

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AJAX PAVING INDUSTRIES, INC.,
a Florida corporation,

Plaintiff,

vs.

CASE NO.: 8:10-cv-02508-VMC-AEP
Judge: Virginia M. Hernandez Covington
Magistrate Judge: Anthony E. Porcelli

AMERICAN HOME ASSURANCE
COMPANY,

Defendant.

AMENDED COMPLAINT

Plaintiff, AJAX PAVING INDUSTRIES, INC., (hereinafter referred to as "AJAX") by and through undersigned counsel sues Defendant, AMERICAN HOME ASSURANCE, COMPANY, (hereinafter referred to as "AMERICAN") and alleges as follows:

GENERAL ALLEGATIONS
(JURISDICTION AND VENUE)

1. This is an action for damages that exceeds Fifteen Thousand Dollars (\$15,000.00) exclusive of interest, attorneys fees and costs.
2. AMERICAN is a New York corporation doing business in the State of Florida and Pinellas County, Florida; specifically selling policies of insurance in the State of Florida and Pinellas County, Florida.
3. AJAX is a corporation which at all times material to the above-styled cause of action was doing business in the State of Florida and Pinellas County, Florida .
4. Professional Staffing - A.B.T.S., Inc. is a Florida corporation with a principle place of business in Pinellas County, Florida and who has sued AJAX in the

lawsuit entitled Professional Staffing - A.B.T.S., Inc. v. Ajax Paving Industries, Inc., Case No. 07-1146CI-15, filed in the Sixth Judicial Circuit in and for Pinellas County, Florida. A copy of that Complaint is attached hereto and made a part hereof as Exhibit "1".

5. The cause of action at issue in Exhibit "1" arose out of an alleged personal injury which occurred in Estero, Lee County, Florida, however was subject to litigation in Pinellas County as set forth above.

COUNT I - BREACH OF CONTRACT

6. AJAX realleges and reincorporates paragraphs 1 through 5 above.
7. AJAX and AMERICAN entered into a contract of insurance which was in place at all times material to the issues set forth in this Complaint, Policy Number WC3676835. Policy Number WC3676835 was in effect from April 1, 2006 through April 1, 2007, a copy of which is in AMERICAN's possession.
8. AJAX was an insured or otherwise afforded coverage for the claims as alleged in Exhibit "1" under Policy Number WC3676835, and AMERICAN has a duty to defend and/or indemnify AJAX "in whole or in part" for the those causes of action set forth in Exhibit "1".
9. AJAX was sued by Professional Staffing- A.B.T.S., Inc., in the suit filed in the Circuit Court of the Sixth Circuit in and for Pinellas County, Case No. 07-1146CI-15 (Exhibit "1").
10. AJAX placed AMERICAN on notice to the lawsuit specifically tendering the lawsuit for defense and indemnification.
11. AMERICAN initially agreed to defend the lawsuit. AMERICAN also agreed with AJAX's request to use undersigned counsel of the Law Firm of Dickinson & Gibbons, P.A. (counsel chosen by AJAX) for the defense.
12. AMERICAN initially made good on its duty to defend AJAX by paying for the defense of the lawsuit set forth in Exhibit "1".

13. AMERICAN paid the invoices of Dickinson & Gibbons, P.A., (either by reimbursing AJAX or paying the invoices directly) specifically the following invoices:

- a. Invoice No.: 232479 dated 11/15/06
- b. Invoice No.: 234682 dated 09/27/07
- c. Invoice No.: 236522 dated 5/12/08
- d. Invoice No.: 237165 dated 7/29/09
- e. Invoice No.: 237827 dated 10/15/08
- f. Invoice No.: 238239 dated 12/1/09
- g. Invoice No.: 238563 dated 1/3/09
- h. Invoice No.: 238819 dated 2/13/09
- i. Invoice No.: 239315 dated 4/16/09
- j. Invoice No.: 239573 dated 5/5/09
- k. Invoice No.: 240754 dated 9/10/09

14. However, at some point in 2009, after specifically requesting that Dickinson & Gibbons, P.A. undertake various discovery actions tied to the defense of Professional Staffing's lawsuit, AMERICAN stopped paying for the defense of the lawsuit described in Exhibit "1". To date AMERICAN has refused to pay those invoices (either directly or by reimbursing AJAX). They are as follows:

- Invoice No.: 239890 dated 6/18/09
- Invoice No.: 240571 dated 8/17/09
- Invoice No.: 241235 dated 11/4/09
- Invoice No.: 241707 dated 1/5/10

15. AMERICAN was given every opportunity to pay the invoices over the course of a twelve (12) month period and repeatedly acknowledged its responsibility to defend its insured by paying for the defense and stated it would pay those invoices pursuant to its duty to defend, however failed to make good on those promises. At no time during this period did AMERICAN deny coverage or issue a reservation of rights to AJAX.

16. AMERICAN's refusal to pay the outstanding invoices in the amount of \$34,884.90 was a material breach of contract.
17. AJAX paid the defense fees and cost on August 31, 2010 and has continued to pay for the defense since that date.
18. As a direct and proximate result of AMERICAN's breach of contract, AJAX has suffered damages associated with paying those invoices in the amount of \$34,884.90.
19. Additionally, AMERICAN was provided invoices for court reporting services for deposition that they authorized be taken in the amount of \$1,349.65. Those invoices were sent directly to AMERICAN and asked that they pay the court reporters directly.
20. AMERICAN never objected to the invoices or indicated they would not pay them, however, failed to pay the court reporting services. The court reporting services threatened the Law Firm of Dickinson & Gibbons, P.A. with legal action and therefore Dickinson & Gibbons, P.A. paid those invoices in the total amount of \$1,349.65. AJAX has since paid for those defense costs.
21. AMERICAN's refusal to pay the invoices for the court reporting fees is a material breach of contract.
22. As a direct and proximate result of AMERICAN's breach of contract, AJAX has suffered damages associated with those invoices in the amount of \$1,349.65.
23. Additionally, on or about August 24, 2010 AMERICAN drafted correspondence to AJAX stating that there was no coverage for the above-referenced lawsuit attached as Exhibit "1". A copy of the correspondence is attached hereto and made a part hereof as Exhibit "2".
24. AMERICAN's refusal to pay for the defense of Exhibit "1" from January 1, 2010 through August 24, 2010 was a material breach of contract.
25. AMERICAN's refusal to provide AJAX a defense for the lawsuit from August 24, 2010 until the date to this Amended Complaint pursuant to Exhibit "2" is a material breach of contract.

26. As a direct and proximate result of AMERICAN's breach of contract, AJAX has suffered damages associated with the investigation and defense of Exhibit "1".
27. As a direct and proximate result of the breaches of contracts set forth above, AJAX has retained the Law Firm of Dickinson & Gibbons, P.A. and provided them authority to retain experts to investigate the claim set forth in Exhibit "1" and defend that lawsuit.
28. AMERICAN's refusal to indemnify AJAX in whole or in part for the damages associated with the lawsuit attached as Exhibit "1" is a material breach of contract.
29. As a direct and proximate result of that breach, AJAX has suffered damages associated with costs of investigating and defending Exhibit "1" and may potentially suffer damages associated with settling Exhibit "1" and any potential judgment that may flow from the lawsuit.
30. AJAX has performed all preconditions for purposes of filing this lawsuit or any such preconditions have been waived by AMERICAN.
31. AJAX is entitled to prejudgment interest on all liquidated damages.
32. Pursuant to Section 627.428 Florida Statutes, AJAX is entitled to attorneys fees, paralegal fees and court costs associated to bringing this litigation and defending the underlying claim attached as Exhibit "1".
33. AJAX has retained undersigned counsel and the Law Firm of Dickinson & Gibbons, P.A. and is obligated to pay them their reasonable fee for those services and reimburse them for costs incurred.
34. AJAX is entitled to prejudgment interest on all liquidated damages.

WHEREFORE, Plaintiff AJAX PAVING INDUSTRIES, INC. demands compensatory damages, attorneys fees, interest and costs from Defendant AMERICAN HOME ASSURANCE COMPANY.

COUNT II - DECLARATORY RELIEF

35. AJAX realleges and reincorporates Paragraphs 1 through 5 and 7 through 10 above as if fully set forth herein.
36. This is an action for declaratory judgment and relief filed for purposes of determining question of an actual controversy between AJAX and AMERICAN. This Court has jurisdiction in this matter pursuant to Chapter 86 Florida Statutes.
37. AMERICAN is obligated to defend and/or indemnify AJAX for the claims presented by Professional Staffing and their lawsuit attached hereto and made part hereof as Exhibit "1".
38. AMERICAN refused to defend and refuse to indemnify AJAX after being properly noticed of the action having the defense tendered to them.
39. AMERICAN is obligated to defend and/or indemnify AJAX for the claims presented in the lawsuit filed by Professional Staffing set forth in Exhibit "1" and any amendments thereto.
40. As a direct and proximate result of AMERICAN's denial of its obligations to defend and/or indemnify AJAX for the claims presented in the lawsuit attached hereto in Exhibit "1", AJAX has had to retain counsel to defend themselves as well as investigate the claims and furthermore have been forced to retain counsel to prosecute this action.
41. AMERICAN through its actions waived its right to control the defense of the lawsuit attached as Exhibit "1".
42. This is a claim for declaratory judgment for purposes of determining the obligations of AMERICAN under the policy of insurance that they issued to the Plaintiff concerning the Professional Staffing lawsuit. By reason of the aforementioned justiciable controversy exist between the parties relating to the legal rights and duties under the policy in question.

WHEREFORE, Plaintiff AJAX PAVING INDUSTRIES, INC. respectfully requests this Court enter a judgment determining the following:

- (a) Pursuant to the terms of the policy between AJAX and AMERICAN, AMERICAN is obligated to defend AJAX for the claims and damages sought in the underlying lawsuit attached as Exhibit "1" both in the past and in the future;
- (b) Due to AMERICAN's actions it is not only obligated to pay for the defense of AJAX but has waived its right to control that defense; therefore AJAX can defend the action set forth in Exhibit "1" through a law firm of its own choosing and its own defense strategy;
- (c) Pursuant to the terms of the policy between AJAX and AMERICAN, AMERICAN is obligated to indemnify AJAX for the claims and damages sought in the underlying lawsuit attached as Exhibit "1";
- (d) Pursuant to the terms of the policy at issue, AMERICAN is obligated to reimburse AJAX for all costs and attorneys fees as well as paralegal fees incurred as a result of their failure to provide a defense and/or indemnify AJAX in the past and in the future for the allegations in Exhibit "1";
- (e) Pursuant to Section 676.4828 Florida Statutes, AJAX is entitled to recover attorneys fees and costs from AMERICAN for the prosecution of this action;
- (f) Pursuant to Section 676.428 Florida Statutes, as well as any other applicable statutes and rules, AJAX is entitled to recover prejudgment interests on all liquidated damages as well as taxable cost.

COUNT III - PROMISSORY ESTOPPEL

- 43. AJAX realleges and reincorporates paragraphs 1 through 5 as well as paragraphs 7 through 15 above as if fully set forth herein.
- 44. During the approximately three (3) year period of time that AMERICAN undertook to defend its insured AJAX, it issued no reservation of rights

letters, no denial letters and at no time, indicated there were policy provisions which precluded coverage associated with its duties to defend.

45. On or about August 24, 2010, AMERICAN issued a denial letter for coverage. A copy of which is attached hereto and made a part hereof as Exhibit "2". That was the first evidence provided by AMERICAN that there were any coverage issues associated with its duty to defend and/or indemnify its insured, AJAX.
46. During this period of time, AMERICAN was also defending AJAX in a worker's compensation lawsuit entitled Medina as Personal Representative of the Estate of Juan Medina v. Ajax Paving Ind., Inc. State of Florida, Office of Judges of Compensation Claims, Case No. 07-015925KAS. It was defending AJAX through counsel that it hired Keith Pallo, Esquire. Through its appointed counsel, AMERICAN controlled the defense in the worker's compensation lawsuit filed by Juan Medina.
47. Additionally, AMERICAN had a second insured, in the Juan Medina worker's compensation lawsuit, specifically, Professional Staffing - A.B.T.S., Inc. However, Professional Staffing - A.B.T.S., Inc. had a policy of insurance which had a one million dollar (\$1,000,000.00) deductible.
48. AMERICAN in the Juan Medina worker's compensation litigation controlled both defenses and created a litigation strategy wherein the matter was settled such that its insured with a million (\$1,000,000.00) deductible, A.B.T.S., assumed liability of approximately \$1,000,000.00 in damages creating a scenario wherein AMERICAN paid no worker's compensation benefits in that litigation and shifted that exposure to its insured AJAX in the lawsuit of Professional Staffing - A.B.T.S., Inc. v. Ajax Paving Industries, Inc., Case No. 07-1146-CI-15.
49. During the period of time that it was involved in all the above-referenced lawsuits AMERICAN took no steps to settle the A.B.T.S. claim against AJAX, failing even to attend mediation.

50. During the period of time it was involved in the above-referenced lawsuits, AMERICAN assigned the same insurance adjuster to both lawsuits, therefore, was well aware of the consequences of its strategy and actions.
51. The manner which AMERICAN defended the Juan Medina worker's compensation litigation, and its failure to provide any reservation of rights letters or denial letters to its insured, AJAX, prejudiced AJAX.
52. Based on the actions of AMERICAN as set forth above, AMERICAN is now estopped from raising the defense of noncoverage and owes its insured AJAX a defense and/or indemnification in the case of Professional Staffing - A.B.T.S., Inc. v. Ajax Paving Industries, Inc., Case No. 07-1146-CI-15.
53. As a direct and proximate result of AMERICAN's actions, AJAX has suffered damages including but not limited to the cost of defense of the above-referenced litigation, and the potential for expanded liability in the lawsuit.
54. AJAX is entitled prejudgment interest on all liquidated damages.
55. AJAX has retained undersigned counsel and the Law Firm of Dickinson & Gibbons, P.A. and is obligated to pay the reasonable fees for services rendered.
56. Pursuant to Section 627.428 Florida Statutes, AJAX is entitled to attorneys fees, paralegal fees and court costs associated with bringing this litigation in defending the underlying claim attached as Exhibit "1".

WHEREFORE, Plaintiff AJAX PAVING INDUSTRIES, INC. demands compensatory damages, attorneys fees, interest and costs from Defendant AMERICAN HOME ASSURANCE COMPANY.

COUNT IV - BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

57. AJAX realleges and reincorporates paragraphs 1 through 5 and paragraphs 44 through 50 above as if fully set forth herein.
58. AMERICAN owed its insured AJAX an implied duty of good faith and fair dealing in which it handled the defense of the lawsuit of Professional Staffing

- A.B.T.S., Inc. v. Ajax Paving Industries, Inc., and Medina as Personal Representative of the Estate of Juan Medina v. Ajax Paving Ind., Inc.

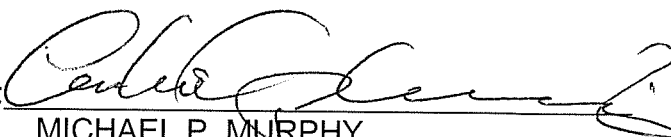
59. AMERICAN's actions wherein it failed to provide any reservation rights letters or denial letters for approximately three (3) years and in structuring the defense and settlement of the worker's compensation matter in such a manner that AMERICAN avoided any payments while knowingly subjected its insured to an additional \$1,000,000.00 worth of liability in the companion lawsuit while using the same insurance adjuster to coordinate the defense of both lawsuits was a material breach of its duty of good faith and fair dealing.
60. As a direct and proximate result of AMERICAN's breach of its duty of good faith and fair dealing, AJAX suffered damages including but not limited to the unpaid legal fees, the continuing defense of the Professional Staffing - A.B.T.S., Inc. v. Ajax Paving Industries, Inc., the potential for an additional \$1,000,000.00 worth of exposure and potential additional damages including but not limited to the unpaid legal fees, the continuing defense of the Professional Staffing - A.B.T.S., Inc. v. Ajax Paving Industries, Inc.
61. AJAX has retained undersigned counsel and the Law Firm of Dickinson & Gibbons, P.A. and is obligated to pay them their reasonable fee for those services.

WHEREFORE, Plaintiff AJAX PAVING INDUSTRIES, INC. demands compensatory damages, attorneys fees, interest and costs from Defendant AMERICAN HOME ASSURANCE COMPANY.

DEMAND FOR JURY TRIAL

Plaintiff AJAX PAVING INDUSTRIES, INC., demands a jury trial on all issues triable by jury.

DICKINSON & GIBBONS, P.A.

By: 

MICHAEL P. MURPHY
401 N. Cattlemen Road, Suite 300
Sarasota, FL 34232
Florida Bar No. 020407
(941) 366-4680
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on April 7th, 2011, I electronically filed the foregoing document with the Clerk of the court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

DICKINSON & GIBBONS, P.A.

By: 

MICHAEL P. MURPHY
401 N. Cattlemen Road, Suite 300
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Florida Bar No. 020407
(941) 366-4680
Counsel for Plaintiff

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL CASE NO.

PROFESSIONAL STAFFING-A.B.T.S., INC.,
a Florida corporation,

Plaintiff,

vs.

AJAX PAVING INDUSTRIES, INC.,
a Florida corporation,

Defendant.

COMPLAINT

Plaintiff, PROFESSIONAL STAFFING-A.B.T.S., INC. ("ABLE BODY"), by and through its undersigned legal counsel, hereby sues Defendant AJAX PAVING INDUSTRIES, INC. ("AJAX") and alleges the following:

General Allegations

1. At all times material hereto, ABLE BODY was a lawfully existing Florida corporation actively engaged in business in Pinellas County, Florida as a temporary help supply services company as contemplated by Standard Industry Code Industry Number 7363 or its current equivalent.



2. A temporary help supply services company acts as a "general employer" who employs persons who are assigned by the temporary help supply services company to its customers, who become "special employers" of the borrowed servants loaned by the temporary help supply services company.

3. At all times material hereto, AJAX was a lawfully existing Florida corporation engaged in business throughout the State of Florida, Florida.

4. Prior to August 24, 2006, AJAX and ABLE BODY had a business relationship pursuant to which ABLE BODY provided temporary workers to AJAX for AJAX's use in its business.

5. The terms and conditions of the relationship between AJAX and ABLE BODY are set forth in the Conditions of Service section of the Work Order delivered to AJAX with each assignment of workers by ABLE BODY to AJAX.

6. The aforementioned Conditions of Service provide, in paragraph 4 thereof, that AJAX understood and agreed, among other things:

a. That it was AJAX's "obligation to make sure that ABLE workers are safe on the jobsite";

b. That AJAX was "responsible for directing, controlling, supervising, and instructing ABLE workers in such a way that no ABLE worker...are put in jeopardy of physical harm";

c. That the aforementioned responsibility included but was not limited to "complying with all applicable laws of any kind relating to health and safety on the job site and providing any and all safety equipment, clothing, devices, and training necessary or required for any work to be performed" by those workers under AJAX's direction, control, and supervision;

d. That AJAX would not "alter the job duties of ABLE workers" without ABLE BODY's permission; and

e. That AJAX would "notify ABLE before any ABLE workers are permitted to work with, near, around or otherwise be exposed to any hazardous or dangerous...conditions, even if notice is not otherwise required by law."

7. On August 24, 2006, ABLE BODY employed, among others, one Juan Medina as a temporary worker available for assignment to ABLE BODY customers.

8. On or before August 24, 2006, AJAX requested that ABLE BODY furnish AJAX with temporary workers for use by AJAX on the Coconut Point Mall project as to which AJAX was a general or subcontractor under contract with Bovis Lend Lease.

9. ABLE BODY in fact provided AJAX on August 24, 2006 with the requested temporary workers at the specified address and at that time relinquished to AJAX the care, custody, and control over the workers. Juan Medina was one of the workers provided by ABLE BODY to AJAX on August 24, 2006.

10. Upon information and belief, it was a part of AJAX's standard policy and construction site protocol that no persons were to be permitted to ride in the cargo area of any

vehicles deployed or used by AJAX in furtherance of its contractual undertakings.

11. Despite the aforementioned policy, AJAX through its authorized supervisory employees on the job site to which Juan Medina was assigned, allowed him to occupy the cargo area of a motor vehicle deployed in furtherance of AJAX's business at the Coconut Point Mall job site on August 24, 2006.

12. While seated in the cargo area of the truck during what upon information and belief was a low-speed journey from one point of the job site to another, Juan Medina fell from the back of the truck, striking his head forcibly on the ground and suffering serious, debilitating head injuries.

13. Venue is proper in Pinellas County, Florida because all damage suffered by ABLE BODY is suffered in Pinellas County.

Count I - Action for Declaratory Judgment

14. This is an action seeking a declaratory judgment that AJAX is the statutorily responsible employer under Chapter 440, Florida Statutes, for the October 4, 2006 industrial accident and injuries suffered by Juan Medina.

15. ABLEBODY realleges and incorporates by reference the allegations of paragraphs 1 through 13 above as if fully set forth herein.

16. Pursuant to Florida Statute §440.11(2), AJAX is considered to be the responsible employer of Juan Medina and as such AJAX is responsible for securing the payment of workers' compensation benefits for Juan Medina as provided by Chapter 440, Florida Statutes.

17. Although Florida Statute §440.11(2) purports to relieve AJAX of the obligation to secure workers' compensation coverage when ABLE BODY has secured such coverage, this exception is inapplicable when ABLE BODY's workers' compensation coverage does not extend to an employee assigned to an ABLE BODY customer because of a customer-driven deviation from the course and scope of duties without the prior knowledge and consent of ABLE BODY.

18. Juan Medina, though employed by ABLE BODY at the commencement of work on August 24, 2006, completely left the course and scope of such employment upon AJAX's unilateral act of permitting Juan Medina to ride in the cargo area of a truck in direct violation and contravention of AJAX's own policy, upon which ABLE BODY relied.

19. By reason of the foregoing, AJAX was at all material times on August 24, 2006 the sole employer responsible for Juan Medina, his accident, and his injuries.

WHEREFORE, ABLE BODY respectfully prays this Honorable Court will enter its judgment declaring as follows:

- A. That the Court has jurisdiction over AJAX and the subject matter of the issues presented by the prayer for declaratory relief;
- B. That AJAX was the sole employer of Juan Medina on August 24, 2006;
- C. That AJAX is the sole employer responsible for securing payment of all compensation and benefits due Juan Medina under Chapter 440, Florida Statutes, as a result of the August 24, 2006 accident suffered by Juan Medina;
- D. Awarding such other and additional relief as the Court may deem proper and just.

Count II - Action For Contractual Indemnity

20. This is an action for contractual indemnity seeking damages which are in excess of \$15,000 exclusive of interest, costs, and attorney's fees.

21. ABLE BODY realleges and incorporates by reference the allegations of paragraphs 1 through 13 above as if fully set forth herein.

22. Pursuant to the Conditions of Service on the Work Order which constituted the contract between ABLE BODY and AJAX on August 24, 2006 regarding the provision of workers including Juan Medina, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, AJAX expressly agreed to the obligations set forth in Paragraph 6 of this Complaint.

23. Furthermore, AJAX also agreed as a part of the Conditions of Service that it would indemnify and hold ABLE BODY harmless against any and all loss and damages arising from AJAX's breach of any obligations under the Conditions of Service.

24. AJAX breached its obligations by, though not limited to, allowing Juan Medina to occupy the cargo area of a truck while the truck was in motion in direct violation of and contravention of AJAX's own policy against the same, which ABLE BODY relied upon.

25. Had AJAX, in direct violation and contravention of its own policy against allowing workers to occupy the cargo areas of trucks, not allowed Juan Medina to do so, Juan Medina's injuries would either not have occurred or would have been substantially less severe

than did occur.

26. As a direct and proximate result of AJAX's breaches of contract as hereinabove alleged, ABLE BODY has suffered damage including though not limited to the following:

a. The costs of providing workers' compensation benefits to Juan Medina, which as of the date of filing this Complaint have already exceeded \$150,000 and will continue to mount;

b. The ancillary costs of providing workers' compensation benefits to Juan Medina, including increased collateral requirements imposed by ABLE BODY's workers' compensation insurance carrier as well as the impact on ABLE BODY's loss history which affect collateral requirements on future workers' compensation insurance policies.

c. The impact on ABLE BODY's financial statements resulting from having to post a reserve on the company financial ledgers for the liability to Juan Medina under Chapter 440, Florida Statutes.

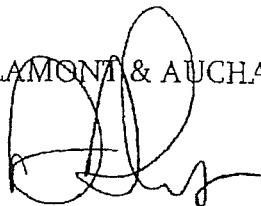
27. ABLE BODY has been forced to engage the services of the undersigned legal counsel to bring and prosecute this action and has agreed to pay fees therefor, and AJAX is responsible for ABLE BODY's reasonable attorney's fees under the Conditions of Service.

28. All conditions precedent to the maintenance of this action have been satisfied or waived.

WHEREFORE, ABLE BODY demands judgment against AJAX for compensatory damages, present and continuing, together with the costs of this action, a reasonable attorney's

fee, and such other and additional relief as this Honorable Court may deem proper and just.

LAMONT & AUCHAMPAU, P.A.



BY: DAVID A. LAMONT, ESQUIRE

P.O. Box 6026

Clearwater, FL 33758

PH: 727-772-7344 / FAX: 727-771-0841

SPN 853832/FBN 747378

Attorneys for Plaintiff

OPE014 05/17/06



3507815

WORK ORDER

ALABAMA: Birmingham, Dothan, Mobile ARIZONA: Glendale, Mesa, Phoenix COLORADO: Aurora, Denver DELAWARE: Georgetown, FL ORIDA: Arcadia, Auburndale, Bonita Springs, Bradenton, Brandon, Brooksville, Bunnell, Clearwater, Crestview, Dade City, Daytona Beach, Deltona, Springs, Ft. Lauderdale, Ft. Myers, Ft. Pierce, Ft. Walton Beach, Gainesville, Gibsonton, Haines City, Hernando, Hialeah, Hollywood, Hudson, Jacksonville, Jupiter, Kissimmee, Lake City, Lake Worth, Lakeland, Largo, Leesburg, Melbourne, Miami, Naples, Ocala, Orlando, Panama City, Pensacola, Pinellas Park, Plant City, Pompano Beach, Port Charlotte, St. Augustine, St. Petersburg, Sanford, Sarasota, Shuan, Tallahassee, Tampa, Tarpon Springs, Tavares, Titusville, Valchylia, West Palm Beach GEORGIA: Atlanta, Cartersville, Columbus, Doraville, Macon, Savannah KENTUCKY: Lexington LOUISIANA: Baton Rouge, Hammond, Lake Charles, Metairie MISSISSIPPI: Biloxi, Jackson, Gulfport NEVADA: Las Vegas NEW YORK: Albany, Glens Falls, Schenectady, Troy NORTH CAROLINA: Boone, Charlotte, Fayetteville, Greensboro, Hickory, Jacksonville, Newton, Raleigh, Wilmington SOUTH CAROLINA: Conway, Greenville, Myrtle Beach, North Charleston, West Columbia TENNESSEE: Chattanooga, Memphis, Nashville TEXAS: Austin, Beaumont, Dallas, Ft. Worth, Houston, Irving, Rosenberg, San Antonio, Temple, Waco VIRGINIA: Norfolk

Date: 8/24	Time:	No. of Workers: 3	Job Description:
Company: Guy's Pizzeria		Boca Raton, FL	
Job Site Name:		Executive Plaza	
Job Site Address:		Executive Plaza	
Report To:		Phone Number:	
Employee Name:		Hrs Worked (to 1/4 hrs):	
Royal Jensen		8	
Bryan Jones		2 1/2	
John Medina		2 1/2	
Total Hours To Be Paid Workers		How many workers needed tomorrow?	
Total Hours To Be Billed to Company		Time needed?	
Please Call With Any Comments Or Questions			
Customer agrees to the terms and conditions set forth on the reverse side hereof and certifies that the listed employees have satisfactorily performed services for the hours shown above and for the bill rate(s) previously agreed upon. Customer also acknowledges that it is Able Body's policy to provide equality of opportunity for all employees regardless of race, color, religion, sex, national origin, age, physical or mental disabilities, or sexual orientation. Able Body's policy applies with equal force to the assignment of employees to customer and will be strictly enforced. Able Body will not tolerate discrimination against or harassment of our employees.			
Print Name & Title		Authorized Signature	

**IMPORTANT
DO NOT GIVE
WORKERS MONEY.
GIVE WORKERS
SIGNED YELLOW,
PINK & BLUE
COPIES.**

FORM MUST BE SIGNED!

DISPATCH

EXHIBIT

CONDITIONS OF SERVICE

2187075

The Company (Customer) designated hereon confirms its agreement with ABLE BODY LABOR (ABLE) to the following terms and conditions of services rendered by ABLE now or in the future:

1. ABLE will provide ABLE workers to Customer provided that ABLE has sufficient workers. ABLE will, at no charge to Customer, replace any worker ABLE has furnished so long as the reason for Customer's rejection of the worker does not violate any law and Customer notifies ABLE of Customer's desire for a replacement worker within two (2) hours after the worker has arrived at the location to which Customer asked ABLE to send him or her.
2. ABLE will decide how much to pay its workers and will withhold and pay all taxes required by law. Customer will not promise to pay or actually pay ABLE workers different wages or benefits than ABLE provides them or promise to have ABLE change pay or benefits.
3. ABLE will maintain workers' compensation insurance as required by state law for its workers.
4. ABLE provides Customer with workers on a temporary basis for use by Customer in its business. It is Customer's obligation to make sure that ABLE workers are safe on the job site. Customer is responsible for directing, controlling, supervising, and instructing ABLE workers in such a way that no ABLE worker or other person or personal property on, near, or around the job site are put in jeopardy of physical harm. This obligation includes, but is not limited to, complying with all applicable laws of any kind relating to health and safety on the job site and providing any and all safety equipment, clothing, devices and training necessary or required by law for any work to be performed by Customer's and ABLE workers as well as ensuring that such workers wear, follow, or utilize the same. Customer will take all reasonable steps to make sure that its officers, employees, agents, servants, independent contractors, and subcontractors act with due care toward ABLE workers. Customer will not alter the job duties of ABLE workers as noted on the front hereof without ABLE's prior written permission. Customer will notify ABLE before any ABLE workers are asked or permitted to work with, near, around, or otherwise be exposed to any hazardous or dangerous substances or conditions, even if notice is not otherwise required by any law.
5. Customer will not hire ABLE employees for permanent, part-time or temporary positions or refer ABLE employees to other temp agencies, employers, contractors or subcontractors for hire, or participate in any way in the recruitment of ABLE employees by other temp agencies, employers, contractors or subcontractors, prior to any such employee completing six (6) months working exclusively with Customer. Customer hereby agrees to pay to ABLE the sum of \$2,500.00 as an agreed employment placement fee for any violation.
6. Customer will not allow ABLE workers to work with or around unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secrets, negotiable instruments, or other valuables without ABLE's prior written permission. ABLE will not be responsible for losses suffered by Customer unless such written permission exists and such claims are reported in writing to ABLE and to the local police by the Customer within twenty-four (24) hours after notice of loss.
7. ABLE's insurance does not cover claims of ABLE employees under the Jones Act. Customer agrees that it will not utilize any ABLE employee in any way which may result in an ABLE employee being classified as a seaman under the Jones Act. Customer releases ABLE from all liability for claims of ABLE employees under the Jones Act.
8. Customer will obtain ABLE's written permission before Customer allows any ABLE worker to operate any machinery, equipment, or vehicles. If ABLE grants permission, Customer will make sure that any machinery, equipment, or vehicles to be used by ABLE workers are safe and modified from their original production condition and are not otherwise lacking reasonable and necessary protective devices. ABLE's insurance does not cover, damage to, or loss of use of Customer's owned, non-owned, or leased vehicles (including contents and cargo), machinery, equipment, material while being used by or in the care, custody or control of ABLE employees. Customer releases ABLE from all liability for claims of damages to, loss of or loss of use of Customer's owned, non-owned, or leased vehicles (including contents and cargo), machinery, equipment or material while being used by or in the care, custody, or control of ABLE employees.
9. Customer will indemnify and hold ABLE harmless from any and every kind of damage, fine, penalty, and loss, including attorney's fees, that ABLE is or might be required to pay because of Customer's failure to do any of the things it has agreed to do in this Work Order. Customer will not assert any defense of immunity based upon any workers' compensation laws that might otherwise apply. Customer waives any and all rights of subrogation or indemnity Customer may have against ABLE by virtue of any claims which may arise as a result of services performed in connection with this Work Order. Customer will carry all available insurance coverages necessary to ensure that ABLE is indemnified as agreed. ABLE does not agree to waive any rights of subrogation against Customer nor to indemnify Customer against anything other than ABLE's negligence and then only to the extent of ABLE's negligence. This Work Order supercedes and takes precedence over anything Customer may ask ABLE to sign, whether before or after execution of this Work Order.
10. ABLE reserves the right to increase any agreed-upon bill rate to account for increases in the wage ABLE must pay its workers for overtime or for governmentally mandated wages.
11. This Work Order constitutes the contract between ABLE and Customer and shall constitute ABLE's legal demand for payment by Customer of charges due for the workers' hours set forth on the reverse hereof. At Customer's request and solely as a matter of convenience to Customer, ABLE may allow Customer to pay on terms longer than daily. In such case, ABLE will provide Customer on not less than a monthly basis an invoice for the aggregate charges Customer owes ABLE for workers provided. Customer will pay interest on its account balance at the higher of one and one-half percent (1 1/2%) per month (18% per annum) or the highest rate allowed by state law. Interest will begin accruing as of the date of the invoice. Payment is due at ABLE's Corporate Office at 30750 U.S. Highway 19 North, Palm Harbor, Florida 34884. If ABLE allows Customer to pay at a local ABLE office, payment is still legally due at the ABLE Corporate Office. Customer may not and will not condition payment to ABLE on receipt of any general release of claims other than those related to lien rights on property or claims against payment bonds that arise under state or federal law.
12. If for any reason Customer disputes any Work Order or Invoice, Customer will notify ABLE in writing before payment is due that there is a dispute and what the dispute is about. Notice of the dispute will be sent to ABLE's Corporate Office to the attention of the Credit Department at 30750 U.S. Highway 19 North, Palm Harbor, Florida 34884. Customer's failure to give timely written notice of the dispute is a waiver of the dispute. Customer waives all rights to dispute the authenticity of signatures on any Work Order and the authority of the person signing to legally bind Customer to these terms and conditions unless Customer has previously provided a written list of all persons authorized to sign Work Orders for Customer and the person signing is not on this list of persons authorized to sign.
13. An election not to exercise any right given under this Work Order does not preclude that party from exercising the same or any other right at any other time. If some portion of this Work Order is made unlawful for any reason, this Work Order will still be valid and enforceable and the portion made unlawful will be modified to comply with the new law. This Work Order contains everything that the parties have agreed to. Nothing that the parties may have discussed before this Work Order was issued is binding unless it is in the Work Order. Nothing the parties may discuss after this Work Order is signed is binding unless the discussions are put in writing and signed by ABLE. If Customer has a dispute with ABLE with a written contract for ABLE to sign either before or after workers are provided to Customer by ABLE, these terms shall prevail over any such contract in the event of a conflict between them.
14. If either party hires an attorney to enforce any term of this Work Order, the prevailing party shall be entitled to recover from the losing party any and all costs, as well as a reasonable attorney's fee through all trial and appellate levels, whether in state or federal court. Venue for any state court litigation arising hereunder shall be exclusively in Pinellas County, Florida and any federal court litigation shall be exclusively in the Middle District of Florida, Tampa Division. This choice of venue is intended by the parties to be mandatory and not permissive. Customer waives any right it may have to assert the doctrine of forum non conveniens or any similar doctrine or to object any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts mandated by this venue selection shall have in personam jurisdiction and venue over it for the purpose of litigation arising out of or related to this Agreement.

10379810

EXHIBIT

A

Chartis
175 Water Street 6th Floor
New York, NY 10038
212-458-2701 Telephone
866-653-0045 Facsimile
www.Robert.Lombardi@chartisinsurance.com



August 24, 2010 CMRRR 70042510000474971906

Ajax Paving Industries
510 Gene Green Road
Nokomis, FL 34275

RE: Case caption: Professional Staffing – A.B.T.S, Inc. v. Ajax Paving Industries, Inc.

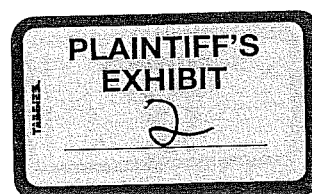
**Insured: Ajax Paving Industries
Policy Nos: WC3676835
Our File #: 709-861414**

Dear Sirs:

Chartis Claims Inc., (formerly known as AIG Domestic Claims, Inc.) a member company of Chartis Inc., is the claims administrator handling claims arising under the Workers Compensation and Employers Liability policy number 3676835 issued to Ajax Paving Industries by American Home Assurance Company, a member underwriting company of Chartis.

The purpose of this letter is to advise you of our position regarding insurance coverage as it relates to the lawsuit brought by Professional Staffing – A.B.T.S., Inc. Chartis Claims Inc. on behalf of American Home Assurance Company advises that there is no coverage under the above referenced policy for the claims made by Professional Staffing – A.B.T.S in the aforesaid suit. After you have reviewed the letter, if there is additional information you would like me to consider please forward me same. Also, if you have any questions about the letter, please contact me.

Please note that this letter is to address **only** the lawsuit brought by Professional Staffing- A.B.T.S. against Ajax Paving Industries, Inc. in 2007 in the Circuit Court of the State of Florida, County of Pinellas under docket number 07-1146CI-15. By separate letter we will address coverage for the suit filed by Franco Medina As Personal Representative of the Estate of Juan Media against Ajax Paving, Inc., et al filed in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, FL bearing docket number 10-CA-001831.



In considering your request for coverage, we have reviewed the insurance policy referenced above, as well as the allegations asserted. No other policies were considered. If you assert a right to coverage under another policy issued by any other member company of Chartis, please submit notice pursuant to the notice provisions contained in that policy.

Based upon our review of the Complaint, below is a summary of the allegations against Ajax Paving Industries. Count I of the Complaint seeks a declaratory ruling that Ajax is the statutorily responsible employer of Juan Medina under Chapter 440, Florida Statutes. We have been advised by your counsel that this count was dismissed by the Circuit Court and that the questions of employment were referred to Workers Compensation court.

Count II of the complaint is an action for breach of contract and avers that Ajax breached the Conditions of Service on the Work Order which constituted the contract between Professional Staffing and Ajax. Professional Staffing claims that the aforesaid agreement to provide temporary workers was breached when Juan Medina was allowed to occupy the cargo area of a truck while the truck was in motion. Further Professional Staffing alleges that Ajax agreed as part of the Conditions of Service that it would indemnify Professional Staffing against any loss arising from this breach of the Conditions of Service.

American Home Assurance Company issued to Ajax Paving Industries a Workers Compensation and Employers Liability policy no. 3676835, effective dates April 1, 2006 to April 1, 2007. Attached to this letter are the relevant policy provisions for convenient review. Kindly refer to the policy for its complete terms and conditions.

Pursuant to Exclusion 1 in section C of the policy there is no coverage for liability assumed under the contract. As the only surviving claim in the complaint specifically concerns Ajax Paving Industries' contractual obligation to professional staffing with regards to the transportation of temporary workers, there is no coverage under the aforesaid policy for this complaint.

Based upon the facts presented, and the policy terms and provisions, we must regrettably disclaim coverage for the claims presented. This letter is not intended to be exhaustive or exclusive, but under the circumstances and facts as outlined in the Complaint, and in light of the various definitions, exclusions and conditions contained within your policy, we must respectfully advise you that Chartis Claims on behalf of American Home Assurance Company will not provide you a defense with regard to this complaint, nor will we indemnify you for any settlement, verdict or judgment awarded as a result.

American Home Assurance Company's coverage position is based on the information presently available to us. This letter is not, and should not be construed as, a waiver of any terms, conditions, exclusions or other provisions of the Policy, or any other policies of insurance issued by American Home Assurance Company or any of its affiliates. American Home Assurance Company expressly reserves all of its rights under the Policy,

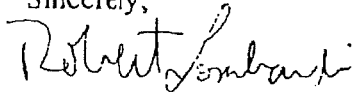
including the right to assert additional defenses to any claims for coverage, if subsequent information indicates that such action is warranted.

Should you have any additional information that you feel would either cause us to review our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible. Also, if you are served with any additional demands or amended complaints or pleadings, please forward them to us immediately, so that we can review our coverage position. If you wish to have your own personal counsel become involved in this matter, at your own expense, please feel free to do so, and we will cooperate fully with such counsel.

If you have any other insurance policies, which may respond to this claim asserted, you should notify that carrier immediately.

In closing, allow me to reiterate that we value you as a customer and encourage you to contact us should you have any questions or concerns regarding the contents of this letter. Thank you for your cooperation in this matter.

Sincerely,



Robert Lombardi, CPCU
Complex Director

CC

Arthur J. Gallagher Risk
Management Services, Inc.
The Gallagher Centre
Two Pierce Place
Itasca, IL 60143-3118

Lamont & Auchampau, PA
PO Box 6026
Clearwater, FL 33758

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner; ...

....

EXHIBIT 1

THIS DOCUMENT CONTAINS EXCERPTS FROM THE APPLICABLE POLICY. YOU SHOULD REFER TO THE POLICY FOR ITS COMPLETE TERMS AND CONDITIONS

PART TWO EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in 3.A. of the Information Page. (NY)
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover damages claimed against that third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and