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Attorneys for Defendants Monica Drummer, and
Arthur J. Gallagher Risk Management Services, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
DEPARTMENT OF EUGENE

UNIVERSITY OF OREGON,

Plaintiff,

v.

MONICA DRUMMER and ARTHUR J.
GALLAGHER RISK MANAGEMENT
SERVICES, INC., an Illinois Corporation.

Defendants.

NO.

NOTICE OF REMOVAL

**To the Clerk of the United States District Court for the District of Oregon,
Eugene Division:**

Please take note pursuant to 28 USC §§ 1332, 1441 and 1446, Arthur J. Gallagher Risk Management Services, Inc. (“AJG”) and Monica Drummer (“Drummer”) hereinafter collectively “Defendants”, hereby removes to this Court the State action described below.

Page 1-NOTICE OF REMOVAL

I. STATE COURT ACTION

The State Court action to be removed is *University of Oregon v. Monica Drummer and Arthur J. Gallagher Risk Management Services, Inc.*, Lane County Case No. 16-15-00096. (Exhibit 1).

II. TIME FOR REMOVAL

Plaintiff filed its action in Lane County Circuit Court on or about January 5 2015. Plaintiff served defendant AJG through its Registered Agent, Corporate Service Company, Salem, Oregon, on January 16, 2015. Plaintiff served Drummer January 27, 2015. Pursuant to 28 U.S.C. § 1446(b), a party may remove an action to Federal District Court within 30 days of service of process. Defendant AJG, therefore, has until February 15, 2015 or 30 days after service of Plaintiff's Complaint and the first day not falling on a Saturday or Sunday, to move for removal to this Federal District Court. 28 U.S.C. § 1446(b).

III. APPLICABLE LAW

A party may seek removal of a State Court action where the amount in controversy exceeds \$75,000 and the action is between citizens of different states. 28 U.S.C. §§ 1332(a)(1) and 1441.

IV. BASIS FOR REMOVAL

1. This is a claim alleging negligence (negligent failure to procure insurance, negligent misrepresentation) and breach of contract, arising from a business transaction between plaintiff and Defendants.

2. Plaintiff's Complaint seeks \$687,965.74 in damages. Declaration of Robert P. Schulhof, Jr., Exhibit 1 ¶ 20.

3. Plaintiff's complaint states that Plaintiff is a resident of Eugene, Oregon. Declaration of Robert P. Schulhof, Jr., Exhibit 1 ¶ 1.

4. On the date Plaintiff's Complaint was filed and the date of the filing of this Notice of Removal:

(a) Defendant AJG is incorporated in the State of Illinois with its principal place of business in the State of Illinois. Declaration of Robert P. Schulhof, Jr.

(b) Defendant Monica Drummer, is an individual, on information and belief she is a resident of the State of Colorado, and her primary place of business is Greenwood Village, Colorado. Declaration of Robert P. Schulhof, Jr.

5. No defendant in this action was a citizen of the State of Oregon as of January 5, 2015 or presently. Declaration of Robert P. Schulhof, Jr.

V. NOTICE TO STATE COURT AND ADVERSE PARTIES

Defendant will promptly file a copy of this Notice with the clerk of the Lane County Circuit Court and will give written notice to all adverse parties. 28 U.S.C. §1446(d).

WHEREFORE, Defendants request that this action, *University of Oregon v. Monica Drummer and Arthur J. Gallagher Risk Management Services, Inc.*, Lane Count Case No. 16-15-00096, be removed to the United States District Court for the District of Oregon, Eugene Division.

DATED this 13th day of February, 2015.

SCHEER & ZEHNDER LLP

By 

John E. Zehnder, OSB No. 054979
Robert P. Schulhof Jr., OSB No. 000018
Attorneys for Defendants Arthur J. Gallagher
Risk Management Services, Inc.,
and Monica Drummer.

John E. Zehnder, OSB No. 054979
Robert P. Schulhof, Jr., OSB No. 000018
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Attorneys for Defendants Gallagher Risk Management
Services, Inc., and Monica Drummer

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

DEPARTMENT OF EUGENE

UNIVERSITY OF OREGON,

Plaintiff,

v.

MONICA DRUMMER and GALLAGHER
RISK MANAGEMENT SERVICES, INC., an
Illinois Corporation.

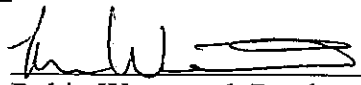
Defendants.

NO.

CERTIFICATE OF SERVICE

I hereby certify that on February 13th, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

COUNSEL FOR PLAINTIFF
Joshua P. Stump
Harrang Long Gary Rudnick PC
1001 SW Fifth Ave., Ste. 1600
Portland, OR 97204


Robin Westwood, Paralegal

John E. Zehnder, OSB No. 054979
Robert P. Schulhof, Jr., OSB No. 000018
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Attorneys for Defendants Monica Drummer, and
Arthur J. Gallagher Risk Management Services, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
DEPARTMENT OF EUGENE

UNIVERSITY OF OREGON,

Plaintiff,

NO.

v.

MONICA DRUMMER and ARTHUR J.
GALLAGHER RISK MANAGEMENT
SERVICES, INC., an Illinois Corporation.

Defendants.

DECLARATION OF ROBERT P.
SCHULHOF, JR. IN SUPPORT OF
DEFENDANTS MONICA
DRUMMER AND ARTHUR J.
GALLAGHER RISK
MANAGEMENT SERVICES INC.
NOTICE OF REMOVAL

I, Robert P. Schulhof Jr., attorney for Defendants Arthur J. Gallagher Risk Management Services, Inc (“AJG”) and Monica Drummer (“Drummer”) hereinafter collectively the “Defendants” declare:

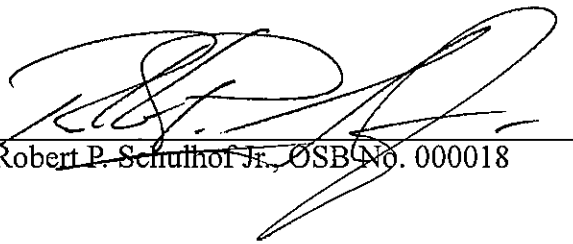
1. On January 5, 2015, Plaintiff filed a complaint in Lane County Circuit Court Case No. 16-15-00096 in the State of Oregon seeking \$687,965.74 in damages against Defendants.

2. Attached to Defendants' Notice of removal and labeled **Exhibit 1** is a true and accurate copy of the Summons and Complaint Plaintiff filed.
3. AJG was served on or about January 16, 2015, Drummer was served on or about January 27, 2015.
4. Based on information and belief, Plaintiff resided in Oregon on January 5, 2015 and on the date the Notice of Removal was filed.
5. On January 5, 2015, the date Plaintiff filed the complaint in Lane County Circuit Court in the State of Oregon, and on the date this Notice of Removal was filed, AJG was a resident of the State of Illinois, as that is the State in which it was incorporated and the State in which it had its principal place of business.
6. On January 5, 2015, the date Plaintiff filed the complaint in Lane County Circuit Court, in the State of Oregon, and on the date this Notice of Removal was filed, Drummer, an individual was a resident of the State of Colorado, where she resides.
7. On January 5, 2015, the date Plaintiff filed its complaint with the Lane County Circuit Court of the State of Oregon, and on the date this Notice of Removal was filed, no Defendant in this action was a citizen of the State of Oregon.
8. No further actions have been filed in the State Court in regards to this matter, nor are there any pending hearings.

I hereby declare that the above statements are true to the best of my knowledge and belief and that I understand that it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 13th day of February 2015.

By


Robert P. Schulhof Jr., OSB No. 000018

Page 2-DECLARATION OF ROBERT P. SCHULHOF, JR.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Oregon, that the following is true and correct:

I am employed by the law firm of Scheer & Zehnder LLP.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the document(s) to which this is attached, in the manner noted on the following person(s):

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
Joshua P. Stump Harrang Long Gary Rudnick PC 10021 SW Fifth Ave., Ste. 1600 Portland, OR 97204 joshua.stump@harrang.com	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input checked="" type="checkbox"/> Via CM/ECF System

+

DATED this 13th day of February, 2015, at Portland, Oregon.



Robin Westwood, Paralegal

EXHIBIT - 1

1/14/2015
2:03 PM

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

UNIVERSITY OF OREGON,
Plaintiff,

Case No. 16-15-00096

SUMMONS

vs.

MONICA DRUMMER and ARTHUR J.
GALLAGHER RISK MANAGEMENT
SERVICES, INC., an Illinois
corporation,,

Defendants.

To: Arthur J. Gallagher Risk Management Services, Inc., c/o Registered
Agent: Corporation Service Company, 285 Liberty Street NE, Salem, OR
97301

IN THE NAME OF THE STATE OF OREGON: You are hereby required to
appear and defend the complaint filed against you in the above-entitled action within
thirty (30) days from the date of service of this Summons upon you, and in case of your
failure to do so, for want thereof, the plaintiff will apply to the court for the relief
demanded in the complaint.

NOTICE TO DEFENDANT:

READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To
"appear" you must file with the court a legal paper called a "motion" or "answer." The
"motion" or "answer" must be given to the court clerk or administrator within 30 days
along with the required filing fee. It must be in proper form and have proof of service on


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the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

DATED this 15th day of January, 2015.

HARRANG LONG GARY RUDNICK P.C.

By: 
Joshua P. Stump, OSB #974075
joshua.stump@harrang.com
Telephone: 503.242.0000
Facsimile: 503.241.1458
Of Attorneys for Plaintiff University of Oregon

Trial Attorney: Joshua P. Stump

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FILED

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CIRCUIT COURT OF OREGON
FOR LANE COUNTY

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

UNIVERSITY OF OREGON,

Plaintiffs,

vs.

MONICA DRUMMER and ARTHUR J.
GALLAGHER RISK MANAGEMENT
SERVICES, INC., an Illinois
corporation,

Defendants.

Case No. *16-15-00096*

COMPLAINT

Negligent Failure to Procure
Insurance; Negligent
Misrepresentation; Breach of
Contract; Breach of Contract -
Promissory Estoppel

NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL DEMANDED

PRAYER FOR \$ 687,965.74

Plaintiff University of Oregon (the "University"), alleges as follows:

JURISDICTIONAL FACTS

1.

The University of Oregon is, and was at all relevant times, an educational institution located in Eugene, Oregon in the county of Lane.

2.

Monica Drummer ("Drummer") is an individual, who at all relevant times, was a registered insurance agent, authorized to do business in the State of Oregon. Upon information and belief, at all relevant times, Drummer was an agent of Arthur J. Gallagher Risk Management Services, Inc. ("Arthur Gallagher"), conducting her business from 6399 S Fiddlers Green Circle, Suite 200, Greenwood Village, Colorado, 80111.

1 As an agent of Arthur Gallagher, Drummer owed Arthur Gallagher and its clients,
2 including the University, a duty of skill and care to provide advice and respond to the
3 insurance needs, including putting in place policies to be bound.

4 3.

5 Arthur Gallagher, at all relevant times, was an insurance broker licensed to do
6 business in the State of Oregon. Arthur Gallagher's corporate headquarters are located at
7 2 Pierce Place, Itasca, Illinois, 60143.

8 4.

9 The causes of action described below arose in Lane County, Oregon, in
10 connection with the University of Oregon Athletics Department and the University of
11 Oregon football coaches, located at 2727 Leo Harris Parkway, Eugene, Oregon, 97401.

12 **OPERATIONAL FACTS**

13 5.

14 In July 2012, the University, through Eric Roedl ("Roedl"), its Executive Senior
15 Associate Athletic Director - Finance & Administration, was approached by John
16 Laskowski ("Laskowski"), a broker from Marsh, an insurance broker and risk
17 management firm, concerning the possibility of purchasing insurance to cover the risk
18 that the University would need to pay its football coaches large incentive bonuses based
19 on their contracts for the upcoming football season. Roedl sought coverage for all
20 potential incentive bonuses paid to football coaches. Roedl and Laskowski, along with
21 other employees of Marsh, negotiated the terms of an insurance policy, effective for the
22 2012-2013 football season, for the University of Oregon football coaches.

23 6.

24 In August 2012, Roedl approached Ellen Holland ("Holland"), the Chief Risk
25 Officer of the Oregon University System ("OUS"), regarding his desire to purchase an
26 insurance policy through Laskowski and Marsh that would cover all potential incentive

1 bonuses the University could be required to pay its football coaches during the 2012-
2 2013 football season.

3 7.

4 OUS is a statutorily created governing body administered by the Oregon State
5 Board of Higher Education. OUS operates pursuant to Oregon Revised Statutes, Chapter
6 351, 352, and 354. Until legislation was passed in 2013, which became effective July 1,
7 2014, OUS was the governing authority and legislative body responsible for all seven
8 public universities in the State of Oregon.

9 8.

10 OUS, pursuant to ORS 351.070(2)(a), is responsible for "establishing procedures
11 for the purchasing, procurement, and contracting of goods, services, and information
12 technology, for the benefit of the Oregon University System and all the public
13 universities."

14 9.

15 OUS, at all relevant times, was responsible for purchasing, procuring, negotiating,
16 and contracting for insurance coverage for the benefit of the University.

17 10.

18 Pursuant to OUS requirements regarding insurance contracts for the universities,
19 Holland engaged Arthur Gallagher, OUS's preferred broker, to procure the insurance
20 Roedl requested. In September 2014, OUS engaged Drummer from Arthur Gallagher to
21 procure the requested insurance policy for the University of Oregon.

22 11.

23 To avoid having to re-negotiate the terms of the insurance contract with Roedl,
24 Drummer reviewed the full email correspondence between Roedl and Marsh regarding
25 the terms of the previously negotiated insurance policy. Further, Drummer spoke with
26 Marsh to clarify various provisions of the contract. Specifically, Drummer attempted to

1 clarify which sports were included in coverage, the potential deductible, and whether the
2 premiums were still valid given that the football season had already started and a game
3 had already been played.

4 12.

5 OUS and Drummer, with assistance from Marsh, negotiated the terms of the
6 insurance contract. Because the insurance policy was intended to cover the University of
7 Oregon football coaches, and to ultimately benefit the University of Oregon, OUS and
8 Drummer worked with Roedl and the University of Oregon regarding the coverage.

9 13.

10 The contracts with coaches at the University of Oregon were set up with
11 escalating bonuses based on the performance of the football team in a given season. The
12 bonuses capped out if the team went undefeated and won the PAC-12 conference and the
13 BCS national championship game. There were smaller bonuses based on winning fewer
14 than every game and participating in and winning lesser bowl games. The University of
15 Oregon was only interested in an insurance policy that covered all possible scenarios.
16 Roedl made clear that the policy the University of Oregon wanted was one that covered
17 *all* potential incentive bonuses paid to University of Oregon football coaches during the
18 2012-2013 season.

19 14.

20 On September 7, 2012, the University of Oregon reviewed the negotiated
21 coverage and was asked to confirm it was indeed the coverage requested: Roedl
22 reviewed the negotiated policy, which appeared to discuss only the maximum bonuses
23 payable to coaches, including: playing in the BCS Championship Game; winning the
24 BCS Championship Game; winning the PAC 12 Championship Game; winning 12
25 Regular Season Games; and finishing ranked #1 in the Associated Press or Coach's Poll.
26 Attempting to confirm that the policy covered all potential bonuses, including the lesser

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17.

On September 7, 2012, a policy through Lloyds of London ("Lloyds") was offered for consideration and bound. The University paid a premium of \$489,940 for the policy. The policy listed the "Assured" as "The State of Oregon acting by and through the State Board of higher education on behalf of the Oregon university system." All involved parties understood that the policy benefitted the University and covered the potential bonus payments to University of Oregon football coaches in the 2012-2013 season.

18.

The University of Oregon football team had a very successful 2012-2013 football season. The team finished second in the PAC-12 with an overall record of 11-1. The team beat Kansas State in the Fiesta Bowl, a non-BCS bowl, and finished ranked #5 in the country.

19.

After the season was over, the University made a claim under their policy with Lloyds for the bonuses paid. Lloyds, through Houston Casualty Company ("HCC"), the third-party administrator and Arthur Gallagher, informed the University that their claim for insurance would be denied because the insurance covered only the scenarios which triggered the maximum bonuses. Lesser bonuses were not covered under the policy.

20.

The University paid out \$687,965.74 in bonuses to football coaches during the 2012-2013 football season.

FIRST CLAIM FOR RELIEF

(Negligent Failure to Procure Insurance against Drummer and Arthur Gallagher)

21.

University of Oregon realleges paragraphs 1 through 20 as it fully set forth herein.

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22.

In or about August 2012, the University of Oregon, through OUS, contacted Drummer and Arthur Gallagher regarding its insurance needs for the University of Oregon football coaches.

23.

Throughout the course of negotiations, the University clearly expressed its desire to insure against all potential performance bonuses paid to University of Oregon football coaches.

24.

Drummer assured the University and OUS that lesser bonuses paid out to the University of Oregon football coaches would be covered by the insurance policy.

25.

In or about September 2012, Drummer bound the insurance policy.

26.

As an Arthur Gallagher agent, Drummer owed the University, as the intended beneficiary of the insurance contract between OUS and Lloyds, a duty of skill and care to procure the policy requested by the University.

27.

Drummer and Arthur Gallagher breached their duty to the University in one or more of the following ways:

- a. In failing to advise the University that the coverage requested was not the coverage being provided;
- b. In failing to provide the requested coverage;
- c. In assuring the University that lesser bonuses would be covered by the insurance policy.

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28.

It was foreseeable that if Drummer and Arthur Gallagher breached their duty to the University in one or more of the aforementioned particulars, the University would sustain injury. Monetary loss sustained during the course of the football season is the type of harm that the University sought to protect itself against in securing the insurance policy.

29.

The University paid bonuses to its coaches and Lloyd's refused to honor the policy Drummer bound.

30.

The University has performed all conditions precedent to the contract to procure insurance, including payment of premiums.

31.

As a result of Drummer and Arthur Gallagher's failure to procure the requested coverage, the University has sustained damages of \$687,965.74.

SECOND CLAIM FOR RELIEF

(Negligent Misrepresentation against Drummer and Arthur Gallagher)

32.

The University realleges paragraphs 1 through 20 as if fully set forth herein.

33.

In or about August 2012, the University, through OUS, contacted Drummer and Arthur Gallagher regarding its insurance needs for the University of Oregon football coaches. Through the course of negotiations, Drummer represented that the requested insurance policy covered not only the maximum performance bonuses, but also lesser performance bonuses the University may be required to pay its football coaches during the 2012-2013 football season.

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34.

In or about September 2012, Drummer facilitated binding the insurance policy with Lloyds.

35.

As Arthur Gallagher's agent, Drummer was acting within the course and scope of her business in causing the insurance policy between Lloyds and OUS to be bound.

36.

In or about January 2013, the University was required to pay performance bonuses to its football coaches. The University made a claim against its insurance policy for coverage and was ultimately denied.

37.

In representing that lesser performance bonuses would be covered by the insurance policy, Drummer and Arthur Gallagher provided the University with false information on which the University justifiably and reasonably relied in securing the insurance policy. As a result of its reliance on their representations, the University of Oregon did not secure the insurance policy desired.

38.

Drummer and Arthur Gallagher failed to exercise reasonable care in providing the University with information concerning the coverage under the insurance policy.

39.

Arthur Gallagher had a special relationship with the University. As an insurance broker, Arthur Gallagher owed the University a special duty of skill and care to ensure that its agent, Drummer was familiar with the insurance coverages she was selling and to ensure that the coverage Drummer caused to be bound was the coverage that the University requested.

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40.

As a result of Drummer and Arthur Gallagher's negligence, the University has sustained damages of \$687,965.74.

THIRD CLAIM FOR RELIEF
(Breach of Contract against Arthur Gallagher)

41.

The University realleges paragraphs 1 through 20, as if fully set forth herein.

42.

OUS and Arthur Gallagher had a binding and enforceable contract by which Arthur Gallagher would obtain insurance for OUS, for the benefit of the University as described in detail herein. The University of Oregon was clearly and explicitly an intended beneficiary of the contract.

43.

OUS and the University performed all conditions precedent under the contract for insurance, including payment of all requested premiums.

44.

Arthur Gallagher has breached its contract and failed to perform their obligations thereunder by:

- a) Representing that lesser bonuses would be covered by the insurance policy; and
- b) Failing to provide the coverage pursuant to the University's requests.

45.

As a result of Arthur Gallagher's actions, the University has sustained damages of \$687,965.74.

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1 **FOURTH CLAIM FOR RELIEF**

2 **(Breach of Contract - Promissory Estoppel against Arthur Gallagher)**

3 46.

4 The University realleges paragraphs 1 through 20, as if fully set forth herein.

5 47.

6 In or about August 2012, the University, through OUS, contacted Drummer and
7 Arthur Gallagher regarding its insurance needs for the University of Oregon football
8 coaches. OUS and Arthur Gallagher contracted to secure insurance for the benefit of the
9 University.

10 48.

11 As Arthur Gallagher's agent, Drummer was acting within the course and scope of
12 her business in working with OUS and the University to secure insurance coverage.

13 49.

14 The University requested an insurance policy that covered all the potential bonus
15 payments the University may be required to make to its football coaches during the 2012-
16 2013 season.

17 50.

18 During the course of negotiations between Drummer, OUS and the University,
19 Drummer assured the University that the insurance policy covered not only the maximum
20 performance bonuses, but also lesser performance bonuses the University may be
21 required to pay its football coaches during the 2012-2013 football season as described in
22 more detail herein.

23 51.

24 The University justifiably and reasonably relied on the representations made by
25 Drummer.

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52.

The University would not have agreed to purchase any insurance if the lesser performance bonuses were not included in the coverage.

53.

As a result of Drummer's representations, the University agreed to the contract and was subsequently bound to an insurance policy that failed to cover the lesser performance bonuses.

54.

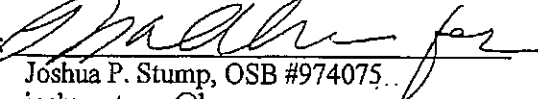
As a result of promises of Arthur Gallagher, made through Drummer, the University has sustained damages of \$687,965.74.

WHEREFORE the University prays for relief on its claims, as follows:

1. On its First Claim for Relief against Drummer and Arthur Gallagher, \$687,965.74 in damages or such sum as is proven at trial;
2. On its Second Claim for Relief against Drummer and Arthur Gallagher, \$687,965.74 in damages or such sum as is proven at trial;
3. On its Third Claim for Relief against Arthur Gallagher, \$687,965.74 in damages or such sum as is proven at trial;
4. On its Fourth Claim for Relief against Arthur Gallagher, \$687,965.74 in damages or such sum as is proven at trial; and
5. Granting the University such other relief as the court deems equitable and just.

DATED this 5th day of January, 2015.

HARRANG LONG GARY RUDNICK P.C.

By: 

Joshua P. Stump, OSB #974075
joshua.stump@harrang.com
Samuel V. Rayburn, OSB#144115
sam.rayburn@harrang.com
Of Attorneys for Plaintiff
Trial Attorney: Joshua P. Stump

P0469980.v3