efforts at

eliminating the termite problem, the ongoing nature of the termite infestation problem, and the damage being caused to their home by the termite problem, they would never have made the decision to maintain their Agreement with Orkin by the continued payment of annual premiums, and they would not have continued to rely on Orkin's alleged expertise in termite extermination to take care of the termite problem and to protect their home from termite damage.

59. At all material times hereto, Orkin held itself out as having expertise in termite extermination, expecting customers such as the Pools to rely on such representations of expertise. Orkin gave itself recognition and advertised as the World's Best in termite/pest control.

COUNT I
NEGLIGENT MISREPRESENTATION

1. Plaintiffs repeat and reallege Paragraphs 1 through 8 of the Parties, Jurisdictional Allegations, and Venue and Paragraphs 1 through 59 of the Factual Allegations, and incorporate the same as though fully set forth herein.

2. Defendants consistently communicated to the Plaintiffs information regarding the effectiveness of its treatment and its ongoing effort to control the termite infestation problem in the home. Specifically, Defendants consistently represented that its efforts had either brought the problem under control, had eliminated the problem, or that its efforts would soon have the problem under control.

3. The information Defendants supplied to the Plaintiffs with regard to the effectiveness of its efforts to control the termite infestation problem at the home was false; specifically, Defendants' representatives knew that its initial

treatment on the home was inadequate or ineffective; they knew that its **spot retreatment** approach to retreating a home would be ineffective without establishing a **complete chemical barrier** around the home and/or treating every square inch of the home; they knew of the ineffectiveness of the chemicals it was using to treat the termite problem in the home; and they knew that it was not following up on the problem as frequently as it should because of the size of the geographic territory that its representatives were required to service. Finally, Orkin knew that this retreatment approach was not consistent with its obligation under the Retreatment Guarantee to provide **“any necessary additional treatment”** if a reinfestation occurred in the home.

4. The representations being made by Defendants from 1997 through 2005 were made at a time when Defendants knew or should have known in the exercise of reasonable care that its efforts could not be effective at controlling or totally eliminating the termite problem because of its unwillingness to fulfill its obligation under the Retreatment Guarantee (to provide **“any necessary additional treatment”**) and to invest the time and resources necessary to treat every square inch so as to make sure there was a **complete chemical barrier** surrounding the Pool home.

5. Defendants had a financial interest in supplying the information in that:

- a. it was consistent with the financial incentive set up by the Defendants through the Retreat Credit Program to only provide a **limited or spot retreatment**, which increased the profitability of the Branch Office and increased the Branch Manager’s (and Regional Manager’s) bonus;

- b. it reduced the cost to the Defendants of providing additional treatment or retreatment as provided for under the Retreatment Guarantee; and
- c. it helped to ensure the continued payment of the annual renewal premium/fee for the Retreatment Guarantee.

6. Defendants intended to supply the information regarding the effectiveness of its efforts to control the termite problem for the benefit and guidance of the Plaintiffs, who owned the home and whose home was being inspected and treated by Orkin for termite activity under the Retreatment Guarantee for which Plaintiffs paid Orkin an annual renewal premium/fee.

7. Defendants intended the information regarding the effectiveness of its efforts to control the termite problem to influence the very transaction and the very duties/obligations it owed to the Plaintiffs set forth in the Retreatment Guarantee under which this information was supplied (i.e., Plaintiffs paid Defendants an annual premium/fee under the Retreatment Guarantee with Defendants so that the Defendants were obligated to provide **any necessary additional treatment** to Plaintiffs' home if required by subsequent termite activity in the home).

8. Plaintiffs justifiably acted in reliance on the truth of the negligently supplied information provided by Defendants regarding the effectiveness of its efforts at controlling the termite activity within the home.

9. The act of negligently supplying false information concerning the effectiveness of Defendants' ongoing effort at controlling the termite problem within the home was a proximate cause of the damage to the Plaintiffs; stated

another way, Plaintiffs justifiably acted and/or justifiably did not act in reliance on the negligently supplied information from Orkin.

10. As a result of the negligent misrepresentations by Defendants, through its agents, representatives, and/or employees, as to the effectiveness of its ongoing efforts at controlling the termite problem within the home, the Plaintiffs have been damaged as follows: There has been ongoing damage to their home over a period of approximately eight years, 1997 through 2005; they have had to undertake extensive repair work for the damage to their home; they have lost substantial use of their home while responding to the damage caused by the ongoing termite infestation; the fair market value of their home has been reduced as a result; and they continued to make annual renewal premium payments to Orkin for a Retreatment Guarantee with Orkin that was utterly worthless.

WHEREFORE, Plaintiffs Lonnie and Terry Pool do hereby seek judgment against Defendants herein, jointly and severally, in an amount that would reasonably compensate for the pecuniary loss sustained by them, together with interest thereon at the maximum legal rate, plus costs of this action.

COUNT II
FRAUDULENT MISREPRESENTATION

1. Plaintiffs repeat and reallege Paragraphs 1 through 8 of the Parties, Jurisdictional Allegations, and Venue and Paragraphs 1 through 59 of the Factual Allegations, and incorporate the same as though fully set forth herein.

2. At all material times hereto, because of the nature of the business of Defendants, it had superior knowledge as to the existence of termites on or in Plaintiffs home.

3. In addition, Defendants had superior knowledge as to the effectiveness of the ongoing termite treatments being provided by Defendants through its agents, representatives, and/or employees.

4. Plaintiffs, as less experienced and less informed persons with respect to the transaction between Defendants and Plaintiffs and with respect to the substance and performance of the Subterranean Termite Agreement and Retreatment Guarantee (i.e., in the extermination or control of termites), relied on Defendants' superior knowledge by continuing to use the services of Defendants for the continued protection of the home from termites by continuing to pay the annual renewal fee on the Retreatment Guarantee to continue the guaranteed coverage and protection of their home.

5. Such reliance by Plaintiffs on the Defendants was justified as Orkin holds itself out as having expertise in the extermination and control of termites. Further, Plaintiffs properly placed their trust and confidence in the Defendants, when they paid Orkin for the very purpose of exterminating termites on and in Plaintiffs' home. Plaintiffs continued to make payments to Orkin for the annual renewal fee under the Retreatment Guarantee to ensure that any prior termite infestation problem in their home was eliminated and/or continued to be controlled. Such a relationship imposed upon Defendants a duty of full disclosure to the Plaintiffs regarding the ongoing existence of termites within the

home, the effectiveness of its ongoing efforts at treating the termite problem, any limitations on its ability to effectively treat the termite problem, and any additional treatment which would be needed to eliminate and/or control the ongoing termite activity within the Devine home.

6. Defendants knowingly misrepresented to the Plaintiffs the effectiveness of its ongoing efforts in response to the termite infestation problem within the Pool home. Specifically, Defendants knowingly concealed and/or suppressed information as to the ongoing existence of termites within the home; the likelihood that those termites were continuing to cause ongoing damage to the home; the effectiveness of its treatment efforts at controlling and/or eliminating the termite problem within the home; and any additional treatment approaches which were needed to effectively eliminate and/or control the ongoing termite problem at the home.

7. Defendants' fraudulent misrepresentations to the Plaintiffs began in 1997 and continued up to approximately 2005.

8. From the inception of Orkin's treatment of the Pool home up to the time the Pools discovered the ongoing termite infestation and extensive termite damage to their home in November 2005, Defendants consistently misrepresented to the Plaintiffs that:

- a. Any termite infestation problem in the home was under control;
- b. Any termite infestation problem in the home had been eliminated;
- c. There were no longer any active termites in the home; and/or

- d. The treatment it had provided on the home was adequate and effective.

Defendants knew that these representations were false and intended to deceive Plaintiffs by such representations.

9. Defendants' ongoing fraud and fraudulent business scheme was financially motivated. This included, but was not limited to, a financial incentive program for Orkin Branch and Regional Managers put in place by Orkin's corporate headquarters/national home office, which encouraged the Orkin Branch Offices to provide only **limited or spot retreatments**, as opposed to a **full retreatment** creating or recreating the **complete chemical barrier**. This program was called the "Retreat Credit Program". Defendants knew that such **limited or spot retreatments** would not and could not effectively eliminate and/or control the ongoing termite problem in the home, and yet made representations to the Pools to the contrary.

10. Defendants' fraudulent business scheme was further perpetuated by its use of the Retreatment Guarantee, which is virtually meaningless to the consumer and does not provide any real protection for the home from termites. Nor does the Retreatment Guarantee provide any real and adequate remedy, if Defendants fail to fulfill their obligations under the Guarantee. Said Retreatment Guarantee, however, was used by the Defendants to obtain payment from the Plaintiffs and to lull them into a false sense of security with respect to the protection of their home from termite infestation and damage. Defendant gave Plaintiffs the illusion that it was complying with the Retreatment Guarantee by

providing **spot retreatments** to the home. All the while, Defendants knew such **limited or spot retreatments** would not and could not effectively eliminate and/or control the ongoing termite problem in the Pool home.

11. Plaintiffs acted in reliance on the truth of Defendants' representations as to the effectiveness of its efforts at eliminating and/or controlling the ongoing termite infestation problem and were justified in so relying, especially given the fact that Orkin holds itself out as the World's Best at termite extermination and controlling termite infestation problems.

12. Defendants' fraudulent misrepresentations as to the effectiveness of its efforts at eliminating and/or controlling the ongoing termite infestation problem at the Pool home was a proximate cause of the pecuniary loss sustained by the Plaintiffs, including significant repairs of the damage done to their home caused by the ongoing ineffectiveness of the treatment efforts of Defendants and their misrepresentations to the contrary, loss of use and enjoyment of the home, and the reduction in the fair market value of the home. In addition, Plaintiffs made continued annual renewal premium payments to Orkin to keep the Retreatment Guarantee in effect. Plaintiffs would not have made these out of pocket payments to Orkin had they known of Orkin's fraudulent misrepresentations.

13. Defendants acted maliciously and improperly with reckless disregard for the Plaintiffs' rights by intentionally and fraudulently misrepresenting the effectiveness of its ongoing efforts at controlling and/or eliminating the termite

infestation problem and concealing the ongoing termite infestation, which was continuing to eat at and cause more and more damage to their home.

14. Defendants misrepresentations, suppressions, and/or concealments constituted a willful and wanton disregard for the rights of the Plaintiffs.

16. In addition to the actual damages incurred as detailed in Paragraph 12 above, Plaintiffs do hereby seek punitive damages in an amount representing a reasonable percentage of the net worth of the Defendants so as to deter Defendants herein and others from similar conduct in the future.

WHEREFORE, Plaintiffs Lonnie and Terry Pool do hereby seek judgment against Defendants herein, jointly and severally, in an amount that would reasonably compensate them for the damages sustained, together with interest thereon at the maximum legal rate, plus the costs of this action. In addition, Plaintiffs seek an award of punitive damages in an amount that would reasonably deter Defendants herein from similar conduct in the future.

COUNT III
TORTIOUS BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND
FAIR DEALING/"BAD FAITH"

1. Plaintiffs repeat and reallege Paragraphs 1 through 8 of the Parties, Jurisdictional Allegations, and Venue and Paragraphs 1 through 59 of the Factual Allegations, and incorporate the same as though fully set forth herein.

2. Within the Subterranean Termite Agreement and Retreatment Guarantee between Defendants and Plaintiffs, there was an implied duty of good faith and fair dealing, as in every other contract.

3. The Subterranean Termite Agreement and Retreatment Guarantee between Defendants and Plaintiffs was in the nature of an insurance contract.

4. Defendants were in a position of superior power and knowledge, given their alleged expertise in termite extermination, over the Plaintiffs.

Understandably, given Orkin's representations that it is the World's Best at termite extermination, Plaintiffs put their trust and confidence in Orkin to protect their biggest and most important investment—their home.

5. Under the Retreatment Guarantee, Defendants were obligated to provide **any necessary additional treatment** to the treated premises if an infestation of subterranean termites was found in the treated premises during the effective period of the Guarantee.

6. Defendants did not provide, as obligated under the Retreatment Guarantee, **any necessary additional treatment** to the Pool home when active infestations of subterranean termites were found in the home during the period the Retreatment Guarantee was in effect between Defendants and Pools. Instead, Defendants merely provided **limited or spot retreatments** when active termites were found (by the Pools), which Defendants knew would not effectively eliminate and/or control the termite problem in the house.

7. Defendants had no reasonable basis for denying Plaintiffs the benefit of their bargain, i.e. **any necessary additional treatment** to the Pool home when active infestations of subterranean termites were found in the home during the period the Retreatment Guarantee was in effect between Defendants and Pools. In other words, Defendants had no reasonable basis for failing to

provide the Pool home with a **full/complete retreatment**, and instead continually providing only **limited or spot retreatments** when active termites were found within the Pool home. Defendants knew it was necessary to provide a **full/complete retreatment** to create and/or recreate a **complete chemical barrier** to effectively eliminate and/or control the termite problem in the home. Nevertheless, Defendants were motivated by a desire to further their own financial interests, at the expense of the customer such as the Pools, in skimping on their obligation to provide **any additional necessary treatment**, and instead providing only **limited or spot retreatments**.

8. This fraudulent business scheme was perpetrated in bad faith by the Defendants in order to make Defendants more profitable than they would have been had they performed their obligations as promised to the Pools (under the Subterranean Termite Agreement and Guarantee) in good faith.

9. Defendants knew, or recklessly disregarded, the fact that they had no reasonable basis for providing only **limited or spot retreatments** when active termites were found. Defendants knew that a **full/complete retreatment** to create a **complete chemical barrier** was necessary to effectively eliminate and/or control the termite problem in the Pool home.

10. Defendants' actions constituted a bad faith breach of its duty under the Retreatment Guarantee to provide **any necessary additional treatment** to the Pool home if a termite infestation is found in the home while the Guarantee is in effect. This was a bad faith breach of the implied covenant of good faith and fair dealing.

11. Defendants' actions in breaching the Subterranean Termite Agreement and Retreatment Guarantee and the implied covenant of good faith and fair dealing therein amounted to a willful and wanton disregard for the rights and interests of the Plaintiffs.

12. Defendants' bad faith conduct and breach of the implied covenant of good faith and fair dealing has caused Plaintiffs damage. Specifically, as a direct result of Defendants' breach of the implied covenant of good faith and fair dealing, Plaintiffs have been forced to make extensive repairs to the damage done to their home caused by the ongoing ineffectiveness of Defendants' treatment efforts and Defendants' misrepresentations to the contrary, loss of use and enjoyment of the home, and the reduction in the fair market value of the home. In addition, Plaintiffs expended an annual renewal premium amount, which they paid to Orkin to insure their home from termite reinfestation and damage. Plaintiffs have also experienced significant emotional distress and mental anguish as a result of Defendants' bad faith acts in the performance of its obligations under the Subterranean Termite Agreement and Retreatment Guarantee. And, Plaintiffs have incurred attorney fees, costs/expenses, and sustained other economic and noneconomic loss.

13. In addition, because of the bad faith nature of Defendants' breach of the implied covenant of good faith and fair dealing and Defendants' willful and wanton disregard for the Plaintiffs' rights and interests in the protection of their home, Plaintiffs do hereby seek punitive damages in an amount representing a

reasonable percentage of the net worth of the Defendants so as to deter Defendants herein and others from similar conduct in the future.

WHEREFORE, Plaintiffs Lonnie and Terry Pool hereby seek judgment against the Defendants, jointly and severally, in an amount which would reasonably compensate them for their damages sustained, together with interest thereon at the maximum legal rate plus the costs of this action. In addition, Plaintiffs seek an award of punitive damages in an amount that would reasonably deter similar conduct by these Defendants or others in the future. Plaintiffs also seek recovery of emotional distress damages, attorney fees, and any other element of economic or noneconomic loss recoverable under this cause of action.

JURY DEMAND

The above-named Defendants are hereby notified that the Plaintiffs, Lonnie and Terry Pool, do hereby demand trial by jury on all issues presented in this Complaint.

HUMPHREY LAW FIRM, P.C.

By: 

Marc A. Humphrey—Lead Counsel

AIN: AT0003843

2755 106th Street

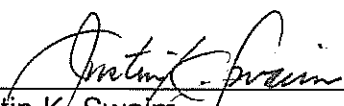
Urbandale, Iowa 50322

Telephone: (515) 331-3510

Facsimile: (515) 331-3544

E-mail: mhumphrey@humphreylaw.com

SWAIM LAW FIRM

By: 
Justin K. Swaim
AIN: AT0007788
108 East Jefferson Street
Bloomfield, Iowa 52537
Telephone: (641) 664-1983
Facsimile: (641) 664-2622
E-mail: justin@swaimlawfirm.com

ATTORNEYS FOR PLAINTIFFS