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February 15, 2008

**VIA CERTIFIED MAIL, RETURN
RECEIPT REQUESTED & FAX 856-455-5227**

Michael J. Fiorétti, Esq.
Law Offices of Chance & McCann
P.O. Box 278
Bridgeton, New Jersey 08302

Re: *Gary W. Cruickshank v. Clean Seas Company v. West Marine Products, Inc. and United States Fire Insurance Company v. Gary W. Cruickshank and Clean Seas Company*, Case no. 04-10251-PBS

Dear Mr. Fioretti:

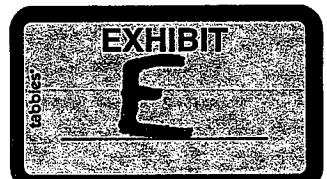
We're writing you on behalf of Mid-Continent Casualty Company ("Mid-Continent"). Mid-Continent retained us to prosecute the pending declaratory judgment action in the Middle District Court of Florida. The purpose of the Florida action is to determine coverage under the liability policy that Mid-Continent issued to Clean Seas in light of claims by the distributors for the allegedly defective bottom paint that Clean Seas manufactured.

The operative complaint in the above-referenced Massachusetts action alleges matters that may fall outside the scope of coverage provided in the liability policy that Mid-Continent issued to Clean Seas. We want to remind you that your interests may therefore diverge from those of Mid-Continent with respect to whether the matters alleged are covered versus non-covered claims. Mid-Continent's policy does not require Mid-Continent to pay damages for claims that do not constitute "property damage" as a result of an "occurrence." In this letter, we discuss the effect this divergence of interests may have on the trial.

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Michael J. Fioretti, Esq.
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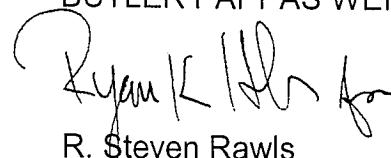
Because Mid-Continent's policy issued to Clean Seas may not require Mid-Continent to pay all of the damages sought in the above suit, we remind you that Mid-Continent will pay only that portion of a judgment which the insured can demonstrate qualifies for coverage under the policy. Under *Duke v. Hoch*, 468 F.2d 973 (5th Cir. 1972), which the First Circuit cited to in *Continental Casualty Company v. Canadian Universal Insurance Company*, 924 F.2d 370, 376 (1st Cir. 1991), Mid-Continent is required to make known to the insured through its representatives, including attorneys, the availability of a special verdict form and the divergence of interests between the insured and insurance carrier arising from damages that were or were not allocated. Thus, Mid-Continent requests that Clean Seas, by and through you, submit to the jury an interrogatory verdict or allocated verdict form that will enable Mid-Continent to determine which portion, if any, of the jury's award pertains to damages resulting from both matters within and matters outside the policy's insuring agreement.

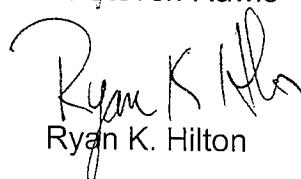
Clean Seas has the right to refuse this request. But if Clean Seas does so, Clean Seas may not be able to recover policy benefits when the Middle District Court of Florida in Mid-Continent's pending declaratory judgment action rules that some of the types of claims in the Massachusetts action are not covered under the policy. In the *Continental Casualty* case, the court observed that the insured should have the burden of proving the compromise of claims that were covered by the general insuring clause. 924 F.2d at 376. A party's failure to obtain a verdict separately allocating amounts for covered and non-covered damages may fatally impair post-suit claims for coverage.

In closing, Mid-Continent requests that Clean Seas Company submit to the jury an allocated verdict form that specifies the types of damages and amounts paid so everyone can later determine the covered versus non-covered damages. If you have any questions regarding this letter, please feel free to call and discuss this with us. We are willing to consider any alternative proposal that you have that will appropriately document these categories of damage in any general verdict form that a jury may use.

Very truly yours,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP


R. Steven Rawls


Ryan K. Hilton



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July 28, 2008

VIA REGULAR & CERTIFIED MAIL, RETURN

RECEIPT REQUESTED

No.: 70062150000081687313

No.: 70062150000081687320

Mr. Martin J. Polsenski
President and Director
Clean Seas d/b/a Barnacle Clean
1808 Montgomery Place
Jacksonville, FL 32205-9319

Warren F. Powers
Director, Secretary, and Treasurer
Clean Seas d/b/a Barnacle Clean
4949 Mariners Point Drive
Jacksonville, FL 32225

Re: All pending actions against the Clean Seas Company being defended by Mid Continent Casualty Company

Dear Mr. Polsenski and Mr. Powers:

On February 15th of this year, we notified Clean Seas of certain rights that Clean Seas has under Florida law. Specifically, in our February 15th letter to Michael J. Fioretti, one of Clean Seas' attorneys, we notified Clean Seas that Florida law gives insured tort defendants the right to request an interrogatory verdict in order to preserve evidence that may assist the insureds in any later coverage dispute with their liability insurer.

We're writing to remind both of you of these rights and to reinforce that both Clean Seas and the two of you have these rights in each of the third party actions pending against Clean Seas and you. These actions, of course, include the following:

- 1) Case No. 04-CV-0035, pending in the United States District Court for the Northern District of New York, styled, *The Coast Distribution System, Inc., Westport Marina, Inc. d/b/a Shipstore.com, Kellogg Marine, Inc. and C.C. Marine Distributors, Inc. v. DOLPHINITE, Inc., Adam Boulay, The CLEAN SEAS Company, Martin Polsensky, Warren P. Powers, Brook Venture Fund, LP, Brook Venture Partners, LLC, Suntect Paint, Inc.; ABC Corps. 1-10 (fictitious entities) and John Does 1-10 (fictitious individuals)*;

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- 2) Case number 2:04-CV-1658, pending in the United States District Court of New York, Eastern Division, styled, *The Jude Thaddeus Glen Cove Marina, Inc. v. Kellogg Marine, Inc., d/b/a Kellogg Marine Supply v. CLEAN SEAS, Inc., Suntec Paint, Inc., Brook Venture Fund, LP, Brook Venture Partners, LCC and Adam Boulay*;
- 3) Case No. 06-CA-2870, pending in the 4th Judicial Circuit, in and for Duval County, Florida, styled *The Coast Distribution System, Inc., et al v. Martin Polsenski and Warren F. Powers*;

- 4) Case No. 04-10251 PBS, pending in the United States District Court for the District of Massachusetts, styled, *West Marine Products, Inc. and United States Fire Insurance Company v. DOLPHINITE, Inc., CLEAN SEAS Company, and Suntec Paint, Inc.*; and
- 5) Case No. 03-11659 PBS, pending in the United States District Court for the District of Massachusetts, styled *Dolphinite, Inc. v. Clean Seas Company and Suntec Paint, Inc.*.

The operative complaints in each of these actions appear to allege matters that fall outside the scope of coverage provided in the liability policy that Mid-Continent issued to Clean Seas. Your interests and those of Clean Seas may therefore diverge from those of Mid-Continent, in all of these actions, with respect to whether the matters alleged are covered versus non-covered claims. Mid-Continent's policy does not require Mid-Continent to pay damages for claims that do not constitute "property damage" as a result of an "occurrence."

In this letter, we again discuss the effect this divergence of interests may have on the trial of these actions.

Because Mid-Continent's policy issued to Clean Seas may not require Mid-Continent to pay all of the damages sought in any of the above suits, we remind you that Mid-Continent will pay only that portion of any judgment which its insureds can demonstrate qualifies for coverage under the policy. Under *Duke v. Hoch*, 468 F.2d 973 (5th Cir. 1972), Mid-Continent is required to make known to its insureds the availability of a special verdict form and the divergence of interests between its insureds and Mid-Continent arising from damages that were or were not allocated. Thus, Mid-Continent requests that Clean Seas and both of you, through your attorneys, submit to the juries an interrogatory verdict or allocated verdict form that will enable Mid-Continent to determine which portion, if any, of

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Mr. Warren F. Powers
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the various jury awards pertain to damages resulting from both matters within and matters outside the policy's insuring agreement.

Clean Seas and you have the right to refuse this request. But refusing this request may prevent Clean Seas and you from recovering policy benefits when the Middle District Court of Florida in Mid-Continent's pending declaratory judgment action rules that some of the types of claims in the actions against Clean Seas and the two of you are not covered under the policy. In the *Duke v. Hoch* case, the court observed that the insured should have the burden of proving the compromise of claims that were covered by the general insuring clause. A party's failure to obtain a verdict separately allocating amounts for covered and non-covered damages may fatally impair post-suit claims for coverage.

In closing, Mid-Continent requests that the Clean Seas Company and both of you submit to the juries in each of the above actions an allocated verdict form that specifies the types of damages and amounts paid so everyone can later determine the covered versus non-covered damages. If you have any questions regarding this letter, please feel free to call and discuss this with us. We are willing to consider any alternative proposal submitted by you, Clean Seas, or its attorneys that will appropriately document these categories of damage in any general verdict form that the juries may use.

Very truly yours,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP

R. Steven Rawls
R. Steven Rawls
Fay E. Ryan
Fay E. Ryan

Mr. Martin J. Polsenski
Mr. Warren F. Powers
July 28, 2008
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cc: (via regular mail & fax) All Counsel of Record for Clean Seas, Martin J. Polsenski, and Warren F. Powers:

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file



FAY E. RYAN
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December 5, 2008

Via e-mail only to: RFischer@ChanceMcCann.com

Robert Fischer, Esq.
Chance, McCann Law Firm
Post Office Box 278
Bridgeton, NJ 08302

Re: Insured: Clean Seas d/b/a Barnacle Clean
Claim Number: 1228129-DDD
Our File Number: 2558-0309107

Dear Rob:

Thank you for speaking with me late Tuesday afternoon. As you remember, you told me on Tuesday that the trial judge does not appear inclined to submit the proposed interrogatory verdict form to the jury. While the judge did not actually rule on the request for an interrogatory verdict, she expressed concern with the number of questions (40 questions on each verdict form, total of 80). You told us that the judge is hesitant to require the jury to go through the task of answering 80 additional questions after completing their deliberations on liability and damages.

You then asked whether Mid Continent could shorten the proposed interrogatory verdict. You asked whether we could draft an interrogatory verdict that asked simply “[w]hat portion of your damage award pertained to property damage?” (or something to this effect). Failing that, you asked whether we could review the interrogatory verdict and eliminate questions that we deemed less essential.

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We've reviewed our proposed interrogatory verdict. We continue to believe that all of the information contemplated in the verdict form is information that is potentially relevant to the issue of coverage. We are concerned that, should Clean Seas fail to take advantage of the chance to ask the jury all of the questions on the form, Clean Seas may not be able to meet its burden of proof regarding coverage.

As we told Clean Seas in our letters of February 15th and July 28th of this year, Clean Seas will have the burden of proving what portion of the jury's award, if any, pertains to covered damages. See *Jones v. Holiday Inns, Inc.*, 407 So. 2d 1032, 1034 (Fla. 1st DCA 1981). Mid Continent, in turn, has a duty to notify Clean Seas of its burden of proof so that Clean Seas might take steps to meet this burden. This is why, when you asked us to prepare an interrogatory verdict form, we submitted a proposed verdict form to you last week. When we did so, we encouraged Clean Seas to carefully review the proposed form and to revise the form, or draft its own form, if you discovered that the form did not adequately address the coverage issues. As trial counsel for Clean Seas, we anticipate that you are very familiar with the claims and damages being litigated.

Because you've now asked us to prepare a shorter interrogatory verdict form, we've done so, despite our concerns that a shorter interrogatory form may not be as useful as the original, longer form. (See enclosed.) By preparing this shorter interrogatory verdict form at your request, we do not waive any of Mid Continent's rights with respect to all coverage issues here, including but not limited to the burden of proof. We continue to encourage Clean Seas to prepare its own interrogatory verdict form rather than relying exclusively upon any verdict form we propose to you.

The primary reason we encourage Clean Seas to prepare its own interrogatory verdict is that Mid Continent and Clean Seas have potentially conflicting interests regarding the interrogatory verdict. Because Clean Seas has the burden of proof in the separate declaratory judgment action, Clean Seas is in a position to ensure that there is no inadvertent vagueness, ambiguity, or omission in the verdict form, in order to ensure that it can carry its burden of proof.

Our motivation in preparing sample interrogatory verdict forms for your consideration is not to induce Clean Seas to defer to Mid Continent in order to preserve Clean Seas' coverage claims. Rather, we want to make sure that we discharge Mid Continent's duty to notify Clean Seas of the need for an allocated verdict form in light of the many categories of uncovered damages potentially at issue in this suit.

Please understand that if Clean Seas chooses to use an interrogatory verdict form that does not identify damages covered under Mid Continent's policy with Clean Seas, Mid Continent will still hold Clean Seas to its burden of proof. Moreover, Mid Continent is not a party to the underlying action and is not bound by any factual findings or allocation

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between types of damages, but can litigate all issues related to any claim made later for covered damages. This is another reason we think it is more appropriate for Clean Seas to prepare its own interrogatory verdict and why we recommend Clean Seas do this.

If you have any questions after reviewing this letter and the alternative sample interrogatory verdict, please give me a call.

Very truly yours,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP

Fay E. Ryan

Fay E. Ryan

Enclosures:

- alternative, shorter sample interrogatory verdict
- original sample interrogatory verdict

cc:

- Patrick Coll, Esq., via e-mail to: ppc@bedellfirm.com
(personal counsel for Clean Seas)
- Martin Polsenski, President and CEO of Clean Seas,
via U.S. mail & e-mail to: martin_polsenski@cleanseasco.com
- Mid Continent Casualty Co.