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JUL - 2 PM 2:26

CIRCUIT COURT
OF MULTNOMAH COUNTY

ENTERED
JUL - 2 2003
IN REGISTER BY LR

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

07034

Bieker & Associates, Inc., dba B R & R
Insurance, an Oregon corporation,

Plaintiff,

v.

FINISHERS CORPORATION, a Washington
limited liability company,

Defendants.

Case No.

0307-07034

COMPLAINT

(Action on Check, Breach of Contract,
and Fraud)

Claim seeks more than \$10,000

Claim not subject to mandatory arbitration

Plaintiff alleges:

FIRST CLAIM FOR RELIEF

(Action on Check)

1.

At all times material herein plaintiff B R & R Insurance, was and now is, a registered
business entity of Bieker & Associates, Inc., an active Oregon corporation; B R & R Insurance is
a licensed insurance agency in the State of Oregon.

2.

At all times material herein, Finishers Corporation was and now is a Washington corporation, registered to do business in the State of Oregon.

3.

At the request of Finishers Corporation, B R & R Insurance procured a policy of insurance on behalf of Finishers Corporation.

4.

In consideration for plaintiff binding the defendant over for insurance coverage, defendant issued to plaintiff the following checks:

(a) Check No. 3734 dated 3-25-03 in the amount of \$26,000.00 payable to BR & R Insurance Agency;

(b) Check No. 3733 dated 03-25-03 in the amount of \$18,262.00 payable to B R & R Insurance Agency; and

(c) Check No. 3736 dated 03-27-03 in the amount of \$9,066.07 payable to B R & R Insurance Agency.

5.

After receiving the checks set forth in paragraph 4 hereinabove, plaintiff arranged to receive verification of insurance which defendant required to conduct his business activities.

6.

The premium due plaintiff for providing services to defendant was earned by plaintiff at the time the insurer bound insurance coverage for defendant.

///

///

7.

1
2 After B R & R Insurance became obligated to the insurance companies who bound
3 coverage for a general liability and umbrella policy for defendant, and B R & R Insurance had
4 obtained a Certificate of Insurance on defendant's behalf and provided same to defendant,
5 defendant stopped payment on checks No. 3734, No. 3733, and No. 3736.

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8.

The stop payment was made without reasonable and good cause pursuant to ORS
30.701(6).

9.

Defendant's conduct in effecting the stop payment on the checks was made in bad faith
and for the purpose of avoiding payment for insurance that had been procured on defendant's
behalf and was necessary for defendant to conduct its business operations.

10.

More than thirty days prior to instituting this action, plaintiff forwarded via certified mail,
return receipt requested, and via first class mail, a demand to defendant to honor the dishonored
checks. A copy of the demand letter is attached hereto as Exhibit "A". Attached hereto as
Exhibit "B" is a copy of the return receipt signed by defendant's representative, acknowledging
receipt of plaintiff's demand letter on or about April 30, 2003.

11.

Despite demand, defendant has failed to make good checks No. 3734, No. 3733, and No.
3736. As a result, there is outstanding the principal sum of \$54,328.07.

///

///

12.

1
2 In accordance with ORS 82.010 plaintiff is entitled to prejudgment interest at the rate of
3 nine percent (9%) per annum on the unpaid principal sum of \$54,328.07 from April 30, 2003, the
4 date demand was received by defendant, until paid.

13.

5 Pursuant to ORS 30.701 plaintiff is entitled to statutory damages for defendant's stop
6 payment on check No. 3734, No. 3733, and No. 3736 in an "amount equal to \$100 or triple the
7 amount for which the check is drawn, whichever is greater;" subject, however, to the limitation
8 that the amount of the penalty for each check drawn "may not exceed by more than \$500 the
9 amount for which the check was drawn."

14.

10 Pursuant to ORS 30.701 (1), plaintiff is entitled to its reasonable attorney fees and costs
11 incurred in this action.

15.

12 Pursuant to ORS 30.701 (5) plaintiff is entitled to a reasonable fee representing the cost
13 of handling and collecting on checks No. 3734, No. 3733, and No. 3736, but not to exceed \$25
14 per check.

15
16
17
18 SECOND CLAIM FOR RELIEF

19 (Breach of Contract)

20 16.

21 Plaintiff realleges and incorporates by reference all the allegations in paragraphs 1
22 through 15 as if fully set forth herein.

17.

1
2 Defendant's conduct in stopping payment on the checks represents a breach of the
3 contract entered into between plaintiff and defendant, wherein plaintiff was to procure insurance
4 coverage for defendant and defendant was to pay plaintiff for said insurance coverage.

18.

5
6 As a result of defendant's breach of contract, plaintiff is entitled to principal damages in
7 the sum of \$54,328.07, prejudgment interest at the rate of nine percent (9%) per annum from
8 April 30, 2003 until paid, together with its reasonable consequential and incidental damages
9 incurred as a result of defendant's breach, including reasonable handling and collection fees on
10 the three checks in the approximate sum of \$75.00.

11 THIRD CLAIM FOR RELIEF

12 (Fraud)

13 19.

14 Plaintiff realleges and incorporates by reference all the allegations in paragraphs 1
15 through 15 as if fully set forth herein.

16 20.

17 At the time that defendant issued checks No. 3734, No. 3733, and No. 3736 to plaintiff,
18 defendant did not intend to honor said checks. Instead defendant simply wrote those checks to
19 procure a certificate of insurance so it could obtain payment from one of its clients.

20 21.

21 After procuring payment from one of its clients for which a certificate of insurance was
22 required, defendant stopped payment on checks No. 3734, No. 3733, and No. 3736.

22.

1
2 Defendant's representation that it would pay plaintiff the sums set forth in checks No.
3 3734, No. 3733, and No. 3736 was false in as much as defendant never intended to honor said
4 checks.

23.

5
6 Defendant issued plaintiff checks No. 3734, No. 3733, and No. 3736 with an actual intent
7 to defraud plaintiff.

24.

8
9 Plaintiff reasonably relied upon defendant's representations that it would pay for the
10 policy of insurance and demonstrated its reasonable reliance by making arrangements to bind
11 insurance coverage and procuring the certificate of insurance coverage for defendant's use and
12 benefit.

25.

13
14 Defendant acted with the intent to defraud plaintiff or, pleading in the alternative,
15 defendant acted with reckless disregard of the truth or falsity of its representations that it could
16 and would pay plaintiff the sums set forth in checks No. 3734, No. 3733, and No. 3736.

26.

17
18 On or about April 30, 2003 plaintiff made demand for defendant to pay plaintiff the
19 principal sum of \$54,328.07.

27.

20
21 Instead of paying the amount demanded, defendant threatened to sue plaintiff and
22 plaintiff's employees and agents personally, when there was no justifiable basis for bringing such

1 suit. Attached hereto as Exhibit "C" is a copy of defendant's letter threatening a false and
2 frivolous lawsuit in response to plaintiff's reasonable attempt to collect the indebtedness.

3 28.

4 Defendant's conduct in procuring a policy of insurance under false pretenses, defrauding
5 plaintiff, and making threats to institute frivolous litigation and filing counterclaims in wanton
6 bad faith, in order to stave off plaintiff's reasonable collection efforts, was willful, malicious, and
7 in bad faith, the type of conduct punitive damages are intended to deter. Pursuant to ORS 18.535
8 plaintiff gives notice of its intent to file a motion to amend and add a claim for punitive damages.

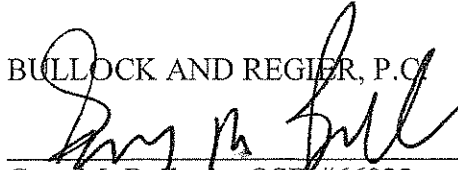
9 WHEREFORE, plaintiff prays for the following relief:

- 10 1. Judgment be entered in plaintiff's favor against the defendant for
- 11 (a) the principal sum of \$54,328.07;
- 12 (a) prejudgment interest on the principal sum of \$54,238.07 at the rate of nine
13 percent (9%) per annum from April 30, 2003 until paid;
- 14 (b) a statutory penalty for non-payment of checks in the sum of \$1,500.00;
- 15 (c) \$75.00 for plaintiff's reasonable fees incurred in handling the checks on
16 which defendant placed a "stop payment";
- 17 (d) plaintiff's reasonable attorney fees and costs incurred herein; and
- 18 (e) enhanced prevailing party fee in accordance with ORS 20.190 (3) in the
19 sum of \$5,000 in the event the defendant files an Answer or Counterclaim alleging facts in bad
20 faith in order to stave off plaintiff's reasonable collection efforts and assert facts for an improper
21 purpose.
- 22

1 (2) Such further relief as the court deems just and equitable under the circumstances.

2 DATED this 22 day of June, 2003.

3 BULLOCK AND REGIER, P.C.

4 
5 By: Gary M. Bullock, OSB #66022
Of Attorneys for Plaintiff

6 Bullock and Regier, P.C.
7 1001 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204
8 Telephone: (503) 228-6277
Facsimile: (503) 228-6280

9 Trial Attorney:
Gary M. Bullock, OSB# 66022

BULLOCK and REGIER, P.C.
ATTORNEYS AT LAW
1001 S.W. FIFTH AVENUE, SUITE 1500
PORTLAND, OREGON 97204

TELEPHONE: (503) 228-6277
FACSIMILE: (503) 228-6280
garybullock@qwest.net

◆ ★ Gary M. Bullock
★ Wade V. Regier

April 25, 2003

★ Admitted in Oregon
and Washington

Joanna L. Crowder
Arthur B. Fowler
★ Tonya Kowalski
Eric S. Postma

VIA CERTIFIED, RETURN RECEIPT REQUESTED AND FIRST CLASS MAIL
◆ ★ Admitted in Oregon,
Washington and
California

4/29/03
Finishers Corporation
7130 S.W. Fir Loop S #100
Tigard, Oregon 97223

Re: Finishers Corp and B R & R Insurance Agency

**Notice of Action Against Maker on Dishonored Check, Statutory Damages,
Attorney Fees and Handling Fees**

Dear Mr. Troxel:

This is an attempt to collect a debt and any information obtained will be used for that purpose. Notice pursuant to 15 U.S.C. Section 1692 is attached.

Please be advised that my client, BR & R Insurance Agency, has advised me that you tendered the following three checks in payment to BR & R Insurance Agency:

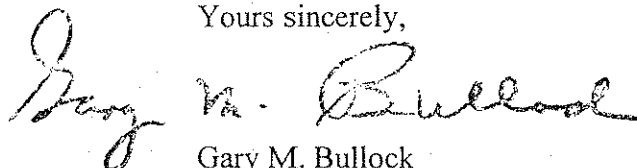
- (a) Check No. 3734 dated 03-25-03 in the amount of \$26,000.00 payable to BR & R Insurance Agency
- (b) Check No. 3733 dated 03-25-03 in the amount of \$18,262.00 payable to BR & R Insurance Agency
- (c) Check No. 3736 dated 03-27-03 in the amount of \$9,066.07 payable to BR & R Insurance Agency

I understand thereafter you stopped payment on the three checks or insufficient funds existed for payment of the same.

In accordance with ORS 30.701 demand is hereby made against you to honor the dishonored checks. Please be advised ORS 30.701 provides for statutory damages and attorney fees if the checks are not made good within thirty (30) days from the date of demand. In addition, interest at a minimum rate of nine percent (9%) per annum is appropriate in accordance with ORS 82.010 until paid.

Please consider this letter a formal demand for payment of the dishonored checks. A copy of the checks and of ORS 30.701 are enclosed herein for your reference.

Yours sincerely,


Gary M. Bullock

WVR:dj
6/WVR/BR&RInsurance/Troxel 4-25-03

4/29/03
RW Perry, Registered Agent
Finishers Corporation
8050 Warm Springs St, Ste 100, Tualatin, Oregon 97062

EXHIBIT A
PAGE 1 OF 4

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICE ACT
15 U.S.C. Section 1692

April 25, 2003

To: Finishers Corporation

1. You are hereby notified that BR & R Insurance Agency is attempting to collect a debt.
2. The approximate amount of the debt is \$53,328.00 as of March 27, 2003 with a per diem of \$13.15 thereafter.
3. The debt will be assumed to be valid unless **WITHIN THIRTY DAYS AFTER THE RECEIPT OF THIS NOTICE**, you dispute the validity of the debt or some portion thereof.
4. If you notify this office in writing within thirty days after the receipt of this Notice that the debt or any portion thereof is disputed, Bullock and Regier, P.C. will provide a verification of the debt, and a copy of the verification will be mailed to you. In attempting to collect the debt, any information obtained will be used for that purpose.
5. Written notice and requests should be addressed to:

BR & R Insurance in care of its attorneys,

Bullock and Regier, P.C.
1001 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204.

FIN53

FINISHERS CORP
7130 SW FR L.P. 100
TIGARD, OREGON 97223

3734

24-22/1230 3221

Date 06-26-03

Pay to the order of BR & R Insurance Agency
Twenty six thousand and 00/100

\$ 26,000.00

Dollars



usbank.com

STOP PAYMENT

[Signature]

3 or

⑆0000003734⑆ ⑆123000220⑆ 153690960759⑆ ⑆000260000⑆

FIN53

FINISHERS CORP
7130 SW FR L.P. 100
TIGARD, OREGON 97223

3733

24-22/1230 3221

Date 03-25-03

Pay to the order of BR & R Insurance Agency
Eighteen thousand two hundred fifty two and 00/100

\$ 18,252.00

Dollars



usbank.com

STOP PAYMENT

[Signature]

3 or

⑆0000003733⑆ ⑆123000220⑆ 153690960759⑆ ⑆0001825200⑆

FIN53

FINISHERS CORP
7130 SW FR L.P. 100
TIGARD, OREGON 97223

3736

24-22/1230 3221

Date 03-27-03

Pay to the order of BR & R Insurance
Nine thousand eight hundred and 00/100

\$ 9,800.00

Dollars



usbank.com

STOP PAYMENT

[Signature]

⑆0000003736⑆ ⑆123000220⑆ 153690960759⑆ ⑆000098000⑆

PERRY & WINEGAR

Attorneys At Law

R.W. Perry

Doris C. Winegar

ONE WARM SPRINGS BUILDING
8050 SW WARM SPRINGS STREET, SUITE 100
TUALATIN, OREGON 97062-7401
Phone (503) 691-2949 ♦ Fax (503) 691-8048
Internet: www.pmwb-law.com

MAILING ADDRESS

P.O. BOX 1107
TUALATIN, OR 97062

May 14, 2003

Gary M. Bullock
Bullock & Regier, P.C.
Attorneys at Law
1001 SW Fifth Avenue, Suite 1500
Portland, OR 97204

Re: Finishers Corporation and Bieker & Associates, Inc., dba B R & R Insurance Agency


Dear Mr. Bullock:

I have your letter of April 25, 2003 that was addressed to my client, Finishers Corporation. My client is not indebted to B R & R Insurance Agency and it disputes the validity of any debt that B R & R Insurance Agency alleges to be due from my client. In your letter you also make demand pursuant to ORS 30.701. Any checks drawn by my client in favor of B R & R Insurance Agency that have not been paid because of a stop payment, such stop payment was made with good and reasonable cause pursuant to ORS 30.701(6). Accordingly, remedies set forth under that statute do not apply to this transaction.

Please be aware that if B R & R takes any legal action against Finishers Corporation, including, but not limited to, reporting any negative comments on its credit report, Finishers Corporation intends to strongly defend such action and will file a counterclaim against the insurance agent and personally against its individual agents with respect to any loss incurred in connection with the insurance that was to be procured by B R & R. B R & R promised to obtain adequate insurance at a reasonable price for Finishers Corporation and then failed to do so.

Should you have any questions or desire to further discuss the transaction involved between our two clients, I would be pleased to do that. Please call me at your convenience.

Very truly yours,



R.W. Perry

RWP/lmc

cc: Finishers Corporation

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FILED

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FOURTH JUDICIAL DISTRICT

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

BIEKER & ASSOCIATES, INC., dba B R & R)
INSURANCE, an Oregon corporation,)

Plaintiff,)

vs.)

FINISHERS CORPORATION, a Washington)
corporation,)

Defendant and Third-Party Plaintiff,)

vs.)

JANELLE MARKOVICH,)

Third-Party Defendant.)

Case No.: 0307-07034

DEFENDANT'S FINISHERS
CORPORATION ANSWER,
AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD-PARTY
COMPLAINT

ENTERED
AUG 19 2003
IN REGISTER BY AM

COMES NOW defendant and third-party plaintiff, Finishers Corporation and for answer
to plaintiff's Complaint, admits, denies and alleges as follows:

1.

Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
allegations of paragraph 1 of the Complaint.

2.

Defendant admits the allegations of paragraph 2 of the Complaint.

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PAGE 1 - DEFENDANT'S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Perry & Winegar
P.O. Box 1107
Tualatin, OR 97062
Phone: 503-670-0443 ♦ Fax: 503-443-3793

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3.

In answer to the allegations of paragraph 3 of the Complaint, defendant admits that it requested plaintiff to procure a policy. Defendant denies the remaining allegations of paragraph 3.

4.

In answer to the allegations of paragraph 4 of the Complaint, defendant admits it signed check number 3733, 3734 and 3736. Defendant denies the remaining allegations of paragraph 4.

5.

Defendant denies the allegations set forth in paragraphs 5 and 6 of the Complaint.

6.

In answer to the allegations of paragraph 7 of the Complaint, defendant admits that it stopped payment on check numbers 3733, 3734 and 3736. Defendant denies the remaining allegations of paragraph 7.

7.

Defendant denies the allegations of paragraphs 8 and 9 of the Complaint.

8.

In answer to paragraph 10 of the Complaint, defendant admits that it received a copy of Exhibit "A" attached to the Complaint. Defendant denies the remaining allegations of paragraph 10.

9.

Defendant denies the allegations of paragraphs 11, 12, 13, 14 and 15 of the Complaint.

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PAGE 2 - DEFENDANT'S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Perry & Winegar
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10.

In answer to paragraph 16 of the Complaint, defendant restates the foregoing replies to paragraphs 1 through 15 of the Complaint.

11.

Defendant denies the allegations of paragraphs 17 and 18 of the Complaint.

12.

In answer to paragraph 19 of the Complaint, defendant restates its replies to paragraphs 1 through 15 of the Complaint.

13.

Defendant denies the allegations of paragraph 20 of the Complaint.

14.

In answer to paragraph 21, defendant admits that it stopped payment on check numbers 3733, 3734 and 3736. Defendant denies the remaining allegations of paragraph 21 of the Complaint.

15.

Defendant denies the allegations in paragraphs 22 through 26 of the Complaint.

16.

In answer to paragraph 27, defendant admits that Exhibit "C" attached to the Complaint is a letter dated May 14, 2003 from defendant's counsel. Defendant denies the remaining allegations of paragraph 27.

17.

Defendant denies the allegations in paragraph 28 of the Complaint.

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PAGE 3 – DEFENDANT’S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

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Tualatin, OR 97062

Phone: 503-670-0443 ♦ Fax: 503-443-3793

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18.

Except as specifically admitted herein, defendant denies each and all allegations of the Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Defendant alleges:

19.

Plaintiff has failed to state ultimate facts sufficient to constitute a claim.

FOR A SECOND AFFIRMATIVE DEFENSE

(Duress)

Defendant alleges:

20.

Check numbers 3733, 3734 and 3735 were signed by defendant under duress. If defendant did not sign the checks, it was without any insurance and would have to go out of business. Plaintiff knew defendant could not continue in business and failed to procure insurance as agreed. Knowing that defendant could not continue in business, plaintiff required defendant to sign the checks. Defendant has no immediate and adequate remedy at law and was compelled to sign the checks in order to stay in business.

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PAGE 4 – DEFENDANT’S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Perry & Winegar
P.O. Box 1107
Tualatin, OR 97062

Phone: 503-670-0443 ♦ Fax: 503-443-3793

1 FOR A THIRD AFFIRMATIVE DEFENSE

2 (Failure of Consideration)

3 Defendant alleges:

4 21.

5 The contract alleged by plaintiff is without consideration as plaintiff did not procure the
6 insurance policy required so that defendant could continue in business.

7 FOR A COUNTERCLAIM AGAINST PLAINTIFF

8 (Breach of Contract)

9 Defendant alleges:

10 22.

11 Defendant Finishers Corporation ("Finishers") is a Washington corporation authorized to
12 conduct business in the state of Oregon. Plaintiff Bieker & Associates, Inc., is an Oregon
13 corporation doing business as B R & R Insurance and B R & R (hereinafter collectively referred
14 to as "B R & R"). B R & R is licensed and authorized to conduct business as an insurance agent
15 or broker in the state of Oregon.

16 23.

17 At all times pertinent to this action, B R & R has held out and represented that it was a
18 specialist and expert in the field of construction insurance.

19 24.

20 Around November 2002, Finishers met with B R & R to discuss procurement of a
21 business insurance policy to cover their construction activities. Finishers advised B R & R that
22 such insurance policy must cover their construction activities, provide an additional insured
23 endorsement for owners and contractors associated with their construction activities and that

24 PAGE 5 – DEFENDANT’S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

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Tualatin, OR 97062

Phone: 503-670-0443 ♦ Fax: 503-443-3793

1 Finishers was relying on B R & R to procure insurance suitable to Finishers' needs and at a
2 reasonable price. B R & R agreed and contracted to procure insurance suitable to Finishers'
3 needs.

4 25.

5 B R & R knew or should have known that Finishers needed the coverage described in
6 paragraph 24 above to stay in business and that such policy must be in force on or prior to 12:01
7 a.m. on March 24, 2003.

8 26.

9 B R & R did not procure the insurance as agreed and commencing on March 24, 2003,
10 Finishers was without insurance coverage. As a result of not having insurance, Finishers was
11 removed from one construction project and owners and contractors threatening to remove
12 Finishers from other projects.

13 27.

14 On March 25, 2003, B R & R demanded that Finishers sign and deliver checks in the
15 amount of \$53,328.07 made payable to B R & R in exchange for B R & R notifying the owners
16 and contractors that Finishers had insurance coverage.

17 28.

18 B R & R failed to procure insurance as agreed and knew or should have known that the
19 required insurance was available at a reasonable price.

20 29.

21 As a result of B R & R's failure to procure the insurance as promised, Finishers has or
22 will incur losses and damages in the amount of \$100,000 or such other amount that may be
23 proven at trial.

24 PAGE 6 – DEFENDANT'S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Perry & Winegar
P.O. Box 1107
Tualatin, OR 97062

Phone: 503-670-0443 ♦ Fax: 503-443-3793

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1 FOR A FURTHER COUNTERCLAIM AGAINST PLAINTIFF

2 (Breach of Duty – Negligence)

3 Defendant alleges:

4 30.

5 Finishers realleges and incorporates by reference all the allegations in paragraphs 22
6 through 29 of Defendant's Counterclaim Against Plaintiff.

7 31.

8 B R & R promised to procure the necessary insurance for Finishers and therefore had a
9 duty to do so. B R & R failed to use due care and diligence in procuring the insurance and failed
10 to procure the insurance as promised.

11 32.

12 As a result of B R & R's failure to procure the insurance as promised, Finishers has or
13 will incur losses and damages in the amount of \$100,000 or such other amount that may be
14 proven at trial.

15 FOR A FURTHER COUNTERCLAIM AGAINST PLAINTIFF

16 (Attorney Fees)

17 Defendant alleges:

18 33.

19 Finishers is entitled to attorney fees pursuant to ORS 30.701.

20 CLAIMS AGAINST THIRD PARTY DEFENDANT

21 For their third-party complaint against Janelle Markovich (hereinafter "Markovich"),
22 third-party defendant, defendant/third-party plaintiff Finishers Corporation (hereinafter
23 "Finishers"), alleges as follows:

24 PAGE 7 – DEFENDANT'S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Perry & Winegar
P.O. Box 1107
Tualatin, OR 97062

Phone: 503-670-0443 ♦ Fax: 503-443-3793

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34.

Finishers realleges and incorporates by reference all of the allegations in paragraphs 22 through 32 above as if fully set forth herein.

35.

Markovich is an individual employed by Bieker & Associates, Inc., dba B R & R Insurance, the plaintiff herein.

36.

Markovich, as an employee and agent of plaintiff assumed the duty and agreed to procure a policy for Finishers that would cover its needs at a fair and reasonable price.

37.

Markovich failed to procure the insurance as agreed and Finisher's insurance policy expired on March 24, 2003. Because Finishers could not work without insurance coverage, it was forced to sign checks therefore for a policy that did not cover the needs of Finishers and was not at a fair and reasonable price.

38.

Markovich owed a duty to Finishers to procure insurance as agreed and failed to do so.

39.

In their Complaint, B R & R alleges a breach of contract, action on check and fraud, resulting in damages of \$54,328.07. A copy of the Complaint is attached as Exhibit A.

40.

To the extent that Finishers is found liable to B R & R, Markovich is primarily responsible for the damages alleged in B R & R's Complaint and Markovich is liable to Finishers

///////

PAGE 8 – DEFENDANT'S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Perry & Winegar
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Phone: 503-670-0443 ♦ Fax: 503-443-3793

1 in the amount of any recovery obtained by B R & R against Finishers, together with Finishers'
2 reasonable costs and attorney fees incurred in defending plaintiff's claims.

3 WHEREFORE, defendant Finishers Corporation prays for a judgment as follows:

4 1. A judgment in its favor and against Bieker & Associates, Inc., and an award of its
5 costs, disbursements and reasonable attorney fees.

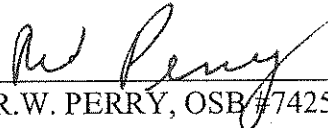
6 2. A judgment on its counterclaims against Bieker & Associates, Inc., in the amount
7 of \$100,000 or such other amount as proven at trial, and an award of its costs, disbursements and
8 reasonable attorney fees.

9 3. A judgment against third-party defendant Janelle Markovich for any amounts
10 Finishers may be liable to pay Bieker & Associates, Inc., as a result of the Complaint together
11 with Finishers' costs, disbursements and its reasonable attorney fees incurred herein.

12 4. Such further relief as the court deems just and equitable under the circumstances.

13 DATED this 15th day of August, 2003.

14 PERRY & WINEGAR

15
16 
17 R.W. PERRY, OSB #74257
18 Attorney for Finishers Corporation

19
20
21
22
23
24 PAGE 9 – DEFENDANT'S FINISHERS CORPORATION ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Perry & Winegar
P.O. Box 1107
Tualatin, OR 97062
Phone: 503-670-0443 ♦ Fax: 503-443-3793

Δ

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FOURTH JUDICIAL DISTRICT

ENTERED IN REGISTER
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

BIEKER & ASSOCIATES, INC., dba B R & R)	Case No. 0307-07034
Insurance, an Oregon corporation,)	
	Plaintiff,)
v.)	PLAINTIFF'S CONCISE STATEMENT
)	OF MATERIAL FACTS IN SUPPORT
FINISHERS CORPORATION, a Washington)	OF MOTION FOR SUMMARY
limited liability company,)	JUDGMENT
)	
Defendant and Third-Party Plaintiff,)	
v.)	
)	
JANELLE MARKOVICH,)	
Third-Party Defendant.)	

- Janelle Markovich is an insurance agent employed by Bieker & Associates, Inc., ("BR & R), plaintiff in this action.
Defendant's Answer, ¶35, Markovich Aff. ¶ 1
- Ms. Markovich had assisted Finishers in procuring their 2002 insurance through Unitrin.
Dep. Burns, Tr. 14; Markovich Aff. ¶ 3
- Ms. Markovich, along with other agents, was requested to review the insurance markets for a 2003 policy for Finishers Corporation ("Finishers"), defendant in this action.
Dep. Burns, Tr. 29,61, Markovich Aff. ¶ 7.

Page 1 PLAINTIFF'S CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

6/WVR/BR&R/ConciseStmntFacts 3-18-04

BULLOCK and REGIER, P.C.
ATTORNEYS AT LAW
1001 S.W. FIFTH AVENUE, SUITE 1500
PORTLAND, OREGON 97204
TELEPHONE (503) 228-6277

- 1 4. Amy Burns was the primary employee of Finishers responsible for procuring insurance
for the corporation for 2003.
2 Dep. Burns, Tr. 11; Dep. Troxel, Tr. 8, 9; Markovich Aff. ¶ 4
- 3 5. Ms. Burns requested Ms. Markovich to seek insurance for 2003 that had essentially the
4 same terms and coverage as the Unitrin policy with the addition of stucco coverage.
Dep. Burns, Tr. 26, 27, 40, 42; Markovich Aff. ¶ 7.
- 5 6. Ms. Burns also requested that the three endorsements for Additional Insured,
6 Primary/Non-contributory, and Waiver of Subrogation be comparable to those issued by
Unitrin.
Dep. Burns, Tr. 39,40; Markovich Aff. ¶ 7.
- 7 7. The Additional Insured endorsement provided by Unitrin was the 2010 3/97 that
8 contained the “ongoing operations” clause.
Markovich Aff. ¶ 5,6.
- 9 8. If another agent had found coverage that was comparable and met all of defendant’s
10 requirements for a lower cost, defendant was free to select that coverage.
Dep. Burns, Tr. 58.
- 11 9. In January 2003, thirty (30) days prior to expiration of their 2002 policy, Finishers was
12 issued a non-renewal notice by Unitrin.
Dep. Burns, Tr. 29; Markovich Aff. ¶ 10.
- 13 10. In February 2003, Ms. Markovich was able to assist Finishers in securing a thirty (30)
14 day extension from Unitrin.
Dep. Burns, Tr. 76; Markovich Aff. ¶11.
- 15 11. The Unitrin policy expired on March 24, 2003.
16 Dep. Burns, Tr. 90; Markovich Aff. ¶ 12.
- 17 12. Ms. Burns was aware that defendant had been declined for insurance by a number of
18 companies for the following reasons: their payroll was too large, they did habitational
work, they did work in Washington State, they wanted to do stucco, they had not been in
19 business for enough years and they had an unfavorable Dunn and Bradstreet rating.
20 Dep. Burns, Tr. 77, 82, 89, Markovich Aff. ¶ 14,
- 21 13. Prior to expiration of t & Marine offered Finishers a
policy that did not include Waiver of Subrogation or Primary/Non-contributory
endorsements.
22 Markovich ¶ 17,18

- 1 14. Finishers was willing to purchase the National Fire & Marine policy but delayed
2 accepting to see if another policy with endorsements would become available. They
3 allowed the Unitrin policy to expire without having new coverage in place.
4 Markovich ¶ 20,21
- 5 15. After the Unitrin policy expired, coverage was offered by Steadfast and Insurance
6 Company of the State of PA ("State of PA") These policies provided general liability
7 coverage and umbrella coverage that met defendant's requirements and was substantially
8 the same as Unitrin.
9 Dep. Burns Tr. 106;. Markovich ¶ 50
- 10 16. Prior to coverage being bound, defendant was provided with and signed the endorsement
11 forms provided by Steadfast. The forms clearly indicated the language that would be
12 used and that they were forms 1631 for Additional Insured, form 1699A for
13 Primary/Non-contributory and form 1603 for Waiver of Subrogation.
14 Exhibit 12 to Markovich Aff.; Markovich Aff. ¶ 27,28; Exhibit 11 to Markovich Aff.
- 15 17. The Additional Insured endorsement offered by Steadfast contained exactly the same
16 language as the Additional Insured endorsement provided by Unitrin.
17 Markovich ¶ 26.
- 18 18. Prior to coverage being bound defendant was provided with quotes for coverage from
19 Steadfast and State of PA.
20 Dep. Burns, Tr. 122; Dep. Daniliene, Tr. 15, 16; Exhibits 9, 10 to Markovich Aff.
- 21 19. The quotes listed the endorsement forms that were to be provided by the insurers.
22 Markovich Aff. ¶ 22,23; Exhibits 9, 10 to Markovich Aff.
- 23 20. Mr. Troxel signed check no. 3733 dated 03- 25-03, in the amount of \$18,262.00, payable
24 to BR & R Insurance Agency, for the purpose of procuring insurance.
25 Dep. Troxel, Tr. 5; Plaintiff's First Request for Admission No. 4 (Exhibit 6 to Bullock
26 Aff.)
- 27 21. Mr. Troxel signed check no. 3734, dated 03-25-03, in the amount of \$26,000.000,
28 payable to BR & R Insurance Agency, for the purpose of procuring insurance.
29 Dep. Troxel, Tr. 5; Plaintiff's First Request for Admission No. 4 (Exhibit 6 to Bullock
30 Aff.)
- 31 22. Mr. Troxel signed check no. 3736, dated 03-27-03, in the amount of \$9,066.07, payable
32 to BR & R Insurance Agency for the purpose of procuring insurance.
33 Dep. Troxel, Tr. 5; Plaintiff's First Request for Admission No. 4 (Exhibit 6 to Bullock
34 Aff.)

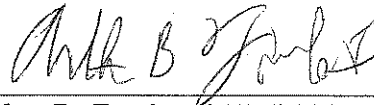
- 1 23. Finishers did not stop working for one day while the Steadfast and State policies were in
place as a result of any problem with the insurance policies.
2 Dep. Troxel Tr. 67.
- 3 24. Finishers received checks from general contractors as a direct result of having procured
insurance and the necessary endorsements. These checks were required for defendant to
4 meet payroll.
Dep. Burns, Tr. 124,125, Markovich ¶ 42,43.
- 5 25. Finishers stopped payment on checks numbers 3733, 3734 and 3736.
6 Plaintiff's First Request for Admission No. 6 (Exhibit 6 to Bullock Aff.); Dep. Troxel, Tr.
93.
- 7 26. In a letter to plaintiff, Mr. Troxel stated that he stopped payment on the checks so that he
would be able to make payroll.
8 Exhibit 13 to Markovich Aff.
- 9 27. Mr. Troxel later stated that cancellation of the checks had nothing to do with making
10 payroll.
Dep. Troxel, Tr. 23, 24.
- 11 28. Defendant admits that the cost of the deposit for the policies created an immediate cash
flow problem for the corporation.
12 Plaintiff's Request for Admission No. 5 (Exhibit 6 to Bullock Aff.)
- 13 29. Mr. Troxel stated that he canceled the insurance because his general contractors wanted a
specific form that was not provided by Steadfast.
14 Exhibit 13 to Markovich Aff., Dep. Troxel, Tr. 24.
- 15 30. Mr. Troxel stated that defendant would have purchased the Steadfast policy whether or
not it issued particular forms.
16 Dep. Troxel, Tr. 27, 90, 93.
- 17 31. Defendant subsequently acquired insurance through another agent at a lower rate that
provided less coverage.
18 Markovich ¶ 49.
- 19 32. The subsequent insurer did issue the three requested endorsements. At the time
defendant purchased the policy, the Additional Insured form CG 2010 11/85 contained
20 different language from the policies written by Unitrin in 2002 and Steadfast in 2003.
Dep. Burns, Tr. 68, 69; Markovich ¶ 46, 56.
- 21 33. Demand for payment of the checks was made to defendant not less than thirty (30) days
prior to commencement of this action.
22 Exhibit 4 to Bullock Aff., Markovich ¶ 67.

Page 4 PLAINTIFF'S CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

1 34. As of the date of this Summary Judgment Motion, payment has not been made to B R &
2 R for insurance purchased by Finishers.
3 Markovich ¶ 68.

4 DATED the 22nd day of March, 2004.

5 BULLOCK AND REGIER, P.C.

6 

7 By: Arthur B. Fowler, OSB # 98053
8 Of attorneys for Plaintiff, Bieker & Associates,
9 Inc. and for Third-Party Defendant, Janelle
10 Markovich

11 Bullock and Regier, P.C.
12 1001 S.W. Fifth Avenue
13 Suite 1500
14 Portland, Oregon 97204

15 Telephone: (503) 228-6277
16 Facsimile: (503) 228-6280

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IN REGISTER BY SD

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CIRCUIT COURT
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

10 BIEKER & ASSOCIATES, INC., dba B R & R) Case No. 0307-07034
11 Insurance, an Oregon corporation,)
12) Plaintiff,) GENERAL JUDGMENT AND
13 v.) MONEY AWARD AGAINST
14) FINISHERS CORPORATION
15 FINISHERS CORPORATION, a Washington)
16 limited liability company,)
17)
18 Defendant and Third-Party Plaintiff,)
19 v.)
20)
21 JANELLE MARKOVICH,)
22 Third-Party Defendant.)

18 THIS MATTER COMING BEFORE THE COURT for trial on Tuesday, June 29, 2004,
19 at which time plaintiff advised the court it was voluntarily withdrawing from its Complaint the
20 Second Claim for Relief (Breach of Contract); the court taking judicial notice of the pleadings;
21 and based upon the entire record, after hearing argument by counsel, the testimony presented and
22 other evidence introduced; and the Court being fully advised in the premises:

Page 1 GENERAL JUDGMENT AND MONEY AWARD AGAINST FINISHERS CORPORATION
6/WVR/BR&R/Order 6-30-04

BULLOCK and REGIER, P.C.
ATTORNEYS AT LAW
1001 S.W. FIFTH AVENUE, SUITE 1500
PORTLAND, OREGON 97204
TELEPHONE (503) 228-6277

1 THE COURT FINDS that plaintiff, Bieker & Associates, dba B R & R Insurance, and
2 third-party defendant, Janelle Markovich, are the prevailing parties on all remaining issues and
3 claims for relief and entitled to entry of a final judgment in their favor;

4 Based on plaintiff's voluntary withdrawal of its second claim for relief, the relief
5 previously granted pursuant to plaintiff's motion for summary judgment, and the relief awarded
6 herein by order of even date, THE COURT FINDS no issues remain to be decided by this court;
7 NOW THEREFORE,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

9 1. Bieker & Associates, dba B R & R Insurance is granted judgment against
10 defendant, Finishers Corporation, as follows:

11 On plaintiff's first and third claims for relief a money award in the amount of

- 12 (a) the principal sum of \$53,328.00;
13 (b) prejudgment interest on the principal sum of \$53,328.00 at the rate of nine percent
14 (9%) per annum from April 30, 2003 until paid;

15 On plaintiff's first claim for relief an additional money award in the amount of

- 16 (c) \$1,500 for a statutory penalty for non-payment of checks;
17 (d) \$75.00 for plaintiff's reasonable fees incurred in handling the checks on which
18 defendant placed a "stop payment"; and
19 (e) plaintiff's costs, disbursements and reasonable attorney fees to be awarded in
20 accordance with the ORCP 68C;

21 ///

22 ///

1 2. Third-party defendant, Janelle Markovich, is granted judgment against defendant,
2 Finishers Corporation, for her costs, disbursements and reasonable attorney fees to be awarded in
3 accordance with the ORCP 68C

4 3. Post-judgment interest on all sums awarded herein shall accrue at the rate of nine
5 percent (9%) per annum until paid.

6 4. Payments on the money award shall be applied first to any accumulated interest,
7 next to attorneys fees and costs, with the remaining portion applied towards reduction of the
8 principal amount of the judgment.

9 IT IS FURTHER ORDERED all affirmative defenses and counterclaims of Finishers
10 Corporation against Bieker & Associates, Inc., dba B R & R Insurance, and third-party claims
11 against Janelle Markovich, are dismissed with prejudice.

12 AND IT IS FURTHER ORDERED that the Court expressly reserves jurisdiction over the
13 parties herein for the purpose of making subsequent fee award(s) and enhancements(s) of fees
14 awarded upon the filing of post judgment cost bill(s) in the event the amount awarded herein
15 pursuant to ORCP 68 C subsequently appears inadequate in light of developments in the
16 collection of the judgments in favor of Bieker & Associates, Inc. dba B R & R Insurance and
17 Janelle Markovich, respectively; and that execution and other process issue hereon.

18 ///
19 ///
20 ///
21 ///
22 ///

MONEY AWARD

in favor of Bieker & Associates, Inc., dba B R & R Insurance

JUDGMENT CREDITOR: Bieker & Associates, Inc., dba B R & R Insurance
Address: 4322 S.E. 182nd Avenue
Gresham, Oregon 97030

Judgment Creditors' Attorney: Gary M. Bullock, OSB #66022
Bullock and Regier, P.C.
1001 SW Fifth Avenue, Suite 1500
Portland, Oregon 97204
Telephone: (503) 228-6277

JUDGMENT DEBTOR: Finishers Corporation
Address: c/o Registered Agent, R.W. Perry
7420 S.W. Bridgeport Road, Suite 204
Portland, Oregon 97224

Date of Birth: Not applicable
Social Security No.: Not applicable
Driver's License No. and State of Issue: Not applicable

Judgment Debtor's Attorney: R.W. Perry
Perry & Winegar
P.O. Box 1107
Tualatin, Oregon 97062

OTHER PERSONS/PUBLIC BODIES ENTITLED TO ANY PORTION OF A PAYMENT MADE ON JUDGMENT: None

MONEY AWARD AMOUNT:
principal sum \$53,328.00
statutory penalty \$ 1,500.00
handling fee \$ 75.00
\$54,903.00

PREJUDGMENT INTEREST: NINE PERCENT (9%) per annum, simple interest on \$54,903.00 calculated from April 30, 2003 to entry of judgment

POST-JUDGMENT INTEREST: NINE PERCENT (9%) per annum

1 Costs and Disbursements: Awarded on the First Claim for Relief in
accordance with ORCP 68 C

2 Attorney Fees: Awarded on the First Claim for Relief
3 accordance with ORCP 68 C

4 **MONEY AWARD**
5 **in favor of Janelle Markovich**

6 JUDGMENT CREDITOR: Janelle Markovich
7 Address: 4322 S.E. 182nd Avenue
Gresham, Oregon 97030

8 Judgment Creditors' Attorney: Gary M. Bullock, OSB #66022
9 Bullock and Regier, P.C.
10 1001 SW Fifth Avenue, Suite 1500
Portland, Oregon 97204
Telephone: (503) 228-6277

11 JUDGMENT DEBTOR: Finishers Corporation
12 Address: c/o Registered Agent, R.W. Perry
7420 S.W. Bridgeport Road, Suite 204
Portland, Oregon 97224

13 Date of Birth: Not applicable
14 Social Security No.: Not applicable
15 Driver's License No. and State of Issue: Not applicable

16 Judgment Debtor's Attorney: R.W. Perry
17 Perry & Winegar
P.O. Box 1107
Tualatin, Oregon 97062

18 OTHER PERSONS/PUBLIC BODIES
19 ENTITLED TO ANY PORTION OF
A PAYMENT MADE ON JUDGMENT: None

20 MONEY AWARD AMOUNT: NIL

21 PREJUDGMENT INTEREST: NIL

22 POST-JUDGMENT INTEREST: NINE PERCENT (9%) per annum

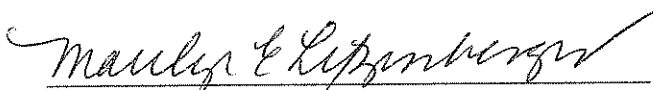
1 Costs and Disbursements:

Awarded in accordance with ORCP 68 C

2 Attorney Fees:

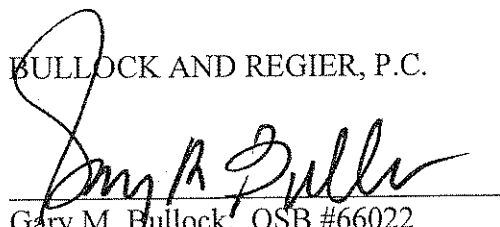
Awarded in accordance with ORCP 68 C

3
4 DATED: 1-13-05

5 
6 Marilyn Litzenberger, Circuit Court Judge

7 Submitted by:

8
9 BULLOCK AND REGIER, P.C.

10 

11 By: Gary M. Bullock, OSB #66022
12 Of attorneys for Plaintiff, Bieker & Associates, Inc.
and for Third-Party Defendant, Janelle Markovich

13 Bullock and Regier, P.C.
14 1001 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204

15 Telephone: (503) 228-6277
Facsimile: (503) 228-6280

1 The Honorable Marilyn E. Litzenger making a joint award of attorney fees to Plaintiff
2 pursuant to ORS 30.701 and to Third-Party Defendant pursuant to ORS 20.107 in the amount of
3 \$41,594.37, plus \$533.00 costs, for a total award in the sum of \$42,127.37;

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff, Bieker &
5 Associates, Inc. dba B R & R Insurance, and Third-Party Defendant, Janelle Markovich, jointly
6 are granted a supplemental judgment against Finishers Corporation in the sum of \$42,127.37.

7 IT IS FURTHER ORDERED that the Court expressly retains jurisdiction over the parties
8 herein throughout collection efforts undertaken by plaintiff and third-party defendant until
9 Finishers Corporation has fully satisfied the money awards granted in these proceedings; the
10 court shall consider granting plaintiff and third-party defendant subsequent awards of attorney
11 fees and costs with respect to collection efforts undertaken by the judgment creditors; and in the
12 event further evidence is developed as efforts are undertaken to collect the money awards, the
13 plaintiff and third-party defendant may renew their requests for an award of an enhanced
14 prevailing party fee.

15 **MONEY AWARD**

16 **in favor of Bieker & Associates, Inc., dba B R & R Insurance and Janelle Markovich**

17 JUDGMENT CREDITOR: Bieker & Associates, Inc., dba B R & R
18 Insurance and Janelle Markovich, jointly
19 Address: 4322 S.E. 182nd Avenue
Gresham, Oregon 97030

20 Judgment Creditors' Attorney: Gary M. Bullock, OSB #66022
21 Gary M. Bullock and Associates, P.C.
1001 SW Fifth Avenue, Suite 1500
Portland, Oregon 97204
22 Telephone: (503) 228-6277

Page 2 SUPPLEMENTAL JUDGMENT AND MONEY AWARD AGAINST FINISHERS
CORPORATION FOR ATTORNEYS FEES AND COSTS IN FAVOR OF JANELLE
MARKOVICH AND BIEKER & ASSOCIATES, INC.

1 JUDGMENT DEBTOR: Finishers Corporation
Address: c/o Registered Agent, R.W. Perry
2 7420 S.W. Bridgeport Road, Suite 204
Portland, Oregon 97224
3 Date of Birth: Not applicable
Social Security No.: Not applicable
4 Driver's License No. and State of Issue: Not applicable

5 Judgment Debtor's Attorney: R.W. Perry
6 Perry & Winegar
P.O. Box 1107
7 Tualatin, Oregon 97062

8 OTHER PERSONS/PUBLIC BODIES
ENTITLED TO ANY PORTION OF
A PAYMENT MADE ON JUDGMENT: None

9 PREJUDGMENT INTEREST: Not applicable

10 POST-JUDGMENT INTEREST: NINE PERCENT (9%) per annum

11 COSTS AND DISBURSEMENTS: \$533.00

12 ATTORNEY FEES: \$41,594.37

13 DATED: 1-31-05

14 *Marilyn E. Litzzenberger*
15 Marilyn Litzzenberger, Circuit Court Judge

16 Submitted by:
17 GARY M. BULLOCK AND ASSOCIATES, P.C.

18 By: *Gary M. Bullock*
Gary M. Bullock, OSB #66022
Of attorneys for Plaintiff, Bieker & Associates, Inc.
and for Third-Party Defendant, Janelle Markovich

19 Gary M. Bullock and Associates, P.C.
20 1001 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204
21 Telephone: (503) 228-6277
22 Facsimile: (503) 228-6280

Page 3 SUPPLEMENTAL JUDGMENT AND MONEY AWARD AGAINST FINISHERS
CORPORATION FOR ATTORNEYS FEES AND COSTS IN FAVOR OF JANELLE
MARKOVICH AND BIEKER & ASSOCIATES, INC.