

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):

Ronald L. Miller
ROGERS & MILLER
720 Southpoint Blvd.
Suite 205
Petaluma, CA 94954

TELEPHONE NO: (707) 781-1920 FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name):

NAME OF COURT: Sacramento Superior Court Civil Limited Juris

STREET ADDRESS: 720 Ninth Street

MAILING ADDRESS:

CITY AND ZIP CODE: Sacramento, CA

BRANCH NAME:

PLAINTIFF: FIRE INSURANCE EXCHANGE

DEFENDANT: MARK JONATHAN BIXBY, HEIDI ANNE BIXBY,
MJB/BIXBY CONSTRUCTION, INC., and

DOES 1 TO 50

COMPLAINT — Personal Injury, Property Damage, Wrongful Death

AMENDED (Number):

Type (check all that apply):

MOTOR VEHICLE

Property Damage

Personal Injury

OTHER (specify): Negligence, Breach of Contract, Intentional

Wrongful Death

Other Damages (specify): Subrogation,

Exemplary Damages

Jurisdiction (check all that apply):

ACTION IS A LIMITED CIVIL CASE

Amount demanded does not exceed \$10,000

exceeds \$10,000, but does not exceed \$25,000

ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)

ACTION IS RECLASSIFIED by this amended complaint

from limited to unlimited

from unlimited to limited

CASE NUMBER:

03A#09126

1. PLAINTIFF (name): FIRE INSURANCE EXCHANGE

alleges causes of action against DEFENDANT (name): MARK JONATHAN BIXBY, HEIDI ANNE BIXBY, MJB/BIX

2. This pleading, including attachments and exhibits, consists of the following number of pages: Seven

3. Each plaintiff named above is a competent adult

a. except plaintiff (name): FIRE INSURANCE EXCHANGE

(1) a corporation qualified to do business in California

(2) an unincorporated entity (describe): Interinsurance Exchange

(3) a public entity (describe):

(4) a minor an adult

(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) other (specify):

(5) other (specify):

b. except plaintiff (name):

(1) a corporation qualified to do business in California

(2) an unincorporated entity (describe):

(3) a public entity (describe):

(4) a minor an adult

(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) other (specify):

(5) other (specify):

Information about additional plaintiffs who are not competent adults is shown in Complaint — Attachment 3.

SUMMONS ISSUED

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03 OCT 20 PM 12:33
LEGAL PROCESS #1

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. Motor Vehicle
 b. General Negligence
 c. Intentional Tort
 d. Products Liability
 e. Premises Liability
 f. Other (specify): Breach of Contract

11. Plaintiff has suffered

- a. wage loss
 b. loss of use of property
 c. hospital and medical expenses
 d. general damage
 e. property damage
 f. loss of earning capacity
 g. other damage (specify): Payments on behalf of plaintiff's insureds totaling, to date, \$11,340.11. Plaintiff anticipates that further payments may be made and should such further payments be made plaintiff will seek leave to amend at trial to allege any such further damages according to proof.

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are
 a. listed in Complaint — Attachment 12.
 b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. PLAINTIFF PRAYS for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) compensatory damages
 (2) punitive damages
 b. The amount of damages is (you must check (1) in cases for personal injury or wrongful death):
 (1) according to proof
 (2) in the amount of: \$ 25,000

15. The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):
 GN-1, BC-1, BC-2, IT-1 and EX-1

Date: October 04, 2003

Ronald L. Miller

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:
FIRE INSURANCE EXCHANGE v. BIXBY

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION - General Negligence

Page Four

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): FIRE INSURANCE EXCHANGE

alleges that defendant (name): MARK JONATHAN BIXBY, HEIDI ANNE BIXBY, MJB/BIXBY CONSTRUCTION, INC., and

Does 1 to 50

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): March 13, 2003

at (place): 31 Guadalupe Drive, El Dorado Hills, California

(description of reasons for liability):

The property located at 31 Guadalupe Drive, El Dorado Hills, California, is/was owned by Marty R. DePaoli and Allison DePaoli. Plaintiff FIRE INSURANCE EXCHANGE insured Marty R. DePaoli and Allison DePaoli and the property located at 31 Guadalupe Drive.

Defendants MARK JONATHAN BIXBY, HEIDI ANNE BIXBY, and MJB/BIXBY CONSTRUCTION, INC., and DOES 1 to 50 were the general contractor, subcontractors, agents and/or employees involved in the construction and/or remodeling of a residence at the property located at 31 Guadalupe Drive. Defendants MARK JONATHAN BIXBY, HEIDI ANNE BIXBY, and MJB/BIXBY CONSTRUCTION, INC., and DOES 1 to 20 contracted to, and were responsible for, the construction and/or remodeling of the residence. Defendants MARK JONATHAN BIXBY, HEIDI ANNE BIXBY, and MJB/BIXBY CONSTRUCTION, INC., employed subcontractors, agents and employees in the construction and/or remodeling of the residence.

Defendants MARK JONATHAN BIXBY, HEIDI ANNE BIXBY, and MJB/BIXBY CONSTRUCTION, INC., were under a duty to carefully supervise the work of their subcontractors, agents and employees.

Defendants were negligent in the construction and/or remodeling of the premises. Plaintiff is informed and believes that the defendants were negligent in the selection and supervision of their subcontractors, agents and/or employees.

As a result of the negligence of the defendants, property owned by Marty R. DePaoli and Allison DePaoli was removed from the premises located at 31 Guadalupe Drive, El Dorado Hills, California. Under the terms of its insurance policy, plaintiff compensated its insureds for the property that was removed from the premises.

SECOND

(number)

CAUSE OF ACTION - Breach of Contract

Page FiveATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): FIRE INSURANCE EXCHANGE

alleges that on or about (date): On or before February 2003

a written oral other (specify):

agreement was made between (name parties to agreement): Marty R. DePaoli, Allison DePaoli, MARK JONATHAN BIXBY, HEIDI ANNE BIXBY and MJB/BIXBY CONSTRUCTION, INC.

 A copy of the agreement is attached as Exhibit A, or The essential terms of the agreement are stated in Attachment BC-1 are as follows (specify):

Defendants agreed to construct and/or remodel a residence at 31 Guadalupe Drive, El Dorado Hills, California.

BC-2. On or about (dates): March 13, 2003

defendant breached the agreement by the acts specified in Attachment BC-2 the following acts

(specify): Plaintiff refers to and incorporates by reference the allegations contained in its First Cause of Action. Removal, or permitting the removal, of the property was a breach of the written or implied terms of the contract.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

 as stated in Attachment BC-4 as follows (specify): Plaintiff refers to and incorporates by reference the allegations contained in paragraphs 8 and 10 of this complaint. As a result of the breach of contract by the defendants, the plaintiffs insureds lost their property as previously alleged.BC-5. Plaintiff is entitled to attorney fees by an agreement or a statute of \$ according to proof.BC-6. Other:

THIRD

(number)

CAUSE OF ACTION - Intentional TortPage SixATTACHMENT TO Complaint Cross-Complaint*(Use a separate cause of action form for each cause of action.)*

IT-1. Plaintiff (name): FIRE INSURANCE EXCHANGE

alleges that defendant (name): MARK JONATHAN BIXBY, HEIDI ANNE BIXBY,
MJB/BIXBY CONSTRUCTION, INC., and Does 1 to 50

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): March 13, 2003

at (place): 31 Guadalupe Drive, El Dorado Hills, California

(description of reasons for liability):

Plaintiff refers to, and incorporates herein, the allegations of its First Cause of Action as if fully set forth. Plaintiff is informed and believes that the property was removed by the defendants from the premises intentionally with the intent to deprive Marty and Allison DePaoli of their property and with the intent to obtain an unjust enrichment to the defendants.

Exemplary Damages Attachment

Page SevenATTACHMENT TO Complaint Cross-Complaint

EX-1. As additional damages against defendant (*name*): MARK JONATHAN BIXBY, HEIDI ANNE BIXBY, MJB/BIXBY CONSTRUCTION, INC., and DOES 1 to 50

Plaintiff alleges defendant was guilty of

 malice fraud oppression

as defined in Civil Code section 3294, and plaintiff should recover, in addition to actual damages, damages to make an example of and to punish defendant.

EX-2. The facts supporting plaintiff's claim are as follows:

Plaintiff refers to, and incorporates herein, the allegations of its First and Third Causes of Action as if fully set forth.

EX-3. The amount of exemplary damages sought is

a. not shown, pursuant to Code of Civil Procedure section 425.10.

b. \$

FILED
ENCLOSURE
2005 DEC -9 PM 3:10
SACRAMENTO COURTS
DEPT. #60 #54

1 MOYER, PARSHALL & TWEEDY, LLP
Charles A. Tweedy, Esq. [SBN 096234]
2 Hayne R. Moyer, Esq. [SBN 66937]
11341 Gold Express Drive, Suite 110
3 Gold River, California 95670
4 Telephone: (916) 631-8388
Facsimile: (916) 631-8188

5 Attorneys for Defendants MARK JONATHAN BIXBY,
6 HEIDI ANNE BIXBY and MJB/BIXBY CONSTRUCTION, INC.

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 FIRE INSURANCE EXCHANGE,
11 Plaintiff,
12 vs.
13 MARK JONATHAN BIXBY, HEIDI ANNE
BIXBY, MJB/BIXBY CONSTRUCTION,
14 INC., and DOES 1 through 50, inclusive,
15 Defendants.

Case No.: 03AM09126

**NOTICE OF ACCEPTANCE OF OFFER TO
COMPROMISE**

17 TO: FIRE INSURANCE EXCHANGE and RONALD L. MILLER, IT'S ATTORNEY OF
RECORD:

18 **NOTICE IS HEREBY GIVEN** that Defendants MARK JONATHAN BIXBY, HEIDI ANNE
19 BIXBY and MJB/BIXBY CONSTRUCTION, INC. (jointly the "Defendants"), accept the October 27,
20 2005, offer made by Plaintiff FIRE INSURANCE EXCHANGE to have judgment entered against
21 Plaintiff FIRE INSURANCE EXCHANGE, in the above-entitled action, with each party to bear his own
22 costs and attorneys fees. The terms of the acceptance are based upon the October 27, 2005, offer to
23 compromise from Plaintiff FIRE INSURANCE EXCHANGE.
24

25 Dated: December 8, 2005

MOYER, PARSHALL & TWEEDY, LLP

26 By: Hayne R. Moyer
27 HAYNE R. MOYER
Attorneys for Defendants MARK JONATHAN BIXBY,
28 HEIDI ANNE BIXBY and MJB/BIXBY