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7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
9 **THE STATE OF NEVADA IN AND FOR THE**
10 **COUNTY OF WASHOE**

11 ELIZABETH REIMERS, ALICIA UHOUSE,
DARRELL MEDLOCK, and WALTER
12 KARATYZ, individually and as appointed
class representatives in the case of Reimers v.
13 The Matthews Company, et al.

CASE NO. CV13-00737

14 Plaintiffs,

DEPT. NO. 1

15 vs.

16 EVEREST INDEMNITY INSURANCE
COMPANY, an Illinois Corporation, CARL
17 WARREN & COMPANY OF NEVADA, a
Nevada Corporation, DOES I-XXX, and ABC
18 CORPORATIONS A-Z;

19 Defendants.
20 _____/

21 **FIRST AMENDED COMPLAINT**

22 Plaintiffs, ELIZABETH C. REIMERS, ALICIA UHOUSE, DARRELL MEDLOCK and
23 WALTER KARATYZ (hereinafter "Plaintiffs"), class representatives of a class action certified in
24 the case of Reimers v. The Matthews Company, et al., Third Judicial District Court, Case No. CI
25 20573 (Justice Shearing), by and through their counsel of record, ROBERT C. MADDOX &
26 ASSOCIATES and LEVERTY & ASSOCIATES LAW CHTD., claim and allege causes of action
27 against the above-named Defendants, as follows:
28

I. JURISDICTION

1. At all relevant times Plaintiff ELIZABETH C. REIMERS was a resident of the State of Nevada. Plaintiff REIMERS was appointed a class representatives of a class action certified in the case of Reimers v. The Matthews Company, et al. and in that capacity, as well as her individual capacity, brings this lawsuit.

2. At all relevant times Plaintiff ALICIA UHOUSE was a resident of the State of Nevada. Plaintiff UHOUSE was appointed a class representatives of a class action certified in the case of Reimers v. The Matthews Company, et al. and in that capacity, as well as her individual capacity, brings this lawsuit.

3. At all relevant times Plaintiff DARRELL MEDLOCK was a resident of the State of Nevada. Plaintiff MEDLOCK was appointed a class representatives of a class action certified in the case of Reimers v. The Matthews Company, et al. and in that capacity, as well as his individual capacity, brings this lawsuit.

4. At all relevant times Plaintiff WALTER KARATYZ was a resident of the State of Nevada. Plaintiff KARATYZ was appointed a class representatives of a class action certified in the case of Reimers v. The Matthews Company, et al. and in that capacity, as well as his individual capacity, brings this lawsuit.

5. Defendant Everest Indemnity Insurance Company ("EVEREST INDEMNITY"), is a corporation incorporated under the laws of the State of Delaware and is duly licensed by the State of Nevada to conduct the business of selling insurance within the State of Nevada.

6. Defendant Carl Warren & Company of Nevada (hereinafter "CARL WARREN"), is third party administrator in Nevada and licensed to perform such insurance services in the State of Nevada.

7. Plaintiffs do not know the true names or capacities of the defendants sued herein as DOES I through XXX; therefore, Plaintiffs sue said defendants by such fictitious names, and prays leave that when the true names of said defendants are ascertained, they may be inserted with appropriate allegations. Plaintiffs are informed and believe, and upon such information and belief, allege that each of the defendants designated herein by such fictitious names is responsible in some manner for

1 the events and happenings hereinafter referred to and that such conduct of defendants caused injury
2 and damages proximately thereby to plaintiffs and each of them. Upon learning the true names and
3 identities of DOES I through XXX, Plaintiffs will seek leave of court to amend this Complaint.

4 8. Plaintiffs do not know the true names or capacities of the defendants sued herein as ABC
5 CORPORATIONS A-Z; therefore, Plaintiffs sue said defendants by such fictitious names, and prays
6 leave that when the true names of said defendants are ascertained, they may be inserted with
7 appropriate allegations. Plaintiffs are informed and believe, and upon such information and belief,
8 allege that each of the defendants designated herein by such fictitious names is responsible in some
9 manner for the events and happenings hereinafter referred to and that such conduct of defendants
10 caused injury and damages proximately thereby to plaintiffs. Upon learning the true names and
11 identities of ABC CORPORATIONS A-Z, Plaintiffs will seek leave of court to amend this
12 Complaint.

13 9. At all times relevant herein, Defendants, and each of them, were the agents and employees
14 of each of the remaining defendants, and were at all times acting within the course and scope of said
15 agency and employment, and each defendant has ratified and approved the acts of the other.
16 Therefore, each defendant is liable for the acts of each remaining defendant.

17 10. That the conduct of each and every defendant was ratified and adopted by each and every
18 other defendant in this action.

19 11. The corporate defendants, and each of them, were acting by and through their authorized
20 employees, agents, and/or representatives, who were acting within the scope and course of said
21 capacity, and whose conduct was ratified by each of said defendants.

22 12. The parties have caused events to occur in Nevada from which these claims arise.

23 **II. FACTS**

24 13. The Matthews Company, Matthews Homes, Fernley Sundance, LLC, M.C. Builders, Inc.,
25 Matthews Land, Inc. dba Matthews Land, Inc.-Nevada, C.H. Investment Trust, and Nevada Land
26 Investments, Inc. dba Matthews Land, Inc. (hereinafter "MATTHEWS") were insured under a
27 Commercial General Liability Policy, No. 5000000434-041, issued by EVEREST INDEMNITY
28 (hereinafter "The Policy").

1 14. The policy period for The Policy was from March 19, 2004 through March 19, 2007.

2 15. The Policy has a "Contractors Products-Completed Operations Hazard - Applicable Law"
3 Endorsement that states the "'Contractors products-completed operations period' means during
4 the period of time allowed by the applicable law for claims or 'suits' to be brought against the
5 insured."

6 16. The Policy has a General Aggregate limit of \$2,000,000, a Products-Completed
7 Operations Aggregate Limit of \$2,000,000, and an Each Occurrence Limit of \$2,000,000.

8 17. At approximately 4:30 a.m. on January 5, 2008, the left embankment of the Truckee
9 Canal collapsed allowing the escape of water from the canal into a large residential area of the
10 City of Fernley, Nevada (hereinafter "Fernley Flood").

11 18. Following the Fernley Flood, the victims of the flood brought a lawsuit against Greater
12 Nevada Builders, Steven F. Campoy, Crisp Development, Inc., Berle G. Crisp, and Crisp
13 Construction in the case of Rondy v. Greater Nevada Builders, et al., Third Judicial District
14 Court, Case No. CI 19181 (Justice Rose).

15 19. In Rondy, Crisp Development, Inc., Berle G. Crisp, and Crisp Construction tendered a
16 claim to MATTHEWS.

17 20. On March 11, 2009, MATTHEWS, by and through RSD Insurance Services, forwarded
18 the tender to EVEREST INDEMNITY's claims service provider, CARL WARREN.

19 21. On April 7, 2009, CARL WARREN adjuster Brian Parry determined the policy
20 expiration date was March 19, 2007. The CARL WARREN adjuster then concluded that since
21 the flood occurred after the policy expiration date he would discuss denying the claim with his
22 supervisor.

23 22. On April 7, 2009, CARL WARREN adjuster Brian Parry discussed the claim with his
24 supervisor Joseph DeRivera.

25 23. The CARL WARREN supervisor instructed Brian Parry to draft a denial letter based on
26 there being no coverage for property damage arising from an occurrence outside the policy
27 period.

28 24. CARL WARREN adjuster Brian Parry drafted the denial letter based on the flood causing

1 property damage post-policy.

2 25. On April 7, 2010, CARL WARREN supervisor Joseph DeRivera approved the denial
3 letter based on the flood causing property damage post-policy going so far as to state it was a
4 "Good letter."

5 26. On April 10, 2009, CARL WARREN sent a report to EVEREST INDEMNITY and its
6 Director of the Claims Department encouraging EVEREST INDEMNITY to deny the tender by
7 finding there was no possible property damage occurring during the policy period.

8 27. On April 10, 2009, CARL WARREN sent the report and the denial letter to EVEREST
9 INDEMNITY.

10 28. On April 20, 2009, EVEREST INDEMNITY Claims Manager, Gwen Arroyo, sent an
11 email to CARL WARREN asking for a number of exclusions to be added to the denial letter.

12 29. CARL WARREN sent over another draft of the letter with the requested exclusions
13 added.

14 30. EVEREST INDEMNITY Claims Manager, Gwen Arroyo, approved the denial letter after
15 making minor edits, namely that since the loss took place in Nevada, the language regarding the
16 Buss case and the California DOI needed to be removed.

17 31. The basis for denial in the letter approved by EVEREST INDEMNITY was the reason for
18 denial CARL WARREN came up with - there was no possible property damage during the policy
19 period.

20 32. On April 20, 2009, EVEREST INDEMNITY's Claims Service Provider, CARL
21 WARREN sent MATTHEWS a letter denying coverage claiming the "property damage" did not
22 occur during the policy period.

23 33. The Policy includes a Completed Operations Hazard provision that insured Matthews
24 Homes against certain risks that occur after a construction project is finished.

25 34. The Completed Operation Hazard provision provided extended coverage to Matthews
26 Homes for completed operations for the applicable statutory of limitations. Nevada's statute of
27 limitations ranges from 6 years after the completion of the project (NRS 11.205) to 12 years after
28 the completion of the project (NRS 11.203). The tender came well within the applicable statute

1 of limitation.

2 35. CARL WARREN assisted and encouraged EVEREST INDEMNITY's denial of the
3 tender without a reasonable basis. The April 20, 2009 denial letter makes no mention of the
4 "Contractors Products-Completed Operations Hazard - Applicable Law" Endorsement.

5 36. During this lawsuit EVEREST INDEMNITY and CARL WARREN recognized their
6 denial based on the claim falling outside the policy period had no merit. On September 19, 2013,
7 in response to Plaintiffs' motion for summary judgment against the policy period claim denial,
8 Defendants stipulated they will not raise a policy defense that the claim/occurrence fell outside
9 the policy period.

10 37. On July 2, 2009 MATTHEWS, by and through RSD Insurance Services, Inc., sent a letter
11 to the claims service provider, CARL WARREN, informing it that Crisp Development brought a
12 third party complaint against it in the Rondy lawsuit.

13 38. The July 2, 2009 letter also detailed how the denial of coverage was incorrect, including
14 how the wrap policy contained tail coverage under the "Contractors Products-Completed
15 Operations Hazard - Applicable Law" Endorsement.

16 39. On August 12, 2009, CARL WARREN reopened the file in response to the tender of the
17 third-party complaint and the objection to the denial.

18 40. On August 12, 2009, CARL WARREN did a coverage analysis wherein it recognized
19 The Policy has tail coverage and so the occurrence would be considered to be within the policy
20 period.

21 41. On September 1, 2009 MATTHEWS, by and through RSD Insurance Services, Inc., sent
22 another letter enclosing the July 2, 2009 letter because CARL WARREN had failed to respond to
23 the July 2nd letter.

24 42. On September 24, 2009, CARL WARREN had a roundtable discussion with Brian Perry,
25 his supervisor, Marc LaPeaux, and EVEREST INDEMNITY Claims Manager Judy Frisina and
26 EVEREST INDEMNITY Director of Claims, Susan Schaal. CARL WARREN decided to stick
27 by the denial that the property damage occurred outside the policy period.

28 43. On September 28, 2009, CARL WARREN adjuster Brian Parry drafted a denial letter

1 standing by its April 20, 2009 denial and sent the denial letter to his supervisor for review and
2 approval.

3 44. On September 29, 2009, Brian Parry's supervisor at CARL WARREN, Marc LaPeaux,
4 approved the denial letter.

5 45. On September 29, 2009, CARL WARREN adjuster Brian Parry sent an email to
6 EVEREST INDEMNITY Claims Manager Judy Frisina and EVEREST INDEMNITY Director
7 of Claims, Susan Schaal the denial letter CARL WARREN encouraged and recommended
8 EVEREST INDEMNITY to adopt the denial letter.

9 46. On October 7, 2009, EVEREST INDEMNITY program manager Judy Frisina approved
10 and authorized the denial letter.

11 47. On October 7, 2009, CARL WARREN sent a letter to MATTHEWS, by and through
12 RSD Insurance Services, Inc., stating that the occurrence did not occur during the policy period
13 and that the Contractors Products-Completed Operation Hazard - Applicable Endorsement did
14 not apply. CARL WARREN's letter stated EVEREST INDEMNITY was standing by its April
15 20, 2009 denial.

16 48. On November 24, 2009 MATTHEWS, by and through RSD Insurance Services, Inc., sent
17 another letter detailing how the "coverage position" taken by EVEREST INDEMNITY and
18 CARL WARREN "is erroneous and neglects to take into consideration the full policy language."

19 49. On December 3, 2009, CARL WARREN adjuster Brian Parry reviewed the letter and
20 again concluded the property damage did not occur during the policy period. Mr. Parry drafted a
21 denial letter for supervisor approval and sent an email to his supervisor recommending that
22 CARL WARREN and EVEREST INDEMNITY stick by their present position that the claim fell
23 outside the policy period.

24 50. On December 9, 2009, CARL WARREN supervisor sent an email to the adjuster Brian
25 Parry approving the letter.

26 51. On December 9, 2009, CARL WARREN adjuster Brian Parry sent the denial letter to
27 Lawrence Warshaw for his review and approval.

28 52. On December 15, 2009, Lawrence Warshaw sent an email to adjuster, Brian Parry, and

1 supervisor Marc LaPeaux, asking to “chat” with them about this issue because he believed the
2 outside policy period denial that CARL WARREN assisted and encouraged EVEREST
3 INDEMNITY to make was wrong.

4 53. Thereafter on December 15, 2009, CARL WARREN employees Lawrence Warshaw,
5 Brian Parry and Marc LaPeaux exchanged emails trying to figure out how the products-
6 completed operations hazard works.

7 54. On December 16, 2009, CARL WARREN supervisor, Marc LaPeaux round-tabled this
8 claim with “Macy” and then discussed it with Brian Parry.

9 55. On December 16, 2009, CARL WARREN supervisor, Marc LaPeaux sent an email to
10 Lawrence Warshaw stating, “the consensus is that although the liability is thin, we may need to
11 defend this one.”

12 56. In response, always looking for a reason to deny coverage and not holding the insured’s
13 interest at least equal to the interests of EVEREST INDEMNITY, on December 16, 2009,
14 Lawrence Warshaw sent an email that stated, “Earth Movement Excl. either not present or
15 insufficient?”

16 57. On December 16, 2009, CARL WARREN supervisor, Marc LaPeaux, sent an email that
17 stated, “Unless we can tie our ribbon to the idea that the levee breaking was the ‘earth
18 movement’ (which maybe we can . . . Brian?) I don’t see how that endorsement will apply.”

19 58. On December 16, 2009, CARL WARREN adjuster, Brian Parry, sent an email that
20 contained the Earth Movement Exclusion and then stated, “My reading of the 1st (2) above is that
21 our levee failure is earth movement (combined with water) that resulted in the property damage
22 complained of by the homeowners. My reading of the ‘this exclusion applies’ language is that
23 any other cause of the PD (i.e. NI’s road allegedly contributing to the damages) won’t give rise to
24 coverage under the policy.”

25 59. On December 16, 2009, CARL WARREN supervisor, Marc LaPeaux, sent an email that
26 stated, “So then, should we forgo the out of policy position and hook our wagon to the Earth
27 Movement exclusion? [¶] If the levee was ‘earth’ I’d say that it definitely applies.” (Emphasis
28 added).

1 60. CARL WARREN adjuster Brian Parry then "researched online to confirm that the
2 Truckee Canal is an earthen structure. I confirmed via the US Dept of Interior's Bureau of
3 Reclamation website that the levee is an earth structure. The levee is made up of several types of
4 soils (clay, sand, random fill) and is topped by a layer of stone cobble to protect against erosion."

5 61. CARL WARREN adjuster Brian Parry then sent an email to Marc LaPeaux and Lawrence
6 Warshaw informing them the Truckee Canal was an earthen structure.

7 62. CARL WARREN's Lawrence Warshaw sent an email stating, "I would be on board with
8 backing a denial recommendation to Everest on this basis."

9 63. On December 16, 2009, CARL WARREN adjuster Brian Parry sent an email in response
10 to Warshaw's email stating, "Ok. I will draft a denial and report based upon the Subsidence and
11 Earth Movement Exclusion and submit for review/approval."

12 64. CARL WARREN adjuster Brian Parry also drafted a denial letter Earth Movement
13 Exclusion based on the idea that since the Truckee Canal was an earthen structure then the
14 exclusion applied.

15 65. CARL WARREN adjuster Brian Parry then drafted a report to EVEREST INDEMNITY
16 encouraging it to deny the claim based on the Earth Movement Exclusion based on the idea that
17 since the Truckee Canal was an earthen structure the exclusion applied.

18 66. On January 7, 2010, CARL WARREN supervisor Marc LaPeaux reviewed report and
19 denial letter and made small corrections and approved them.

20 67. On January 7, 2010, CARL WARREN adjuster Brian Parry sent the denial letter and
21 report to Lawrence Warshaw for review and approval.

22 68. On January 12, 2010, Lawrence Warshaw reviewed the report and denial letter and
23 approved them: "Agree with conclusion and reasoning based on Earth Movement exclusion." On
24 January 12, 2010, Lawrence Warshaw responded in an email to EVEREST INDEMNITY
25 attaching the report and denial letter and stating, "I have reviewed the attached letter, and agree
26 with the conclusion and reasoning. After editing, I now believe the letter is in order. Please
27 advise if you suggest further modification."

28 69. CARL WARREN and EVEREST INDEMNITY failed to conduct a reasonable

1 investigation into MATTHEWS' request for a defense and indemnification in the Rondy lawsuit.

2 70. On January 25, 2010, EVEREST INDEMNITY Director of Claims, Susan Schaal wrote
3 an email to Brian Perry stating "Letter approved."

4 71. On January 25, 2010 CARL WARREN sent a letter to "further clarify" its position "that
5 there was no coverage under the" EVEREST INDEMNITY policy.

6 72. The January 25, 2010 denial letter changes the reason for denial from "outside policy
7 position" to the Truckee Canal embankment failure being excluded earth movement.

8 73. CARL WARREN assisted and encouraged EVEREST INDEMNITY to deny
9 MATTHEWS request for defense in the Rondy lawsuit based on the Truckee Canal embankment
10 failure being excluded earth movement even though there was no reasonable basis for that denial.

11 74. The insuring agreement of The Policy provides that EVEREST INDEMNITY has the
12 duty to defend any suit seeking damages.

13 75. The duty to defend is broader than the duty to indemnify.

14 76. If an allegation of the complaint falls even possibly within the coverage, then the
15 insurance company must defend the insured.

16 77. An insurer has the burden of proof on an exclusion.

17 78. To meet that burden on the earth movement exclusion EVEREST INDEMNITY must
18 demonstrate it wrote its earth movement exclusion in obvious and unambiguous language, its
19 interpretation is the *only* is the *only* interpretation of the exclusion that could fairly be made and
20 that its earth movement exclusion applies in this particular case.

21 79. EVEREST INDEMNITY cannot meet the burden of proof on its Earth Movement
22 Exclusion because the exclusion does not exclude man-made causes of earth movement.

23 80. Neither EVEREST INDEMNITY nor CARL WARREN ever reviewed the allegations of
24 the Rondy Third-Party complaint to determine if the Truckee Canal embankment failure was a
25 man-made or natural cause.

26 81. The Rondy Third-Party complaint contains allegations that the agency tasked with
27 maintaining and operating the Truckee Canal, Truckee Carson Irrigation District (TCID), caused
28 the embankment failure.

1 82. On or about January 5, 2010, a lawsuit was filed against MATTHEWS by residents
2 affected by the Fernley Flood, being Case No. CI 20573 in Third Judicial District Court of the
3 State of Nevada in and for the County of Lyon, bearing case number and entitled Reimers, et al.
4 v. The Matthews Company, et al., (hereinafter "Reimers Lawsuit").

5 83. The allegations against MATTHEWS in the Reimers Lawsuit concerned its development
6 and construction of residential real properties and the blocking of the Fernley "A" drain located
7 within Fernley, Nevada because the Fernley "A" Drain was not effective in 2008 in moving flood
8 waters away from areas outside of the "A" Drain.

9 84. On or about April 22, 2010, MATTHEWS, by and through RSD Insurance Services, Inc.,
10 timely notified EVEREST INDEMNITY and CARL WARREN of the Reimers lawsuit.

11 85. EVEREST INDEMNITY initially recognized its duty to defend MATTHEWS.

12 86. On May 11, 2010, CARL WARREN sent a letter assigning the law firm of Wilson Elser
13 Moskowitz Edelman & Dicker as counsel for MATTHEWS in the Underlying Lawsuit.

14 87. On May 20, 2010, CARL WARREN sent a Reservation of Rights letter to MATTHEWS.

15 88. The Policy contains a SIR endorsement.

16 89. The May 20, 2010 letter outlined EVEREST INDEMNITY's position that it had duty to
17 defend after the SIR was exhausted.

18 90. The entire SIR Endorsement is cut-and-pasted into the May 20, 2010 letter in the section
19 of the letter that addresses pertinent policy provisions.

20 91. The "conclusion" of the letter states there is coverage and that EVEREST INDEMNITY
21 will provide a defense after the SIR is exhausted.

22 92. Then EVEREST INDEMNITY decided to "hook its wagon" to the Earth Movement
23 Exclusion to deny coverage.

24 93. On June 15, 2010, CARL WARREN supervisor Marc LaPeaux reviewed the filed and
25 made the following claim notes, "The Truckee Canal was bordered by an earthen levy which
26 failed. We previously issued a denial on a related claim for this insured relying on the earth
27 movement exclusion. Request authority to draft a declination letter to NI based on earth
28 movement exclusion.

- 1 94. On June 15, 2010, CARL WARREN adjuster, George Palmer, sent an email to his
2 Supervisor, Marc LaPeaux, requesting authority to deny coverage to Matthews Homes “based on
3 the earth movement exclusion.”
- 4 95. On June 17, 2010, CARL WARREN adjuster, George Palmer, sent an email to his
5 supervisor Lawrence Warshaw attaching a denial letter for his review.
- 6 96. On June 25, 2010, CARL WARREN supervisor, Lawrence Warshaw, made a claim note
7 approving denying coverage based on the Earth Movement Exclusion.
- 8 97. On July 7, 2010, EVEREST INDEMNITY Claims Manager Judy Frisina sent an email to
9 George Palmer that stated, in part, “I’ve taken the time to review your notes, discussions and
10 analysis. I would concur with your assessment in remaining consistent. Accordingly, approval is
11 granted to issue the proposed declination as submitted to Susan.”
- 12 98. On July 7, 2010, CARL WARREN sent a letter to MATTHEWS denying coverage based
13 on the Truckee Canal embankment failure being excluded earth movement.
- 14 99. The July 7, 2010 denial letter did not cite or reference the “Contractors Products-
15 Completed Operations Hazard-Applicable Law endorsement.” Contrary to its prior assertions
16 that the claim fell outside the policy period, EVEREST INDEMNITY and CARL WARREN did
17 not assert, in the July 7, 2010 denial letter that the occurrence happened outside the policy period.
- 18 100. The July 7, 2010 denial letter did not quote the SIR Endorsement.
- 19 101. The SIR is a policy condition.
- 20 102. After stating there was no coverage because of the earth movement exclusion, the letter
21 also denied the claim for the other policy exclusions cited in the letter.
- 22 103. The July 7, 2010 denial letter reserved the right to assert other policy conditions and
23 exclusions based upon new information.
- 24 104. CARL WARREN assisted and encouraged EVEREST INDEMNITY’s denial of
25 MATTHEWS request for defense and indemnification in the Reimers lawsuit based on the
26 Truckee Canal embankment failure being excluded earth movement even though there was no
27 reasonable basis for that denial.
- 28 105. CARL WARREN and EVEREST INDEMNITY failed to conduct a reasonable

1 investigation into MATTHEWS' request for a defense and indemnification in the Reimers
2 lawsuit.

3 106. The duty to defend is broader than the duty to indemnify.

4 107. If an allegation of the complaint falls even possibly within the coverage, then the
5 insurance company must defend the insured.

6 108. An insurer has the burden of proof on an exclusion.

7 109. To meet that burden on the earth movement exclusion EVEREST INDEMNITY must
8 demonstrate it wrote its earth movement exclusion in obvious and unambiguous language, its
9 interpretation is the *only* is the *only* interpretation of the exclusion that could fairly be made and
10 that its earth movement exclusion applies in this particular case.

11 110. EVEREST INDEMNITY cannot meet the burden of proof on its Earth Movement
12 Exclusion because the exclusion does not exclude man-made causes of earth movement.

13 111. Neither EVEREST INDEMNITY nor CARL WARREN ever reviewed the allegations of
14 the complaint or first amended complaint in Reimers to determine if the Truckee Canal
15 embankment failure was a man-made or natural cause.

16 112. Given EVEREST INDEMNITY's and CARL WARREN's denial of coverage,
17 MATTHEWS was required to defend itself in the Rondy and Reimers lawsuits.

18 113. On March 10, 2011 the Reimers Plaintiffs made a settlement demand of \$1,900,000.00 to
19 MATTHEWS. That settlement demand provided that if the \$1,900,000.00 was paid, the Reimers
20 Plaintiffs would have settled their claims with MATTHEWS and released them.

21 114. MATTHEWS forwarded the March 10, 2011 demand letter to EVEREST INDEMNITY
22 and/or CARL WARREN.

23 115. The settlement offer set forth in the March 10, 2011 demand was reasonable in light of
24 liability and damages.

25 116. Neither EVEREST INDEMNITY nor CARL WARREN attempted to negotiate a
26 settlement with the Reimers Plaintiffs so as to protect MATTHEWS.

27 117. Thereafter, the Reimers Plaintiffs sent MATTHEWS a detailed analysis of its liability.

28 118. Upon information and belief, MATTHEWS forwarded that detailed analysis of

1 MATTHEWS' liability to EVEREST INDEMNITY and/or CARL WARREN.

2 119. On May 17, 2011 the Reimers Plaintiffs reiterated their settlement demand of \$1,900,000
3 to MATTHEWS. That settlement demand provided that if the \$1,900,000.00 was paid, Reimers
4 Plaintiffs would have settled their claims with MATTHEWS and released them.

5 120. MATTHEWS forwarded the May 17, 2011 demand letter to EVEREST INDEMNITY
6 and/or CARL WARREN.

7 121. The settlement offer set forth in the May 17, 2011 demand was reasonable in light of
8 liability and damages.

9 122. Following the May 17, 2011 demand, neither EVEREST INDEMNITY nor CARL
10 WARREN attempted to negotiate a settlement with the Reimers Plaintiffs so as to protect
11 MATTHEWS.

12 123. On October 27, 2011 the Reimers Plaintiffs sent yet another settlement demand of
13 \$1,900,000. That settlement was sent directly to EVEREST INDEMNITY and CARL
14 WARREN. That letter also provides, "Please let us know whether you want us to provide you
15 with a copy of the prior demands or the detailed analysis of Matthews Homes' liability."

16 124. The settlement offer set forth in the October 27, 2011 demand was reasonable in light of
17 liability and damages.

18 125. On November 2, 2011, EVEREST INDEMNITY sent a letter rejecting the Reimers
19 Plaintiffs' settlement demand. That letter provided in part:

20 Your letter suggests that Everest Indemnity is failing to provide a defense to its
21 named insured based upon the belief that the SIR of \$50,000 has not been
22 satisfied. Please be advised that Everest's coverage denial is not based upon the
23 SIR issue. To clarify, the policy that Everest issued to Nevada Land
24 Investments, Inc. contains a Subsidence and Earth Movement Exclusion. In
25 addition, the date of loss of January 5, 2008 occurs after our policy expired.
26 Thus, there is no potential for any "property damage" as a result of an
27 "occurrence" to have occurred during the policy period.

28 Accordingly, Everest will not be participating in the settlement of this matter
and will not defend or indemnify Matthews Homes in this matter.

126. The November 2, 2011 letter does not reserve EVEREST INDEMNITY's rights to assert
any policy terms, condition and/or exclusions other than those specifically cited in the letter.

127. On November 15, 2011 the Reimers Plaintiffs sent another letter to EVEREST

1 INDEMNITY and CARL WARREN inviting them to participate in a mediation between
2 Plaintiffs and MATTHEWS scheduled on December 5, 2011.

3 128. On November 18, 2011, EVEREST INDEMNITY sent a letter to Plaintiffs stating it
4 would not participate in the mediation scheduled for December 5, 2011. That letter provides:

5 ... At this time Everest is reiterating our position that there is no applicable
6 coverage for the above captioned matter under the Everest Indemnity policy.
7 The policy that Everest issued to Nevada Land Investments, Inc. contains a
8 Subsidence and Earth Movement Exclusion. In addition, the date of loss of
January 5, 2008 occurs after our policy expired. Thus, there is no potential for
any "property damage" as a result of an "occurrence" to have occurred during
the policy period.

9 Accordingly Everest will not be participating in the settlement of this matter
10 and will not defend or indemnify Matthews Homes in this matter. Everest will
not be participating in the mediation set for December 5, 2011.

11 129. The November 18, 2011 letter does not reserve EVEREST INDEMNITY's rights to
12 assert any policy terms, condition and/or exclusions other than those specifically cited in the
13 letter.

14 130. On December 21, 2011, MATTHEWS wrote a letter to CARL WARREN and EVEREST
15 INDEMNITY enclosing TRC Engineer's cross-complaint against it and requesting a defense and
16 indemnification.

17 131. Paragraph 12 to TRC Engineers, Inc.'s First Amended Cross-Claim against
18 MATTHEWS in the Reimers Lawsuit, provides in pertinent part "...in or around January 5,
19 2008, the Truckee Canal was owned, controlled and maintained by Truckee Carson Irrigation
20 District ("TCID"). Due to intentionally increasing the flow rates in the Truckee Canal, TCID
21 caused waters to increase in the Canal to reach levels where the Canal was compromised by poor
22 maintenance practices and procedures of TCID. Consequently, the Canal breached and flooded
23 the surrounding areas."

24 132. CARL WARREN and EVEREST INDEMNITY failed to conduct a reasonable
25 investigation into MATTHEWS' request for a defense and indemnification to TRC Engineers,
26 Inc.'s First Amended Cross-Claim against MATTHEWS.

27 133. Neither EVEREST INDEMNITY nor CARL WARREN ever reviewed the allegations of
28 TRC Engineers, Inc.'s First Amended Cross-Claim against MATTHEWS in the Reimers

1 Lawsuit determine if the Truckee Canal embankment failure was a man-made or natural cause.

2 134. On December 28, 2011, EVEREST INDEMNITY's claim director, Susan Schaal,
3 emailed CARL WARREN and admitted the initial reason for the denial was the earth movement
4 exclusion and the absurd contention the date of loss fell outside the policy period.

5 135. On January 18, 2012, CARL WARREN emailed EVEREST INDEMNITY affirming the
6 July 7, 2010 denial was based solely on the earth movement exclusion.

7 136. On or about January 24, 2012, based upon the evidence presented to the Court, the Court
8 certified the Reimers Lawsuit as a class action and ordered the class shall be:

9 Owners and renters, including their families, of residential real property who
10 suffered damage or injury by the impoundment of water created by the Wrangler
11 Road "Knuckle" (where the Fernley "A" Drain is crossed by the intersection of
Wrangler Road and Wagon Wheel Road) following the Truckee Canal
Embankment failure on January 5, 2008.

12 137. Plaintiffs ELIZABETH C. REIMERS, ALICIA UHOUSE, DARRELL MEDLOCK and
13 WALTER KARATYZ were appointed class representatives of the Reimers class.

14 138. On February 16, 2012, MATTHEWS, relying on EVEREST INDEMNITY'S November
15 2, 2011 representation that the SIR was not an issue, wrote a letter to EVEREST INDEMNITY
16 asking for a defense given an absence of funds

17 139. On March 9, 2012, the Reimers Plaintiffs wrote a letter to MATTHEWS, EVEREST
18 INDEMNITY and CARL WARREN informing them that the Court certified a class action and
19 attempting to schedule a mediation with mediator D. Michael Schoenfeld.

20 140. EVEREST INDEMNITY and CARL WARREN notified the mediator D. Michael
21 Schoenfeld that they would not participate in the mediation.

22 141. On March 15, 2012, CARL WARREN sent a letter to MATTHEWS stating EVEREST
23 was sticking by its July 7, 2010 claim denial based on the Earth Movement Exclusion.

24 142. On May 8, 2012, the Reimers Plaintiffs sent a letter to EVEREST INDEMNITY and
25 CARL WARREN requesting their participation in a mediation set for May 16, 2012. The letter
26 detailed the liability claims against MATTHEWS. The letter also detailed how EVEREST
27 INDEMNITY's and CARL WARREN's denial of defense and indemnity was incorrect. The
28 letter made a settlement demand of five million dollars (\$5,000,000.00).

1 143. On May 15, 2012, EVEREST INDEMNITY sent a letter to Plaintiffs stating it would not
2 participate in the mediation scheduled for May 16, 2012.

3 144. At no point in time did EVEREST INDEMNITY or CARL WARREN attempt to
4 negotiate a settlement with the Reimers Plaintiffs so as to protect MATTHEWS.

5 145. At no time did EVEREST INDEMNITY provide a defense for MATTHEWS under a
6 reservation of rights or otherwise.

7 146. On May 16, 2012, the Reimers Plaintiffs and MATTHEWS participated in a mediation
8 with the mediator D. Michael Schoenfeld.

9 147. At the mediation the parties agreed to settle and compromise all disputed claims between
10 and among them arising out of and/or any damages claims resulting from the failure of the
11 Truckee Canal in Fernley, Nevada that occurred on or about January 5, 2008.

12 148. The terms of the settlement between MATTHEWS and the Reimers Plaintiffs were as
13 follows:

14 a. MATTHEWS agreed to stipulate to a judgment in favor of the Reimers Plaintiffs
15 in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) with a covenant not to execute
16 against MATTHEWS or any of its related entities or individuals.

17 b. A MATTHEWS insurer, Certain Underwriters at Lloyd's, London (hereinafter
18 "Underwriters"), agreed to assist in this settlement and contribute \$500,000.00 (Five Hundred
19 Thousand Dollars) to the stipulated judgment in exchange for a full and final release.

20 c. MATTHEWS agreed to convey and assign to the Reimers Plaintiffs all of their
21 rights, remedies, titles and/or interest in and to any and all claims and/or causes of action owned
22 by MATTHEWS against EVEREST INDEMNITY, including but not limited to, claims and/or
23 causes of action for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing,
24 Breach of Nevada Insurance Laws (NRS 686A.310, NAC 686A.660, NAC 686A.665, NAC
25 686A.670 and NAC 686A.675), Fraud and Declaratory Relief arising from EVEREST
26 INDEMNITY's failure to provide a defense or indemnity to MATTHEWS arising from the
27 *Reimers* lawsuit.

28 d. MATTHEWS agreed to convey and assign to the Reimers Plaintiffs all of their

1 rights, remedies, titles and/or interest in and to any and all claims and/or causes of action owned
2 by MATTHEWS against CARL WARREN including but not limited to, claims and/or causes of
3 action for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing,
4 arising from CARL WARREN's joint venture with EVEREST INDEMNITY by way of its
5 administrative responsibilities, policy management duties, claims handling duties and special
6 relationship with Everest.

7 e. The above terms were subject to the Court's approval and a finding that the
8 stipulated judgment, including its amount, was fair and reasonable, non-collusive, and otherwise
9 in compliance with the requirements of Nevada Rules of Civil Procedure Rule 23.

10 149. Thereafter, MATTHEWS and the Reimers Plaintiffs entered into an agreement entitled
11 "Settlement, Assignment, and Covenant Not to Execute Agreement" whereby, in consideration
12 for MATTHEWS assignment to the Reimers Plaintiffs of any and all rights against EVEREST
13 INDEMNITY and CARL WARREN, the Reimers Plaintiffs agreed not to execute against
14 MATTHEWS to satisfy the monetary judgment of \$5 million, but expressly reserving the right to
15 enforce that monetary judgment against EVEREST INDEMNITY and CARL WARREN. The
16 agreement also provides that, in the event that Plaintiffs' claims against EVEREST
17 INDEMNITY and/or CARL WARREN are determined to be non-assignable, MATTHEWS will
18 pursue said rights and will assign any proceeds thereof to Plaintiffs.

19 150. On December 7, 2012, Plaintiffs filed a motion entitled "Plaintiffs' Motion for Approval
20 of Settlement of Class Action Pursuant to NRCP 23(e) and Distribution of Settlement Funds,"
21 which detailed the terms of the settlement between MATTHEWS and Plaintiffs and requested
22 the Court approve the settlement at a hearing set for December 20, 2012 at 10:30 a.m.

23 151. Plaintiffs' December 7, 2012 Motion detailed how Plaintiffs had made a number of
24 settlement demands on EVEREST INDEMNITY.

25 152. Plaintiffs' December 7, 2012 motion was sent to EVEREST INDEMNITY and CARL
26 WARREN.

27 153. MATTHEWS and the Reimers Plaintiffs stipulated that the Reimers Plaintiffs would
28 have a monetary judgment against MATTHEWS in the amount of FIVE MILLION DOLLARS

1 (\$5,000,000.00).

2 154. MATTHEWS and the Reimers Plaintiffs stipulated that the FIVE HUNDRED
3 THOUSAND (\$500,000) paid by Underwriters went toward the stipulated judgment.

4 155. Despite being sent notice of the December 20, 2012 settlement approval hearing,
5 EVEREST INDEMNITY and CARL WARREN elected not to attend and not to challenge the
6 terms and conditions of the settlement.

7 156. On December 20, 2012, the District Court Judge entertained "Plaintiffs' Motion for
8 Approval of Settlement of Class Action Pursuant to NRCP 23(e) and Distribution of Settlement
9 Funds."

10 157. On December 20, 2012, the District Court Judge issued an order entitled, "Order
11 Approving Fairness of Settlement" in which the Judge the terms of Plaintiffs settlement with
12 MATTHEWS were fair, reasonable and adequate.

13 158. The District Court Judge's "Order Approving Fairness of Settlement" also found that
14 "legal and sufficient notice has been duly and regularly given to EVEREST and CARL
15 WARREN prior to the mediation scheduled for May 16, 2012;" that "legal and sufficient notice
16 has been duly and regularly given to representatives of EVEREST and CARL WARREN
17 regarding MATTHEWS HOMES' proposed stipulated judgment and the December 20th fairness
18 hearing via Plaintiffs' Motion for Approval of Settlement of Class Action Pursuant to NRCP
19 23(e) and Distribution of Settlement Funds;" and that "MATTHEWS HOMES' agreement to
20 stipulate to a judgment in favor of Plaintiffs in the amount of \$5,000,000.00 was a negotiated
21 amount that is reasonable and prudent and that agreement was made without fraud or collusion at
22 the May 16, 2012 mediation overseen by the mediator D. Michael Schoenfeld and also attended
23 by UNDERWRITERS."

24 159. On December 20, 2012, the District Court Judge entered the Judgment pursuant to the
25 Stipulation for Judgment.

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III.
FIRST CAUSE OF ACTION
Declaratory Relief

160. Plaintiffs incorporate herein by reference, as if fully restated, each and every allegation contained in all paragraphs of this complaint inclusive.

161. An actual controversy has arisen and now exists between Plaintiffs, on the one hand, and Defendants, on the other hand, concerning their respective rights and duties under the Policy.

162. Plaintiffs contend that MATTHEWS is entitled to coverage and that the Stipulated Judgment obtained by Plaintiffs should be paid by Defendants.

163. Defendants have refused to recognize that MATTHEWS is entitled to coverage.

164. Accordingly, Plaintiffs desire a judicial determination of their rights and duties under the Policy, as well as the rights and duties of Defendants under the EVEREST INDEMNITY Policy. A prompt and speedy declaration of rights and duties of all parties is necessary and appropriate at this time in view of the controversy presented between Plaintiffs and Defendants relating to those rights and duties.

IV.
SECOND CAUSE OF ACTION
Breach of the Insurance Contract

165. Plaintiffs incorporate herein by reference, as if fully restated, each and every allegation contained in all paragraphs of this complaint inclusive.

166. Plaintiffs entered into the insurance contract with Defendant EVEREST INDEMNITY or are assignees of claims, benefits or damages under the insurance contract.

167. The insurance policy is a contract of adhesion and should be interpreted broadly, affording the greatest possible coverage to the insured.

168. The contract must be given a construction which will fairly achieve its object of providing indemnity for the loss to which the insurance relates.

169. The terms of the insurance contract are to be understood in their plain, ordinary, and popular sense.

1 170. CARL WARREN is engaged in a joint venture with the insurer EVEREST INDEMNITY
2 by way of its administrative responsibilities, claims handling duties and special relationship with
3 EVEREST INDEMNITY.

4 171. EVEREST INDEMNITY and CARL WARREN breached the insurance contract by,
5 among other things, failing to adequately investigate; by failing to provide all of the benefits
6 entitled to under the policy; by failing to provide benefits due and owing under the insurance
7 policy; by denying the claim; by refusing to perform its contractual duty to defend under a
8 reservation of its rights or otherwise; by refusing to recognize coverage; by refusing to indemnify
9 MATTHEWS; by placing its interests ahead of the insured; by failing to promptly and fairly
10 process and settle the claim; and by withholding benefits due and owing under the policy.

11 172. Plaintiffs are entitled to damages in excess of the court's jurisdictional minimum for the
12 breach of contract.

13 173. EVEREST INDEMNITY's and CARL WARREN's breach of contract was malicious,
14 fraudulent, oppressive and in bad faith.

15 **V.**

THIRD CAUSE OF ACTION

16 *Excess Liability Based on Failure to Accept Reasonable Settlement Offer Within Policy Limits*

17 174. Plaintiffs incorporate herein by reference, as if fully restated, each and every allegation
18 contained in all paragraphs of this complaint inclusive.

19 175. Plaintiffs entered into the insurance contract with EVEREST INDEMNITY or are assignees
20 of claims, benefits and/or damages under the insurance contract.

21 176. As part of its contractual obligations under the Policy, EVEREST INDEMNITY bore the
22 duty to accept and pay a reasonable settlement offers within the Policy's limits.

23 177. The multiple offers by Plaintiffs were reasonable settlement offer within policy limits.

24 178. In failing to accept and pay the reasonable settlement offers, EVEREST INDEMNITY
25 breached its obligations under the Policy.

26 179. Plaintiffs are entitled to damages for the breach of contract, including but not limited to
27 recovery of the amount of the Judgment, in excess of the Policy's limits, subsequently entered in the
28 Reimers lawsuit.

1 180. EVEREST INDEMNITY's breach of contract was malicious, fraudulent, oppressive and in
2 bad faith.

3 181. Plaintiffs are entitled to compensatory and punitive damages.

4 **VI.**
FOURTH CAUSE OF ACTION
5 *Enforcement of Judgment*

6 182. Plaintiffs incorporate herein by reference, as if fully restated, each and every allegation
7 contained in all paragraphs of this complaint inclusive.

8 183. The Plaintiffs have the legal right to enforce the Stipulated Judgment entered by the
9 Nevada District Court against Defendant EVEREST INDEMNITY.

10 184. The Plaintiffs are entitled to this Court's Order confirming their right to execute on the
11 entire Judgment against the Policy and against Defendant EVEREST INDEMNITY.

12 **VII.**
FIFTH CAUSE OF ACTION
13 *Breach of the Duty of Good Faith and Fair Dealing*

14 185. Plaintiffs incorporate herein by reference, as if fully restated, each and every allegation
15 contained in all paragraphs of this complaint inclusive.

16 186. There is an implied covenant of good faith and fair dealing in the insurance contract that
17 Defendants will not do anything to injure the rights of its insureds to obtain benefits due and
18 owing under the policy.

19 187. MATTHEWS had a legal entitlement to benefits due and owing under the insurance
20 policy.

21 188. EVEREST INDEMNITY and CARL WARREN have acted in bad faith and have
22 breached the covenant of good faith and fair dealing by their conduct including but not limited to
23 the following: (a) refusing, without proper basis, to recognize its coverage obligations; (b) failing
24 to make a timely determination of coverage; (c) failing to properly investigate; (d) refusing a
25 reasonable settlement offer within policy limits; (e) refusing to perform its contractual duty to
26 defend under a reservation of its rights or otherwise; (f) misrepresenting that coverage may not
27 exist; (g) failing to provide all of the benefits the insured is legally entitled to under the policy;
28 (h) failing to comply with NRS 686A.310(1), NAC 686A.660, NAC 686A.665, NAC 686A.670

1 and NAC 686A.675; (g) failing to conduct a full, fair, and prompt investigation of the claim; (h)
2 misrepresenting facts and policy provisions; (i) failing to adopt and implement reasonable
3 standards for the prompt investigation of claims; (j) ignoring evidence that supports coverage; (k)
4 unreasonably interpreting the policy; (l) misrepresenting the law applicable to the policy and its
5 claims handling; (m) failing to conduct a fair and objective evaluation of the claim; and (n) and
6 failing to reference in the original denial letter the specific policy provision(s), condition(s) or
7 exclusion(s) for the ultimate denial.

8 189. As a proximate result of Defendants' breach of their duty of good faith and fair dealing,
9 Plaintiffs have suffered damages in an amount in excess of this court's jurisdictional minimum.

10 190. In engaging in its bad faith conduct, Defendants acted fraudulently, oppressively, and in
11 malicious disregard of the rights of Plaintiffs. Plaintiffs, therefore, seek punitive damages by
12 way of punishment and deterrence in an amount to be determined at trial.

13 **VIII.**
14 **SIXTH CAUSE OF ACTION**
Violations of Nevada's Unfair Claims Practices Act

15 191. Plaintiffs incorporate herein by reference, as if fully restated, each and every allegation
16 contained in all paragraphs of this complaint inclusive.

17 192. EVEREST INDEMNITY is, and at all times mentioned herein was, an entity regulated by
18 Title 57 of the Nevada Revised Statutes.

19 193. Carl Warren is an "adjuster" as defined by NRS 684A .020.

20 194. Pursuant to NRS 684A.035, adjusters are liable for violations of NRS 686A.310.

21 Therefore, as an adjuster, Carl Warren is liable for violations of NRS 686A.310.

22 195. Plaintiffs incorporate the specific provisions of NRS 686A.310(1), NAC 686A.660, NAC
23 686A.665, NAC 686A.670 and NAC 686A.675. Under NRS 686A.310(2), Plaintiffs are
24 specifically authorized to enforce the provisions of NRS 686A.310(1).

25 196. EVEREST INDEMNITY and CARL WARREN have acted in violation of the Claims
26 Practices Standards prescribed by NRS 686A.310 and by the Nevada Insurance Regulations
27 adopted pursuant thereto, including but not limited to misrepresenting to insureds or claimants
28 pertinent facts or insurance policy provisions relating to any coverage at issue; failing to

1 acknowledge and act promptly upon communications with respect to claims arising under
2 insurance policies; failing to adopt and implement reasonable standards for the prompt
3 investigation and processing of claims arising under insurance policies; failing to affirm or deny
4 coverage of claims within a reasonable time after proof of loss requirements have been
5 completed and submitted by the insured; failing to effectuate prompt, fair and equitable
6 settlement of claims in which liability of the insurer has become reasonably clear; and failing to
7 reference in the original denial letter the specific policy provision, condition or exclusion for the
8 ultimate denial.

9 197. As a proximate and foreseeable result of these violations, Plaintiffs have suffered
10 damages in an amount in excess of this court's jurisdictional minimum.

11 198. EVEREST INDEMNITY and CARL WARREN hav maliciously, fraudulently,
12 oppressively and in bad faith breached the provisions of said statutes and regulations. Plaintiffs,
13 therefore, seek punitive damages by way of punishment and deterrence in an amount to be
14 determined at trial.

15 199. Plaintiffs are entitled to recover compensatory and punitive damages for the malicious
16 and bad faith breach of said statutes and regulations.

17 **IX.**
SEVENTH CAUSE OF ACTION
18 *Negligence v. CARL WARREN*

19 200. Plaintiffs hereby incorporate by this reference and reallege each and every allegation
20 contained in all paragraphs on this complaint inclusive, as if fully set forth herein.

21 201. CARL WARREN owed a duty to MATTHEWS to act with reasonable care, skill and
22 diligence as a third-party administrator.

23 202. CARL WARREN breached the above standard of care when it negligently handled,
24 processed and/or investigated MATTHEWS request for a defense and indemnification.

25 203. As a direct and proximate result of the above-referenced circumstances, CARL WARREN
26 negligently failed to handle, process and/or investigate MATTHEWS' request for defense and
27 indemnification.
28

1 204. As a direct and proximate result of CARL WARREN's negligence, Plaintiffs have suffered
2 damages in an amount in excess of this court's jurisdictional minimum.

3 X.
4 EIGHTH CAUSE OF ACTION
Gross Negligence v. CARL WARREN

5 205. Plaintiffs hereby incorporate by this reference and reallege each and every allegation
6 contained in all paragraphs on this complaint inclusive, as if fully set forth herein.

7 206. CARL WARREN owed a duty to MATTHEWS to act with reasonable care, skill and
8 diligence as a third-party administrator.

9 207. CARL WARREN breached the above standard of care when it negligently, carelessly and
10 recklessly handled, processed and/or investigated MATTHEWS request for a defense and
11 indemnification.

12 208. CARL WARREN failed to exercise even a slight amount of care in its handling, processing
13 and investigating MATTHEWS request for a defense and indemnification.

14 209. CARL WARREN's claim handling, processing and investigation of MATTHEWS request
15 for a defense and indemnification demonstrates that it gave little, if any, thought to the consequences
16 of its behavior.

17 210. By reason of Defendant CARL WARREN's negligence, Plaintiffs incurred special damages
18 in the form of liability exposure, attorneys' fees and costs, and general damages in the form of
19 financial loss and inconvenience in an amount in excess of the jurisdiction of this Court.

20 211. As a direct and proximate result of the gross negligence, carelessness, and willful and wanton
21 conduct of CARL WARREN, Plaintiffs have suffered damages in an amount in excess of this court's
22 jurisdictional minimum, including punitive damages by way of punishment and deterrence in an
23 amount to be determined at trial.

24 XI.
25 NINTH CAUSE OF ACTION
Aiding and Abetting Everest Indemnity's Tortious Breach of the Duty of Good Faith & Fair
26 *Dealing v. CARL WARREN*

27 212. Plaintiffs hereby incorporate by this reference and reallege each and every allegation
28 contained in all paragraphs on this complaint inclusive, as if fully set forth herein.

1 213. A person or entity who aids and abets a tortfeasor is himself or itself liable for the resulting
2 harm to a third person.

3 214. An insurer's breach of an implied covenant of good faith and fair dealing is a tort.

4 215. As detailed herein, EVEREST INDEMNITY tortiously breached the implied covenant of
5 good faith and fair dealing.

6 216. CARL WARREN was aware of its role in promoting the tortious breach of the implied
7 covenant of good faith and fair dealing at the time it provided its claims services. A third party
8 administrator, such as CARL WARREN, tasked with handling, processing and investigating
9 claims for an insurance company knows, or at a minimum has a general awareness, that if it
10 assists or encourages the insurer to deny a request for a defense and/or a request for
11 indemnification without a reasonable basis that the insurer will have committed bad faith.

12 217. CARL WARREN knowingly and substantially assisted and/or encouraged EVEREST
13 INDEMNITY with the intent of promoting the tortious breach of the implied covenant of good
14 faith and fair dealing.

15 218. CARL WARREN failed to conduct a reasonable investigation into MATTHEWS' tender,
16 MATTHEWS' requests for a defense and indemnification in the Rondy lawsuit, MATTHEWS'
17 requests for a defense and indemnification in the Reimers lawsuit, and MATTHEWS' requests
18 for a defense and indemnification in the third-party complaint brought in the Reimers lawsuit.

19 219. CARL WARREN substantially assisted or encouraged EVEREST INDEMNITY in
20 denying the request for a defense and indemnification without a reasonable basis.

21 220. As a direct and proximate result of CARL WARREN's conduct, Plaintiffs have suffered
22 damages in an amount in excess of this court's jurisdictional minimum.

23 221. In engaging in its conduct, CARL WARREN acted fraudulently, oppressively, and in
24 malicious disregard of the rights of Plaintiffs. Plaintiffs, therefore, seek punitive damages by
25 way of punishment and deterrence in an amount to be determined at trial.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for relief as follows:
28

1 1. This Court declare and adjudicate the rights and duties of the respective parties hereto
2 concerning the controversy referred to above and resolve any disputes concerning coverage for
3 insurance benefits under the insurance contract and confirm the enforceability against Defendants
4 of the Judgment entered against MATTHEWS;

5 2. Plaintiffs be awarded contractual and compensatory damages;

6 3. Plaintiffs be awarded punitive damages;

7 4. For prejudgment and post-judgment interest on all sums awarded, according to proof
8 at the maximum legal rate;

9 5. For costs of suit, interest, and reasonable attorneys' fees; and,

10 6. For such other relief as the Court deems just and proper.

11 **AFFIRMATION**

12 **(NRS 239B.030)**

13 The undersigned does hereby affirm that the preceding document, **FIRST AMENDED**
14 **COMPLAINT**, filed in the Second Judicial District Court of the State of Nevada in and for the
15 County of Washoe, does not contain any personal information.

16 DATED this 29th day of July, 2014.

17 **LEVERTY & ASSOCIATES LAW CHTD.**

18 /S/ Patrick Leverty

19 Vernon E. Leverty, Esq., NV Bar No. 1266
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28

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify under penalty of perjury that I am an employee of Levery & Associates Law, Chtd., and that service of the foregoing was made on this date via electronic service through the Court's e-flex system to:

Jack G. Angaran, Esq.
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Attorneys for Plaintiffs

Service of the foregoing was made on this date via United States Mail to:

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*Attorneys for Defendant Everest
Indemnity Insurance Company*

DATED this 29th date of July, 2014.

/S/ Lisa Jasso

An employee of Levery & Associates Law, Chtd.

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