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Clerk of the Court
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DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA INSURANCE GUARANTY
ASSOCIATION, a non-profit, unincorporated
Nevada entity,

Plaintiff,

vs.

MGM/MIRAGE, a Delaware Corporation;
STEEL ENGINEERS, INC., a Nevada
Corporation; and DOE CORPORATIONS I - X,

Defendants.

Case no. A512004
Dept. XI

Date of Hearing: 2/13/07
Time of Hearing: 9:00 a.m.

ERRATA TO DEFENDANT SEI'S REPLY TO
PLAINTIFF'S RESPONSE TO DEFENDANT'S
COUNTER-MOTION FOR SUMMARY JUDGMENT

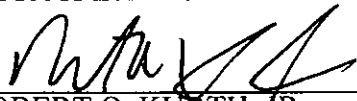
COMES NOW the Defendant, STEEL ENGINEERS, INC. ("SEI"), by and through its
counsel, Robert O. Kurth, Jr., of the KURTH LAW OFFICE, and hereby files its Errata to its Reply to
Plaintiff's Response to Defendant's Counter-Motion for Summary Judgment. This Errata is being
submitted because Exhibits "B" and "C" were not attached to SEI's Reply. As such, see AB 338

RECEIVED
FEB 13 2007
CLERK OF THE COURT

1 **Section Summary**, attached and incorporated as SEI's Exhibit "B"; see also Minutes of the Senate
2 **Committee on Commerce and Labor**, attached and incorporated as SEI's Exhibit "C."

3 DATED this 13th day of February, 2007.

4 **Respectfully Submitted by,**
5 **KURTH LAW OFFICE**

6 
7 ROBERT O. KURTH, JR.
8 Nevada Bar No. 4659
9 Attorney for Defendant,
10 STEEL ENGINEERS, INC.

11 **CERTIFICATE OF SERVICE**

12 I HEREBY CERTIFY that on the 13th day of February, 2007, I served a true and correct
13 copy of the foregoing **ERRATA TO DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO**
14 **DEFENDANT'S COUNTER-MOTION FOR SUMMARY JUDGMENT** in the above-entitled case
15 by hand delivery to the following:

16 James H. Randall
17 Michael K. Wall
18 HUTCHINSON & STEFFEN, LLC.
19 10080 West Alta Drive, Suite 200
20 Las Vegas, NV 89145
21 Attorneys for Plaintiff

22 S. Denise McCurry, Esq.
23 3260 Industrial Rd.
24 Las Vegas, NV 89109
25 Attorneys for Defendant,
26 MGM Mirage

27 
28 An employee of **KURTH LAW OFFICE.**

EXHIBIT B

AB 338 Section Summary

- Section 1. Title 57 is amended by adding sections 2-16, concerning *Discount Health Plans*:
- Sec. 2. Transitional language adding definitions found in sections 3 and 4.
- Sec. 3. Defines "Discount health plan."
- Sec. 4. Defines "Provider of health care."
- Sec. 5. Establishes the Commissioner's exclusive jurisdiction to regulate discount health plans.
- Sec. 6. Establishes requirements for registering as a discount health plan in Nevada.
- Sec. 7. Establishes requirements for registration, including: completed application; \$500 registration fee; names; contact info and bios on key personnel in the plan; complete biographical statement describing facilities, employees and services; copy of all contracts between applicant and networks of providers of health care; copy of most recent financial statements audited by an independent certified public accountant; description of marketing activities; description of the procedures for complaint handling by the applicant; any other information required by the Commissioner. The renewal registration requires an annual fee of \$500 and any other information required by Commissioner. Authorized insurers in Nevada are not required to pay fees for registration.
- Sec. 8. Prohibits discount health plans from: using the word "insurance" in advertising or marketing materials; using insurance terms such as "co-pay, preexisting conditions, PPO, etc." in any materials which could mislead consumers; paying a provider of health care any fee for a medical service; collecting or accepting money from a member for specific services to be provided unless authorized unless the Commissioner expressly approves.
- Sec. 9. Establishes the method of disclosure and requires discount health plan to disclose: the plan is not a health insurance policy; the plan provides discounts from providers; the plan does not make payments directly to the providers; the member will be required to pay for services but will receive a discount from the contracted provider; must disclose the corporate name, locations and address of the plan; must provide a telephone number where the member can obtain information and answers to complaints.
- Sec. 10. Requires that disclosures be in 12-point type or same as the largest type on page, whichever is larger.
- Sec. 11. Requires that each plan maintain a net worth of at least \$100,000.
- Sec. 12. Establishes the administrative penalties assessed each person if he: solicits, markets, etc. without proper registration or fails to provide required disclosures in section 9; fails to make available: a toll-free phone number; complete and accurate list of providers; or fails to update the list at least every six months.
- Sec. 13. Provides that violators may be punished with an administrative fine of up to \$2,000 for each act or violation not to exceed an aggregate of \$10,000 for violations of a similar nature.

Sec. 75. Identical to section 74, but becomes effective on the date on which the provisions of 42 U.S.C. § 666 are repealed by the Congress of the United States.

Sec. 75.3. By amending the recovery fee from \$15 to a maximum of \$15, the Commissioner has the ability to manage the balance in the Education and Research account.

Sec. 75.5. By amending the recovery fee from \$15 to a maximum of \$15, the Commissioner has the ability to manage the balance in the Education and Research account.

Sec. 75.7. By amending the recovery fee from \$15 to a maximum of \$15, the Commissioner has the ability to manage the balance in the Education and Research account.

Sec. 76. Amends NRS 685A.220 to include NRS 683A.451 in provisions of Title 57 of NRS applicable to surplus lines brokers. (This was an unintentional deletion in the 2001 session.)

Sec. 76.5. Amends chapter 685B of NRS by adding new sections 77 to 78 concerning Unauthorized Insurance, as follows:

Sec. 77. Adds a new section to chapter 685B declaring that any producer or surplus lines broker who represents or aids in the placement of unauthorized insurance is guilty of a category B felony and shall be punished as provided in NRS 193.130.

Sec. 78. Adds a new section to chapter 685B declaring that any insurer who transacts any unauthorized business is guilty of a category B felony and shall be punished as provided in NRS 193.130.

Sec. 79. Amends NRS 685B.080 by deleting the criminal actions from this statute and having them moved to a separate statute as recommended by the Attorney General.

Sec. 80. Deleted by amendment.

Sec. 81. Amends NRS 687A.033 to clarify that claims arising from an insolvent excess workers' compensation insurer are covered by the Nevada Insurance Guaranty Association (NIGA). This section includes four new definitions to provide clarity.

Sec. 82. Amends NRS 687A.060 to provide NIGA express authority to perform administrative acts at the request of the Commissioner as long as there are no additional costs to the Association or its members.

Sec. 83. Amends NRS 687A.080 to conform with section 82, so that NIGA can perform administrative acts at the request of the Commissioner.

1 ~~—(c) Any person who commits a second or subsequent violation~~
2 ~~of this section is guilty of a category B felony and shall be punished~~
3 ~~by imprisonment in the state prison for a minimum term of not less~~
4 ~~than 1 year and a maximum term of not more than 20 years.~~

5 ~~—3.]~~ In addition to the penalties provided in subsection ~~[2,]~~ 1,
6 such a violator is liable, personally, jointly and severally with any
7 other person liable therefor, for the payment of premium taxes at the
8 same rate of tax as imposed by law on the premiums of similar
9 coverages written by authorized insurers.

10 **Sec. 80.** NRS 686C.240 is hereby amended to read as follows:

11 686C.240 1. The Board of Directors *of the Association* shall
12 determine the amount of each assessment in Class A and may, but
13 need not, prorate it. If an assessment is prorated, the Board may
14 provide that any surplus be credited against future assessments in
15 Class B. An assessment which is not prorated must not exceed
16 ~~[\$150]~~ \$300 for each member insurer for any one calendar year.

17 2. The Board may allocate any assessment in Class B among
18 the accounts according to the premiums or reserves of the impaired
19 or insolvent insurer or any other standard which it considers fair and
20 reasonable under the circumstances.

21 3. Assessments in Class B against member insurers for each
22 account and subaccount must be in the proportion that the premiums
23 received on business in this State by each assessed member insurer
24 on policies or contracts covered by each account or subaccount for
25 the 3 most recent calendar years for which information is available
26 preceding the year in which the insurer became impaired or
27 insolvent bears to premiums received on business in this State for
28 those calendar years by all assessed member insurers.

29 4. Assessments for money to meet the requirements of the
30 Association with respect to an impaired or insolvent insurer must
31 not be authorized or called until necessary to carry out the purposes
32 of this chapter. Classification of assessments under subsection 2 of
33 NRS 686C.230 and computation of assessments under this section
34 must be made with a reasonable degree of accuracy, recognizing
35 that exact determinations may not always be possible. The
36 Association shall notify each member insurer of its anticipated
37 prorated share of an assessment authorized but not yet called within
38 180 days after it is authorized.

39 **Sec. 81.** NRS 687A.033 is hereby amended to read as follows:

40 687A.033 1. "Covered claim" means an unpaid claim or
41 judgment, including a claim for unearned premiums, which arises
42 out of and is within the coverage of an insurance policy to which
43 this chapter applies issued by an insurer which becomes an insolvent
44 insurer, if one of the following conditions exists:



- 1 (a) The claimant or insured, if a natural person, is a resident of
2 this State at the time of the insured event.
- 3 (b) The claimant or insured, if other than a natural person,
4 maintains its principal place of business in this State at the time of
5 the insured event.
- 6 (c) The property from which the first party property damage
7 claim arises is permanently located in this State.
- 8 (d) The claim ~~is not a covered claim pursuant to the laws of any~~
9 ~~other state and the premium tax imposed on the insurance policy is~~
10 ~~payable in this State pursuant to NRS 680B.027.]~~ *arises as a claim*
11 *within the coverage of a policy of excess industrial insurance*
12 *which exceeds the limit of a self-insured retention or another*
13 *policy of industrial insurance.*
- 14 2. The term does not include:
- 15 (a) An amount that is directly or indirectly due a reinsurer,
16 insurer, insurance pool or underwriting association, as recovered by
17 subrogation, indemnity or contribution, or otherwise.
- 18 (b) That part of a loss which would not be payable because of a
19 provision for a deductible or a self-insured retention specified in the
20 policy.
- 21 (c) Except as otherwise provided in this paragraph, any claim
22 filed with the Association:
- 23 (1) More than 18 months after the date of the order of
24 liquidation; or
- 25 (2) After the final date set by the court for the filing of claims
26 against the liquidator or receiver of the insolvent insurer,
27 ~~whichever is earlier.~~ The provisions of this paragraph do not
28 apply to a claim for workers' compensation that is reopened
29 pursuant to the provisions of NRS 616C.390 ~~{}~~ *or to a claim that is*
30 *covered by a policy of excess industrial insurance issued to a self-*
31 *insured employer or to an association of self-insured public or*
32 *private employers.*
- 33 (d) A claim filed with the Association for a loss that is incurred
34 but is not reported to the Association before the expiration of the
35 period specified in subparagraph (1) or (2) of paragraph (c).
- 36 (e) An obligation to make a supplementary payment for
37 adjustment or attorney's fees and expenses, court costs or interest
38 and bond premiums incurred by the insolvent insurer before the
39 appointment of a liquidator, unless the expenses would also be a
40 valid claim against the insured.
- 41 (f) A first party or third party claim brought by or against an
42 insured, if the aggregate net worth of the insured and any affiliate of
43 the insured, as determined on a consolidated basis, is more than
44 \$25,000,000 on December 31 of the year immediately preceding the
45 date the insurer becomes an insolvent insurer. The provisions of this



EXHIBIT C

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
May 26, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Thursday, May 26, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

STAFF MEMBERS PRESENT:

Lynn Hendricks, Committee Secretary
Scott Young, Committee Policy Analyst
Donna Winter, Committee Secretary

OTHERS PRESENT:

Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of
Business and Industry
John R. Orr, Deputy Commissioner, Division of Insurance, Department of
Business and Industry
Lisa Foster, Deputy Chief of Staff, Office of the Governor
Don Jayne, Nevada Self Insurers Association
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual
Company
Samuel P. McMullen, Assurant Group
Harry Bassett, Jr., Assurant Group

would be charged \$125 less 10 percent, 20 percent or whatever the discount card was worth.

SENATOR CARLTON:

When I read this, I am looking at the back end of the system. This bill applies all to the front end. When I write the check for my health insurance, it will be a discounted rate. However, the definition of "discount health plan" is confusing.

DON JAYNE (Nevada Self Insurers Association):

I want to comment on section 81 being deleted. The reason this section was in the bill was a result of the insurance commissioner's subcommittee for self-insurance. There was testimony that we originally had some issues with the NIGA accepting claims or considering accepting claims for excess worker compensation insurance policies. This is why that was in there. I am glad to hear that it is clarification language. We were interested in that section and would have preferred it to stay in the bill. Since it is clarification language, I suppose it is something with which we can live.

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):

I believe section 81 of A.B. 338 has been deleted because there are certain segments of the property and casualty industry that believes the change was substantive. Since we never reached agreement on whether it was clarification or substantive we agreed to work on this in the future. It is not a pressing issue at the moment so we all agreed to let it go. We will continue to work with the commissioner in regard to our definition of excess insurance or reinsurance and how the two play into the guaranty fund.

MR. JAYNE:

I understand what Mr. Ostrovsky said but we do have a situation that we need to continue to work on in this next interim in order to get clarification. The excess of workers compensation insurance is a requirement to have in order to acquire a self-insurer certificate as a casualty coverage. The premium is paid by the self-insured employers. We have had a couple of excess worker compensation carriers go bankrupt. This issue will present itself to us in the future and we would like to see the clarification made on whether or not those claims for an excess worker compensation carrier would be claims that the NIGA would honor.