

National Union v. Intrawest et al.

EXHIBIT A to NOTICE OF DEPOSITION OF NATIONAL UNION

Pursuant to Fed. R. Civ. P. 30(b)(6), Defendants Federal Insurance Co. (“Federal”), Intrawest ULC, f/k/a Intrawest Corp. (“Intrawest”), and National Fire Ins. Co. of Hartford (“National Fire”) and Continental Cas. Co. (“Continental”) (collectively, “CNA”) provide the following designation of subject matter for the deposition of corporate Plaintiff National Union.

I. DEFINITIONS

The following terms and phrases are employed in **boldface** within the subject matter areas (also referred to as “categorical descriptions”) that are identified below. These terms are defined below. Words and terms that are not specifically defined herein shall be construed in accordance with their ordinary dictionary definitions. The following definitions apply regardless of whether the words are used in the singular or plural and regardless of the tense of the use of any term, unless otherwise specified.

AIG shall mean American International Group, Inc., along with any employee, agent, officer, director, attorney, predecessor, successor, subsidiary, parent, affiliate, or division thereof which was involved in the **OCIP** or **Claims** made under the **OCIP Policies** (including without limitation, Chartis, Inc., the entity identified as “AIGRM” in the **Paid Loss Addenda**, AIG Claims Services, AIG Domestic Claims, and **National Union**).

Claim shall mean any request or tender by any **Insured**, including without limitation **Intrawest**, under the **OCIP** for indemnity and/or defense under the Policies.

Claims Staff shall refer to and include claims adjusters, claims examiners, claims professionals, claims supervisors, independent claims consultants and contractors, claims handling organizations, claims services organizations, or other independent adjusters, who are involved in the ordinary course of **National Union**’s business with respect to the evaluation of **Claims**. The term shall also apply to outside legal counsel if employed from time to time in evaluation of **Claims** in the ordinary course of business. The term shall not include litigation counsel.

Communication shall mean an oral or written utterance, notation, or statement of any nature whatsoever, by and whomever made, including but not limited to correspondence, email, meetings, presentations, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.

Copper Springs Claims shall mean any **Claims** made under the **OCIP** related to the Copper Springs Lodge condominium development located in Copper Mountain, Colorado.

Defendants shall mean Federal Insurance Co. (“**Federal**”), Intrawest ULC, f/k/a Intrawest Corp. (“**Intrawest**”), and National Fire Ins. Co. of Hartford (“**National Fire**”) and Continental Cas. Co. (“**Continental**”) (collectively, “**CNA**”).

Document shall mean any item or matter within the scope of Fed. R. Civ. P. 34 and F.R.E. 1001, including but not limited to: all paper material of any kind, whether written, typed, punched, filmed, or marked in any way; recording tape or wires; film, photographs, movies, or any graphic matter however produced or reproduced; all computerized, electronic, or magnetic records, information, notes, messages, electronic mail or data compilations; and/or all mechanical or electronic sound recordings or transcripts thereof. "Document" shall also be deemed to include the original or any draft or other version thereof, and any copy of an original or draft which differs in any respect from such original or draft.

Eagle Run Litigation shall mean the litigation filed by the Eagle Run at Juniper Springs Owner Association, styled *Eagle Run at Juniper Springs Owner Assoc., Inc. v. The Upper Bench Development Corp.*, Case No. 16960, in the Superior Court of California, Mono County.

Endorsement No. 9 shall mean the endorsement styled "Products and Completed Operations Extension Endorsement," as shown on the **Policies**, effective April 30, 1998 and April 30, 1999 and signed by Edward J. Garofolo.

Endorsement No. 10 shall mean the endorsement styled "Endorsement MS #010 – Products and Completed Operations Extension Endorsement."

Engelberth shall mean Engelberth Construction, Inc.

Federal shall mean Federal Insurance Company, along with any employee, agent, officer, director, attorney, predecessor, successor, subsidiary, parent, affiliate, or division thereof.

First Ascent Litigation shall mean the litigation filed by the First Ascent Homeowners Association, styled *First Ascent Homeowners Association v. Intrawest California Holdings, Inc. et al.*, Case No. SCV 27233, in the Superior Court of California, Placer County.

Indemnity Agreement shall mean the Indemnity Agreement entered into by **National Union** and **Intrawest** on or around April 30, 1998, a copy of which is attached as Ex. 1 to Ex. A (Doc. No. 84-3) of Plaintiff's Motion for Summary Judgment (Doc. No. 84).

Insured shall mean the named insured under the **OCIP**, including without limitation **Intrawest**, **Engelberth**, Evergreen Roofing, LLC, additional insureds, or any other insured under the **OCIP**.

Intrawest shall mean Intrawest ULC and its predecessors in interest, including Intrawest Corporation and those entities identified as "Intervenors" in the Motion to Intervene Under Rule 24, filed April 29, 2013 (Doc. No. 51).

Kimmel Mechanical Claims shall mean any **Claims** made under the **OCIP** related to Kimmel Mechanical, Inc. and Settlers' Creek condominium development located in Keystone, Colorado.

Long Trail Litigation shall mean the suits filed against **Engelberth** styled *Long Trail House Condominium Association v. Engelberth Construction, Inc.*, Docket No. 581-11-08 Wmcv,

in the Superior Court of Vermont, Windham County and *The Stratton Corp. v. Engelberth Construction, Inc.*, Docket No. 291-6-07, in the Superior Court of Vermont, Windham County.

National Union shall mean National Union Fire Insurance Company of Pittsburgh, PA., along with any employee, agent, officer, director, attorney, predecessor, successor, subsidiary, parent, affiliate, or division thereof (including without limitation **Chartis** and **AIG**).

OCIP shall mean the Owner Controlled Insurance Program underwritten by **National Union**, including the **Policies**, which is the subject of this lawsuit.

Paid Loss Addenda shall mean the Paid Loss Addenda and Policy and Funding Schedule, copies of which are attached as Exs. 2 and 3 to Ex. A (Doc. Nos. 84-4, 5) of Plaintiff's Motion for Summary Judgment (Doc. No. 84).

Patrick Campbell Claims shall mean any **Claims** made under the **OCIP** related to Patrick Campbell and Settlers' Creek condominium development located in Keystone, Colorado.

Policies shall mean the commercial general liability insurance policies issued by **National Union** as part of the **OCIP**, including without limitation Commercial General Liability Policy Nos. 933-00-79 RA and 933-04-78 RA, effective April 30, 1998 to June 30, 2002, including any Endorsements thereto.

Rule 30(b)(6) shall mean Rule 30(b)(6) of the Federal Rules of Civil Procedure.

Solstice Litigation shall mean the litigation against **Engelberth** styled *The Stratton Corporation et al. v. Engelberth Construction, Inc.*, Docket No. 272-6-05 Wmcv, in the Superior Court of Vermont, Windham County; and *The Stratton Corporation et al. v. Engelberth Construction, Inc.*, Docket No. 291-6-07 Wmcv, in the Superior Court of Vermont, Windham County.

Squaw Valley Litigation shall mean the litigation filed by the Squaw Valley Neighborhood Company, styled *Squaw Valley Neighborhood Company v. Intrawest California Holdings, Inc. et al.*, Case No. SCV 27198 in the Superior Court of California, Placer County.

Sunstone Claims shall mean any **Claims** made under the **OCIP** related to the Sunstone at Juniper Springs condominium development located in Mammoth Lakes, California.

Willis means Willis North America, Inc. f/k/a Willis Corroon Corporation, Willis of New York, Inc., Willis Insurance Brokerage of Utah, Inc., Willis of New Jersey, Inc., Willis Construction Services Corporation of New Jersey f/k/a Willis Corroon Construction Services Corporation of New Jersey, Willis Corroon Construction Services Corporation of Connecticut, Willis Corroon Construction Services Corporation, Willis of New Hampshire, Inc. f/k/a Willis Corroon Corporation of New Hampshire, Willis of Massachusetts, Inc., along with any employee, agent, officer, director, attorney, predecessor, successor, subsidiary, parent, affiliate, or division of any of the aforementioned Willis companies.

II. SUBJECT MATTER

National Union is required to respond pursuant to **Rule 30(b)(6)** to questions posed by counsel for **Defendants** in relation to the following areas of subject matter. Notice is hereby given that the questions posed at the deposition may not follow the order set forth below and may exceed the bounds of these subject matter areas for the purposes of determining: (1) foundation; (2) hearsay issues; (3) whether the deponent(s) designated by **National Union** have personal knowledge of areas outside of these topics, which knowledge is appropriate subject matter and discoverable in a **Rule 30(b)(6)** deposition under federal law; and (4) the exercise of diligent inquiry in preparation for the deposition as required under the aforementioned Rule. The titles used below are offered only for aid in organizing topics and are not to be construed as a limitation or dilution of the information otherwise responsive to the expressly stated, separately enumerated, topic areas.

Furthermore, the parties may stipulate to a bifurcation of this deposition, with the first segment of the deposition allocated to addressing addressing issues related to recordkeeping and underwriting of the **OCIP**, and the second segment allocated to addressing **Claims** filed under the **OCIP**. Alternatively, **Defendants** can address all topics listed in this Exhibit in one deposition, to be continued day to day until complete.

A. Individual Background, Training, Education, and Experience

1. The background, training, education, and experience of the deponent.
2. The employment history of the deponent.
3. The deponent's preparation for the deposition, including efforts by **National Union** and the deponent to determine what information is known or reasonably available to **National Union** regarding the topics identified in this Exhibit A.
4. The deponent's understanding of the procedure used in Rule 30(b)(6) depositions.
5. The deponent's review of the underwriting and claims files related to the **OCIP**.
6. The deponent's communications with **National Union** related to the underwriting and claims files related to the **OCIP**.
7. The deponent's use of documents during the deposition, including any documents produced by **National Union** in response to discovery or as attachments to the Initial Disclosures and supplements thereto filed by **National Union**.

B. The OCIP and Related Documents

1. The documents comprising the **OCIP** and **Policies** issued by **National Union**, including any versions, drafts, or iterations thereof, and the authentication of those documents, including but not limited to:

- a. The completeness of any collection of information identified as the entire body of documentation comprising the **OCIP**;
- b. The diligence and investigative measures exercised by the deponent in identifying, locating and producing the documents that comprise the **OCIP**;
- c. The diligence and investigative measures exercised by **National Union** in identifying, locating, compiling and producing the documents that comprise the **OCIP**;
- d. The documents that might reflect the intent and understanding of the **Insureds** under the **OCIP** concerning the extent of coverage afforded by **National Union** under the **OCIP**, including policy limits applicable to **National Union**'s primary layer of insurance; and
- e. Any and all written (or electronic) representations made by **National Union** concerning the extent of coverage under the **OCIP** prior to the commencement of the instant litigation, whether or not used in other litigation by **National Union**.

2. The underwriting intent of the parties with respect to the **OCIP** and the **Policies**.

3. The benefits conferred to **Insureds** under the **OCIP** including but not limited to **National Union**'s interpretation of the various clauses, endorsements, definitions, exclusions, riders, declarations or other contents of any document establishing the insuring requirements of **National Union** under the **OCIP**.

4. The negotiation, implementation, administration, and underwriting of the **OCIP**, including identification of the individuals involved on behalf of **National Union**.

5. **National Union**'s procedures, policies, and processes in negotiation, implementation, and underwriting owner controlled insurance programs in general during the period of 1997 to 2003.

6. The identity of any party, person or entity known or believed by **National Union** to have knowledge of the communications between **National Union** and others regarding the insuring objectives of the **Insureds** under the **OCIP** or **National Union**'s acceptance of insuring obligations thereunder, including but not limited to:

- a. The names, titles and nature of involvement of all persons employed by **National Union** in the present or the past who were involved in the following activities with respect to the **OCIP**:
 - i. Computation of premiums charged;
 - ii. Assembly of policy forms, endorsements, declarations and certificates of coverage;
 - iii. Establishment of reserves for any **Claims** made against **Insureds** under the **OCIP**;

- iv. Interpretation of the meaning of the insurance and other terms contained within the documents comprising the **OCIP**;
- v. The creation of the **Paid Loss Addenda**;
- vi. The creation of the **Indemnity Agreement**;
- vii. Any reinsuring agreement related in any way to the **OCIP** or any insuring obligation thereunder;
- viii. The negotiation of settlements (including authorization to make payments toward settlement) of **Claims** under the **OCIP**;
- ix. The defense of **Claims** (including authorization to incur defense expenses) under the **OCIP**; and
- x. The creation of **Endorsement No. 9**.

7. The role of **Willis** in the **OCIP** negotiation, implementation, and underwriting process, and the identities of individuals employed by **Willis** in such negotiation, implementation, and underwriting.

8. The role of **Intrawest** in the **OCIP** negotiation, implementation, and underwriting, and the identity of the individuals employed by **Intrawest** in such negotiation, implementation, and underwriting.

9. The drafting, negotiation, meaning, purpose, interpretation, and signing of **Endorsement No. 9** to the **Policies**, including the identity of all individuals involved in the drafting, negotiation, and signing of said endorsement.

10. The drafting, negotiation, meaning, purpose, interpretation, and signing of **Endorsement No. 10** to the **Policies**, including the identity of all individuals involved in the drafting, negotiation, and signing of said endorsement.

11. The drafting, negotiation, modification, amendment, and signing of the **Policies**, including all endorsements, and including the identity of all individuals involved in the drafting, negotiation, and signing of said endorsements.

12. The drafting, negotiation, modification, amendment, and signing of the **Indemnity Agreement**, including the identity of all individuals involved in the drafting, negotiation, and signing of said agreement.

13. The drafting, negotiation, modification, amendment, and signing of the **Paid Loss Addenda**, including the identity of all individuals involved in the drafting, negotiation, and signing of said addenda.

14. The intent of the parties as to the purpose, meaning, and effect of the **Indemnity Agreement**.

15. The intent of the parties as to the purpose, meaning, and effect of the **Paid Loss Addenda**.

16. The intent of the parties as to the purpose, meaning, and effect of the **Policies**, including all endorsements thereto.

17. National Union's process for certifying copies of the policies issued under the **OCIP**, including the identity of all individuals involved in certifying any of the **Policies**.

18. The method or factors employed for calculating premiums charged by **National Union** on the **Policies** and the **OCIP**.

19. The process for creating, approving, and issuing the **Policies** in final form, including the endorsements.

20. The process by which persons or entities other than **Intrawest** enrolled or became insured under the **Policies**.

21. The process for identifying or verifying a person's or entity's status as an insured under the **Policies**.

22. The lawsuit captioned *Intrawest Corporation et al. v. Federal Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA*, Case No. CIV.S-03-0249 MCE JFM, in the United States District Court, Eastern District of California, Sacramento Division, including any discovery, documents, depositions, pleadings, or non-privileged correspondence generated or received in that litigation which are or were in the possession, custody, or control of **National Union** or its current or former counsel.

23. The current or law known business address of the following persons:

- a. Geoffrey Hall
- b. Joseph Riela
- c. Thomas Morrissey
- d. Patricia Murphy
- e. Louis Iglesias

C. Claims Arising Under the OCIP

1. The administration of **Claims** made under the **OCIP** tendered by **Intrawest** and other **Insureds**.

2. The nature of **Claims** made under the **OCIP** by **Intrawest** and other **Insureds**.

3. The date on which the completed operations period commenced for each **Claim** tendered under the **OCIP**.

4. The procedures, policies, and processes used by **Claims Staff** in handling **Claims** under the **OCIP**.

5. The **Solstice Litigation and Claims** made by **Intrawest** and other **Insureds** pursuant to the **OCIP** relating to such litigation, including, but not limited to:

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Solstice Litigation**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

6. The **Long Trail Litigation and Claims** made by **Intrawest** and other **Insureds** pursuant to the **OCIP** relating to such litigation, including, but not limited to:

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Long Trail Litigation**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

7. The **First Ascent Litigation and Claims** made by **Intrawest** and other **Insureds** pursuant to the **OCIP** relating to such litigation, including, but not limited to:

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **First Ascent Litigation**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

8. The **Squaw Valley Litigation and Claims** made by **Intrawest** and other **Insureds** pursuant to the **OCIP** relating to such litigation.

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Squaw Valley Litigation**; and

- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

9. The **Eagle Run Litigation** and **Claims** made by **Intrawest** and other **Insureds** pursuant to the **OCIP** relating to such litigation.

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Eagle Run Litigation**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

10. The **Copper Springs Claims** and any amounts paid by **National Union** in settlement of such claims.

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Copper Springs Litigation**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

11. The **Kimmel Mechanical Claims** and any amount paid by **National Union** in settlement of such claims.

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Kimmel Mechanical Claims**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

12. The **Patrick Campbell Claims** and any amount paid by **National Union** in settlement of such claims.

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;

- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Patrick Campbell Claims**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

13. The **Sunstone Claims** and any amount paid by **National Union** in settlement of such claims.

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Sunstone Claims**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

14. The **Claims** indicated on the document attached hereto as Exhibit A, Bates Nos. NU11047–NU11048.

- a. The date that **National Union** was first placed on notice, and the **Insured** placing **National Union** on such notice;
- b. The amount paid to settle the **Claim** by **National Union**, if any;
- c. The **AIG** personnel assigned to adjust or handle the **Claims** related to the **Claims**; and
- d. Any coverage determinations made by **National Union**, including **National Union's** determination that the **Claim** is or was within the Products-Completed Operations Hazard.

15. The total amounts paid by **National Union** as of the date of the deposition relating to **Claims** tendered to **National Union** under the **OCIP** by any **Insured**, and which amounts **National Union** assets are applicable to any policy limit, including without limitation the **Documents** that confirm or otherwise relate to **Claims** that **National Union** has paid, or has committed to pay, under the **OCIP**.

16. The identity of members of the **Claims Staff** who evaluated **Claims** arising under the **OCIP**.

17. The **Evaluation** process used by the **Claims Staff** in evaluating **Claims** that arise under the **OCIP**.

18. The current or last known address of the following persons:

- a. Sara Wharton
- b. Joy Walker

- c. Amy van Valkenberg
- d. Albert H. Wilson
- e. Diane Pardee
- f. Charles Coker

D. Issues Related to Discovery and Recordkeeping

1. The search for **Documents** and information pursuant to **Defendants'** written discovery requests and pursuant to Fed. R. Civ. P. 26(a)(1).
2. The authentication of all documents, including any documents related to the **Policies**, submitted in response to **Defendants'** written discovery requests and pursuant to Fed. R. Civ. P. 26(a)(1).
3. **National Union's** procedures, policies, and process related to responding to written discovery requests.
4. **National Union's** recordkeeping procedures, policies, and processes related to the **OCIP**.
5. **National Union's** recordkeeping procedures, policies, and process related to the management of owner controlled insurance programs in general.
6. The identity of all individuals at **National Union** involved in recordkeeping of **Documents** and information related to the **OCIP**.