

18<sup>th</sup> DISTRICT COURT OF ARAPAHOE COUNTY COLORADO  
“JUSTICE DENIED”©

By James W. Burneson [www.court-house.com](http://www.court-house.com)

**CHAPTER 7 STATE FARM AND OTHER INSURANCE COMPANIES DOUBLE  
DIPPING IN HOAs Insured the Dam East Homeowner Association.**

Where money can be made there will be lawyers and businesses working together to get what they deem is their share. That doesn't make it legal or honest.

Members of HOAs have insurance policies which cover their property against fire wind lighting and accidents. Some insurance companies also have a clause to protect the Homeowners from being sued or if the owner has to sue their HOA.

The double dipping comes when the Insurance Company is in the business of also insuring the HOA Board of Directors for the liability of being sued. When a Board of Directors gets sued frequently it is an indication that the board is incompetent. When a Board of Directors gets sued by a member it is usually going to court because the Association attorney has so angered a member that court was the only solution. A sign of a good attorney is one that keeps the Association out of court and not one that set the membership up to go to court. A lawsuit against a Board of Directors is not a frivolous action. For an owner to file claims is a major step which will have consequences in expenses and major commitment of time for say two years.

The Board of Directors is incompetent to have allowed the discourse to reach the level of going to court. The next reason the lawsuit is going forward is the Board of Directors has an insurance policy that will reimburse all legal fees if the board wins. If the board members were financially liable for any lost in court there **would be no lawsuits**. Disputes between a member and the board would all be settled without court. The CAI lawyers who are involved with HOA tell a homeowner if you don't like what we are doing sue us. (And he prays the owner will bring suit because the lawyer needs the legal fees for his son or Daughter's collage tuition.)

The Insurance Company sends a representative to evaluate the case and the fact the Plaintiff is going to court as a Pro Se Plaintiff. The local courts hate the Constitutional rights of a citizen to represent himself in court Pro Se. The insurance companies have dropped money in the right places and the judges know insurance cases are important in their courts so they always find in favor of the Board of Directors and against the Pro Se Plaintiff or as a Defendant. The game is fixed before the trial date is set. There are judges who have never found for a Pro Se Plaintiff or a member of a HOA. Of course there are judges who have never ruled against their favor law firm in 25 years.

Who will win is determined by the insurance company's review of the file and in some cases come to meetings between the Association's attorney and the Plaintiff to get a feeling on how strong the Plaintiff case is. A representative for State Farm in this case sat in on a deposition before he approved Jeffrey Lane proceeding with defending the Dam East Homeowner Association. This can be very profitable for State Farm and Jeffrey Lane. The association has been collecting insurance premiums on two policies. A policy for insurance coverage for Association HOA liability and the individual's homeowner Policies. Whatever amount of legal fees paid to the lawyer the Pro Se Plaintiff will loses the case and all legal fees will be ordered by the court to be reimbursed to State Farm by the losing Pros Se homeowner. The cost of the lawsuit is reimbursed to State Farm Insurance and the premiums are pure profit in defending the lawsuit. State Farm continues collecting the insurance premium from the losing plaintiff on his/her homeowner insurance.

Now here comes the rub. ALL HOMEOWNERS IN AN HOA SHOULD CHECK TO SEE WHO IS THE INSURANCE COMPANY THAT IS INSURING THE BOARD OF DIRECTORS. Example my HOA had State Farm Insurance Company insuring the board. I didn't have a conflict since my home insurance was with another company. I have friends where they had their home insurance with State Farm Insurance and the Board of Directors was also insured with State Farm. This becomes a conflict since State Farm will have to hire two attorneys by the same company to represent both parties insured by State Farm.

Because the courts are prejudice in favor of insurance companies, State Farm insurance policy for the HOA will win over the homeowner policy 95 percent of the time. This double dipping of insurance policies should not be allowed by an insurance company. State Farm knows there is a chance of being on both sides of lawsuit from an HOA where they are bound to have two insurance policies in a fixed real estate position. Insuring cars is not the same as insuring an HOA with 425 homes with one policy covering the HOA directors and say 50 homeowners within this HOA have State Farm homeowner policies.

It is my recommendation all HOA owners question their Board of Directors as to who they have as their insurance carrier for liability. If both parties have the same company then the Homeowner should look for another HOA insurance company for their protection in the event a dispute with the Board of Directors is in their future.

In the following example these are the names of State Farm agency and staff members who were involved with a lawsuit filed by Jim Burneson against his HOA the Dam East Homeowner Association.

The State Farm personnel are as follows: Donna Impeg, Beth Dykstra, Ed Lucero, Dave Gonzales Gary Flaming Claim number 06C890286 Policy 96 37 85 24 7.

1. Board of Directors from 1999 to the present; STEVE CLOUGH, GREG SILVA, FINN LARSEN, TOM RUZICKA, DALTON FORD, JENNIFER MCLEAN, ALAN STARK, MARGIE MOORE, KELSEY QUIGG, CHAD HAMEL, GLEN WHITE.

2. Property Managers; WESTWIND, and CAI member Tim Larsen, WESTERN STATES PROPERTY SERVICES INC. CAI member Earl Johnson, part owner.
3. Lawyers; JEFFREY LANE, Patterson, Nuss & Seymour, P.C. TIM MOELLER of Winzenburg, Leff, Purvis & Payne and RICH JOHNSTON of Rich Johnston law firm.
4. CPA accountant Kent Beichle, Beichle & Associates Inc.

Two lawsuits were filed against the Dam East Homeowners Association, one by Jim Burneson and one by Emmett Johnson. Case No 02 CV 1748 and 90CV 247. These lawsuits were combined upon request by Jeffrey Lane to Judge Sylvester District Court Arapahoe County.

The trial was held in Judge Hannen District Court of Arapahoe County as combined cases. Mr. Johnson's case was heard first and took two days. The Mr. Burneson's was started the third day.

Mr. Johnson's case has claims against the Board of Directors for Contempt of Court. To my surprise Judge Hannen in summation stated the Board of Directors was to be found guilty of Johnson's charges. They had violated the Bylaws, and two District Court Orders by Chief Judge Leopold and District Judge Hickman.

But then Judge Hannen stated that the Board of Directors were poor volunteers and he felt the violations performed by the property manager was a convenience for the board and that even though the board should have completed these duties HE THE COURT WOULD NOT FIND AGAINST THE BOARD AND THUS HE WAS FINDING AGAINST THE PLAINTIFF. Everyone one in the courtroom was in shock except Mr. Jeffrey Lane. This Judge did not uphold the law or the Covenants and Bylaws of the HOA and decided that **CONVENIENCE OVERRULES THE LAW.** How can this be?

Does a District Judge have the authority to authorize a property manager to violate the Covenants and Bylaws because it was convenience for the board? Where does a District Judge have the authority to deny an HOA their rights to expect the Board of Directors to be held liable for performing their fiduciary duties as stated in the HOA rules and State Statutes? Judge Hannen is now above all judges the State legislature and the Supreme Court to have this power of ruling against all laws if it is more convenient to violate all rules for the benefit of the Board of Directors...

Mr. Burneson had filed the following complaint against the Dam East Homeowner Association.

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A complaint was filed in Judge Sylvester's District Court after he was on the bench six months. Mr. Lane immediately attacked the individual claims and got Claim 1 and 2 dismissed for reasons I still don't understand. Claim three was dismissed on the claim it was not served on the defendants as a Contempt of Court Charge. The case was moved from Judge Sylvester's Court to Judge Hannen's court.

So on the day of trial Mr. Burneson's complaint was reduce to Claim 4 which had to do with the wrongful actions of Mr. Greg Silva President at the annual membership meeting of December 20, 2001.

After hearing Judge Hannen's ruling about **Convenience Overrules the Law** Mr. Burneson did not trust his chances on a whim of a judge who believe he has the authority to overrule all laws governing HOAs.

Mr. Burneson requested that his last claim be withdrawn and Judge Hannen granted his request and Ordered it dismissed with prejudice. The court proceeding were over except for the legal fees claimed owed to State Farm Insurance Company.

The attorney fees were filed as \$19,769.50 against Emmett Johnson and \$24,931.50 owed by Jim Burneson. You must notice there is a discrepancy to these figures. Mr. Burneson never had the expense of a trial yet his fees are larger than Mr. Johnson's who had a two day trial. The entire legal fees are filed on this website at [www.court-house.com](http://www.court-house.com) under the title of Jeffry Lanes Legal fees for Cases 02 CV 1748 consolidated with 90CV 247. The list of reasons for charges in this fee schedule is amazing and totality usury and yet State Farm never questioned any of Mr. Lane's charges and paid them without question.

Mr. Clinton P. Swift Esq. gave an affidavit to justify the legal fees charged by Mr. Lane and acknowledge he had a working relationship with Mr. Lane. Plaintiff Burneson objected to his affidavit and Mr. Swift was never called to court on his affidavit.

Judge Hannen accepted Clinton's statement the legal fees are correct but the court didn't accept Mr. Swift's affidavit.

Judge Hannen held a hearing on the legal fees and during this hearing he had to adjure for a meeting that was prescheduled. The meeting should not take more than half an hour. An hour later Judge Hannen returned with apologies for being so long. He said another judge had stopped by his chamber and it took longer that anticipated.

From that point on Judge Hannen mannerisms and responses were changed to the point I knew whoever the visiting judge was he had convinced Judge Hannen I should pay the legal fees.

The following rules should have applied in this case.

“When a Pro Se litigant withdraws his claim as provide for § 13-17-102 (5) and (6)

attorney fees cannot be awarded and this Court failed comply with this law. This Court denied Mr. Burneson his rights to a fair trial and due process of the law.

When Mr. Burneson withdrew his last claim in Judge Hannen's Court he was not aware of this statute but it was cited in his appeal to the Colorado Supreme Court of Colorado.

The legal fees have been upheld by the Appellant Court of Colorado and a Writ of Certiorari was denied by Chief Justice Mullarkey of the Supreme Court of Colorado.

Insurance Company's like State Farm Insurance has found insuring HOA are very profitable. Problem is it is all built on a sham against the public. The courts are in this game for money and not justice. There are judges who are known to be a friend of insurance companies and they are all too often found appointed to cases with insurance issues. I have recently learned all HOA lawsuits in Arapahoe County are directed to Magistrate Petri in County Court of Aurora. This action is totally prejudicial to the defendants or Plaintiffs of HOA lawsuits. One judge or magistrate becomes the CAI judge of Arapahoe County. He through association litigation becomes most familiar with all the lawyers feeding on the HOA membership for their income.

If an overall review could be performed I believe it will be found over the last 15 years not one Pro Se litigator for an HOA lawsuit won in Arapahoe County Courts. I REPEAT NOT ONE CASE WON BY A PRO SE LITIGATOR CAN BE FOUND. The review is near impossible because the court records are not indexed by names of lawyers, or by a litigate being a Pro se and who won for how much by the Plaintiff or Defendant?

Also the fact Perjury is not enforced in our civil courts makes it near impossible for a Pro Se to prevail in a lawsuit. If the Judge doesn't advise a pro se party to a lawsuit that in their court perjury will not be enforced then the entire case is a mistrial and that goes for all trials held in the Colorado courts from the beginning of time. Do you understand how big the injustice is for all civil cases conducted in the State of Colorado?

Chief Justice Mullarkey of our Supreme Court of Colorado knew of this problem and refuses to address the issue to protect the law industry and not the public who she is sworn to protect. Everyone is protected in our society Insurance companies, HOAs, Government, Judges, but not the public. This has to change and Perjury has to be enforced in our civil courts. If perjury were enforced half the lawsuits involving HOA would be dismissed because the Lawyer could be charged with **Suborn Perjury**.

Because Perjury is not enforced State Farm Insurance can make a fortune insuring HOAs against the members State Farm is insuring their properties. The law license is a license to coin money granted by the law by taking advantage of the peasants (Citizens of our County.) The real reason perjury is not enforced is if it were half the lawyers would be bankrupt so to keep them in the money the law industry must allow them to lie in court. In Summary Insurance Companies double dipping causes an injustice to the public. HOA are becoming a drag on the market and resale prices are 20 percent cheaper than non-HOA homes.

The lowest level of tort twisters (Lawyers) is found in the HOA legal business. They are functioning as Association lawyers or are hired by Insurance companies to litigate

complaints against Board of Directors of HOAs. Most of them are members of the CAI (Community Association Institute) which is the Mafia of the HOA business.

When will State Farm Insurance Company get out of the double dipping business of playing and profiting from both sides of the lawsuits, Directors against the homeowner?

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