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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE-15-003338 (25)

ROBERT LEVERETT,

Plaintiff,

v.

CAPACITY INSURANCE COMPANY, MILLS
MEHR & ASSOCIATES, INC., SHAWN
STARBUCK, KEITH BOLEN, FOCUS CLAIM
MANGERS, LLC, and ORION WHITLOCK,

Defendants.

/

DEFENDANTS' MOTION FOR FINAL SUMMARY JUDGMENT

Defendants, Capacity Insurance Company, Mills Mehr & Associates, Inc., Shawn Starbuck, Keith Bolen, Focus Claim Managers, LLC, and Orion Whitlock, by and through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.510, hereby file this Motion for Final Summary Judgment, and state:

1. This is a malicious prosecution action by Plaintiff Robert Leverett against Defendants Capacity Insurance Company ("Capacity"), Mills Mehr & Associates, Inc. ("MMA"), Shawn Starbuck ("Starbuck"), Keith Bolen ("Bolen"), Focus Claim Managers, LLC ("FCM"), and Orion Whitlock ("Whitlock"). The precursor to the underlying case was a first-party property claim filed by a Capacity insured, which later retained Leverett as its public adjuster.

2. Leverett alleges in his Amended Complaint that Defendants maliciously provided information to the Department of Financial Services, Division of Insurance Fraud

("DFS"), for the purposes of beginning a fraud investigation against him. Leverett contends that DFS, after conducting a fraud investigation, referred the matter to the State Attorney's Office, which in turn found probable cause to charge him with several counts for fraud. The State Attorney's Office later dropped the charges. A copy of Leverett's Amended Complaint is attached hereto as Exhibit "A."

3. Defendants are entitled to final summary judgment on Leverett's claims because the undisputed material facts demonstrate that probable cause existed for the referral to DFS and the ensuing criminal charges. DFS conducted its own investigation before finding probable cause to refer the matter to the State Attorney's Office. The Assistant State Attorney who charged Leverett, Stephen Browning ("Attorney Browning"), unequivocally testified that Leverett likely attempted to overbill Capacity for the damages, but he later dropped the charges. Because the absence of probable cause is a necessary element of a malicious prosecution action, Leverett's claims fail as a matter of law.

4. Defendants are also entitled to final summary judgment pursuant to section 626.989, Florida Statutes, which provides qualified immunity from civil suit arising out of a report of suspected fraudulent activity to DFS. The undisputed material facts demonstrate that Defendants did not maliciously or in bad faith communicate any information to DFS as a matter of law.

5. Finally, the undisputed material facts demonstrate that, at all material times, Defendants relied on advice of counsel with respect to communicating information to DFS. Accordingly, even if this Court finds that Defendants are not entitled to statutory immunity, Defendants are nonetheless entitled to final summary judgment in their favor.

I. Undisputed Material Facts

This lawsuit arises out of a first-party property claim by Sai Jal, LLC d/b/a Red Carpet Inn ("Red Carpet Inn"), a Capacity insured, for property damage stemming from a fire at its hotel in August 2012. Whitlock's Depo., p. 10. The fire started after a guest left a cigarette burning on the mattress in one of the rooms. Id. at 118. Red Carpet Inn retained Leverett as its public adjuster for the claim. Leverett's Depo., pp. 23–25. In addition to damages from the fire, the hotel suffered water damage when the fire was put out. Id. at p. 52. Red Carpet Inn contracted with Roy Marshall of MIT Restoration for demolition and repair of the property. Bolen's Depo., Exhibit 13.

At all material times hereto, Capacity had two employees involved in the claim: Whitlock, Capacity's senior vice present of claims, and Bolen, a desk adjuster. Whitlock's Depo., pp. 21–22. Both Whitlock and Bolen were also employees of FCM, which served as Capacity's claim-handling unit, performing claims investigation and adjusting. Whitlock's Depo., pp. 28–29. Capacity retained MMA as its independent adjuster for the claim. Starbuck's Depo., p. 7, 12–13. MMA employee George Turnbull had primary responsibility, and Starbuck assisted when Turnbull was unavailable. Id. at 96. Capacity also retained engineer Grant Renne of Donan Engineering to inspect the property. Bolen's Depo., Exhibit 13. Finally, Capacity retained general contractors John Crist and Greg Boling of BRC Restoration. Bolen's Depo., Exhibit 1.

Red Carpet Inn—through Leverett—submitted a sworn proof of loss for \$686,416.51 in building damage and \$69,146.74 for damage to contents—a total of over **\$750,000**. Leverett's Depo., p. 199; Bolen's Depo., Exhibit 13. Based on reports and/or estimates from BRC and Donan Engineering, Capacity determined that the appropriate

amount of the loss was **\$138,768.40**. Bolen's Depo., Exhibit 13. The competing estimates reflected an "extreme disparity" in the quality of the items in the individual rooms, as well as the total number of rooms affected by the fire. Whitlock's Depo., pp. 12, 105. Specifically, the estimates differed in the quality of flooring, quality of fixtures, the depth of drywall, and the amount of business personal property that suffered damage. Id. at 129–30, 132–34; Bolen's Depo., pp. 176–79. In fact, Leverett claimed that 64 rooms of the hotel sustained damage, even though **the building damaged by the fire has only 56 rooms**. DFS Report, p. 2, attached hereto as Exhibit "B." ¹² Capacity paid Red Carpet Inn benefits totaling \$138,768.40. Bolen's Depo., Exhibit 13. Whitlock believed that the extreme disparity between Leverett's and the remaining estimates raised a suspicion of fraud sufficient to refer the matter to DFS. Whitlock's Depo., pp. 11–12, 141.

The parties proceeded to an appraisal to determine if Red Carpet Inn was entitled to additional benefits: Capacity and Red Carpet Inn each selected an appraiser to determine the appropriate amount of the outstanding loss. Leverett's Depo., p. 85. Each appraiser submitted their own estimate of the damages. Bolen's Depo., p. 125. After the two appraisers failed to reach an agreement, they appointed an umpire to settle the dispute. Leverett's Depo., pp. 92, 97; Bolen's Depo., p. 125. The umpire ultimately valued the outstanding loss at \$167,399.32, for a total amount of \$306,167.72—**less than half** of Leverett's estimate of the damages. Leverett's Depo., p. 199.

¹ Capacity requests that this Court take judicial notice of the Report pursuant to section 90.202, Florida Statutes, which provides that this Court may take judicial notice of "[o]fficial actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States." § 90.202(5), Fla. Stat.

² The page numbers refer to the Investigation Summary Report.

Meanwhile, Capacity retained counsel, Attorney Scharome Wolfe ("Attorney Wolfe") to assist with the claims process. Id. at 104–05. Attorney Wolfe prepared the report to DFS, as well as the accompanying affidavits and documentation. Id. at 118–19, 142; Starbuck's Depo., pp. 160–61; Leverett's Depo., p. 129; Bolen's Depo., p. 256.

DFS then, in its own words, "conducted a Criminal Investigation to determine if [Leverett] committed any criminal violations." DFS Report, p. 1. As noted previously DFS determined that, although the building damaged by the fire **had only 56 rooms**, Leverett claimed that **64 rooms were damaged**. Id. at 2. DFS also explained that the hotel owner testified at his EUO that only **14 rooms** were damaged, despite later recanting that statement. Id. at 3. DFS noted that it contacted Leverett to obtain his response to the allegations, but Leverett would not cooperate based on advice of his counsel. Id. at 5.

DFS ultimately determined that, having reviewed the materials submitted and conducted its own investigation, there was sufficient probable cause to refer the matter to the State Attorney's Office for criminal charges:

Based on the above facts, evidence and sworn testimony, **the Division of Insurance Fraud investigation has developed probable cause** to believe that beginning on August 2, 2012 . . . [Leverett] **did engage in a scheme to defraud** and attempt to obtain property causing Sworn Proof of Loss statements to be submitted to Capacity Insurance on behalf of the owners of Sai Jal, LLC d/b/a Red Carpet Inn, **knowing at the time of submission that the Proof Loss statements were not accurate and overly inflated**. Leverett also presented repair and replacement estimates and Proof of Loss statements in excess of \$750,000.00. Leverett did this **with the intent to defraud Capacity Insurance**, thereby violating FS 817.034, Organized Scheme to Defraud, which is a felony of the 1st degree.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has also developed probable cause to believe that on or about

October 1, 2012, . . . [Leverett] did commit insurance fraud by knowingly and willfully providing false information in support of the insurance claim, i.e. repair and replacement estimates and Proof of Loss statements in excess of \$750,000.00. In doing so, Leverett violated FS 817.234(1)(a)1, which is a felony of the 1st degree.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has also developed probable cause to believe that [Leverett] did commit attempted theft by knowingly and willfully providing false information in support of the insurance claim, i.e. repair and replacement estimates and Proof of Loss statements in excess of \$750,000.00 as well as additional demands for full payment even after Capacity Insurance paid the insured \$138,768.40. In doing so, Leverett violated FS 812.014(2)(a)1, which is a felony of the 1st degree.

Id. at 15–16 (emphasis added).

After DFS referred the matter to the State Attorney's Office, Attorney Browning found probable cause to file charges against Leverett in April 2014: one count for scheme to defraud and four counts for fraudulent claims relating to individual hotel rooms. Id. at 9, 20–21, 25. Attorney Browning met multiple times with DFS investigators, and once with Attorney Wolfe, but he did not recall any of the Defendants directly providing him with documents or other evidence. Id. at 16–18, 86. Whitlock confirmed that none of the Defendants provided any documents directly to the State Attorney's Office. Whitlock's Depo., p. 119.

After further investigation, Attorney Browning determined that, **although it was likely that Leverett overbilled Capacity for damage**, he did not believe that he could prove the case beyond a reasonable doubt, and as a result, he dropped the charges in August 2014. Browning's Depo., pp. 62, 70. Nonetheless, Attorney Browning confirmed that he would not have charged Leverett unless he believed that he could prove that

Leverett committed fraud beyond a reasonable doubt. Id. at 62, 157–58, 184. Attorney Browning accepted full responsibility for the initial charges, explaining that, although he took into account the information that DFS provided him, **he alone** made the final decision to file charges. Id. at 146.

After Attorney Browning dropped the charges, Leverett filed the instant malicious prosecution action, alleging that Defendants provided false and/or misleading information to DFS for the purposes of beginning a fraud investigation against him.

II. Probable Cause Existed for the Charges

Defendants are entitled to final summary judgment in their favor because the undisputed material facts unequivocally establish that probable cause existed for the charges at their inception, regardless of the fact that they were subsequently dropped. Because the absence of probable cause is a necessary element to maintain a malicious prosecution action, Leverett's claims fail as a matter of law.

To establish a claim for malicious prosecution, the plaintiff must prove each of the following six elements:

- (1) an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued; (2) the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant, and (6) the plaintiff suffered damage as a result of the original proceeding.

Fischer v. Debrincat, 169 So. 3d 1204, 1206 (Fla. 4th DCA 2015) (citation omitted). If the plaintiff cannot establish any one of these elements, he cannot prevail on a malicious

prosecution claim. Endacott v. Int'l Hosp., Inc., 910 So. 2d 915, 920 (Fla. 3d DCA 2005) (citation omitted).

The presence of probable cause will defeat a claim for malicious prosecution as a matter of law because lack thereof is a necessary element of the claim. Lewis v. Morgan, 79 So. 3d 926, 929 (Fla. 1st DCA 2012). Probable cause in this context means that the defendant in the malicious prosecution action had an arguably viable action against the plaintiff. Cohen v. Amerifirst Bank, 537 So. 2d 1108, 1110 (Fla. 3d DCA 1989). A party need not be certain of the ultimate outcome to have probable cause to institute the action. Sharaka v. E & A, Inc., 135 So. 3d 428, 432 (Fla. 2d DCA 2014) (citation omitted).

This case is virtually indistinguishable from Saenz v. State Farm Fire & Cas. Co., 861 So. 2d 64 (Fla. 3d DCA 2003). There, a homeowner's insurer reported one of its insureds to DFS after determining that the insured misrepresented that its property damage was caused by a hurricane. DFS conducted its own investigation before determining that there was sufficient evidence of fraud to warrant referral to the State Attorney's Office. The State Attorney's Office brought charges against the insured, but it later dropped those charges for reasons unclear from the opinion. The plaintiff then sued the insurer and its agent for malicious prosecution, among other claims.

The defendants moved for summary judgment on the ground that there was probable cause for the referral to DFS, and therefore the plaintiff could not prevail as a matter of law. The trial court granted summary judgment, and the Third District Court affirmed. In doing so, the Court reasoned that DFS conducted an independent investigation before contacting the State Attorney's Office, which in turn found probable cause to file criminal charges. Crucially, the Third District explained that dropping those

charges at a later date did not mean that there was no probable cause in the first instance: "**the fact that the state attorney's office declined for whatever reason to proceed with its prosecution against [plaintiff] does not vitiate its initial probable cause finding of fraud in the matter.**" Id. at 68 (emphasis added). Because lack of probable cause is a necessary element of every malicious prosecution action, the Court found that the trial court properly granted summary judgment because the State Attorney's Office independently found probable cause to charge plaintiff with a crime.

Here, as in Saenz, the evidence shows that Capacity had reason to **suspect** that Leverett had attempted to overbill it for the damages to the hotel, and thus Capacity was statutorily-obligated to report its suspicion to DFS. DFS then conducted its **own independent investigation** before determining that there was probable cause to refer the matter to the State Attorney's Office based on Leverett's "overly inflated" sworn proof of loss, in which DFS found he exaggerated the number of rooms damaged by the fire and the quality of the materials in the rooms.

Attorney Browning also testified that there was probable cause for the charges regardless of his decision to ultimately drop the same. Specifically, Attorney Browning testified that it was "**likely** that [Leverett] [attempted] to overbill Capacity for damage," but that the evidence simply did not suffice to "prove any sort of fraud beyond a reasonable doubt." Id. at 62 (emphasis added). Attorney Browning took responsibility for bringing the charges, explaining that it was his "decision ultimately as to what criminal charges are filed and my rationale for filing them" and that he "would take any victim's statement into account but they're not the prosecutor." Id. at 146. As the Third District has made clear, the fact that Attorney Browning later dropped the charges "**[did] not vitiate [his] initial**

probable cause finding of fraud in the matter." Saenz, 861 So. 2d at 68 (emphasis added); see also Rivernider v. Meyer, 174 So. 3d 602, 606 (Fla. 4th DCA 2015) (affirming summary judgment in malicious prosecution action where evidence showed probable cause for the claim); Endacott, 910 So. 2d at 923 (same).

Because the record indisputably reflects that Defendants had probable cause to refer the matter to DFS, which in turn found probable cause to refer the matter to the State Attorney's Office, which in turn found probable cause to charge Leverett for fraud, Defendants are entitled to final summary judgment in their favor as a matter of law.

III. Defendants Are Entitled to Statutory Immunity

Alternatively, Defendants are also entitled to final summary judgment in their favor because there is absolutely no evidence that any of the Defendants acted maliciously in bad faith by reporting Leverett's suspected fraud to DFS in compliance with Florida law.

Section 626.989, Florida Statutes, requires that insurers report suspected fraudulent activity relating to insurance matters:

any insurer, agent, or other person licensed under the code, or an employee thereof, **having knowledge or who believes** that a fraudulent insurance or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the code, or under s. 817.234, is being or has been committed **shall send** to the [DFS] a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. . . . [DFS] shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. **It shall then cause an independent examination of the facts surrounding such information or report** to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being committed. **[DFS] shall report any alleged violations of law which its investigations disclose to the appropriate licensing**

agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violation, as provided in s. 624.310. . . .

§ 626.989(6), Fla. Stat. (emphasis added).

Because section 626.989(6) requires insurers and their employees to report even **suspected** fraudulent activity, the statute affords them qualified immunity from civil liability arising out of reports to DFS, as long as the report is made in good faith:

In the absence of fraud or bad faith, a person is not subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports, without malice, or furnishing other information, without malice, required by this section or required by the department or division under the authority granted in this section, and no civil cause of action of any nature shall arise against such person:

1. For any information relating to **suspected** fraudulent insurance acts or persons **suspected** of engaging in such acts furnished to or received from law enforcement officials, their agents, or employees;
2. For any information relating to **suspected** fraudulent insurance acts or persons **suspected** of engaging in such acts furnished to or received from other persons subject to the provisions of this chapter;
3. For any such information furnished in reports to the department, the division, the National Insurance Crime Bureau, the National Association of Insurance Commissioners, or any local, state, or federal enforcement officials or their agents or employees; or
4. For other actions taken in cooperation with any of the agencies or individuals specified in this paragraph in the lawful investigation of **suspected** fraudulent insurance acts.

Id. § 626.989(4)(c) (emphasis added).

In addition to finding that the existence of probable cause defeated the plaintiff's malicious prosecution claim, the Third District in Saenz also found that the defendants

were immune from liability under section 626.989. The Third District reasoned that the defendants referred the matter to DFS, which conducted an independent investigation before contacting the State Attorney's Office, which in turn found probable cause to file criminal charges. The Court determined that the record reflected no evidence that the defendants acted in bad faith, and, therefore, they were entitled to statutory immunity. In fact, in the only two reported Florida decisions to address section 626.989, the court has determined that the defendants were entitled to statutory immunity. See id.; Pearce v. U.S. Fid. & Guar. Co., 476 So. 2d 750, 752 (Fla. 4th DCA 1985) (affirming summary judgment for insurer and its employees pursuant to section 626.989).³

There is no evidence that Defendants acted maliciously or in bad faith by reporting Leverett's suspected fraud to DFS. The entire basis of Leverett's claims rests on his assertion that Defendants knowingly provided **false** information to DFS. However, Attorney Browning specifically testified that he did not believe Defendants provided any misleading—**much less false**—information to DFS, which, in turn, provided that information to him. Attorney Browning's Depo., p. 184. Attorney Browning simply determined that this case likely boiled down to a matter of opinion, and thus he could not prove fraud beyond a reasonable doubt. Id. at 62, 70, 157–58.

Whitlock's testimony makes clear that he reasonably believed that the inordinate discrepancy between Leverett's estimate and the other estimates raised a red flag. Whitlock's Depo., pp. 129–30, 132. Specifically, Whitlock explained that he noted a significant disparity between the number of rooms affected by the fire, and the quality of

³ Pearce and Saenz are the only reported Florida appellate court decisions regarding immunity from malicious prosecution under section 626.989. Thus, a finding that Defendants are not entitled to immunity would be the **first ever case** to that effect.

the materials in the rooms. Id. In fact, when asked directly as to Defendants' motivations for referring the case to DFS upon advice of their counsel, Whitlock responded that neither he nor the other Defendants had any interest in seeing that the State Attorney's Office prosecuted Leverett. Id. at 150–51, 181.

In the absence of any evidence demonstrating that Defendants acted maliciously or in bad faith, Defendants are immune from liability as a matter of law.

IV. Defendants Relied on Advice of Counsel

Finally, Defendants are entitled to final summary judgment because they relied on advice of counsel, Attorney Wolfe, to whom they provided all relevant information before acting on her advice and reporting Leverett's suspected fraud to DFS.

Reliance on advice of counsel constitutes an **absolute** defense to a malicious prosecution claim where a party has made a full disclosure to counsel before relying on counsel's advice. Royal Tr. Bank, N.A. v. Von Zamft, 511 So. 2d 654, 655 (Fla. 3d DCA 1987). Reliance on advice of counsel defeats a claim for malicious prosecution even where the defendant acted with malice, Redland Construction Co. v. Callahan, 480 So. 2d 118, 118 (Fla. 3d DCA 1985), and where counsel provided erroneous advice, Von Zamft, 511 So. 2d at 655–56.

Here, the evidence shows that Defendants retained Attorney Wolfe in this matter after Whitlock reviewed the competing estimates and noted the inordinate discrepancies. Whitlock's Deposition, pp. 104–05. The Defendants testified that Attorney Wolfe prepared the affidavits that they signed, and that she was generally responsible for communicating with DFS regarding the investigation. See Starbuck's Depo., p. 161; Bolen's Depo., pp. 184, 212, 220, 256. Bolen elaborated that he relied on Attorney Wolfe to verify that the

information contained in his affidavit was true. Bolen's Depo., p. 279. Attorney Wolfe also had responsibility for meeting with Attorney Browning with regard to the criminal case. Attorney Browning's Depo., pp. 16–17.

Even Leverett himself testified that Attorney Wolfe prepared the affidavits that he alleges contained false or misleading material. See Leverett's Depo., pp. 130, 142–43. Leverett claimed that Roy Marshall of MIT Restoration told him that Attorney Wolfe had "tricked" him into signing the affidavit. Id. at 138. Leverett also believed that Attorney Wolfe spearheaded this report to DFS because she was "trying to make a name for herself as an attorney." Id. at 144. Leverett even claimed that Attorney Wolfe had expressed a romantic interest in him, and that she "was more interested in trying to get [him] arrested" after he rejected her advances. Id. at 182–84.

Accordingly, the undisputed material facts demonstrate that Defendants relied on advice of counsel at all material times in the underlying action. Defendants retained Attorney Wolfe early in the investigation and **before** reporting Leverett's suspected fraud to DFS. The evidence shows that Attorney Wolfe was responsible for preparing the affidavits and otherwise assisting DFS and the State Attorney's Office, and no action for malicious prosecution lies where the defendant relies on advice of counsel. See Von Zamft, 511 So. 2d at 655. Therefore, even if this Court finds that Defendants are not entitled to statutory immunity, and that probable cause was lacking for the charges despite Attorney Browning's testimony to the contrary, Defendants are nonetheless entitled to final summary judgment on the basis that they relied on advice of counsel.

WHEREFORE Defendants, Capacity Insurance Company, Mills Mehr & Associates, Inc., Shawn Starbuck, Keith Bolen, Focus Claim Managers, LLC, and Orion

Whitlock, move this Court for an Order granting this Motion for Final Summary Judgment and for the entry of Final Summary Judgment in their favor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by service through the eportal to **DANIEL CAINE, ESQUIRE/TODD J. STABINSKI, ESQUIRE**, Attorney for Plaintiff, Stabinski & Funt, P.A., 757 Northwest 27th Avenue, Third Floor, Miami, FL 33125, DCaine@stabinski-funt.com, service@stabinski-funt.com on March 6, 2019.

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Michael K. Wilensky, Esquire
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ROBERT LEVERETT,

Plaintiff,

vs.

CAPACITY INSURANCE COMPANY,
a Florida Corporation, MILLS MEHR &
ASSOCIATES, INC., a Florida
Corporation, SHAWN STARBUCK,
KEITH BOLEN, FOCUS CLAIM
MANAGERS, LLC, a Florida Limited
Liability Company and ORION
WHITLOCK,

Defendants.

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY,
FLORIDA

CASE NO.: CACE 15-003338 (25)

AMENDED COMPLAINT

Plaintiff, ROBERT LEVERETT, by and through the undersigned attorneys, sues the Defendants, CAPACITY INSURANCE COMPANY, a Florida Corporation, MILLS MEHR & ASSOCIATES, INC., a Florida Corporation, SHAWN STARBUCK, KEITH BOLEN, FOCUS CLAIM MANAGERS, LLC, a Florida Limited Liability Company, a and ORION WHITLOCK and in support thereof states as follows:

1. This is an action for damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest, attorney's fees and costs, and is otherwise within the jurisdictional limits of this Court.

2. At all times material hereto, the Defendant, CAPACITY INSURANCE COMPANY, was an insurance company authorized to do business in the State of Florida,

and doing business in Broward County, Florida and with a principle place of business in Broward County Florida.

3. At all times material hereto, the Defendant, MILLS MEHR & ASSOCIATES, INC. was an insurance adjusting company authorized to do business in the State of Florida, and doing business in Broward County, Florida.

4. At all times material hereto, the Defendant, FOCUS CLAIM MANAGERS, LLC, was an insurance adjusting company authorized to do business in the State of Florida, and doing business in Broward County, Florida and with a principle place of business in Broward County Florida.

5. At all times material hereto, Defendant, SHAWN STARBUCK, was and is a Florida resident, and is otherwise *sui juris*.

6. At all times material hereto, Defendant, SHAWN STARBUCK was an employee, and/or agent, and/or under the control of MILLS MEHR & ASSOCIATES and was working within his scope of employment with MILLS MEHR & ASSOCIATES.

7. At all times material hereto, Defendant, SHAWN STARBUCK was an employee, and/or agent, and/or under the control of CAPACITY INSURANCE COMPANY and was working within his scope of employment with CAPACITY INSURANCE COMPANY.

8. At all times material hereto, Defendant, SHAWN STARBUCK was an employee, and/or agent, and/or under the control of FOCUS CLAIMS MANAGERS, LLC and was working within his scope of employment with FOCUS CLAIMS MANAGERS, LLC.

9. At all times material hereto, Defendant, KEITH BOLEN, was and is a Florida resident, and is otherwise *sui juris*.

10. At all times material hereto, Defendant, KEITH BOLEN was an employee, and/or agent, and/or under the control of CAPACITY INSURANCE COMPANY and was working within his scope of employment with CAPACITY INSURANCE COMPANY.

11. At all times material hereto, Defendant, KEITH BOLEN was an employee, and/or agent, and/or under the control of FOCUS CLAIMS MANAGERS, LLC and was working within his scope of employment with FOCUS CLAIMS MANAGERS, LLC.

12. At all times material hereto, Defendant, ORION WHITLOCK, was and is a Florida resident, and is otherwise *sui juris*.

13. At all times material hereto, Defendant, ORION WHITLOCK, was an employee, and/or agent, and/or under the control of CAPACITY INSURANCE COMPANY and was working within his scope of employment with CAPACITY INSURANCE COMPANY.

14. At all times material hereto, Defendant, ORION WHITLOCK, was an employee, and/or agent, and/or under the control of FOCUS CLAIMS MANAGERS, LLC and was working within his scope of employment with FOCUS CLAIMS MANAGERS, LLC.

15. At all times material hereto, the Plaintiff, ROBERT LEVERETT, was and is a Florida resident, and is otherwise *sui juris*.

16. At all times material hereto, Plaintiff, ROBERT LEVERETT, was a licensed public adjuster in the State of Florida.

17. That on or about August 26, 2012, a property owned by Sai Jal, LLC d/b/a Red Carpet Inn (“Red Carpet”) and insured by the Defendant CAPACITY INSURANCE COMPANY was damaged as the result of a fire.

18. Red Carpet retained the services of Plaintiff, ROBERT LEVERETT, to perform adjusting services for the damage to the property.

19. At all material times hereto, SHAWN STARBUCK, was an employee and/or hired by CAPACITY INSURANCE COMPAY to adjust, determine the cause of, estimate and handle the claim for the fire loss.

20. At all material times hereto, KEITH BOLEN was an employee and/or hired by CAPACITY INSURANCE COMPAY to adjust, determine the cause of, estimate and handle the claim for the fire loss.

21. At all material times hereto, ORION WHITLOCK was an employee and/or hired by CAPACITY INSURANCE COMPAY to adjust, determine the cause of, estimate and handle the claim for the fire loss.

22. At all material times hereto, SHAWN STARBUCK, was an employee and/or hired by FOCUS CLAIMS MANAGERS, LLC to adjust, determine the cause of, estimate and handle the claim for the fire loss.

23. At all material times hereto, KEITH BOLEN, was an employee and/or hired by FOCUS CLAIMS MANAGERS, LLC to adjust, determine the cause of, estimate and handle the claim for the fire loss.

24. At all material times hereto, ORION WHITLOCK, was an employee and/or hired by FOCUS CLAIMS MANAGERS, LLC to adjust, determine the cause of, estimate and handle the claim for the fire loss.

25. At all times material hereto Defendants, CAPACITY INSURANCE COMPANY, MILLS MEHR & ASSOCIATES, INC, SHAWN STARBUCK, KEITH BOLEN, ORION WHITLOCK and/or FOCUS CLAIMS MANAGERS, LLC and their employees, agents and/or representatives provided false, misleading and/or incomplete information, contained within sworn affidavits, to the Department of Financial Services, Division of Insurance Fraud for purposes of beginning a fraud investigation of Plaintiff.

26. That at all times material hereto the false, misleading or incomplete information provided by Defendants to the Department of Financial Services, Division of Insurance Fraud was done so fraudulently and/or in bad faith.

27. That as a result of the Defendants, CAPACITY INSURANCE COMPANY, MILLS MEHR & ASSOCIATES, INC, SHAWN STARBUCK, KEITH BOLEN, ORION WHITLOCK and/or FOCUS CLAIMS MANAGERS, LLC and their employees, agents, and/or representatives actions of providing false, misleading and/or incomplete information to the Department of Financial Services, Division of Insurance Fraud a fraud investigation of Plaintiff was started.

28. At all times material hereto the false, misleading and/or incomplete information provided was for the express purpose of instituting a fraud investigation against Plaintiff so that Plaintiff would be charged and prosecuted by the State Attorney's Office for fraud.

29. At all time material hereto, the State Attorney filed charges against Plaintiff and an arrest warrant or capias was subsequently issued against Plaintiff on May 8, 2014.

30. Plaintiff turned himself in and was arrested and taken into custody by the Sheriff of Orange County, Florida and was held in custody until Plaintiff gave bond for Plaintiff's appearance to answer the criminal charges made against him.

31. Thereafter the criminal charges made against Plaintiff were dismissed because there was no evidence to prove the charges against Plaintiff. The criminal charges have been finally disposed of in favor of Plaintiff and no further prosecution has been instituted against Plaintiff in the matter.

COUNT I
MALICIOUS PROSECUTION AGAINST CAPACITY

Plaintiff realleges and readopts paragraphs 1-31 as fully set forth herein and further states as follows:

32. Defendant CAPACITY INSURANCE COMPANY instituted the criminal charges without any probable cause and did so with malice.

33. Defendant CAPACITY INSURANCE COMPANY procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

34. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, CAPACITY INSURANCE COMPANY, for his damages including but not limited to those listed herein as a result of Defendant's actions and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT II
MALICIOUS PROSECUTION AGAINST MILLS MEHR & ASSOCIATES, INC.

Plaintiff realleges and readopts paragraphs 1-31 as fully set forth herein and further states as follows:

35. Defendant MILLS MEHR & ASSOCIATES, INC instituted the criminal charges without any probable cause and did so with malice.

36. Defendant MILLS MEHR & ASSOCIATES, INC procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

37. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, MILLS MEHR & ASSOCIATES, INC, for his damages including but not limited to those listed herein as a result of Defendant's actions and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT III
MALICIOUS PROSECUTION AGAINST FOCUS CLAIMS MANAGERS, LLC

Plaintiff realleges and readopts paragraphs 1-31 as fully set forth herein and further states as follows:

38. Defendant FOCUS CLAIMS MANAGERS, LLC instituted the criminal charges without any probable cause and did so with malice.

39. Defendant FOCUS CLAIMS MANAGERS, LLC procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

40. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, FOCUS CLAIMS MANAGERS, LLC, for his damages including but not limited to those listed herein as a result of Defendant's actions and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT IV
MALICIOUS PROSECUTION AGAINST SHAWN STARBUCK

Plaintiff realleges and readopts paragraphs 1-31 as fully set forth herein and further states as follows:

41. Defendant SHAWN STARBUCK instituted the criminal charges without any probable cause and did so with malice.

42. Defendant SHAWN STARBUCK procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

43. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, SHAWN STARBUCK, for his damages including but not limited to those listed herein as a result of Defendant's actions and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT V
MALICIOUS PROSECUTION AGAINST KEITH BOLEN

Plaintiff realleges and readopts paragraphs 1-31 as fully set forth herein and further states as follows:

44. Defendant KEITH BOLEN instituted the criminal charges without any probable cause and did so with malice.

45. Defendant KEITH BOLEN procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

46. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation

personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, KEITH BOLEN, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT VI
MALICIOUS PROSECUTION AGAINST ORION WHITLOCK

Plaintiff realleges and readopts paragraphs 1-31 as fully set forth herein and further states as follows:

47. Defendant ORION WHITLOCK instituted the criminal charges without any probable cause and did so with malice.

48. Defendant ORION WHITLOCK procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

49. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, ORION WHITLOCK, for his damages including but not limited to those

listed herein as a result of Defendant's actions and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

Dated this 9th day, of July, 2018.

Attorneys for Plaintiff
STABINSKI & FUNT, P.A.
757 NW 27th Avenue
Third Floor
Miami, FL33125
Telephone: (305) 643-3100
Fax: (305) 643-1382
dcaine@stabinskilaw.com
tstabinski@stabinskilaw.com
service@stabinskilaw.com

/s/ Daniel Caine

Daniel Caine, Esq.
Florida Bar No.: 0013097
Todd J. Stabinski, Esq.
Florida Bar No.: 0105988

EXHIBIT “A”

Department of Financial Services Fraud Division



LAW ENFORCEMENT INVESTIGATIVE REPORT

ROBERT EUGENE LEVERETT II

13-457

Prepared by:
Detective Scott E. Kiso 

Reviewed by:

K. H.
Lieutenant

Department of Financial Services, Fraud Division
400 West Robinson Street, Suite S-823
Orlando, Florida 32801
Telephone: (407) 835-4402

Exhibit B

MEMORANDUM

DATE: **September 11, 2013**

TO: Office of the State Attorney
9th Judicial Circuit of Florida

FROM: Scott E. Kiso, Detective
Fraud Division
400 W. Robinson St. #S-823
Orlando, FL 32801
Phone: 407-835-4402

SUBJECT: **Robert Eugene Leverett II**

CASE: **13-457**

Attached is this Division's Law Enforcement Investigative Report concerning the above captioned subject. At such time as this subject is convicted or in the event your office decides to negotiate a plea, in addition to full restitution to all victims and appropriate monetary fine, we respectfully request and strongly urge the subject be required to pay our cost of investigation listed below.

Total Investigative Cost: \$2,682.58

Total Restitution to Victim: \$0.00

Original-APS ____ Records Copy ____ Fiscal ____

INVESTIGATIVE COSTS EXPENSE REPORT

Agency Case No. 13-457

Court Case No. _____

Defendant's Name Robert Eugene Leverett II

| Employee's Name/# | Investigative Activity | Hours | Hourly Rate | Expense Total |
|------------------------------------|------------------------|--------------------|--------------------|---------------------|
| Lt. Kurt Harmon | Case Initiated | 1.00 | \$34.82 | \$34.82 |
| Det. Scott Kiso | Investigation | 81.00 | \$28.32 | \$2,293.92 |
| Det. Steven Bosch | Assist | 6.50 | \$28.32 | \$184.08 |
| CIA Taylor Weisz | Analyst Assistance | 5.00 2.00 O.T. | \$21.22 \$31.83 | \$106.10 \$63.66 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| TOTAL COST OF INVESTIGATION | | \$ 2,682.58 | | |

The above is a true account of the investigative hour expenses case number 13-457
involving Robert Eugene Leverett II See attached investigative activity report.

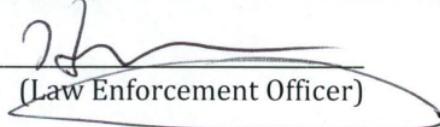

Officer's Signature

I241
Employee #

Program #

SWORN to and SUBSCRIBED before me this 11 day of Sept, 2013.


(Notary Public)


(Law Enforcement Officer)

See _____ Online, Forms, for current
Pay Rate Chart or use the employee's
actual pay rate.

Original-APS ____ Records Copy ____ Fiscal

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL
CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Court case: 13-457
Agency Case: _____

STATE OF FLORIDA
PLAINTIFF
vs.
LEVERETT , ROBERT EUGENE
DEFENDANT

ORDER FOR REIMBURSEMENT OF INVESTIGATIVE COSTS

THIS CAUSE coming on to be heard on motion of the State of Florida, pursuant to **Florida Statute 938.27**, for repayment of \$2,682.58 for the total **costs of investigation** incurred by the Department of Financial Services /Division of Insurance Fraud, and this Court having found that the Department of Financial Services/Division of Insurance Fraud has requested and documented such costs and that said reimbursement of costs should be ordered.

IT IS HEREBY ORDERED and ADJUDGED that Defendant shall reimburse such costs and pay the Department of Financial Services /Division of Insurance Fraud the sum of \$ _____, to be paid in full no later than _____, 20 _____. Beginning on _____, 20 ____, the Defendant shall make payments at the rate of not less than \$ _____ per month, directly to the Department of Financial Services, Revenue Processing Section, PO Box 6100, Tallahassee, FL 32314.

FOR WHICH SUM, LET EXECUTION ISSUE.

DONE AND ORDERED this _____ day of _____, 20 ___, the
_____ County Courthouse, in _____, _____ County, Florida.

Circuit Judge

Copies to: Defendant
 Defendant Counsel
 Office of the State Attorney

Case Number: 13-457

Primary Information

Date Initiated: 02/28/2013
 Type Of Case: COMMERCIAL
 Case Sub-Type: INFLATED CLAIM
 Case Description: Sai Jal LLC Comm Inflated Claim *Orange
 Case Priority: 1.0
 Total Time: 95:30
 Total Time Cost: \$2682.58
 Total Mileage: 85.0

Case Status

Case Status: OPEN
 Case Status Date: 02/28/2013

Current Assignment

Lead LEO: Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud)
 Department: DEPARTMENT OF FINANCIAL SERVICES
 Division: DIRECTOR OFFICE
 Region: EAST CENTRAL REGION
 Squad: ORLANDO SQUAD 1 (RF)

Related Tips/Tasks

| Number | Type | Date | Occurred Date | Status | Description |
|--------------|------|------------|---------------|--------------------------|---|
| 1. T12-14997 | TIP | 12/04/2012 | 08/26/2012 | CLOSED - CASE INITIATED: | Sai Jal LLC Comm Inflated Claim *Orange |

Related Reports

| | Number | Report Date | Report Type | Description | Reporting LEO | Total Time | Mileage | Total Expenses |
|----|----------|-------------|--------------------------|--|---|------------|---------|----------------|
| 1. | 13-457 | 02/28/2013 | Case Origination | Sai Jal LLC Comm Inflated Claim *Orange | Harmon, Kurt (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 1:00 | -- | -- |
| 2. | 13-457/1 | 04/05/2013 | Investigative Supplement | conferral with SIU Investigator Bolen and review of documents provided | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 5:00 | -- | -- |
| 3. | 13-457/2 | 04/17/2013 | Investigative Supplement | document review, Conferral W/ SIU Bolen and observation | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 4:00 | 10 | -- |
| 4. | 13-457/3 | 04/17/2013 | Investigative Supplement | Conferral w/ Agent and Agencies Services | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 0:30 | -- | -- |
| | 13- | | Investigative | Observation of subject | Kiso, Scott (DFS / ORLANDO SQUAD 1 | | | |

| | | | | | | | | |
|-----|-----------|------------|--|--|--|-------|----|----|
| 5. | 457/4 | 04/18/2013 | Supplement | Robert Leverett residence | (RF) / DFS Division of Insurance Fraud | 1:30 | 30 | -- |
| 6. | 13-457/5 | 04/18/2013 | Request for Analyst Assistance Report: | AAR on Robert Eugene Leverett | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 1:00 | -- | -- |
| 7. | 13-457/6 | 04/18/2013 | Request for Analyst Assistance Report: | AAR of Vasantil and Bhaga Patel | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 1:00 | -- | -- |
| 8. | 13-457/7 | 04/18/2013 | Request for Analyst Assistance Report: | AAR on Naqvinchandra and Virenkumar Patel | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 1:00 | -- | -- |
| 9. | 13-457/8 | 04/18/2013 | Investigative Supplement | Assist Det. Kiso at SIU meeting and on observation | Bosch, Steven (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 3:00 | -- | -- |
| 10. | 13-457/9 | 04/18/2013 | Investigative Supplement | Assist Det. Kiso | Bosch, Steven (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 0:30 | -- | -- |
| 11. | 13-457/10 | 04/19/2013 | Investigative Supplement | Observation of subject Robert Leverett office address | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 1:00 | 25 | -- |
| 12. | 13-457/11 | 04/24/2013 | ANALYST REPORT | COMPLETED Analyst Report- Robert Eugene Leverett (Orange) | Weisz, Taylor (DFS / CIA WEST CENTRAL SQUAD / DFS Division of Insurance Fraud) | 1:00 | -- | -- |
| 13. | 13-457/12 | 04/24/2013 | ANALYST REPORT | COMPLETED Analyst Report- Vasantil Patel & Bhaga Patel (Orange) | Weisz, Taylor (DFS / CIA WEST CENTRAL SQUAD / DFS Division of Insurance Fraud) | 2:00 | -- | -- |
| 14. | 13-457/13 | 04/24/2013 | Analyst Case Development Report | COMPLETED Analyst Report- Navinchandra Patel & Virenkumar Patel (Orange) | Weisz, Taylor (DFS / CIA WEST CENTRAL SQUAD / DFS Division of Insurance Fraud) | 4:00 | -- | -- |
| 15. | 13-457/14 | 04/25/2013 | Investigative Supplement | Assist Det. Kiso | Bosch, Steven (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 1:00 | -- | -- |
| 16. | 13-457/15 | 04/26/2013 | Investigative Supplement | Review Insurance Documents, volume one | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 2:00 | -- | -- |
| 17. | 13-457/16 | 05/07/2013 | Investigative Supplement | Review Bhaga Patel, Navinchandra Patel and Virenkumar Patel EUO's | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 9:00 | -- | -- |
| 18. | 13-457/17 | 06/06/2013 | Investigative Supplement | Affidavit of SIU Keith Bolen | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 3:30 | -- | -- |
| 19. | 13-457/18 | 06/07/2013 | Investigative Supplement | Conf. W/ Orange County SA Elmer Sanchez | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 21:30 | -- | -- |
| 20. | 13-457/19 | 09/10/2013 | Investigative Supplement | Investigative Supplement | Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division | 27:00 | -- | -- |

| | | | | | | | | | | | |
|-----|-----------|------------|--------------------------|--|--|---|-------|----|-----|----|--|
| | | | | | | | | | | | |
| 21. | 13-457/20 | 09/05/2013 | Investigative Supplement | Conferral W/ SIU Bolen/Observation of Red Carpet Inn | | of Insurance Fraud) Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 3:00 | 20 | -- | -- | |
| 22. | 13-457/21 | 09/05/2013 | Investigative Supplement | Assist Det. Kiso | | Bosch, Steven (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud) | 2:00 | -- | -- | -- | |
| | | | | | | | 95:30 | 85 | \$0 | | |

Related Subjects

| | Name | Type | Age | DOB | Sex | Race | Relationship | As Of Report |
|-----|--------------------------------|----------------------------|-------------|------------|--------|-------------|----------------------------------|--------------|
| 1. | Arouri, Hasan Said | PERSON | 53 YEAR (S) | 4/11/1960 | MALE | EAST INDIAN | SUBJECT | 13-457/18 |
| 2. | Bolen, Keith | PERSON | --- | --- | MALE | WHITE | (SIU) SPECIAL INVESTIGATIVE UNIT | 13-457/18 |
| 3. | CAPACITY INSURANCE COMPANY | DFS INSURANCE COMPANY NAME | --- | --- | --- | --- | COMPLAINANT/VICTIM | 13-457/18 |
| 4. | Crist, John | PERSON | --- | --- | MALE | UNKNOWN | SUBJECT | 13-457 |
| 5. | Green, Mark | PERSON | --- | --- | MALE | UNKNOWN | SUBJECT | 13-457 |
| 6. | Leverett & Associates | BUSINESS | --- | --- | --- | --- | SUSPECT BUSINESS | 13-457/15 |
| 7. | LEVERETT, ROBERT EUGENE | PERSON | 42 YEAR (S) | 11/15/1970 | MALE | WHITE | SUSPECT | 13-457/19 |
| 8. | PATEL, BHAGA BAI | PERSON | 47 YEAR (S) | 11/26/1965 | MALE | INDIAN | SUBJECT | 13-457/18 |
| 9. | PATEL, NAVINCHANDRA | PERSON | --- | --- | MALE | INDIAN | SUBJECT | 13-457/18 |
| 10. | PATEL, VASANTLAL | PERSON | 56 YEAR (S) | 2/26/1957 | MALE | INDIAN | SUBJECT | 13-457/18 |
| 11. | Patel, Virenkumar Navinchandra | PERSON | 30 YEAR (S) | 12/29/1982 | MALE | INDIAN | SUBJECT | 13-457/16 |
| 12. | Renee, Grant | PERSON | --- | --- | MALE | UNKNOWN | SUBJECT | 13-457/15 |
| 13. | Renne, Grant William | PERSON | 50 YEAR (S) | 1/12/1963 | MALE | WHITE | WITNESS | 13-457/17 |
| 14. | Sai Jal LLC | BUSINESS | --- | --- | --- | --- | SUBJECT | 13-457/21 |
| 15. | Starbuck, Shawn | PERSON | --- | --- | MALE | UNKNOWN | WITNESS | 13-457/8 |
| 16. | The Red Carpet Inn | BUSINESS | --- | --- | --- | --- | SUBJECT | 13-457/20 |
| 17. | Turnbull, George | PERSON | --- | --- | MALE | UNKNOWN | WITNESS | 13-457/17 |
| 18. | Wolfe, Scharome | PERSON | --- | --- | FEMALE | WHITE | VICTIM'S ATTORNEY | 13-457/18 |

Restitution Data Summary

| Type | Total Amount |
|----------------------------------|--------------|
| 1. Investigative Costs Requested | \$2625.94 |
| 2. Restitution Requested | \$0.00 |

| Time | | | | | | | |
|------|-----------|------|----------------------|---------|-----------|------------|--|
| | Number | Time | Activity | Type | Unit Cost | Total Cost | Comments |
| 1. | 13-457 | 1:00 | Lieutenant Regular | Regular | \$34.82 | \$34.82 | Meeting with SIU & Atty to discuss referral |
| 2. | 13-457/1 | 5:00 | Investigator Regular | Regular | \$28.32 | \$141.60 | Conferral w/ Inv. Bolen and review docs provided |
| 3. | 13-457/2 | 4:00 | Investigator Regular | Regular | \$28.32 | \$113.28 | document review, Conf. W/ SIU Bolen, Observation |
| 4. | 13-457/3 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | conferral w/ agent & agencies re: Leverett license |
| 5. | 13-457/4 | 1:30 | Investigator Regular | Regular | \$28.32 | \$42.48 | Observation of subject Robert Leverett residence |
| 6. | 13-457/5 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | AAR of Eugene Leverett |
| 7. | 13-457/5 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | reviewed analyst docs on Leverett |
| 8. | 13-457/6 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | AAR on Vasantlal and Bhaga Patel |
| 9. | 13-457/6 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | Review analyst docs of Vasantlal and Bhaga Patel |
| 10. | 13-457/7 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | AAR on Navinchandra and Virenkumar Patel |
| 11. | 13-457/7 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | review analyst docs on Navinchandra & Virenkumar |
| 12. | 13-457/8 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | aasist at meeting, observation, report |
| 13. | 13-457/9 | 0:30 | Investigator Regular | Regular | \$28.32 | \$14.16 | conferral, report |
| 14. | 13-457/10 | 1:00 | Investigator Regular | Regular | \$28.32 | \$28.32 | Observation of Robert Leverett business address |
| 15. | 13-457/11 | 1:00 | CIA Regular | Regular | \$21.22 | \$21.22 | AAR Robert Eugene Leverett |
| 16. | 13-457/12 | 2:00 | CIA Regular | Regular | \$21.22 | \$42.44 | AAR- Vasantlal Patel & Bhaga Patel |
| 17. | 13-457/13 | 2:00 | CIA OverTime | Regular | \$31.83 | \$63.66 | AAR Navinchandra Patel |
| 18. | 13-457/13 | 2:00 | CIA Regular | Regular | \$21.22 | \$42.44 | AAR Virenkumar Patel |
| 19. | 13-457/14 | 1:00 | Investigator Regular | Regular | \$28.32 | \$28.32 | travel. observation |
| 20. | 13-457/15 | 2:00 | Investigator Regular | Regular | \$28.32 | \$56.64 | review of insuracne docs, vol. 1 |
| 21. | 13-457/16 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | Review Bhaga ,Navinchandra & V. Patel EOU's |
| 22. | 13-457/16 | 2:00 | Investigator Regular | Regular | \$28.32 | \$56.64 | Review Vol.#2 of Insurance Docs., |
| 23. | 13-457/16 | 2:00 | Investigator Regular | Regular | \$28.32 | \$56.64 | Review vol.#3 of insurance Docs. |
| 24. | 13-457/16 | 2:00 | Investigator Regular | Regular | \$28.32 | \$56.64 | documentation |
| 25. | 13-457/17 | 3:30 | Investigator Regular | Regular | \$28.32 | \$99.12 | received sworn affidavit from Keith Bolen/document |
| 26. | 13-457/18 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | Presentation preparation/documentation |

| | | | | | | | |
|----------------|-----------|-------|----------------------|---------|---------|------------------|---|
| 27. | 13-457/18 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | Presentation preparation/documentation |
| 28. | 13-457/18 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | Presentation preparation/documentation |
| 29. | 13-457/18 | 2:00 | Investigator Regular | Regular | \$28.32 | \$56.64 | Presentation preparation/documentation |
| 30. | 13-457/18 | 2:30 | Investigator Regular | Regular | \$28.32 | \$70.80 | presentation preparation/documentation |
| 31. | 13-457/18 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | review docs/EOU's/documentation |
| 32. | 13-457/18 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | meeting w/ SIU Bolen and Atty. Wolfe |
| 33. | 13-457/18 | 2:00 | Investigator Regular | Regular | \$28.32 | \$56.64 | conf. w/ SA Elmer Sanchez/admin process |
| 34. | 13-457/19 | 27:00 | Investigator Regular | Regular | \$28.32 | \$764.64 | Presentation & exhibit prep./perepare interview |
| 35. | 13-457/20 | 3:00 | Investigator Regular | Regular | \$28.32 | \$84.96 | conf. W/ SIU/Travel/observation/documentation |
| 36. | 13-457/21 | 2:00 | Investigator Regular | Regular | \$28.32 | \$56.64 | travel, report |
| Totals: | | 95:30 | | | | \$2682.58 | |

Record Status Information

Record Origination Operator: **Harmon, Kurt (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud)**

Record Origination Date: **02/28/2013 9:25**

Last Update Operator: **Kiso, Scott (DFS / ORLANDO SQUAD 1 (RF) / DFS Division of Insurance Fraud)**

Last Update Date: **09/05/2013 9:35**

Orange County

Page 1 of 2

Charging Affidavit

| | | | | | | | | | |
|--|--|---|-------------------|--|---|--------------------------|---|-------------------------------|---------|
| Location of Defendant's Veh: | | | Date-Time Booked: | | | Case Number: 13-457 | | | |
| ORI) FL0481600 | Agency Name: FL DIVISION OF INSURANCE FRAUD | | | Division Number: | | | Court Case Number: | | |
| Arrested? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | FCIC/NCIC Check? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | | | Date Arrested (MM/DD/YYYY): NIC | | | Time of Arrest: | | |
| Address of Arrest: | | | | | | Total Bond Set at: \$ | | | |
| DEFENDANT | | Adult <input checked="" type="checkbox"/> Juvenile <input type="checkbox"/> | Name Key #: | Jacket #: | Inmate #: | | Language Spoken: | | |
| NAME (L,F,M): LEVERETT, ROBERT, EUGENE II | | | | | | Race: W | Sex: M | DOB: 11-15-1970 | Age: 43 |
| RES. Street #: 7734 | Pre-Dir: | Street Name: APPLE TREE CIRCLE | | | Road Designator: | Post-Dir: | Apt/Ste/Rm: | | |
| City: ORLANDO | | | State: FL | Zip: 32819 | | Home Phone: 407-370-2171 | | | |
| Height: 6'00" | Weight: 185 | Hair: BLK | Eyes: BRN | POB (City, State, Country): FL | | | Citizenship: US | | |
| Business & Occupation: ROBERT E. LEVERETT & ASSOCIATES, INC., PUBLIC ADJUSTER | | | | | AKA: | | | | |
| BUS/SCHOOL Street #: | Pre-Dir: | Street Name: | | | Road Designator: | Post-Dir: | Apt/Ste/Rm: | | |
| City: | | | State: | Zip: | | Bus. Phone: | | | |
| Driver's License/State ID Number: | | | | State: FL | Year Expires: 2020 | | S.S. Number: | | |
| CHARGES | | FELONY <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/> TRAFFIC <input type="checkbox"/> | | | Court Location: ORANGE COUNTY | | Domestic Violence? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| # | Description | | | | FSS/Ord. | Suffix | Citation Number | | |
| 1 | ORGANIZED SCHEME TO DEFRAUD | | | | 817.034 | | | | |
| 2 | FALSE AND FRAUDULENT INSURANCE CLAIM | | | | 817.234(1)(a)1 | | | | |
| 3 | ATTEMPTED GRAND THEFT | | | | 812.014(2)(a)1 | | | | |
| 4 | | | | | | | | | |
| 5 | | | | | | | | | |
| 6 | | | | | | | | | |
| CO-DEFENDANT | | Co-Def#1 Arrested? Y <input type="checkbox"/> No <input type="checkbox"/> Fel <input type="checkbox"/> Misd <input type="checkbox"/> Traf <input type="checkbox"/> Ord <input type="checkbox"/> NTA <input type="checkbox"/> | | | Co-Def#2 Arrested? Y <input type="checkbox"/> No <input type="checkbox"/> Fel <input type="checkbox"/> Misd <input type="checkbox"/> Traf <input type="checkbox"/> Ord <input type="checkbox"/> NTA <input type="checkbox"/> | | | | |
| #1 | NAME (L,F,M): | | | | Race: | Sex: | DOB: | Age: | |
| #2 | NAME (L,F,M): | | | | Race: | Sex: | DOB: | Age: | |
| NARRATIVE | | | | | | | | | |
| The undersigned has probable cause to believe that the above-named defendant, on the 27 day of AUGUST, 2012, at approximately AM <input type="checkbox"/> PM <input type="checkbox"/> at 3956 W. COLONIAL DRIVE, ORLANDO, FL 32808 (Zone) in Orange County did SEE ATTACHED | | | | | | | | | |
| Next of Kin Name: | | | Address: | | | Phone: | | | |
| DCF Notified? Yes <input type="checkbox"/> No <input type="checkbox"/> | | Miranda Warning? Yes <input type="checkbox"/> No <input type="checkbox"/> | | By Whom? | | | Invoked? Yes <input type="checkbox"/> No <input type="checkbox"/> | | |
| Sworn to and subscribed before me, | | | | I swear/affirm the above statements are correct and true. | | | | Officer's OCSO Employee ID #: | |
| This <u>11</u> day of <u>Sept</u> , <u>2013</u> . | | | |  | | | | KISO, SCOTT E. | |
| Notary Public <input type="checkbox"/> Law Enforcement or Corrections Officer <input checked="" type="checkbox"/> | | | | OFFICER'S SIGNATURE | | | | OFFICER'S PRINTED NAME (L,F) | |
| Personally Known <input checked="" type="checkbox"/> Produced Identification <input type="checkbox"/> Type of Identification: _____ | | | | Officer's Name Key: | | | Officer's Business Phone #: 407-835-4402 | | |
| FOR CORRECTIONS USE ONLY | | | | | | | | | |
| OBTS: <input type="checkbox"/> | | | | | | | | | |
| Distribution List: <input type="checkbox"/> Court <input type="checkbox"/> Records <input type="checkbox"/> State Attorney <input type="checkbox"/> Docket <input type="checkbox"/> Agency/Report Review <input type="checkbox"/> Defendant | | | | | | | | | |

Continuation Of: **Charging Affidavit** **Notice to Appear**Defendant Name:
LEVERETT, ROBERT, EUGENE IICase Number:
13-457

Page 2 of 2

NARRATIVE

BEGINNING ON AUGUST 27, 2012, THE DEFENDANT, ROBERT EUGENE LEVERETT II DID ENGAGE IN AN ON-GOING SCHEME TO DEFRAUD CAPACITY INSURANCE AND ATTEMPT TO OBTAIN PROPERTY BY CAUSING SWORN PROOF OF LOSS STATEMENTS TO BE SUBMITTED TO CAPACITY INSURANCE ON BEHALF OF SAI JAL, LLC D/B/A RED CARPET INN, KNOWING AT THE TIME OF PRESENTATION THAT THE PROOF OF LOSS STATEMENTS WERE NOT ACCURATE AND OVERLY INFLATED. LEVERETT ALSO PRESENTED REPAIR AND REPLACEMENT ESTIMATES IN EXCESS OF \$750,000.00. LEVERETT DID THIS WITH THE INTENT TO DEFRAUD CAPACITY INSURANCE COMPANY, THEREBY VIOLATING FS 817.034, ORGANIZED SCHEME TO DEFRAUD, WHICH IS A FELONY OF THE 1ST DEGREE.

THERE IS ALSO PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT, ROBERT EUGENE LEVERETT II DID COMMIT THE OFFENSE OF FALSE AND FRAUDULENT INSURANCE CLAIM BY KNOWINGLY AND WILLFULLY PROVIDING FALSE INFORMATION IN SUPPORT OF THE INSURANCE CLAIM, I.E. REPAIR AND REPLACEMENT ESTIMATES AND PROOF OF LOSS STATEMENTS IN EXCESS OF \$750,000.00. IN DOING SO, LEVERETT VIOLATED FS 817.234(1)(a)1, WHICH IS A FELONY OF THE 1ST DEGREE.

THERE IS ALSO PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT, ROBERT EUGENE LEVERETT II DID COMMIT ATTEMPTED THEFT BY KNOWINGLY AND WILLFULLY PROVIDING FALSE INFORMATION IN SUPPORT OF THE INSURANCE CLAIM, I.E. REPAIR AND REPLACEMENT ESTIMATES AND PROOF OF LOSS STATEMENTS IN EXCESS OF \$750,000.00 AS WELL AS ADDITIONAL DEMANDS FOR PAYMENT EVEN AFTER CAPACITY INSURANCE PAID THE INSURED \$138,768.40. IN DOING SO, LEVERETT VIOLATED FS 812.014(2)(a)1, WHICH IS A FELONY OF THE 1ST DEGREE.

Sworn to and subscribed before me,

This 11 day of Sept, 2013.Notary Public Law Enforcement or Corrections Officer Personally Known Produced Identification

Type of Identification: _____

I swear/affirm the above statements are correct and true.



OFFICER'S SIGNATURE

KISO, SCOTT

OFFICER'S PRINTED NAME (L,F)

Officer's Name Key:

Officer's Business Phone #:
407-835-4402Distribution List: Court Records State Attorney Docket Agency/Report Review Defendant

1001B (MS Word 11-03)

I. INVESTIGATION SUMMARY REPORT

Synopsis: Capacity Insurance Company initiated a fraud referral with the Division of Insurance Fraud in regards to an inflated insurance claim submitted by Robert Eugene Leverett II on behalf of the owners of Sai Jal, LLC d/b/a Red Carpet Inn located at 3956 West Colonial Drive, Orlando Florida.

On August 26, 2012, a guest of the Red Carpet Inn left a lit cigarette burning in room number 207 causing a fire. The Orlando Fire Department (OFD) responded and within a short period of time the fire was extinguished. The owners of Sai Jal, LLC retained Public Adjuster, Robert Eugene Leverett II to assist in presenting a claim for benefits to Capacity Insurance Company. On or about August 30, 2012, Leverett demanded reserves for 64 rooms he was claiming as being damaged in the fire including the attic and roof of the building as well as all of the contents of the rooms. Capacity Insurance Company hired Expert General Contractor John Crist of BRC, as well as Engineer Grant Renne of Donan Engineering and Independent Adjuster George Turnbull of Mills Mehr to inspect the property. All of the experts hired by Capacity Insurance Company determined that the loss was limited to nine to twelve rooms with little or no damage to the attic and no damage to the roof. Statements of loss submitted by Leverett on behalf of Sai Jal, LLC are claiming in excess of \$750,000.00 in damages. While adjusting the claim, Capacity Insurance Company developed evidence to believe that Robert Eugene Leverett II knowingly and willfully submitted false and fraudulent material information in support of the insurance claim. After conducting an investigation, SIU/Claims Manager Keith Bolen forwarded his findings to the Division of Insurance Fraud for a criminal investigation into the claim. The Division of Insurance Fraud conducted a Criminal Investigation to determine if Robert Eugene Leverett II committed any criminal violations.

Narrative: As part of this investigation, documents were reviewed related to Capacity Insurance Company, tip number T13-14997 submitted to the Division of Insurance Fraud on or about February 28, 2013. The following was noted.

On Sunday, August 26, 2012, at approximately 2135 hours, the OFD responded to the Red Carpet Inn located at 3956 West Colonial Drive, Orlando in reference to a structure fire. Upon arrival, the OFD personnel located the fire in Room 207 of the Red Carpet Inn at which time they encountered heavy smoke, but minimal fire. The OFD was able to extinguish the fire with approximately 150 gallons of water. Once the fire was extinguished, Lt. Felix Benitez of the OFD interviewed the occupant of Room 207, Mark Green. Green advised that he left the room to get ice and that when he returned he saw smoke coming from around and under the door. Green told Lt. Benitez that he grabbed a portable fire extinguisher and attempted to extinguish the fire but was forced out of the room by the smoke and heat. OFD Arson/Bomb Squad Investigator Lt. John Jockin responded and conducted an investigation, where upon completion, it was determined that the fire was accidental, caused by the lit cigarette left burning by the room occupant, Mark Green. OFD incident report number 2012-0034751 is attached. **Exhibit 1**

On August 28, 2012, Licensed Adjuster, George Turnbull of Mills, Mehr and Associates was retained by Capacity Insurance and began his inspection of the Red Carpet Inn. Turnbull provided a sworn affidavit, and a three part estimate for demolition, drying/water extraction and repairs of the Red Carpet Inn dated October 2, 2012. Turnbull's 27 page estimate for demolition totaled \$13,397.63 which included rooms 106, 107, 108, 206, 207, 208, 220 and 221. Turnbull's 18 page estimate for cleaning, water extraction and remediation totaled \$5,222.44 which was for rooms 106, 107, 108, 206, 207 and 208. Turnbull's 31 page estimate totaling \$55,412.95 which included the repairs of the aforementioned rooms. **Exhibit 2, 3, 4, 5**

Licensed Adjuster, Shawn Starbuck of Mills Mehr & Associates became involved with this matter on or about September 27, 2012 while George Turnbull was on assignment in England. Starbuck provided the attached sworn affidavit regarding his findings and observations. Starbuck stated that on October 26, 2012, while on the property of the Red Carpet Inn, he noted that room number 203 that was previously reported as being damaged from the fire was occupied and in use. Hasan Arouri of TLC Engineering who had been hired by Leverett had listed room number 203 in his report as being uninhabitable. Starbuck stated that on October 28, 2012 he met with Greg Boling of BRC Restoration who conducted an inspection on behalf of Capacity Insurance Company. Starbuck stated that while on the property of the Red Carpet Inn, he noted four additional rooms, 118, 119, 204 and 205 that were previously reported by Leverett and Arouri to have been damaged by the fire were occupied and in use. **Exhibit 6**

On August 27, 2012, Public Adjuster Robert Eugene Leverett II was hired by the owners of Sai Jal, LLC d/b/a Red Carpet Inn to represent them in submitting claims to Capacity Insurance Company. Leverett provided an Agreement for Representation that entitled him to 10% of the total claim and damages recovered as well as a Notice to Insurance Companies of Representation and Assignment.

On August 30, 2013, Leverett sent a letter to SIU Bolen stating the following;

*“As you know, the insured suffered a fire loss on August 26, 2012. The General Contractor has estimated the period of restoration will exceed 6 months. Based on a review of the loss, it appears the Contents Loss will exceed the \$50,000.00 coverage limit and the Business Income w/Extra Expense will exceed the \$50,000.00 coverage limit. With respect to the building, 64 rooms have sustained either fire, smoke/soot or water damage. The truss trails have sustained fire damage and an engineer is inspecting the trusses to determine the extent of the damage. I would recommend a reserve of \$750,000.00 for the building at this time.” *It should be noted that the building damaged by the fire has 56 Rooms.**

Leverett submitted an initial Demand Package on behalf of Sai Jal, LLC to Capacity Insurance that included a Sworn Statements of Loss for fire damage to the building totaling \$691,416.51 and for business personal property totaling \$69,146.71 signed by one of the owners, Vasantlal “Wayne” Patel. Leverett also included a 71 page repair and replacement estimate dated September 24, 2012. The estimate included the exterior of the building, roof, stairs and rooms 101, 102, 103, 104, 105, 106, 107, 108, 109, 118, 119, 120, 121, 122, 123, 124, 205, 206, 207, 208, 209, 221, 222 and 223. **Exhibit 7, 8, 9, 10**

Roy Marshall of MIT Restoration, LLC d/b/a MIT Construction and Restoration, Inc. on behalf of Sai Jal, LLC d/b/a Red Carpet Inn provided a sworn affidavit, an authorization of repairs and a 53 page estimate for emergency services and restoration dated 09/13/2012 which included cleaning, demolition, electrical, flooring, water extraction and labor for the following rooms damaged by the fire, smoke and/or water; 105, 106, 107, 108, 109, 206, 207, 208, 121, 122, 123, 221, 222 and 223 totaling \$49,109.50. *Marshall stated in his sworn affidavit that he also included an additional 34 page repair and replacement estimate dated 10/12/2012 for rooms 101, 102, 103, 104, 205, 209, 220 and roof trusses which totaled an additional \$255,197.03 solely at the request of Public Adjuster Robert Leverett and the Engineer Hasan Arouri. Exhibit 11, 12, 13, 14*

Hasan Arouri of TLC Engineering for Architecture, Inc. was hired by Robert Leverett and Sai Jal, LLC to conduct an inspection of the Red Carpet Inn. Upon completion Arouri provided a report of his findings from his inspection which took place on September 3, 2012 and September 11, 2012 which included 16 photographs of reported damage. Arouri also provided a summary of costs for business personal property replacement totaling \$69,146.74 for rooms 101,102, 103, 104, 105, 106, 107, 108, 109, 110, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213 and 214 (15 pages). Arouri stated that there was evidence of charring over the window opening of room 207 as well as evidence of charring on six wood trusses above the window opening. Arouri stated there was evidence of charred and twisted wood trusses and damaged joints at the truss end. Arouri stated that there was evidence of nails being pulled out at the hurricane strap anchor and observed evidence of water damaged roof plywood sheathing above the fire damaged room. Arouri concluded by stating that it was his opinion that the temperature during the fire could have reached between 300 to 500 degrees for 30 – 60 minutes causing six wood trusses above the fire location to lose tensile strength causing them to be structurally unstable. Arouri stated that in his professional opinion, the removal and replacement of the six wood trusses, roof sheathing and roofing above the fire damaged room needed to be replaced. Arouri stated in his finding that his inspection was visible in nature, and that no special tools or instruments were used, nor did he perform any testing or analysis. **Exhibit 15, 16**

On September 25, 2012, Grant Renne who is a Forensic Engineer for Donan Engineering, Inc. was retained by Capacity Insurance to conduct an inspection of the Red Carpet Inn to determine the extent, if any, of structural damage caused by the fire in room 207 and determine the extent of moisture damage to room 207 and to any other rooms. Renne stated that based on his findings and observations, the pre-engineered trusses, top plates and bond beams were not structurally damaged by the fire and associated temperatures from the reported loss. Renne stated that water damage from firefighting efforts was confined to rooms 206, 207, 208, 106, 107 and 108. Renne stated that the stained, discolored and deteriorated pre-engineered truss ends were caused by a long-term exposure to moisture from a roof leak and were present multiple years prior to the reported date of loss. Renne took in excess of 340 photographs during the course of his inspection. On September 4, 2102 this joint inspection was completed and Renne located an un-melted, undamaged plastic wrap used in wrapping bundles of shingles in the attic space directly above the exterior wall of room 207 where the fire originated. Renne stated that with consent of the property owner, the plastic wrap was secured and placed in an air-tight container for future testing. Renne stated that he has maintained chain of custody of the plastic wrap. *Renne stated that during the inspection, he was asked by Robert Leverett if he would like to accompany him to Rachel's Strip Club for a meal with adult entertainment. Renne stated that he told Leverett that his opinion could not be bought.* **Exhibit 17**

On October 16, 2012, Examinations Under Oath (EOU) were taken of Sai Jal, LLC owners; Bhaga "Brian" Patel, Navinchandra "Nick" Patel, Virenkumar "V" Patel and Vasantlal "Wayne" Patel. During the EOU's there were reports of limited damage to the property. In contrast to the testimony provided by the owners of Sai Jal, LLC, Wayne Patel testified that Robert Eugene Leverett's original estimate was an accurate representation of the actual damage to the property despite the fact that eight rooms for repair had no supporting documentation by any licensed contractor or engineer. In Nick Patel's EOU, he alleged that he did not know about the property damage even though he lives on the property, is the daily maintenance person for the property and performs housekeeping services in and out of all rooms. During V Patel's statement, he reported damage to only fourteen rooms caused by the fire. V. Patel also stated that some of the contents of the rooms reported as being damaged by the fire were actually damaged or destroyed due to mold. V. Patel later recanted this statement. **Exhibit 18, 19, 20, 21**

On October 26, 2012, Capacity Insurance Company's General Contractor, John Crist of BRC Restoration attempted to coordinate additional inspections of the property with Robert Leverett, but was told that none of the owners were available to give access to the property.

On this same date, a private investigator from EBS Investigations hired by Capacity Insurance Company was conducting video surveillance. During the surveillance, Nick Patel was observed on the property contrary to Robert Leverett's previous statement to John Crist. The private investigator also advised that housekeeping services were being performed on at least six rooms claimed by the insured to have been damaged by the fire and unusable. **Exhibit 22, 23**

On October 28, 2012, John Crist BRC Restoration was allowed onto the property only after statutory demand for access was made. Crist determined that only nine rooms sustained damages as a result of the fire. Crist was also able to confirm that the three additional rooms that sustained damage by the fire department were minimal. Crist found no permanent damage to the attic space or roof caused by the fire.

A letter from Mr. Leverett was received by Capacity Insurance on November 2, 2012 stating that despite the testimony during the Examinations Under Oath and the professional report received, that the total claim for Sai Jal, LLC remained at \$760,563.25. **Exhibit 24**

On or about June 5, 2013, Claims Manager, Keith Bolen provided a sworn affidavit regarding his investigation into this matter. The following is a brief synopsis of Bolen's affidavit;

Bolen stated that the owners of Sai Jal, LLC obtained a policy for commercial property coverage effective May 31, 2012 to May 31, 2013. The policy was for the motel d/b/a Red Carpet located at 3956 West Colonial Drive, Orlando, Florida. Bolen stated that after the fire, Sai Jal, LLC contracted with Roy Marshall of MIT Restoration, LLC to begin emergency services, demolition and rebuild work at the Red Carpet. Sai Jal, LLC also contracted with an engineer, Hasan Arouri of TLC Engineering to inspect the roof structure. Bolen stated that upon notification of the claim, Capacity Insurance Company coordinated for with Sai Jal, LLC to have a representative on the property. Capacity Insurance contracted with Mills Mehr and Associates for Independent Adjuster, George Turnbull to be on-site. Bolen stated that Turnbull responded to the property and made contact with the representatives of the Red Carpet as well as guests. Bolen stated that Turnbull also inspected the rooms purportedly damaged from the fire. Bolen stated that Turnbull prepared an estimate of the damages related to the fire, including drying, emergency services, demolition and repair work in twelve rooms and the hallway totaling \$74,033.02. Bolen stated that on August 30, 2012, Capacity Insurance received a letter from Robert Leverett who had been retained as a Public Adjuster representing the owners of Sai Jal, LLC d/b/a the Red Carpet Inn. Leverett claimed in the letter that the damage would exceed policy limits and demanded a reserve of \$750,000.00 for the damage to 64 rooms, even though the building contains only 56 rooms.

Bolen stated that on September 4, 2012, Forensic Engineer Grant Renne who had been retained by Capacity Insurance conducted an inspection of the attic space and roof. During the inspection, Renne found a piece of plastic wrap used to wrap shingles, directly above room 207 where the fire occurred. Renne reported that the plastic was undamaged by the fire. Renne took possession of the plastic wrap for further testing if needed. Bolen stated that Engineer Renne agreed with the findings of

George Turnbull that only nine rooms sustained damage directly from the fire and three additional rooms sustained damage caused by the OFD when confirming no extension into the attic. Bolen stated that Renee's opinion was that the attic space and roof sustained no fire related damage.

Bolen stated that on October 1, 2012, Wayne Patel signed a sworn Proof of Loss and demand for payment for \$686,416.51 for damage to the structure and a second sworn Proof of Loss for \$69,146.74 for reported damages to contents. **Exhibit 25**

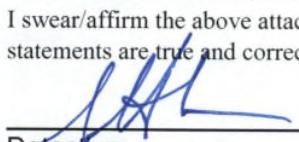
Contact was made with Robert Leverett who agreed to respond to the Division of Insurance Fraud on September 11, 2013 for questioning regarding this investigation. I was later contacted by Attorney Mike Snure who stated that he was been retained by Leverett therefore, at this time he was not allowing Leverett to answer any questions regarding this investigation.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has developed probable cause to believe that beginning on August 27, 2012, at 3956 West Colonial Drive, Orlando, FL 32808, ROBERT EUGENE LEVERETT II did engage in a scheme to defraud and attempt to obtain property by causing Sworn Proof of Loss statements to be submitted to Capacity Insurance on behalf of the owners of Sai Jal, LLC d/b/a Red Carpet Inn, knowing at the time of submission that the Proof of Loss statements were not accurate and overly inflated. Leverett also presented repair and replacement estimates and Proof of Loss statements in excess of \$750,000.00. Leverett did this with the intent to defraud Capacity Insurance thereby violating FS 817.034, Organized Scheme to Defraud, which is a felony of the 1st degree.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has also developed probable cause to believe that on or about October 1, 2012, at 3956 West Colonial Drive, Orlando, FL 32808, ROBERT EUGENE LEVERETT II did commit insurance fraud by knowingly and willfully providing false information in support of the insurance claim, i.e. repair and replacement estimates and Proof of Loss statements in excess of \$750,000.00. In doing so, Leverett violated FS 817.234(1)(a)1, which is a felony of the 1st degree.

Based on the above facts, evidence and sworn testimony, the Division of Insurance Fraud investigation has also developed probable cause to believe that ROBERT EUGENE LEVERETT II did commit attempted theft by knowingly and willfully providing false information in support of the insurance claim, i.e. repair and replacement estimates and Proof of Loss statements in excess of \$750,000.00 as well as additional demands for full payment even after Capacity Insurance paid the insured \$138,768.40. In doing so, Leverett violated FS 812.014(2)(a)1, which is a felony of the 1st degree.

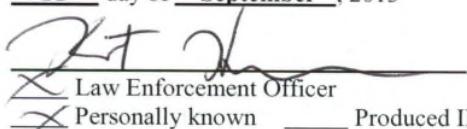
I swear/affirm the above attached statements are true and correct.



Detective

State of Florida, County Of Orange
Sworn to and subscribed before me this

11 day of September, 2013



X Law Enforcement Officer
X Personally known _____ Produced ID