

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

JOHNSON-GRAHAM-MALONE, INC.,
a Florida corporation
Plaintiff,

Case No. 16-2009-CA-005750-XXXX-MA

v.

Division: CV-F

AUSTWOOD ENTERPRISES, INC.,
a Florida corporation f/k/a HOLMES
LUMBER COMPANY; AMERICAN
AND FOREIGN INSURANCE COMPANY, a
Delaware insurance company; LIBERTY
MUTUAL INSURANCE COMPANY, a
Massachusetts insurance company;
AMERISURE INSURANCE COMPANY,
a Michigan insurance company; CRUM &
FORSTER INDEMNITY COMPANY,
a Delaware insurance company and
MID-CONTINENT CASUALTY COMPANY,
an Ohio insurance company
Defendants.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
AMERISURE'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Plaintiff, JOHNSON-GRAHAM-MALONE, INC. ("JGM"), by and through its undersigned counsel files this Response in Opposition to Defendant, AMERISURE INSURANCE COMPANY's ("AMERISURE") Motion for Summary Judgment, and in support thereof, states as follows:

1. AMERISURE's Motion for Summary Judgment and JGM's Motion for Summary Declaratory Judgment, or in the Alternative, Partial Summary Declaratory Judgment as to AMERISURE's Duty to Defend and Duty to Indemnify Johnson-Graham Malone, Inc. for Damages Which Occurred "In Fact" During the AMERISURE Policy Period(s) ("JGM's Motion") involve identical questions of law and fact.
2. JGM incorporates by reference its Motion along with all argument contained therein, all exhibits referenced therein and all exhibits attached thereto in this Response in Opposition to AMERISURE's Motion for Summary Judgment.

3. The undisputed material facts of the case show that at least some of the covered damages actually happened (occurred) during the policy periods of AMERISURE's CGLs and UMBRELLAS. As such there is no genuine issue of material fact.
4. As stated in JGM's Motion, because there are no material facts in dispute that AMERISURE breached its duty to defend and indemnify JGM for damages which occurred "in fact" during the AMERISURE policy periods, AMERISURE's Motion for Summary Judgment should be denied and JGM is entitled to Summary Judgment as a matter of law or alternatively, Partial Summary Judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished via E-mail and regular U.S. Mail to Counsel for AMERISURE: ANDREW F. RUSSO, ESQUIRE, Rywant, Alvarez, Jones, Russo & Guyton, P.A., Suite 500, Perry Paint & Glass Building, 109 Brush Street 7406, Tampa, FL 33602, arusso@rywantalvarez.com, DONALD ELDER, ESQUIRE and ABRAHAM SANDOVAL, ESQUIRE, Tressler LLP, 233 South Wacker Drive, 22nd Floor, Chicago, IL 60606, delder@tresslerllp.com and asandoval@tresslerllp.com on this 13th day December, 2010.

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