

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IDS PROPERTY AND CASUALTY INSURANCE COMPANY, an admitted insurer,)	Case No. 2:15-cv-02031-TSZ
)	JOINT PRETRIAL ORDER
Plaintiff,)	LCR 16
vs.)	
CHARLES H. FELLOWS;)	
Defendant.)	

JURISDICTION

This Court has jurisdiction in this case under 28 U.S.C. §1441 under diversity jurisdiction. The parties are of diverse citizen ship and the matter in controversy exceeds \$75,000.

CLAIMS AND DEFENSES

A. PLAINTIFF IDS PROPERTY AND CASUALTY INS. CO.

Plaintiff IDS Property and Casualty Insurance Company (hereinafter "IDS") asserts the Court should declare no coverage exists for Defendant Charles H. Fellows' (hereinafter "Fellows") insurance claims because (A) the intentional act exclusion to coverage applies because, as IDS asserts, the domestic violence exception to the exclusion does not apply to this matter; and (B) the

1 applicable policy specifically does not provide coverage for theft of personal property by another
2 insured.

3 As defenses to Fellows' counterclaims for alleged breach of contract, alleged insurance
4 bad faith, and alleged violations of the Washington Insurance Fair Conduct Act (hereinafter
5 "IFCA") and the Consumer Protection Act (hereinafter "CPA"), IDS asserts its investigation and
6 actions in connection with the subject insurance claim were reasonable, as was its ultimate
7 coverage determination and denial of the insurance claim. IDS asserts it did not violate the
8 regulations and statutes of the IFCA or the CPA and that Fellows' claims fail. Further, IDS asserts
9 Fellows has not demonstrated a covered loss occurred to trigger coverage for personal property
10 and that Fellows is barred from coverage because of the intentional act exclusion.

11 **B. DEFENDANT CHARLES H. FELLOWS**

12 Fellows will pursue the following affirmative defenses:

13 1. IDS is estopped and/or precluded from collaterally challenging the determination
14 of the King County Superior Court that Osborne violated the court order to preserve the house by
15 willfully and purposefully destroying the family home.

16 2. The Court should enter a declaratory judgment that there is coverage for the loss to
17 the dwelling and Fellows' personal property.

18 Defendant will pursue the following claims:

19 1. IDS committed the tort of insurance bad faith by failing to perform a full and fair
20 investigation of Fellows's insurance claim and by elevating its interests above those of Fellows's.

21 2. IDS committed the tort of negligence by failing to perform a full and fair
22 investigation of Fellows's insurance claim and by elevating its interests above those of Fellows's.

23 3. IDS committed the tort of constructive fraud by failing to perform a full and fair
24 investigation of Fellows's insurance claim and by elevating its interests above those of Fellows's.

25 4. IDS committed breach of contract by failing to pay insurance benefits owed
26 pursuant to the contract.

1 5. IDS violated the Consumer Protection Act both by committing an unfair or
2 deceptive act or practice in trade or commerce causing injury to Fellows's property and by
3 violating WAC 284-30-330(1); WAC 284-30-330(2); WAC 284-30-330(40); WAC 284-30-330(5);
4 WAC 284-30-330(13); WAC 284-30-350(1); WAC 284-30-360(1); WAC 284-30-360(3); WAC
5 284-30-370; WAC 284-30-380(3).

6 6. IDS violated the Insurance Fair Conduct Act by unreasonably denying Fellows's
7 insurance claim and by unreasonably denying payment of benefits and IDS is liable for punitive
8 damages based on this and its violation of WAC 284-30-330(1); WAC 284-30-330(2); WAC 284-
9 30-330(40); WAC 284-30-330(5); WAC 284-30-330(13); WAC 284-30-350(1); WAC 284-30-
10 360(1); WAC 284-30-360(3); WAC 284-30-370; WAC 284-30-380(3).

11 ADMITTED FACTS

12 The following facts are admitted or otherwise undisputed between the parties:

- 13 1. Fellows and Michaela Osborne (hereinafter "Osborne") were married.
- 14 2. Osborne petitioned the King County Superior Court for dissolution of the marriage.
- 15 3. As part of the dissolution proceedings, the King County Superior Court issued a
16 no-contact Protection Order which restricted any and all contact by Fellows with Osborne or her
17 children. The Protection Order removed Fellows from the family residence in October 2013.
- 18 4. Also as part of the dissolution proceedings, an appraisal report was prepared on or
19 about April 14, 2015.
- 20 5. The appraisal report noted the residence was in "good condition" as of April 2015.
- 21 6. The underlying dissolution proceeding resolved on or about July 8, 2015, and
22 awarded Fellows the residence. Further, the decree ordered Osborne to vacate the residence within
23 60 days from June 30, 2015.
- 24 7. The dissolution decree also ordered Osborne to maintain the home "in the condition
25 it is; the house needs to be in a livable condition; she needs to leave the home intact. Do not
26 damage it in any way, shape, or form."

1 8. Also on July 8, 2015, a the King County Superior Court issued a permanent no-
2 contact Protection Order restricting Fellows from contacting Osborne or her children.

3 9. Fellows attempted to re-enter the family residence on or about August 31, 2015.

4 10. Fellows discovered substantial damage to the home including graffiti, holes in the
5 walls, missing appliances, and other vandalism.

6 11. Fellows reported the damages to the Renton Police Department who began an
7 investigation of the damages and prepared a report.

8 12. As part of its investigation, Renton Police spoke with Osborne who admitted the
9 damages occurred and also reported some of the damages were caused by her children whom she
10 allowed to damage the home.

11 13. Fellows reported the loss to IDS on or about September 1, 2015.

12 14. The residence was insured through a policy issued by IDS with effective dates of
13 May 10, 2015, through May 10, 2016.

14 15. IDS assigned a claim under the subject insurance policy to Fellows' reported
15 damages.

16 16. IDS inspected the home, with Fellows and his attorneys present, on or about
17 September 23, 2015.

18 17. IDS requested examinations under oath of Fellows and Osborne as of September
19 28, 2015.

20 18. Fellows submitted to an examination under oath on November 5, 2015.

21 19. Osborne submitted to an examination under oath on December 18, 2015.

22 20. IDS filed the instant action for declaratory relief on December 30, 2015.

23 21. Fellows has incurred approximately \$75,000 in repairing and replacing the
24 dwelling. Fellows also paid approximately \$9,000 to his brother for additional repair to the
25 dwelling for a total of approximately \$84,000.00 in actual expenditures to date.

26 22. IDS denied coverage for Fellows claim on December 6, 2016, based on the

1 intentional act exclusion, the theft by an insured exclusion, and a failure to substantiate a covered
2 loss occurred to the personal property.

3 **DEFENDANT’S PROPOSED ADDITIONAL ADMITTED FACTS**

4 Defendant proposes the following facts also be admitted. IDS objects to these as admitted
5 facts.

6
7 23. Eric Lamb is an independent, licensed home appraiser.

8 24. Mr. Lamb completed an appraisal of the home on April 14, 2015.

9 25. The purpose of the appraisal was to assist in valuing the home for purposes of the
10 Fellows and Osborne divorce.

11 26. Both Fellows and Osborne sought the home in the divorce.

12 27. Mr. Lamb’s appraisal showed that on April 14, 2015, the home was in very good
13 condition.

14 28. There was no significant damage to the home at the time of the appraisal on April 14,
15 2015.

16 29. IDS issued a renewal policy insuring the home effective May 10, 2015, for the period
17 May 10, 2015 through May 10, 2016.

18 30. The King County Superior Court awarded the home to Fellows. *In re Marriage of*
19 *Fellows*, 196 Wn. App. 1073, 2016 WL 6948771 at *1 (Nov. 28, 2016).

20 31. At the conclusion of the divorce trial on June 30, 2015, and in a hearing on July 8,
21 2015, the King County Superior Court ordered Osborne to keep the home free from
22 damage, ruling: “The house needs to be maintained in the condition it is”; “the house
23 needs to be in a livable condition”; “she needs to leave the home intact. Do not
24 damage it in any way, shape, or form.” *Ibid*.

- 1 32. At the conclusion of the divorce trial on June 30, 2015, the home was in good
2 condition without any significant damage.
- 3 33. The King County Superior Court ordered Fellows to pay Osborne \$52,413 for her
4 interest in the house. Fellows paid this to Osborne in cash.
- 5 34. Fellows filed a police report relating to damage to the home with the Renton Police
6 on August 31, 2015.
- 7 35. Fellows cooperated with the Renton Police investigation relating to the damage.
- 8 36. The Renton Police opened an investigation into the suspected crime of Malicious
9 Mischief in the First Degree, Domestic Violence.
- 10 37. The Renton Police identified Osborne as the suspect.
- 11 38. Osborne telephoned IDS the next morning, September 1, 2015, and retroactively
12 canceled the insurance coverage.
- 13 39. IDS allowed the policy to be canceled without any notice to Fellows.
- 14 40. IDS made a mistake when it allowed Osborne to cancel the insurance policy without
15 giving proper, statutory notice to Fellows.
- 16 41. IDS learned later that day that it had made a mistake by allowing the policy to be
17 canceled when Fellows telephoned to file a claim for the damage.
- 18 42. IDS did not tell Fellows that it had been a mistake to allow the policy to be canceled.
- 19 43. IDS did not tell Fellows that he was covered as an insured on the policy.
- 20 44. The King County Superior Court concluded that Osborne violated the court order to
21 preserve the house by willfully and purposefully destroying the family home. *In re*
22 *Fellows*, 2016 WL 6948771 at *2.
- 23
24
25 45. This ruling was affirmed on appeal and is final.
- 26

- 1 46. By willfully and purposefully destroying the family home, Osborne committed
2 contempt of court in violation of Washington law. *Id.* at *3.
- 3 47. Robert Null and Eric Michalak were assigned by IDS to assist Mr. Fellows with his
4 insurance claim.
- 5 48. Claudia Lemon, Scott Wilson, or Robert Null were responsible for deciding whether
6 IDS will cover Mr. Fellows' insurance claim.
- 7 49. Fellows did not cooperate in or contribute to the creation of the loss.
- 8 50. Fellows cooperated in the investigation relating to the loss.
- 9 51. IDS's lawyer, Dan Thenell, assisted in IDS's investigation of the claim.
- 10 52. On September 18, 2015, Mr. Thenell wrote to Fellows' former lawyer that all
11 communications regarding Fellows' insurance claim were to go through Mr.
12 Thenell's office.
- 13 53. An examination under oath is a process under which an insurance company can
14 require a person who has made a claim to testify under oath about the claim.
- 15 54. An examination under oath can be used only as a reasonable part of the insurer's
16 investigation.
- 17 55. IDS's lawyer Dan Thenell took the examinations under oath of Fellows and Osborne.
- 18 56. Mr. Thenell's office also gathered documents for use in IDS's investigation.
- 19 57. In October and November 2015, Fellows' former lawyer wrote to IDS's counsel Mr.
20 Thenell on more than one occasion requesting clarification as to whether Fellows was
21 an insured under the policy.
- 22 58. Mr. Thenell and IDS knew that Fellows was insured.
- 23
24
25
26

1 59. Neither Mr. Thenell nor IDS informed Fellows nor Fellows's former lawyer that he
2 was insured.

3 60. Fellows obtained three independent bids for the repair of the damage.

4 61. Mike Storino of Tersuli Construction estimated the repair cost to be \$174,388.05.

5 62. Richard Tietjen of Tubro Construction estimated the repair cost to be \$134,217.44.

6 63. Tim Burnson of Maxcare of Washington estimated the repair cost to be \$162,689.24.

7 64. IDS informed Fellows that after completing Osborne's examination under oath in
8 December 2015, it would promptly make a decision on Fellows' insurance claim.

9 65. IDS filed this lawsuit on December 30, 2015, without making a decision on Fellows'
10 claim.

11 66. IDS filed this lawsuit before completing its investigation.

12 67. Mr. Thenell advised in January 2016, after suing Fellows, that IDS considered its
13 investigation to be continuing.

14 68. On November 21, 2016, the Court ordered IDS to make a coverage decision on
15 Fellows' insurance claim.

16 69. On December 6, 2016, Mr. Thenell wrote a letter to Fellows' lawyers stating that IDS
17 was denying Fellows's insurance claim. Mr. Thenell is the only person who signed
18 the letter.

19 70. When IDS filed this lawsuit, it did not claim that Osborne's children did any damage
20 nor that any loss was excluded for this reason.

21 71. The insurance policy covers any property damage that Osborne did that was either
22 "domestic abuse" or "domestic violence."
23

24
25
26 ////

1 72. Intentionally, knowingly, or recklessly causing damage to property so as to intimidate
2 or attempt to control the behavior of another family or household member is domestic
3 abuse. RCW 48.18.550(5)(d).

4 73. Former spouses are family or household members for purposes of domestic abuse or
5 domestic violence. RCW 10.99.020(3) & RCW 26.50.010(6).

6 74. Malicious mischief property damage is domestic violence. RCW 10.99.020(5)(l)-(n).

7
8 75. A person commits malicious mischief property damage if the person: knowingly and
9 maliciously causes physical damage to the property of another in an amount exceeding
10 five thousand dollars; knowingly and maliciously causes physical damage to the
11 property of another in an amount exceeding seven hundred fifty dollars; knowingly and
12 maliciously causes physical damage to the property of another; or writes, paints, or
13 draws any inscription, figure, or mark of any type on any public or private building or
14 other structure or any real or personal property owned by any other person unless the
15 person has obtained the express permission of the owner or operator of the property.
16 RCW 9A.48.070-.090.

17 18 ISSUES OF LAW

19 The following are the issues of law to be determined by the Court:

20 1) Whether the intentional act exclusion bars coverage to Fellows and, further,
21 whether the innocent spouse exception for domestic violence does or does not apply to Fellows'
22 claim.

23 2) Whether Osborne's damage caused by Osborne children, if any, is covered under
24 the subject policy; and

25 3) Whether Fellows is entitled to coverage for personal property.

26 In addition to IDS's issues, Fellows raises the following issues as counterclaims:

- 1) Whether IDS breached the insurance contract;
- 2) Whether IDS committed insurance bad faith;
- 3) Whether IDS violated the Washington Consumer Protection Act;
- 4) Whether IDS violated the Washington Insurance Fair Conduct Act; and
- 5) Whether IDS committed the torts of constructive fraud and/or negligence.

EXPERT WITNESSES

A. IDS's Expert Witnesses

IDS intends to introduce the following expert witnesses to testify at trial in this matter:

- 1) ^{Mark}~~Matt~~ Lawless *WILL TESTIFY*
Construction Systems Management, Inc.
811 First Avenue, Suite 466
Seattle, WA 98104

Mr. Lawless is expected to testify consistently with his report regarding his opinion as to what the damages related to this loss are, what the cost to repair and/or replace the damages is, and what methods of repair and replacement would meet industry standards.

- 2) David Mandt *WILL TESTIFY*
Professional Claim and Loss Consulting
PO Box 854
Montesano, WA 98563

Mr. Mandt is expected to testify consistently with his rebuttal report as to his opinion of the reasonableness of IDS's claims handling, investigation, and ultimate coverage determination. Mr. Mandt will rebut Fellows' expert witness regarding these same topics.

B. Fellows' Expert Witnesses

- 1) Roger Howson *WILL TESTIFY*
CDR
1100 Dexter Avenue North, Suite 100
Seattle, WA 98109
Phone: 206-676-3851

Mr. Howson has knowledge and opinions concerning the damage to Mr. Fellows' home consistent with the expert report he prepared.

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2) Dennis Smith **WILL TESTIFY**
4800 Fremont Ave N #202
Seattle, WA 98103
Phone: 206-999-3506

Mr. Smith has knowledge and opinions concerning IDS's claim handling consistent with the expert report he prepared.

3) Paul Pederson **WILL TESTIFY**
Pederson Associates, Inc.
PO Box 366
Preston, WA 98050

Mr. Pederson has knowledge and opinions concerning the economic damages of Mr. Fellows' home consistent with the expert report he prepared.

OTHER FACT WITNESSES

The names and addresses of witnesses, other than experts, to be sued by each party at the time of trial and the general nature of the testimony of each are:

A. IDS's Witnesses

IDS intends to introduce the following witnesses to testify at trial in this matter:

1) Robert Null **WILL TESTIFY**
IDS Property and Casualty Insurance Company
c/o Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320
Portland, OR 97223

Mr. Null is expected to testify consistently with his deposition as to his personal observations of the reported damages, the actions he took in connection with this claim including preparing an estimate of damages related to this loss.

2) Erik Michalak **WILL TESTIFY**
IDS Property and Casualty Insurance Company
c/o Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320
Portland, OR 97223

Mr. Michalak is expected to testify consistently with his deposition as to his personal observations of the reported damages, the actions he took in connection with this claim including

1 the steps taken in the investigation of the claim and persons interviewed.

2 3) Jodi Helf **WILL TESTIFY**
3 IDS Property and Casualty Insurance Company
4 c/o Thenell Law Group, PC
5 12909 SW 68th Parkway, Suite 320
6 Portland, OR 97223

7 Ms. Helf is expected to testify consistently with her deposition as to IDS's practices
8 and procedures associated with claims handling. Ms. Helf will introduce IDS claims handling
9 documents, best practices and state specific practices.

10 4) Scott Wilson **WILL TESTIFY**
11 IDS Property and Casualty Insurance Company
12 c/o Thenell Law Group, PC
13 12909 SW 68th Parkway, Suite 320
14 Portland, OR 97223

15 Mr. Wilson is expected to testify via contemporaneous video conference consistently
16 with his deposition as to IDS's practices and procedures in claims handling, as well as his personal
17 involvement in Fellows' claim.

18 5) Chad Giessen **WILL TESTIFY**
19 IDS Property and Casualty Insurance Company
20 c/o Thenell Law Group, PC
21 12909 SW 68th Parkway, Suite 320
22 Portland, OR 97223

23 Mr. Giessen will testify as to his limited involvement with the subject insurance policy
24 and determining whether Fellows was an insured and other policy research.

25 6) Clair Harrison **WILL TESTIFY**
26 IDS Property and Casualty Insurance Company
c/o Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320
Portland, OR 97223

Ms. Harrison is expected to testify as to her limited involvement with the subject insurance
policy and determining whether Fellows was an insured and other policy research.

////

1 7) Michaela Osborne
2 5224 Wilson Ave S, Suite 103
3 Seattle, WA 98118

WILL TESTIFY

4 Ms. Osborne is expected to testify consistently with her examination under oath and
5 her deposition. Ms. Osborne is expected to testify as to her involvement in causing the damages
6 or directing the damages to the residence to be done. Ms. Osborne is further expected to testify as
7 to her history with Fellows, including her history of domestic violence and/or abuse by Fellows,
8 as well as recent violations of the permanent no-contact order by Fellows.

8 ~~8) Mason L. Hill, age 10-11~~ ~~POSSIBLE WITNESS~~
9 ~~e/o Michelle Osborne~~
10 ~~5224 Wilson Ave S, Suite 103~~
11 ~~Seattle, WA 98118~~

12 ~~Mason is expected to testify as to her personal knowledge and experience with Fellows and~~
13 ~~any of the damages she may have caused or participated in to the residence.~~

13 ~~9) Madison M. Hill, age 10-11~~ ~~POSSIBLE WITNESS~~
14 ~~e/o Michelle Osborne~~
15 ~~5224 Wilson Ave S, Suite 103~~
16 ~~Seattle, WA 98118~~

17 ~~Madison is expected to testify as to her personal knowledge and experience with Fellows~~
18 ~~and any of the damages she may have caused or participated in to the residence.~~

17 10) Officer C. Jacobs/1953
18 Renton Police Department
19 1055 S Grady Way
20 Renton, WA 98057

WILL TESTIFY

21 Officer Jacobs is expected to testify consistently with the report he prepared in
22 connection with investigating the damages claimed by Fellows on or about August 31, 2015.

22 11) Detective Edwards
23 Renton Police Department
24 1055 S Grady Way
25 Renton, WA 98057

WILL TESTIFY

26 ////

////

////

1 Detective Edwards is expected to testify as to his actions and investigation in
2 connection with the damages claimed by Fellows on or about August 31, 2015, as well as the
3 investigation into the alleged violations of the temporary restraining order against Fellows.

4 12) Eric Webster
5 20315 33rd Ave W, Unit A
6 Lynnwood, WA 98036

WILL TESTIFY

7 Mr. Webster is expected to testify consistently with his deposition as to his personal
8 observations of the residence in April 2015, including the lack of men's suits and apparel in the
9 master-bedroom closet.

10 13) Celina Kershner
11 1507 Rolling Hills Ave SE
12 Renton, WA 98055

WILL TESTIFY

13 Ms. Kershner is expected to testify consistently with her deposition as to when Fellows
14 lived with her, what Fellows disclosed to her regarding this loss and the damages, Fellows
15 relationship with Osborne, and Ms. Kershner's observations of the effect of the damages on
16 Fellows.

17 14) Robby Lee Dickerson
18 815 21st NE
19 Auburn, WA 98002

POSSIBLE WITNESS

20 Mr. Dickerson is expected to testify consistently with his deposition as to his personal
21 observations and personal knowledge of the relationship between Osborne and Fellows, his
22 observations (if any) of the damages to the residence, and his personal knowledge of domestic
23 violence between Fellows and Osborne.

24 15) Sheila Phillips
25 211 32nd Ave E
26 Seattle, WA 98112

POSSIBLE WITNESS

Ms. Phillips is expected to testify as to her personal observations and personal
observations and personal knowledge of the relationship between Osborne and Fellows, her
observations (if any) of the damages to the residence, and her personal knowledge of domestic
violence between Fellows and Osborne.

1 16) John Hill
2 3436 South 186th St
3 Seattle, WA 98188

POSSIBLE WITNESS

4 Mr. Hill is expected to testify consistently with his deposition as to his personal
5 knowledge and observations of the damages to the residence, and any resulting effects, or lack
6 thereof, on Fellows' emotional state.

7 17) Officer Shawn D. Crow, 7610
8 Seattle Police Department
9 610 5th Avenue
10 Seattle, WA 98124

WILL TESTIFY

11 Officer Crow is expected to testify consistently with his report prepared in October 2016
12 in connection with allegations of violations of the permanent protective order against Fellows in
13 that same month.

14 18) Claudia Lemon
15 IDS Property and Casualty Insurance Company
16 c/o Thenell Law Group, PC
17 12909 SW 68th Parkway, Suite 320
18 Portland, OR 97223

WILL TESTIFY VIA DEPOSITION

19 Ms. Lemon is expected to testify via video deposition regarding her involvement in the
20 claim investigation and claim handling, including directing other employees of IDS in the handling
21 of the claim as well as retaining and directing outside counsel to assist in the claim.

22 19) Tim Lasso
23 c/o Hinshaw's Honda
24 2605 Auburn Way North
25 Auburn, WA 98002

POSSIBLE WITNESS

26 Mr. Lasso is expected to testify consistently with his deposition as to his personal
observations and knowledge of Fellows' work performance and income.

~~20) Spencer Freeman
Freeman Law Firm, Inc.
1107 1/2 Tacoma Ave S
Tacoma, WA 98402~~

~~**POSSIBLE WITNESS**~~

~~Mr. Freeman is expected to testify as rebuttal to Fellows' witnesses who may provide
testimony regarding the reputation, habits, etc. of Daniel E. Thenell. Mr. Freeman will offer testify~~

1 regarding specific instances of claims involvement on behalf of policyholders on files involving
2 Mr. Thenell.

3 ~~21) Rico Tessadore~~ ~~POSSIBLE WITNESS~~
4 ~~Law Offices of Rico Tessadore~~
5 ~~4100 194th St. SW #215~~
6 ~~Lynnwood, WA 98036~~

7 ~~Mr. Tessadore is expected to testify as rebuttal to Fellows' witnesses who may provide
8 testimony regarding the reputation, habits, etc. of Daniel E. Thenell.~~

9 ~~22) Patrick H. LePley~~ ~~POSSIBLE WITNESS~~
10 ~~LePley Law Firm~~
11 ~~12600 SE 38th St., Suite 201~~
12 ~~Bellevue, WA 98006~~

13 ~~Mr. LePley is expected to testify as rebuttal to Fellows' witnesses who may provide
14 testimony regarding the reputation, habits, etc. of Daniel E. Thenell. Mr. LePley will testify about
15 two claims handling by Mr. Thenell where he represented the insureds.~~

16 ~~23) Brian Williams~~ ~~POSSIBLE WITNESS~~
17 ~~Hitt Hiller Monfils Williams~~
18 ~~411 SW 2nd Avenue, Suite 400~~
19 ~~Portland, OR 97204~~

20 ~~Mr. Williams is expected to testify as rebuttal to Fellows' witnesses who may provide
21 testimony regarding the reputation, habits, etc. of Daniel E. Thenell. Mr. Williams will discuss
22 several cases where he was involved in files that also involved Mr. Thenell, and one file involving
23 Mr. Taylor.~~

24 ~~24) Jillian Hinman~~ ~~POSSIBLE WITNESS~~
25 ~~Forsberg & Umlauf, PS~~
26 ~~901 Fifth Avenue, Suite 1400~~
~~Seattle, WA 98164~~

~~Ms. Hinman is expected to testify as rebuttal to Fellows' witnesses who may provide
testimony regarding the reputations habits, etc. of Daniel E. Thenell. Ms. Hinman will offer
testimony regarding her professional experience as an attorney in working with Mr. Thenell.~~

Pursuant to LCR 16(h)(5), IDS reserves the right to call additional witnesses for purposes

1 of rebuttal.

2 **B. Fellows' Witnesses**

3 1) Charles H. Fellows *WILL TESTIFY*
4 c/o Keller Rohrback LLP
5 1201 Third Avenue, Suite 3200
6 Seattle, WA 98101
7 Phone: (206) 623-1900

8 Mr. Fellows is the defendant in this action and has knowledge surrounding the substance
9 of events, the timeline of events, and intimate knowledge surrounding damage to his property.

10 2) Chad Giesen *WILL TESTIFY*
11 IDS property Casualty Insurance Company
12 c/o Thenell Law Group, PC
13 12909 SW 68th Parkway, Suite 320
14 Portland, OR 97223
15 Phone: (503) 372-6450

16 Mr. Giesen is an employee of IDS who has handled and worked on the Mr. Fellows' file.
17 Mr. Giesen has knowledge about the defendant's claim.

18 3) Robert Null *WILL TESTIFY*
19 IDS property Casualty Insurance Company
20 c/o Thenell Law Group, PC
21 12909 SW 68th Parkway, Suite 320
22 Portland, OR 97223
23 Phone: (503) 372-6450

24 Mr. Null is an employee of IDS who has handled and worked on the Mr. Fellows's file.
25 Mr. Null has knowledge about the defendant's claim.

26 4) Eric Michalak *WILL TESTIFY*
IDS property Casualty Insurance Company
c/o Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320
Portland, OR 97223
Phone: (503) 372-6450

Mr. Michalak is an employee of IDS who has handled and worked on the Mr. Fellows' file.
Mr. Michalak has knowledge about the defendant's claim.

5) Claudia Lemon *WILL TESTIFY*
IDS property Casualty Insurance Company
c/o Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320

Portland, OR 97223
Phone: (503) 372-6450

Ms. Lemon is an employee of IDS who has handled and worked on the Mr. Fellows' file.

Ms. Lemon has knowledge about the defendant's claim.

6) Jodi Helf **WILL TESTIFY**
IDS property Casualty Insurance Company
c/o Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320
Portland, OR 97223
Phone: (503) 372-6450

Ms. Helf is an employee of IDS who has handled and worked on the Mr. Fellows' file. Ms. Helf has knowledge about the defendant's claim.

7) Scott Wilson **WILL TESTIFY**
IDS property Casualty Insurance Company
c/o Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320
Portland, OR 97223
Phone: (503) 372-6450

Mr. Wilson is an employee of IDS who has handled and worked on the Mr. Fellows' file.

Mr. Wilson has knowledge about the defendant's claim.

~~8) Daniel E. Thenell **POSSIBLE WITNESS**
Thenell Law Group, PC
12909 SW 68th Parkway, Suite 320
Portland, OR 97223
Phone: (503) 372-6450~~

~~Mr. Thenell is a representative of IDS who has handled and worked on the Mr. Fellows' file. Mr. Thenell has knowledge about defendant's claim.~~

9) Eric Webster **WILL TESTIFY**
Lamb Hanson Lamb Appraisal Associates, Inc.
4025 Delridge Way SW, Suite 140
Seattle, WA 98106
Phone: (206) 838-1215

Mr. Webster appraised the subject property on April 14, 2015. Mr. Webster has knowledge of the state the property was in on that date.

10) Michael Elvidge **WILL TESTIFY**
10025 SE 192nd Place
Renton, WA 98055

1 Mr. Elvidge resides next door to the property. He would have knowledge of conversations
2 between himself and Michaela Fellows regarding the damage to the subject property.

3 11) Celina Kerschner **WILL TESTIFY**
4 Phone: (206) 859-7770

5 The defendant was residing with Ms. Kerschner at the time he discovered the damage to
6 the subject property. She would have knowledge as to his reaction to the discovery and
7 conversations she had with Mr. Fellows before he discovered the damage with regards to the
8 subject property.

9 12) John Ferguell **POSSIBLE WITNESSES**
10 Marcie Sako-Orme
11 John Ferguell, P.S.
12 555 West Smith Street, Suite 106
13 Kent, WA 98032
14 Phone: (206) 575-1401

15 John Ferguell is Mr. Fellows's divorce attorney and has knowledge of Mr. Fellows's
16 divorce action. Ms. Sako-Orme is a paralegal for Mr. Ferguell. Mr. Fellows phoned Ms. Sako-
17 Orme after discovering his home had been destroyed by Michaela Fellows.

18 13) Michela Osborne **POSSIBLE WITNESS**
19 Phone: (206) 931-5530

20 Ms. Osborne damaged the subject property.

21 14) Tom Lether **WILL TESTIFY**
22 Lether & Associates, PLLC
23 1848 Westlake Ave N, Suite 100
24 Seattle, WA 98109

25 Mr. Lether was retained by Mr. Fellows following IDS denial of Mr. Fellows's insurance
26 claim due to him not being listed as an insured on the policy. Mr. Colito and Mr. Lether may
testify as to their initial communications with IDS and their representative, Dan Thenell.

~~23 15) Kittis Eucher **POSSIBLE WITNESS**
24 c/o Patrick LePley
25 12600 SE 38th Street, Suite 201
26 Bellevue, WA 98006~~

~~Ms. Eucher has knowledge of the legislative history of RCW 48.18.550.~~

16) Tim Lasso
c/o Hinshaw's Honda
2605 Auburn Way North
Auburn, WA 98002
Phone: (253) 833-7900

POSSIBLE WITNESS

Mr. Lasso is the General Manager of Hinshaw's Honda and Mr. Fellows' employer. Mr. Lasso has knowledge of Mr. Fellows' contents loss.

17) Peter Camiel
Mair & Camiel, P.S.
710 Cherry Street
Seattle, WA 98104
Phone: (206) 624-1551

POSSIBLE WITNESS

Mr. Camiel is Mr. Fellows' criminal attorney and has knowledge of Mr. Fellows' criminal history.

~~18) R. Scott Taylor~~ ~~WILL TESTIFY~~
~~Taylor & Tapper Attorneys~~
~~400 E 2nd Avenue, Suite 103~~
~~Eugene, OR 97401~~
~~Phone: (541) 485-1511~~

~~Mr. Taylor has knowledge regarding Mr. Thenell's reputation for dealing with policyholders.~~

~~19) Devin Robinson~~ ~~WILL TESTIFY~~
~~Law Offices of Devin Robinson~~
~~1706 NW Glisan Street, Suite 5~~
~~Portland, OR 97209~~
~~Phone: (800) 921-4749~~

~~Mr. Robinson has knowledge regarding Mr. Thenell's reputation for dealing with policyholders.~~

~~20) Karen Koehler~~ ~~WILL TESTIFY~~
~~Stritmatter Kessler Whelan~~
~~3600 15th Ave W, Suite 300~~
~~Seattle, WA 98119~~
~~Phone: (206) 448-1777~~

~~Ms. Koehler has knowledge regarding Mr. Thenell's reputation for dealing with policyholders.~~

~~21) George Mix~~ ~~WILL TESTIFY~~
~~Mix Sanders Thompson~~

~~1420 5th Ave, Suite 2200
Seattle, WA 98101
Phone: (206) 521-5989~~

~~Mr. Mix has knowledge regarding Mr. Thenell's reputation for dealing with policyholders.~~

EXHIBITS

A. IDS's Exhibits

IDS intends to offer the following exhibits at trial:

Ex. No.	Description	Admissibility Stipulated	Authenticity Stipulated	Objection
1	IDS Homeowners Insurance Policy No. HI01499589	X	X	
2	Claim Log Notes	X	X	
3	Claims Correspondence	X	X	
4	State Specific Claims Manuals and Best Practices Guides for the State of Washington	X	X	
5	Photographs taken by IDS (Sept. 2015)	X		
6	Estimate prepared by Robert Null (Sept. 2015)	X		
7	IDS Field Report (prepared by E. Michalak in Sept. 2015)	X		
8	Certified Police Reports from Renton Police Dept. regarding charges and investigations of alleged violations of no-contact Protection Order against Fellows.			X
9	Order for Protection, Case No. 13-3-11851 KNT, Dated July 8, 2015	X		
10	Estimate prepared by Lawless	X		
11	Photographs taken by Lawless	X		
12	Transcript of Examination Under Oath of Charles Fellows (Nov. 5, 2015)	X	X	
13	Transcript of Examination Under Oath of Michaela Osborne (Dec. 18, 2015)	X	X	
14	Video of Examination Under Oath of Charles Fellows (Nov. 5, 2015)	X	X	
15	Video of Examination Under Oath of Michaela Osborne (Dec. 18, 2015)	X	X	
16	Seattle Police Report (Oct. 2016)			X
17	Personal Property List (M. Osborne EUO Ex. 1)		X	X
18	Defendant's Answers to Plaintiff's First Interrogatories and Requests For Production		X	X
19	Defendant's First Supplemental Answers to Plaintiff's First Interrogatories and Requests For Production		X	X

Ex. No.	Description	Admissibility Stipulated	Authenticity Stipulated	Objection
20	Defendant's Second Supplemental Answers to Plaintiff's First Interrogatories and Requests For Production		X	X
21	Defendant's Third Supplemental Answers to Plaintiff's First Interrogatories and Requests For Production		X	X
22	Defendant's Fourth Supplemental Answers to Plaintiff's First Interrogatories and Requests For Production		X	X
23	Defendant's Fifth Supplemental Response to First Interrogatories & Request for Production		X	X
24	Defendant's Sixth Supplemental Response to First Interrogatories & Request for Production		X	X
25	Defendant's Answers to Plaintiff's Second Requests For Production		X	X
26	Defendant's Answers and Objections to Plaintiff's Second Interrogatories and Third Requests For Production		X	X
27	Defendant's Answers to Plaintiff's Fourth Requests For Production		X	X
28	Defendant's Privilege Log RE: Letheremails_000001 to Letheremails_000959		X	X
29	Defendant's Privilege Log		X	X
30	10/28/13 Audio Call between IDS Mary DeGalan and Michaela Osborne – Audio Recording (IDS_000670)			X
31	09/01/15 Call between IDS Rep Adrian Flanagan and Michaela Osborne - Audio Recording (IDS_000671)	X	X	
32	09/01/15 Call between IDS Reps Amber Kiesling/Evan Brunner and Charles Fellows - Audio recording (IDS_000672)	X	X	
33	09/01/15 Call between IDS Reps April Lasecki/Corey Heim and Charles Fellows - Audio recording (IDS_000673)	X	X	
34	09/02/15 Call between IDS Rep April Lasecki and Charles Fellows - Audio recording (IDS_000674)	X	X	

Ex. No.	Description	Admissibility Stipulated	Authenticity Stipulated	Objection
35	09/02/15 Second call between IDS Rep April Lasecki and Charles Fellows - Audio recording (IDS_000675)	X	X	
36	09/10/15 Call between IDS Rep April Lasecki and Charles Fellows - Audio recording (IDS_000676)	X	X	
37	09/10/15 Call between IDS Rep Kevin Craddock and Michaela Osborne - Audio recording (IDS_000677)	X	X	
38	Client server email exchange regarding the handling of the subject claim (IDS_003572-IDS_003610)	X		
39	09/10/15 Letter & Complaint from Office of Insurance Commissioner to IDS	X		
40	09/16/15 Letter from Office of Insurance Commissioner to IDS	X		
41	09/18/15 Letter from IDS to Office of Insurance Commissioner	X		
42	09/01/15 Policy Cancellation IDS_000158	X		
43	10/28/10 Policy pending cancellation #AI00605086 IDS_004509			X
44	01/29/16 Letter from Daniel Thenell to Office of the Insurance Commissioner	X		
45	Keller Rohrback email exchange(s)			X
46	Karen Koelher Blog			X
47	Lear vs. IDS WD Wash. Case No. C14-1040 RAJ Summary Judgment Order dated January 11, 2017			X
48	<i>Reserved</i>			
49	<i>Reserved</i>			
50	<i>Reserved</i>			

Pursuant to LCR 16(h)(6), IDS reserves the right to submit additional exhibits as permitted by the Rules of this Court, including, but not limited to, exhibits introduced for the purposes of impeachment.

B. Fellows' Exhibits

In addition to several of the exhibits listed by IDS, Fellows will offer the following exhibits.

Ex. No.	Description	Admissibility Stipulated	Authenticity Stipulated	Objection
101	Order finding Osborne in Contempt	X	X	

Ex. No.	Description	Admissibility Stipulated	Authenticity Stipulated	Objection
102	Photographs of damage taken by Charles Fellows	X		
103	Lamb Hanson Lamb Appraisal	X		
104	Lamb Hanson Lamb photographs	X		
105	Tersuli bid	X		
106	Tubro bid	X		
107	Maxcare bid and photos	X		
108	Personal Property List			Plf's Ex. 17
109	Photos of personal property taken by Charles Fellows	X		
110	Renewal declarations May 10, 2012 through May 10, 2016	X	X	
111	Renton police report and photos dated August 31, 2015	X	X	
112	2015 09 01 Call between IDS Rep Adrian Flanagan and Michaela Osborne Audio Recording			Plf's Ex. 31
113	2015 09 01 Call between IDS Reps April Lasecki/Corey Heim and Charles Fellows Audio Recording			Plf's Ex. 33
114	2015 09 01 Call between IDS Reps Amber Kiesling/Evan Brunner and Charles Fellows Audio recording			Plf's Ex. 32
115	2015 09 02 Call between IDS Rep April Lasecki and Charles Fellows Audio recording			Plf's Ex. 34
116	2015 09 02 Call between IDS Rep April Lasecki and Charles Fellows Audio Recording			Plf's Ex. 35
117	2015 09 10 Call between IDS Rep April Lasecki and Charles Fellows Audio recording			Plf's Ex. 36
118	2015 09 10 Call between IDS Rep Kevin Craddock and Michaela Osborne			Plf's Ex. 37
119	IDS letter to insurance commissioner dated September 16, 2015			Plf's Ex. 3 Pg. 46
120	IDS letter to insurance commissioner dated September 18, 2015			Plf's Ex. 41
121	Transcript of Oral orders by King County Superior Court re preservations of home (Bench Trial June 30, 2015 and Presentation of Ruling July 8, 2015)			X
122	Washington Court of Appeals Opinion <i>In re Marriage of Fellows</i> , 196 Wn.App. 1073, 2016 WL 6948771 (Nov. 28, 2016)			X
123	Dismissal of charges entered November 19, 2015			X

Ex. No.	Description	Admissibility Stipulated	Authenticity Stipulated	Objection
124	Dismissal of charges entered December 19, 2016			X
125	Video of car circling cul-de-sac July 23, 2015	X		
126	Smart email dated December 10, 2014 (Fellows 002799)	X	X	
127	Letter letter to IDS dated September 15, 2015			Plf's Ex. 3 Pgs. 22-23
128	Thenell email dated September 18, 2015 (LEATHERFILE 000145-46)	X	X	
129	Colito letter to Thenell dated October 5, 2015			Plf's Ex. 3 Pgs. 1-2
130	Colito letter to Thenell dated October 13, 2015			Plf's Ex. 3 Pgs. 24-25
131	Thenell email dated October 13, 2015	X	X	
132	Colito letter dated October 20, 2015			Plf's Ex. 3 Pgs. 17-19
133	Thenell email dated October 21, 2015	X	X	
134	Thenell email dated October 27, 2015			Plf's Ex. 3 Pgs. 3-5
135	Colito emails dated November 2, 2015	X	X	
136	Thenell ROR letter dated November 4, 2015	X	X	
137	Thenell letter to Colito dated November 5, 2015	X	X	
138	Thenell letter to Colito dated November 10, 2015	X	X	
139	Colito letter to Thenell dated November 17, 2015			Plf's Ex. 3 Pgs. 20-21
140	Thenell email dated November 20, 2015	X	X	
141	Thenell letter dated December 3, 2015			Plf's Ex. 3 Pgs. 27-28
142	Email exchange between Colito and Thenell December 15, 2015	X	X	
143	Colito letter to Thenell dated December 16, 2015			Plf's Ex. 3 Pgs. 29-31
144	Colito letter to Thenell dated December 30, 2015	X	X	
145	Thenell email dated December 30, 2015	X	X	
146	Thenell letter dated January 15, 2016			Plf's Ex. 3 Pgs. 50-53
147	IFCA Notice and Notification Sheet dated January 12, 2016			Plf's Ex. 3 Pgs. 54-56
148	<i>Kirstyn Kono and Christopher Kono v. Pacific Star Insurance Company, et. al.</i>			X

Ex. No.	Description	Admissibility Stipulated	Authenticity Stipulated	Objection
	(King County Superior Court No. 12-2-30494-7 SEA) Findings of Fact, Conclusions of Law and Supplemental Order Granting Plaintiffs' Motion for Discovery Relief and Sanctions and to Compel Discovery dated October 18, 2013 and Order Granting Plaintiffs Motion for Discovery Relief and Sanctions and to Compel Discovery dated August 28, 2013			
149	<i>Espinoza v. American Commerce Ins. Co.</i> Yakima County Superior Court – Court's Ruling on In Camera Review of Claims File dated January 12, 2016			X
150	<i>Beck v. Metropolitan</i> , 2016 WL 4978411 (D. Or. Sep. 16, 2016)			X
151	Email between Will Smart and Ann Peterson/Anita Rosenthal dated December 10, 2014	X	X	
152	No. T97-4 Technical Assistance Advisory – October 31, 1997 (Subject: Denial of coverage to innocent co-insureds)			X
153	RCW 48.18.550			X
154	RCW 26.50.010			X
155	RCW 10.99.020			X
156	RCW 9A.48.070-.090			X
157	WAC 284-20-010			X
158	1943 New York Standard Fire Policy			X

Dated: March 13, 2017.

Dated: March 13, 2017.

THENELL LAW GROUP, PC

KELLER ROHRBACK L.L.P.


By: /s/ Daniel E. Thenell
Daniel E. Thenell, WSBA No. 37297
Email: Dan@ThenellLawGroup.com
Alexander H. Hill, *pro hac vice*
Email: AlexH@ThenellLawGroup.com
Of Attorneys for Plaintiff IDS Property and
Casualty Insurance Company

By: /s/ William C. Smart
William C. Smart, WSBA No. 8192
Email: WSmart@KellerRohrback.com
Ian S. Birk, WSBA No. 31431
Email: IBirk@KellerRohrback.com
Attorneys for Defendant Charles H. Fellows

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IT IS SO ORDERED.

Dated this 17th day of March, 2017.



THOMAS S. ZILLY
United States District Judge