

Agenda Item #: 7B-2

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 5, 2008

☐ Consent

☒ Regular

☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: Approve an Agreement with the law firm of Barry S. Balmuth, P.A., for Legal Services, pursuant to which Barry S. Balmuth, Esq. will represent County employee Fire-Rescue District Chief Ken Fisher, who has been named as a Defendant in his personal capacity in the case styled Randolph Starling v. Board of County Commissioners, Palm Beach County and Ken Fischer [sic], Florida 15th Judicial Circuit Case No. 50 2007 CA 021475XXXXMB AFJ, in an amount not to exceed \$125,000, and costs not to exceed \$15,000.

Summary: Randolph Starling (Starling) has sued the County and County employee Fire-Rescue District Chief Ken Fisher (Fisher) in both his official and personal capacity. Starling claims that the County and Fisher retaliated against him, resulting in Starling being demoted. Fisher denies all the allegations. Countywide (AJM)

Background and Policy Issues: Randolph Starling, a County employee, sued the County and County employee Fire-Rescue District Chief Ken Fisher in both his official and personal capacities. The County Attorney's Office will represent the interests of the County, as well as those of Fisher in his official capacity. In order to avoid any possible conflict of interest that might arise out of representing Fisher's personal interests, staff recommends that outside counsel be retained to represent Fisher in his personal capacity.

Attachments: Agreement with Barry S. Balmuth, P.A., for Legal Services

Recommended by: _____



County Attorney

1/23/08

Date

Approved by: _____ N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	—	—	—	—	—
Operating Costs	\$140,000	—	—	—	—
External Revenues	—	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
NET FISCAL IMPACT	\$140,000	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 5010 Department 700 Unit 7130 Object 4511

Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

1/25/08 1-25-08 OFMB 1/25/08

1/28/08 1/29/08 Contract Dev. and Control

B. Legal Sufficiency:

Ashley
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

There is no signature from Risk Director, but they are aware of the item and approve it.

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

**AGREEMENT BETWEEN PALM BEACH COUNTY AND
BARRY S. BALMUTH, P.A., FOR LEGAL SERVICES**

THIS AGREEMENT, made and entered _____ day of _____, 2008, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "COUNTY"), and **BARRY S. BALMUTH, P.A** ("OUTSIDE COUNSEL").

WITNESSETH:

WHEREAS, COUNTY employee Ken Fischer ("Fischer"), has been named as Defendant in his official and his individual capacity in a case styled Randolph Starling v. Board of County Commissioners, Palm Beach County and Ken Fischer, Florida 15th Judicial Circuit Case No. 50 2007 CA 021475XXXXMB AFJ (the "PENDING LITIGATION");

WHEREAS, the COUNTY intends to represent Fischer in his official capacity in the PENDING LITIGATION, and desires to provide him with a defense to the claims against him individually, but also seeks to avoid any conflict of interest that could result from having its internal counsel represent him in his personal capacity;

WHEREAS, the COUNTY desires to retain OUTSIDE COUNSEL to represent Fischer in the PENDING LITIGATION (the "LEGAL SERVICES"); and,

WHEREAS, OUTSIDE COUNSEL desires to provide such LEGAL SERVICES to Fischer;

NOW, THEREFORE, in consideration of the mutual covenants and agreements expressed herein the parties agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.

2. (a) The parties hereby agree that OUTSIDE COUNSEL shall represent Fischer in the PENDING LITIGATION. Barry S. Balmuth, Esquire will assume primary responsibility on behalf of OUTSIDE COUNSEL for management of the LEGAL SERVICES.

(b) It is anticipated that OUTSIDE COUNSEL will attempt whenever possible to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.

(c) Multiple staffing of attorneys at meetings and depositions by OUTSIDE COUNSEL will not be compensated unless prior approval from the COUNTY has been obtained.

3. (a) The COUNTY agrees to pay for OUTSIDE COUNSEL's direct time at the rate of \$250.00 per hour for attorneys and legal assistant's time at the rate of \$85.00 per hour, in total amount not to exceed \$125,000.00.

(b) OUTSIDE COUNSEL shall invoice the COUNTY on a monthly basis. The monthly bills must be submitted to the County Attorney's Office for review and approval prior to payment. The bills shall be itemized to reflect each task performed by OUTSIDE COUNSEL and the actual time spent on each task, using one-tenth of an hour increments.

(c) OUTSIDE COUNSEL must notify the COUNTY, in writing, when its hourly fees reach ninety percent (90%) of the contractual limit, or \$112,500.00.

4. (a) The COUNTY agrees to reimburse OUTSIDE COUNSEL for reasonable out-of-pocket expenses and costs incurred during the course of said legal representation, which may include, but are not limited to, out-of-pocket expenses for photocopying projects, courier charges,

long distance telephone charges, postage, and printing; provided, however, that the cumulative reimbursable out-of-pocket expenses and costs paid by the COUNTY shall not exceed \$15,000.00. Court filing fees and costs, witness fees, and previously approved travel shall be itemized and invoiced separately. OUTSIDE COUNSEL must notify the COUNTY, in writing, when the costs it has paid reach ninety percent (90%) of the contractual limit, or \$13,500.00. Fees of expert witnesses, if any, retained pursuant to paragraph 8, below, shall be separate and apart from this AGREEMENT.

(b) All requests for payment of expenses eligible for reimbursement under the terms of this AGREEMENT shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this AGREEMENT. Long distance telephone calls shall state the number called, time and cost. Any out-of-county travel, any travel between Miami Dade or Broward Counties and Palm Beach County, mileage or meal expenses which may be reimbursable under the terms of this AGREEMENT shall be approved by the County Attorney's Office, in advance, and shall be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes and all applicable policies and procedures established by the Board of County Commissioners.

(c) OUTSIDE COUNSEL further agrees to comply with the requirements for reimbursable expenses set forth in Exhibit A, which is attached hereto and made a part hereof.

(d) OUTSIDE COUNSEL covenants and agrees that any other type of billing or time keeping which allows compensation for time not actually spent by OUTSIDE COUNSEL is not

permitted under this AGREEMENT. Therefore, it shall be a material breach of the terms of this AGREEMENT for OUTSIDE COUNSEL or anyone on OUTSIDE COUNSEL's behalf to submit for payment any statement of services rendered that either (i) overstates the amount of time actually spent pursuant to this AGREEMENT, or (ii) includes time spent by any person not affiliated with OUTSIDE COUNSEL.

(e) Each statement of costs and fees represents an implied warranty that the statement sets forth only the actual time spent and only the actual costs incurred. The COUNTY may rely on the implied warranty.

5. OUTSIDE COUNSEL shall maintain its file on this matter, including adequate records to justify all charges, expenses, and costs incurred in performing the LEGAL SERVICES, for at least five (5) years after completion of the PENDING LITIGATION. The COUNTY shall have access to such records during normal business hours, upon reasonable notice to OUTSIDE COUNSEL.

6. (a) This AGREEMENT may be terminated by the COUNTY upon twenty (20) days' written notice to OUTSIDE COUNSEL. The AGREEMENT may be terminated by OUTSIDE COUNSEL upon ninety (90) days' written notice to the COUNTY. Upon termination by either party, OUTSIDE COUNSEL shall transfer all work in progress, completed work, and other materials related to the LEGAL SERVICES to the COUNTY.

(b) If OUTSIDE COUNSEL terminates this AGREEMENT before completion of the PENDING LITIGATION, it shall not seek, nor be awarded, any work as outside counsel for the COUNTY on the matter.

7. Copies of all correspondence and pleadings shall be directed to the County Attorney's Office.

8. OUTSIDE COUNSEL shall obtain prior approval from the County Attorney's Office before retaining any expert witness, or arranging any out-of-town travel.

9. OUTSIDE COUNSEL shall provide periodic status reports, either oral or in writing, as requested by the County Attorney's Office.

10. (a) OUTSIDE COUNSEL shall deliver to the COUNTY all documents and materials prepared by and for the COUNTY under this AGREEMENT.

(b) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense, will be kept confidential by OUTSIDE COUNSEL and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by a lawful order. All drawings, maps, sketches, and other data developed, or purchased, under this AGREEMENT or at the COUNTY's expense shall be and remain the COUNTY's property and may be reproduced and reused solely at the discretion of the COUNTY.

11. OUTSIDE COUNSEL has been advised that the COUNTY and all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes). OUTSIDE COUNSEL shall observe and comply with the requirements of said laws and all related COUNTY policies and procedures in performing the LEGAL SERVICES hereunder.

12. (a) OUTSIDE COUNSEL will maintain in full force and effect, during the life of this AGREEMENT, Standard Professional Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence with a maximum deductible of Fifty Thousand Dollars (\$50,000.00).

(b) Certificates of liability insurance satisfactory to the COUNTY, evidencing the coverage required hereunder, shall be furnished to the COUNTY immediately upon execution hereof and before commencement of any services under this AGREEMENT, with complete copies of policies to be furnished upon the COUNTY's request. Such certificates of insurance will provide COUNTY with thirty (30) days prior written notice of any cancellation or non-renewal.

(c) Approval of the insurance by the COUNTY shall not relieve or decrease any liability of OUTSIDE COUNSEL hereunder.

13. OUTSIDE COUNSEL shall indemnify and save harmless and defend the COUNTY, its agents, servants, and employees from and against any and all claims, liability, losses and/or cause of action which may arise from any intentional or negligent act or omission of OUTSIDE COUNSEL, its agents, servants, or employees in the performance of the LEGAL SERVICES.

14. (a) OUTSIDE COUNSEL represents that it has, or will secure as its own expense, all necessary personnel required to perform the LEGAL SERVICES under this AGREEMENT. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

(b) All of the LEGAL SERVICES required herein shall be performed by OUTSIDE COUNSEL or under its supervision, and all personnel engaged in performing the services

shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

(c) Any changes or substitutions in OUTSIDE COUNSEL's key personnel, must be made known to the COUNTY's representative and written approval granted by the COUNTY before said change or substitution can become effective.

(d) OUTSIDE COUNSEL warrants that all services shall be performed by skilled and competent personnel to the highest professional standards.

15. Signature of this AGREEMENT by OUTSIDE COUNSEL shall act as the execution of a truth-in negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in the AGREEMENT are accurate, complete and current as of the date of this AGREEMENT.

16. (a) OUTSIDE COUNSEL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the LEGAL SERVICES, as provided in the standards set forth in Part III of Chapter 112, Florida Statutes. OUTSIDE COUNSEL further represents that no person having such a conflicting interest shall be employed by OUTSIDE COUNSEL to perform the LEGAL SERVICES.

(b) OUTSIDE COUNSEL shall promptly notify the COUNTY in writing of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence OUTSIDE COUNSEL's judgment or quality of the LEGAL SERVICES. The notice shall identify the prospective business association, interest, or circumstance and the nature of work that OUTSIDE COUNSEL wants to undertake and request the

COUNTY's opinion as to whether the association, interest, or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by OUTSIDE COUNSEL. The COUNTY agrees to notify OUTSIDE COUNSEL of its opinion within thirty (30) days of receipt of notification by OUTSIDE COUNSEL. If, in the opinion of the COUNTY, the prospective business association, interest, or circumstance would not constitute a conflict of interest by OUTSIDE COUNSEL, the COUNTY shall so state in its opinion, and the association, interest, or circumstance shall not be deemed to be a conflict of interest with respect to the LEGAL SERVICES. OUTSIDE COUNSEL further agrees to comply with Palm Beach County P.P.M. #CW-0-052 regarding outside attorney conflicts of interest. Said P.P.M. is incorporated herein by reference and made a part of this contract.

17. OUTSIDE COUNSEL is, and shall be, in the performance of all work services and activities under this AGREEMENT, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this AGREEMENT shall at all times, and in all places, be subject to OUTSIDE COUNSEL's sole discretion, supervision, and control. OUTSIDE COUNSEL shall exercise control over the means and manner in which it and its employees perform the work, and in all respects OUTSIDE COUNSEL's relationship and the relationship of its employees to the COUNTY shall be that of an independent Contractor and not as employees or agents of the COUNTY. OUTSIDE COUNSEL does not have the power or authority to bind the COUNTY in any promise, AGREEMENT or representation other than specifically provided for in this AGREEMENT.

18. OUTSIDE COUNSEL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OUTSIDE COUNSEL to solicit or secure this AGREEMENT and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for OUTSIDE COUNSEL, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this AGREEMENT.

19. OUTSIDE COUNSEL warrants and represents that all of its employees are treated equally during employment without regard to race, color, physical handicap, religion, sex, age, national origin, or sexual orientation.

20. OUTSIDE COUNSEL hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a professional manner and that all services shall be performed by skilled and competent personnel to the highest professional standards.

21. (a) This AGREEMENT shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this AGREEMENT shall be originally filed and later held in Palm Beach County. To encourage prompt and equitable resolution of any litigation that may arise hereunder, the parties hereby waive any rights that either may have to a trial by jury of any such litigation. No remedy herein conferred upon the parties is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. The parties agree that time is of the essence in the performance of all obligations hereunder. No single or

partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

(b) In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees.

22. As provided in Sections 287.132-133, Florida Statutes, by entering into this AGREEMENT or performing any work in furtherance hereof, OUTSIDE COUNSEL certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

23. All notices required in this AGREEMENT shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Andrew J. McMahon
Chief Assistant County Attorney
Litigation Department
300 North Dixie Highway
Third Floor
West Palm Beach, Florida 33401

and if sent to OUTSIDE COUNSEL shall be mailed to:

Barry S. Balmuth, Esquire
Centurion Tower - Eleventh Floor
1601 Forum Place
Suite 1101
West Palm Beach, Florida 33401

24. The foregoing terms and conditions constitute the entire AGREEMENT between the parties hereto and any representation not contained herein shall be null and void and of no force and

effect. Further, this AGREEMENT may be amended only in writing upon mutual consent of the parties hereto.

25. This AGREEMENT shall be effective as of January 1, 2008.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT on the day and year reflected above.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

(SEAL)

BARRY S. BALMUTH, P.A.

WITNESSES:

Sharon A. Browning
Signature

By: [Signature]
Signature

Sharon A. Browning
Print Name

Barry S. Balmuth
Type or Print Name

[Signature]
Signature

President
Title/Position

Paula F. Birdsong
Print Name

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
Chief Assistant County Attorney

EXHIBIT A

REQUIREMENTS FOR REIMBURSABLE EXPENSES

The following represents Palm Beach County's payment requirements for legal costs:

- Your federal employee identification number must be on all invoices submitted.
- No service, interest, or other charge of like nature is to be imposed with regard to any item, invoice, or request.
- Services rendered must be specifically and concisely identified.
- Names of persons performing services, hourly rates, and dates must be listed.
- Reimbursable expense must be verified by attached receipts or copies thereof. (RECEIPTS REQUIRED IF COSTS OVER \$5.00)
- Claims for mileage and meals cannot exceed statutory allowance as provided for under Chapter 112, F.S. (mileage \$0.36 per mile; breakfast \$6.00; lunch \$12.00; dinner \$22.00).
- Claims for lodging at single rate (actual cost) must be substantiated by paid bill or charge.
- Car rentals required for necessary travel should include compact or standard-size vehicles only.
- Common carrier travel shall be reimbursable at tourist or coach class fares only.
- Accounting Division requires **original** receipts, or copies of receipts which have been individually certified to be true copies of the originals, or a single certificate describing the attached copies and certifying them to be true copies. The certification can either be typed on the copy itself or attached to the "Certification" form. The Certification form must be signed by the certifying person and a description provided of the items which are certified.

CERTIFICATE

IT IS HEREBY CERTIFIED that:

1. _____ has been duly designated as special counsel to render legal services or provider of services for and on behalf of Palm Beach County;
2. Each of the documents hereinafter identified and attached is a true and correct copy of the original record;
3. Expenditure(s) enumerated represent costs necessarily incurred during the course of official business for which payment has not been received and for which documentation is not available or reasonably retrievable;
4. Claims are in compliance with the applicable statutes and administrative orders, and with the express provision that all other parties are barred from entitlement to any part of these costs.

RE: Invoice No.: _____ dated: _____
Period Covered: _____ Amount: \$

IN-HOUSE CHARGES:

Mileage: _____ miles @ \$.36/mile
Photocopies: _____ copies @ \$.20/each
Long-distance Calls: itemized

OTHER (Copies of invoices required):

TOTAL \$

FOR THE FIRM

Signed: _____
Print Name: _____
Title: _____
Date: _____



**LAWYERS PROFESSIONAL LIABILITY POLICY
DECLARATIONS**

Agency:
700324

Branch:
912

Policy Number:
287160655

Insurance is provided by Continental Casualty Company,
333 S. Wabash Ave. Chicago, IL 60604
A Stock Insurance Company.

1A. NAMED INSURED AND MAILING ADDRESS:

Barry S. Balmuth, P.A.
1601 Forum Place, Suite 1101
Centurion Tower
West Palm Beach, FL 33401

NOTICE TO POLICYHOLDERS:

This is a Claims Made and Reported policy. It applies only to those claims that are both first made against the insured and reported in writing to the Company during the policy period. Please review the policy carefully and discuss this coverage with your insurance agent or broker.

1B. PREDECESSOR FIRM(S): See Declarations Addendum

2. POLICY PERIOD:

Inception: 08/20/2007
at 12:01 A.M. Standard Time at the address shown above

Expiration: 08/20/2008

3. LIMITS OF LIABILITY:

Inclusive of Claims Expenses

Each Claim: \$1,000,000
Aggregate: \$2,000,000

Death or Disability and Non-Practicing
Extended Reporting Period Limit of Liability:

Each Claim: \$1,000,000
Aggregate: \$2,000,000

4. DEDUCTIBLES:

Inclusive of Claims Expenses

Aggregate: \$5,000

5. POLICY PREMIUM:

Annual Premium: \$3,561.00

Surcharges/Taxes:

Florida Hurricane Catastrophe Fund	Amount:
Florida Insurance Guaranty Association - 2005 Assessment	\$35.61
Florida Insurance Guaranty Association - 2006 Special Assessment	\$64.10
	\$71.22

Total Amount Due: \$3,731.93

Includes CNA Risk Management Seminar Credit of \$ 0.00

6. FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION:

G-118011-A (Ed. 07/2001), G-118012-A (Ed. 03/1999), G-118016-A (Ed. 09/1996), G-118029-A (Ed. 09/1996), G-118031-A (Ed. 10/2001), G-118039-A09 (Ed. 06/2001), G-118065-A09 (Ed. 06/2001), G-145126-A (Ed. 08/2003), G-145184-A (Ed. 06/2003), G-30033148-A (Ed. 09/2006)

7. WHO TO CONTACT:

To report a claim:
CNA Insurance Companies
333 S. Wabash, 39 South
Chicago, IL 60685

Att: Regional Director, GSL Lawyers Claims
Phone 312-822-6466 Fax 312-817-0528

John S. Brand

Countersignature

Date

Authorized Representative

Date



**LAWYERS PROFESSIONAL LIABILITY POLICY
DECLARATIONS ADDENDUM**

Item 1.B. PREDECESSOR FIRM(S):

NONE



Continental Casualty Company
333 S. Wabash Ave.
Chicago, IL 60604

LAWYERS PROFESSIONAL LIABILITY POLICY

ATTORNEY SCHEDULE

Policy Number: 287160655

Name of Each Lawyer
Barry Balmuth



INSURANCE IN TOUCH WITH BUSINESS

Continental Casualty Company
CNA PLAZA
CHICAGO, ILLINOIS 60685

LAWYERS PROFESSIONAL LIABILITY POLICY

EACH CLAIM DEDUCTIBLE ENDORSEMENT

In consideration of a premium credit, it is understood and agreed that Item 4. of the Declarations is deleted and replaced in its entirety by the following:

4. DEDUCTIBLE: Each **claim**: \$5,000
inclusive of claims expenses.

It is further understood and agreed that Section II, LIMITS OF LIABILITY AND DEDUCTIBLE, paragraph (C), entitled Deductible, is deleted in its entirety, and the following is substituted in place thereof:

(C) Deductible - Each Claim

The deductible amount stated in the Declarations for "each **claim**" applies to each and every **claim** made against an **Insured**. It shall be paid by the **Named Insured** and applies to the payment of **damages** and **claims expenses** for **claims** both first made against the **Insured** and reported to the **Company** in writing during the **policy period**. In the event the **Named Insured** fails to pay, the deductible shall be paid jointly and severally by all **Insureds**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

All other terms and conditions of the Policy remain unchanged.

POLICY NO.287160655

THIS ENDORSEMENT FORMS A PART OF THE ABOVE REFERENCED POLICY, AND TAKES EFFECT ON THE EFFECTIVE DATE AND HOUR OF SAID POLICY UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW, AND EXPIRES CONCURRENTLY WITH SAID POLICY.

ISSUED TO: **BARRY S. BALMUTH, P.A.**

EFFECTIVE DATE
OF THIS ENDORSEMENT **08/20/2007**

Complete only when this Endorsement is not prepared with the Policy or is not to be effective with the Policy

Countersigned by _____

AUTHORIZED REPRESENTATIVE



INSURANCE IN TOUCH WITH BUSINESS

Continental Casualty Company
CNA PLAZA
CHICAGO, ILLINOIS 60685

LAWYERS PROFESSIONAL LIABILITY POLICY

RETROACTIVE EXCLUSION CLAUSE ENDORSEMENT

It is understood and agreed that Section I., Insuring Agreement, Paragraph A., is amended to include a new subparagraph (5) as follows:

A(5). the act or omission occurred on or after 08/20/1997.

All other provisions of this Policy remain unchanged.

POLICY NO.287160655

THIS ENDORSEMENT FORMS A PART OF THE ABOVE REFERENCED POLICY, AND TAKES EFFECT ON THE EFFECTIVE DATE AND HOUR OF SAID POLICY UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW, AND EXPIRES CONCURRENTLY WITH SAID POLICY.

ISSUED TO: BARRY S. BALMUTH, P.A.

**EFFECTIVE DATE
OF THIS ENDORSEMENT 08/20/2007**

Complete only when this Endorsement is not prepared with the Policy or is not to be effective with the Policy

Countersigned by _____

AUTHORIZED REPRESENTATIVE



INSURANCE IN TOUCH WITH BUSINESS

Continental Casualty Company
CNA PLAZA
CHICAGO, ILLINOIS 60685

LAWYERS PROFESSIONAL LIABILITY POLICY
OFFICE SHARING EXCLUSION ENDORSEMENT

It is understood and agreed that the following paragraph is added to Section IV Exclusions:

This Policy does not apply to any **claim** based on or arising out of any acts or omissions of any person or entity who is not an **Insured** under this Policy but with whom an **Insured** shares common office space.

All other terms and conditions of the Policy remain unchanged.

POLICY NO.287160655

THIS ENDORSEMENT FORMS A PART OF THE ABOVE REFERENCED POLICY, AND TAKES EFFECT ON THE EFFECTIVE DATE AND HOUR OF SAID POLICY UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW, AND EXPIRES CONCURRENTLY WITH SAID POLICY.

ISSUED TO: BARRY S. BALMUTH, P.A.

EFFECTIVE DATE
OF THIS ENDORSEMENT 08/20/2007

Complete only when this Endorsement is not prepared with the Policy or is not to be effective with the Policy

Countersigned by _____

AUTHORIZED REPRESENTATIVE



INSURANCE IN TOUCH WITH BUSINESS

CONTINENTAL CASUALTY COMPANY
CNA PLAZA
CHICAGO, ILLINOIS 60685

LAWYERS PROFESSIONAL LIABILITY POLICY

AMENDMENT OF TERMINATION PROVISIONS
FLORIDA

It is understood and agreed that Condition L. Cancellation/Nonrenewal is deleted and replaced in its entirety by the following:

L. Cancellation/Nonrenewal

1. Cancellation

- a. This Policy may be canceled by the **Named Insured** by returning it to the **Company**. The **Named Insured** may also cancel this Policy by written notice to the **Company** stating at what future date cancellation is to be effective.
- b. The **Company** may cancel this Policy by mailing, or by delivery of a written notice of cancellation to the **Named Insured** to the mailing address last known to the **Company**. Notice of cancellation will state the reasons for cancellation and the effective date of cancellation. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Delivery (where permitted by law) of such written notice either by the **Named Insured** or by the **Company** shall be equivalent to mailing. If mailed, proof of mailing shall be sufficient proof of notice.
- c. If this Policy is a new policy and has been in effect for less than 90 days, the **Company** may cancel for any reason by giving notice at least:
 - (1) 10 days before the effective date of cancellation, if the **Company** cancels for nonpayment of premium; or
 - (2) 20 days before the effective date of cancellation, if the **Company** cancels for failure to pay amounts in excess of the limit of the **Company's** liability or within the amount of the deductible or if the **Company** cancels for any other reason, except that the **Company** may cancel immediately if there has been:
 - (a) a material misstatement, misrepresentation or fraud made by the **Named Insured** or with the **Named Insured's** knowledge in obtaining the Policy or in pursuing a **claim** under this Policy; or
 - (b) a failure to comply with the underwriting requirements established by the Insurer.
- d. If this policy has been in effect for 90 days or more, or if it is a renewal of a policy issued by the **Company**, the **Company** may cancel only for one or more of the following reasons:
 - (1) Nonpayment of premium; or



- (2) Material misstatement, misrepresentation or fraud made by the **Named Insured** or with the **Named Insured's** knowledge in obtaining this Policy or in pursuing a **claim** under this Policy; or
- (3) There has been a substantial change in the risk covered by this Policy; or
- (4) A failure to comply with underwriting requirements within 90 days of the effective date of coverage; or
- (5) The cancellation is for all **Insureds** under such Policy for a given class of **Insureds**.

The **Company** will give notice at least:

- (1) 10 days before the effective date of cancellation, if the **Company** cancels for nonpayment of premium; or
 - (2) 45 days before the effective date, if the **Company** cancels for failure to pay amounts in excess of the limit of the **Company's** liability or within the amount of the deductible or if the **Company** cancels for any of the other reasons stated in paragraph d. above.
- e. If the **Company** cancels this Policy, the earned premium shall be computed pro rata. If the **Named Insured** cancels this Policy, the **Company** shall retain the customary short rate proportion of the premium. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

2. Nonrenewal

- a. If the **Company** elects to nonrenew this Policy, the **Company** will mail, or deliver written notice of nonrenewal, including reasons for nonrenewal, to the **Named Insured** to the mailing address last known to the **Company**, at least 45 days prior to the expiration date of this Policy. Delivery (where permitted by law) or such written notice by the **Company** shall be equivalent to mailing. If mailed, proof of mailing shall be sufficient proof of notice.
- b. The offering of terms and conditions different from the expiring terms and conditions does not constitute a refusal to renew.

All other terms and conditions of the Policy remain unchanged.

POLICY NO.287160655

THIS ENDORSEMENT FORMS A PART OF THE ABOVE REFERENCED POLICY, AND TAKES EFFECT ON THE EFFECTIVE DATE AND HOUR OF SAID POLICY UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW, AND EXPIRES CONCURRENTLY WITH SAID POLICY.

ISSUED TO: BARRY S. BALMUTH, P.A.

**EFFECTIVE DATE
OF THIS ENDORSEMENT 08/20/2007**

Complete only when this Endorsement is not prepared with the Policy or is not to be effective with the Policy

Countersigned by _____

AUTHORIZED REPRESENTATIVE



INSURANCE IN TOUCH WITH BUSINESS

CONTINENTAL CASUALTY COMPANY
CNA PLAZA
CHICAGO, ILLINOIS 60685

LAWYERS PROFESSIONAL LIABILITY POLICY

AMENDATORY ENDORSEMENT - FLORIDA

It is understood and agreed that the following special condition is added to the Policy:

Notice: The following telephone number is provided in the event any questions arise regarding this Policy:

1-800-445-7227 Ext. 753.

All other provisions of this Policy remain unchanged.

POLICY NO.287160655

THIS ENDORSEMENT FORMS A PART OF THE ABOVE REFERENCED POLICY, AND TAKES EFFECT ON THE EFFECTIVE DATE AND HOUR OF SAID POLICY UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW, AND EXPIRES CONCURRENTLY WITH SAID POLICY.

ISSUED TO: **BARRY S. BALMUTH, P.A.**

EFFECTIVE DATE
OF THIS ENDORSEMENT **08/20/2007**

Complete only when this Endorsement is not prepared with the Policy or is not to be effective with the Policy

Countersigned by _____

AUTHORIZED REPRESENTATIVE



POLICYHOLDER NOTICE
Economic and Trade Sanctions Conditions

Ethics and proper business conduct has been the cornerstone of CNA since 1897. While much has changed during the last century, our commitment to these core values has not wavered. We strongly believe that proper business conduct is more than the practice of avoiding wrong; it is also a matter of choosing to do right. Nowhere is this more essential than helping in the fight against terrorism. As such, we are committed to complying with U.S. Department of Treasury Office of Foreign Asset Control (OFAC) requirements.

Through a variety of laws, OFAC administers and enforces economic sanctions against countries and groups of individuals, such as terrorists and narcotics traffickers. These laws prohibit all United States citizens (including corporations and other entities) and permanent residents from engaging in transactions with sanctioned countries and with individuals and entities on the Specially Designated Nationals (SDN) list. Because all U.S. citizens and companies are subject to this law, we wanted to be sure you were aware of its scope and restrictions. If you haven't already done so, you may want to consider discussing this issue with your legal counsel to ensure you are in compliance.

For insurance companies, accepting premium from, issuing a policy to, insuring property of, or making a claim payment to an individual or entity that is the subject of U.S.-imposed economic sanctions or trade embargoes usually are violations of these laws and regulations. Fines for violating OFAC requirements can be substantial. CNA has established an OFAC compliance program part which includes the use of exclusionary policy language. We believe this makes good business sense for CNA and you.

The purpose of this letter is to advise you that your policy includes OFAC exclusionary policy language, which may reduce or eliminate certain coverage. Specifically, if it is determined that your policy violates certain Federal or State laws or regulations, such as the U.S. list of Specially Designated Nationals or Blocked Persons (organizations or individuals associated with terrorist groups), any term or condition of your policy will be null and void to the extent it violates the applicable laws or regulations of the United States.

We're sure you share our commitment to compliance and thank you for your cooperation.

Your policy language reads as follows:

ECONOMIC AND TRADE SANCTIONS CONDITION

The following condition is added to the Policy:

ECONOMIC AND TRADE SANCTIONS CONDITION

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void from its inception with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

1. Any insured, or any person or entity claiming the benefits of an insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
2. Any claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or suit is prohibited by U.S. economic or trade sanctions;
3. Any claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;

ENDORSEMENT NUMBER: 6
POLICY NUMBER: 287160655
ISSUED TO: Barry S. Balmuth, P.A.



4. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
5. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used in this endorsement a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (OFAC) as it may be from time to time amended.

As used in this endorsement a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

THIS DISCLOSURE NOTICE DOES NOT PROVIDE COVERAGE NOR DOES THIS NOTICE REPLACE ANY PROVISIONS OF YOUR POLICY. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE FOR COMPLETE INFORMATION ON THE COVERAGE AND PRICE OF YOUR POLICY. IF THERE IS ANY CONFLICT BETWEEN THE POLICY AND THIS NOTICE, THE PROVISIONS OF THE POLICY SHALL PREVAIL. YOUR INDEPENDENT INSURANCE AGENT WILL BE ABLE TO EXPLAIN THE TERMS OF THE CONTRACT IN DETAIL.

ENDORSEMENT NUMBER: 6
POLICY NUMBER: 287160655
ISSUED TO: Barry S. Balmuth, P.A.
EFFECTIVE DATE OF ENDORSEMENT: 08/20/2007

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown above.

By Authorized Representative _____
(No signature is required if this endorsement is issued with the Policy or if it is effective on the Policy Effective Date)



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ECONOMIC AND TRADE SANCTIONS CONDITION

The following condition is added to the Policy:

ECONOMIC AND TRADE SANCTIONS CONDITION

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void from its inception with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

1. Any insured under this Policy, or any person or entity claiming the benefits of such insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
2. Any claim or suit that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or suit is prohibited by U.S. economic or trade sanctions;
3. Any claim or suit that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;
4. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
5. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used in this endorsement a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this endorsement a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

ENDORSEMENT NUMBER: 7
POLICY NUMBER: 287160655
ISSUED TO: Barry S. Balmuth, P.A.
EFFECTIVE DATE OF ENDORSEMENT: 08/20/2007

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown above.

By Authorized Representative _____
(No signature is required if this endorsement is issued with the Policy or if it is effective on the Policy Effective Date)



IMPORTANT INFORMATION

FOR OUR FLORIDA COMMERCIAL LINES POLICYHOLDERS

Your policy premium includes a **Florida Hurricane Catastrophe Fund** surcharge.

Hurricanes Dennis, Katrina, Rita and Wilma, caused substantial property damage in Florida during the 2005 hurricane season. Certain of the hurricanes causing property damage in the 2005 hurricane season caused insured losses covered by the Fund. The State Board of Administration (BOARD) has determined that the amount of revenue produced under Section 215.555(5), Florida Statutes is insufficient to fund the obligations, costs, and expenses of the Florida Hurricane Catastrophe Fund (**FUND**) and the Florida Hurricane Catastrophe Fund Corporation (**CORPORATION**), including repayment of revenue bonds and that portion of the debt service coverage not met by reimbursement.

Pursuant to the provisions of S.215.555(6)(b), Florida Statutes, the Board has directed the Office of Insurance Regulation (**OFFICE**) to levy, by order, an emergency assessment on direct premiums for all property and casualty lines of business in this state, excluding policy premiums for workers compensation, accident and health, medical malpractice and the National Flood Insurance Program. This Order was released as Case No. 86203-06.

This assessment shall be collected from each property and casualty policyholder with a policy that is issued or renewed during an assessment period. An assessment period begins on January 1 and continues for twelve-months. The emergency assessment shall be assessed in each successive assessment period until further Order of the Office

The Florida Hurricane Catastrophe Fund surcharge has been set at 1% of your premium.

If you have questions about this surcharge, please contact either your CNA agent or the Florida Office of Insurance Regulation.

G300331A (7-06)

Page 1

Continental Casualty Company

Insured Name: Barry S. Balmuth, P.A.

Policy No: 287160655

Endorsement No: 8

Effective Date: 08/20/2007

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IMPORTANT INFORMATION

FOR OUR FLORIDA COMMERCIAL LINES POLICYHOLDERS

Your policy premium includes a Florida Insurance Guaranty Association assessment.

The Board of Directors of the Florida Guaranty Association, Inc., in accordance with Florida Statutes 631.57 (3)(a), have determined that this assessment is necessary to secure funds "for the payment of covered claims and also to pay the reasonable costs to administer the same".

The need for this assessment is based upon actuarial projections included in the court filings for the liquidation of Southern Family Insurance Company, Atlantic Preferred Insurance Company and Florida Preferred Property Insurance Company. The estimated loss and loss adjustment expense deficiency for these three insolvencies may range between \$110 million and \$391 million, with best case estimate of \$239 million. The current account balance to handle the claims and expense amounts is approximately \$35 million.

The following policy types are included in the assessment: Monoline policies – Fire, General Liability, Inland Marine, Boiler and Machinery, Aircraft, Burglary and Theft, Earthquake and Medical Malpractice. Package policies: Commercial Multiple Peril policies – both the liability and non-liability portions of the premiums.

If you have questions about this surcharge, please contact either your CNA producer or the Florida Office of Insurance Regulation.



FL FIGA 2006 SPECIAL ASSESSMENT REQUIREMENTS

IMPORTANT INFORMATION

FOR OUR FLORIDA COMMERCIAL LINES POLICYHOLDERS

Your policy premium includes a Florida Insurance Guaranty Association Special **Assessment** of 2.0% (0.02)

In accordance with Section 631.57(3)(e), Florida Statutes and based on the recommendation by the Board of Directors of the Florida Insurance Guaranty Association, Inc., ("Association") the Office of Insurance Regulation has issued Emergency Assessment Levy No. 01-2006 to all member Insurers writing coverage in the All Other lines of business in the state of Florida for the purpose of securing funds to pay covered claims and to pay the reasonable costs of the Association.

The need for this assessment is based on the current case reserves in the court filings for the liquidation estates of Southern Family Insurance Company, Atlantic Preferred Insurance Company and Florida Preferred Property Insurance Company. The estimated loss and loss adjustment expense and unearned premium deficiency remaining for these three insolvencies is \$232 million. Therefore, the Board of Directors of the Association determined that this assessment is necessary.

The following policy types are included in the assessment:

- Monoline policies – Fire, General Liability, Inland Marine, Boiler and Machinery, Aircraft, Burglary and Theft, Earthquake and Medical Malpractice; and
- Package policies -- Commercial Multiple Peril policies – both the liability and non-liability portions of the premiums.

If you have questions about this surcharge, please contact either your CNA producer or the Florida Office of Insurance Regulation.