

1 [prior firm redacted]

2 Mary F. Mock (CA State Bar No. 249379)

3 Attorneys for Defendant  
4 LAWYERS' MUTUAL INSURANCE COMPANY

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
6 **FOR THE COUNTY OF LOS ANGELES, WEST DISTRICT**

8 BRUCE M. LORMAN, an individual,  
9 Plaintiff,  
10 vs.  
11 LAWYERS' MUTUAL INSURANCE  
12 COMPANY, a California Corporation, and  
13 Does 1-50,  
14 Defendants.

Case No. SC099075

Complaint Filed: July 22, 2008

**PETITION TO COMPEL ARBITRATION  
AND REQUEST FOR STAY OF  
PROCEEDINGS; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF; DECLARATION  
OF WBL IN SUPPORT THEREOF**

Date: 11/04/08  
Time: 9:00 a.m.  
Dept.:

16 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

17 **PLEASE TAKE NOTICE THAT** on November 4, 2008 at 9:00 a.m., or as soon  
18 thereafter as the matter may be heard, in Department \_\_ of the above-entitled Court, located at  
19 9355 Burton Way, #300, Beverly Hills, CA, 90210, Defendant LAWYERS' MUTUAL  
20 INSURANCE COMPANY ("Defendant") will petition the Court for an order compelling  
21 arbitration of all the matters embraced in the Complaint filed by Plaintiff BRUCE M. LORMAN  
22 ("Plaintiff"), for an order staying all proceedings in this matter pending completion of the  
23 arbitration, and for an award of costs incurred in bringing this Petition.

24 This Petition is made pursuant to Code of Civil Procedure, § 1281, § 1281.2,  
25 1281.4, 1292.4, and § 1293.2, on the grounds that the professional liability insurance policy issued  
26 by Defendant to Plaintiffs requires arbitration of any dispute arising under the policy, including  
27 any "coverage" dispute. As this matter involves a coverage dispute arising under the insurance  
28 policy, Defendant is entitled to an order compelling arbitration, an order staying all proceedings in

1 this matter, and an award of costs incurred by Defendant in bringing this Petition.

2                   This Petition is based upon this Notice, the attached Petition to Compel Arbitration,  
3 Memorandum of Points and Authorities, and Declaration of WBL, and all exhibits thereto, the  
4 pleadings, files and records of the within action, and such other oral and documentary evidence as  
5 may be presented to the Court at or before the hearing on this Petition.

6

7 DATED: October 3, 2008

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By: \_\_\_\_\_  
WBL & Mary F. Mock  
Attorneys for Defendant LAWYERS' MUTUAL  
INSURANCE COMPANY

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1 **PETITION TO COMPEL ARBITRATION**

2 For its Petition to Compel Arbitration, Defendant LAWYERS' MUTUAL  
3 INSURANCE COMPANY alleges as follows:

4 1. Plaintiff Bruce M. Lorman ("Plaintiff") was insured by Defendant under a  
5 Lawyers' Professional Liability Insurance Policy, Policy No. LPDD05376 ("LMIC Policy"), for  
6 the period April 26, 2007 to April 26, 2008. [Declaration of WBL ("WBL Decl."), ¶ 2 and Exhibit  
7 "A"; Complaint ¶ 7.]

8 2. Plaintiff does business in the County of Los Angeles, California. [Complaint, ¶ 1.]

9 3. The LMIC Policy was made and issued in the City of Burbank, County of Los  
10 Angeles, California. [WBL Decl. Exhibit "A".]

11 4. On September 24, 2007, Plaintiff notified Defendant that he had "been the victim  
12 of an internet scam by a purported client." Plaintiff reported that he "was retained as an attorney  
13 by a purported client to collect on accounts," that he "received a check for \$197,500 in purported  
14 collection of that client's account," that he deposited the check into his client trust account at  
15 Pacific Western Bank ("Bank"), that he instructed the Bank to wire transfer \$192,500 to a bank in  
16 China pursuant to the purported client's instructions, and that he subsequently learned that the  
17 check he had deposited was "phony." Plaintiff stated that the Bank was demanding that he repay  
18 the \$192,500 which had been wire transferred out of the account, and that it had frozen the  
19 account. [WBL Decl. ¶ 3 and Exhibit "B"; Complaint, ¶ 13.]

20 5. By letter to Plaintiff dated October 4, 2007, Defendant's counsel advised Plaintiff  
21 that the LMIC Policy did not afford coverage to him for the Bank's claim because that claim did  
22 not arise from Plaintiff's "Professional Services" as that term is defined in the LMIC Policy, and  
23 that Defendant thus denied coverage for the claim. [WBL Decl. ¶ 4 and Exhibit "C".]

24 6. In an October 9, 2007 letter to Defendant's counsel, Plaintiff requested that  
25 Defendant reconsider and reverse its denial of coverage. [WBL Decl. ¶ 5 and Exhibit "D".]  
26 Defendant's counsel responded to Plaintiff on October 16, 2007, further explaining why the  
27 Bank's claim was not subject to coverage under the LMIC Policy and reiterating the denial of  
28 coverage. [WBL Decl. ¶ 9 and Exhibit "E".]

1                   7. On October 29, 2007, Plaintiff filed a lawsuit against Bank and its employees in the  
2 Los Angeles County Superior Court, Case No. SC095841 (“Bank Lawsuit”), seeking damages in  
3 connection with the Bank’s deposit of the phony check and wire transfer of Plaintiff’s trust  
4 account funds. [Complaint, ¶ 10.] The Bank filed a Cross-Complaint against Plaintiff on  
5 December 26, 2007, for breach of contract, breach of warranty of good title, open book account,  
6 and money paid out. [Complaint ¶ 11.]

7                   8. On January 25, 2008, Plaintiff tendered the Bank’s Cross-Complaint to Defendant  
8 and requested coverage under the LMIC Policy for the Cross-Complaint. [WBL Decl. ¶ 6 and  
9 Exhibit “F.”]

10                  9. On February 7, 2008, Defendant’s counsel advised Plaintiff that the LMIC Policy  
11 did not afford coverage to him for the Bank’s Cross-Complaint. [WBL Decl. ¶ 7 and Exhibit  
12 “G.”]

13                  10. The next communication received by Defendant from Plaintiff was service of the  
14 instant lawsuit on September 4, 2008. [WBL Decl. ¶ 7.] In this lawsuit, Plaintiff contends that the  
15 LMIC Policy affords coverage to him for the Bank’s claim and Cross-Complaint, and he alleges  
16 causes of action against Defendant for “breach of contract,” “bad faith breach of the covenant of  
17 good faith and fair dealing” and “declaratory relief.” [Complaint.]

18                  11. The LMIC Policy includes an arbitration provision which mandates arbitration of  
19 any coverage dispute, as follows:

20                         “In the event that a dispute arises between an insured and the  
21                         Company with respect to (1) coverage; (2) liability for premiums,  
22                         deductibles, or other amounts; or (3) any term or condition of the  
23                         Policy, the matter shall be resolved by arbitration and such  
24                         arbitration shall be governed by the provisions of the California  
25                         Arbitration Act, Sections 1280 through 1294.2 of the Code of Civil  
26                         Procedure. ...” [WBL Decl. ¶ 8 and Exhibit “A,” § 5.6.]

27                  12. By letter to Plaintiff and Plaintiff’s counsel dated September 11, 2008, Defendant’s  
28 counsel advised that it invoked its right to have the dispute framed by Plaintiff’s Complaint

1 submitted to arbitration, and asked that Plaintiff dismiss the Complaint, even if without prejudice,  
2 so that arbitration, as required under the LMIC Policy, could proceed. [WBL Decl., ¶ 9 and  
3 Exhibit “H.”]

4 13. Plaintiff responded to Defendant’s counsel by letter dated September 18, 2008. In  
5 that letter, Plaintiff argued that the arbitration provision of the LMIC Policy was not binding on  
6 him, and he refused to dismiss the Complaint so that an arbitration could proceed. [WBL Decl. ¶  
7 10 and Exhibit “I.”]

8 14. Defendant’s counsel responded to Plaintiff by letter dated September 30, 2008.  
9 That letter advised Plaintiff that Defendant would file this Petition to Compel Arbitration and, in  
10 connection with the same, would seek an award of costs for having to pursue what should be an  
11 unnecessary motion. [WBL Decl. ¶ 11 and Exhibit “J.”]

12  
13 **WHEREFORE**, Defendant prays:

14 1. That the Court order Plaintiff to arbitrate the dispute which is the subject of his  
15 Complaint and this Petition;

16 2. That the arbitration proceed under the terms of and pursuant to the arbitration  
17 provision set forth in the LMIC Policy and in accordance with the California Arbitration Act,  
18 Code of Civil Procedure §§ 1280 through 1294.2, inclusive;

19 3. That all proceedings in this matter be stayed pending completion of the arbitration;

20 4. That Defendant be awarded costs of \$320.00 incurred in these proceedings  
21 pursuant to Code of Civil Procedure § 1293.2 or as otherwise provided by statute or at law; and  
22 For such other and further relief as the Court may deem just and proper.

23  
24 DATED: October 3, 2008

25  
26 By: \_\_\_\_\_  
27 WBL & Mary F. Mock  
28 Attorneys for Defendant LAWYERS’ MUTUAL  
INSURANCE COMPANY

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION TO**  
2 **COMPEL ARBITRATION AND REQUEST FOR STAY OF PROCEEDINGS**

3  
4 **I. INTRODUCTION**

5 This litigation arises out of an unfortunate, but not unknown, Internet scam to  
6 which Plaintiff Bruce M. Lorman (“Plaintiff”), an attorney, fell victim in September 2007.  
7 Plaintiff was solicited and retained via email by a purported Chinese corporation, Northlink  
8 Industrial Limited (“NIL”), to assist in collection of its accounts in the United States. Plaintiff  
9 transmitted a retainer agreement to NIL, and which reportedly was signed by an officer of NIL.  
10 NIL advised Plaintiff that he would received a check for \$197,500.00, and that Plaintiff should  
11 deposit that check into his bank account and retain \$5,000.00 for payment of Plaintiff’s fees, and  
12 that Plaintiff should then wire transfer the balance to a bank account in China. Plaintiff received  
13 the check on September 17, 2007 and deposited it in his client trust account at Pacific Western  
14 Bank (“Bank”) the same day. Plaintiff then instructed the Bank to wire transfer \$192,500.00 to a  
15 bank account in China, and the Bank completed that wire transfer on September 18, 2007. On  
16 September 21, 2007, the Bank advised Plaintiff that the check he deposited was “phony,” and  
17 demanded that Plaintiff repay the \$192,500.00 which had been wire-transferred out of the account.  
18 [WBL Decl. ¶ 3 and Exhibit “B.”]

19 Plaintiff sought coverage from Defendant Lawyers’ Mutual Insurance Company  
20 (“Defendant”) under his professional liability insurance policy, Policy No. LPDD05376 (“LMIC  
21 Policy”) for the Bank’s claim against him. Defendant denied coverage, as the claim was based on  
22 Plaintiff’s depositing of a phony check into his account and wire transferring of funds out of the  
23 account, rather than on any “Professional Services” rendered by Plaintiff. [WBL Decl. ¶¶ 3-5 and  
24 Exhibits “B,” “C,” “D” and “E.”]

25 Plaintiff filed a lawsuit against the Bank on October 29, 2007, in which he asserts  
26 that the Bank should not have sent the wire transfer unless and until the deposited check had  
27 cleared. On December 26, 2007, the Bank filed a Cross-Complaint against Plaintiff, alleging that  
28 Plaintiff breached his Deposit Agreement by failing to repay the overdraft caused by the wire

1 transfer and the subsequent dishonoring of the deposited check. Plaintiff tendered the Bank's  
2 Cross-Complaint to Defendant under the LMIC Policy, and Defendant again denied coverage to  
3 Plaintiff. As Defendant explained to Plaintiff, the Policy potentially affords coverage only for  
4 claims arising out of "Professional Services," which term is defined in the Policy as "legal  
5 services performed for others," and the Bank's claim against Plaintiff was based on his depositing  
6 of a bad check, rather than on his rendition of legal services. [WBL Decl. ¶¶ 6-7 and Exhibits "F"  
7 and "G."]

8 Plaintiff disagrees with Defendant's coverage determination, and he filed the  
9 instant lawsuit seeking to establish that the LMIC Policy affords coverage to him for the Bank's  
10 claim. Upon being served with this lawsuit, Defendant pointed out to Plaintiff that the LMIC  
11 Policy requires that any coverage dispute be submitted to binding arbitration. Plaintiff refused to  
12 dismiss the lawsuit so his claim could be arbitrated, necessitating that Defendant file this Petition  
13 to Compel Arbitration. [WBL Decl. ¶¶ 9-11 and Exhibits "H," "I" and "J."]

14 As set forth below, in light of the express arbitration provision in the LMIC Policy,  
15 Plaintiff may not proceed with this lawsuit. Rather, all further judicial proceedings in this action  
16 must be stayed until an arbitration is conducted and an arbitration award is rendered. Further, as  
17 Plaintiff has deliberately failed and refused to comply with the arbitration provision of the LMIC  
18 Policy, Defendant should be awarded its costs in bringing this Motion.

19 **II. IN ACCORD WITH THE LMIC POLICY, THE COURT SHOULD ORDER THIS**  
20 **MATTER TO ARBITRATION**

21 **A. Plaintiff's Claim Is Subject to Binding Arbitration**

22 Where one of the parties to a contract containing an arbitration clause nonetheless  
23 initiates a civil action, the party seeking to enforce the arbitration clause may move to compel  
24 arbitration and, concurrently with that motion, obtain an order staying the pending litigation.

25 *Twentieth Century Fox Film Corp. v. Superior Court* (2000) 79 Cal.App.4th 188, 192.

26 The LMIC Policy clearly provides that coverage disputes arising under the LMIC  
27 Policy are subject to mandatory, binding arbitration:

28 "In the event that a dispute arises between an insured and the

1 Company with respect to (1) coverage; (2) liability for premiums,  
2 deductibles, or other amounts; or (3) any term or condition of the  
3 Policy, the matter shall be resolved by arbitration and such  
4 arbitration shall be governed by the provisions of the California  
5 Arbitration Act, Sections 1280 through 1294.2 of the Code of Civil  
6 Procedure. ...” [WBL Decl., Exhibit “A” § 5.6.]

7 The California Arbitration Act, Code of Civil Procedure §§ 1280 - 1294.2  
8 (“CAA”), states: “A written agreement ... to submit to arbitration an existing controversy or a  
9 controversy thereafter arising is valid, irrevocable, and enforceable, save upon such grounds as  
10 exist at law in equity for the revocation of any contract.” Indeed, Code of Civil Procedure  
11 §1281.2 requires the Court to enforce an arbitration provision where one party is refusing to  
12 arbitrate:

13 “On petition of a party to an arbitration agreement alleging the  
14 existence of a written agreement to arbitrate a controversy, and that  
15 a party thereto refuses to arbitrate such controversy, the court **shall**  
16 order the petitioner and the respondent to arbitrate the controversy if  
17 it determines that an agreement to arbitrate the controversy exists  
18 unless it determines that:

- 19 (a) the right to compel arbitration has been waived by the  
20 petitioner; or
- 21 (b) grounds exist for the revocation of the agreement ....”  
22 (Emphasis added.)

23 As numerous courts have emphasized, the use of “shall” makes this provision mandatory, not  
24 discretionary.

25 The CAA reflects an established public policy favoring arbitration as an  
26 expeditious and efficient method of resolving disputes. Christensen v. Dewor Developments  
27 (1983) 33 Cal.3d 778, 782 (the court should “indulge every intendment to give effect to” an  
28 arbitration agreement); Valsan Partners Limited Partnership v. Calcor Space Facility, Inc. (1994)



1 25 Cal.App.4th 809, 816-817 (same).

2 **B. This Dispute Is Governed By The Arbitration Provision Of The LMIC**  
3 **Policy**

4 The controversy here – whether or not the LMIC Policy affords coverage to  
5 Plaintiff for the Bank’s claim against him – falls squarely within the scope of the arbitration  
6 provision of the LMIC Policy. And any doubt, though there is none here, about whether a claim  
7 falls within the scope of the arbitration provision must be resolved in favor of arbitration. *Hayes*  
8 *Children Leasing Co. v. NCR Corp.* (1995) 37 Cal.App.4th 775, 788 (“even if we found the  
9 arbitration clause to be ambiguous, [the court] would be compelled to resolve the ambiguity in  
10 favor of finding that the claims at issue are subject to arbitration”); *Bos Material Handling, Inc. v.*  
11 *Crown Control Corps.* (1983) 137 Cal.App.3d 99, 105 (“arbitration should be upheld unless it can  
12 be said with assurance that an arbitration clause is not susceptible to an interpretation covering the  
13 asserted dispute.”)

14 Thus, the instant coverage dispute between Plaintiff and Defendant is subject in all  
15 respects to arbitration pursuant to the arbitration provision in the LMIC Policy and a strong public  
16 policy favoring arbitration.

17 **C. Plaintiff Is Obligated To Comply With The Arbitration Provision In The**  
18 **Policy**

19 Plaintiff is bound by the clear and conspicuous arbitration provision in the LMIC  
20 Policy. See, *Hadland v. NN Investors Life Ins. Co.* (1994) 24 Cal.App.4th 1578, 1589 (insured  
21 cannot complain of policy provision even if he failed to read policy); *Hackethal v. National Cas.*  
22 *Co.* (1987) 189 Cal.App.3d 1102, 1111-1112 (“receipt of a policy and its acceptance by the  
23 insured without an objection binds the insured as well as the insurer and he cannot thereafter  
24 complain that he did not read it or know its terms.”).

25 Plaintiff asserts in his September 18, 2008 correspondence that the arbitration  
26 provision is not binding and is “unenforceable and unconscionable under California law” because  
27 it “purports to have the ‘costs of arbitration borne equally by the parties or in such proportion as  
28 the arbitrator shall determine,’” and because it “purports to require that the arbitration take place in

1 Burbank, where the insurance company does business.” Neither objection is well-founded and,  
2 contrary to Plaintiff’s assertion, neither of these provisions causes the arbitration clause to be  
3 “unconscionable” or unenforceable.” Indeed, the CAA expressly endorses provisions requiring  
4 that each party pay its own arbitration costs:

5 “Unless the arbitration agreement otherwise provides or the parties  
6 to the arbitration otherwise agree, each party to the arbitration shall  
7 pay his pro rata share of the expense and fees of the neutral  
8 arbitrator, together with other expenses of the arbitration incurred or  
9 approved by the neutral arbitrator, not including counsel fees or  
10 witness fees or other expenses incurred by a party for his own  
11 benefit.” Code of Civil Procedure § 1284.2.

12 Further, there is nothing in the CAA stating that a forum selection clause in an  
13 arbitration provision causes the arbitration provision to be unconscionable or unenforceable.  
14 Thus, and given that the location of Plaintiff’s office, Santa Monica, is less than 25 miles from the  
15 arbitration locale, Burbank, there is no logic to Plaintiff’s argument that the arbitration provision is  
16 rendered unconscionable by the requirement that the arbitration be conducted in Burbank.

17 **III. THE COURT SHOULD STAY THE ACTION PENDING RESOLUTION OF**  
18 **THE ARBITRATION PROCEDURES**

19 Plaintiff’s lawsuit must be stayed pending completion of the arbitration mandated  
20 by the LMIC Policy. In this regard, Code of Civil Procedure § 1281.4 provides:

21 “If a court of competent jurisdiction, whether in this State or not, has  
22 ordered arbitration of a controversy which is an issue involved in an  
23 action or proceeding pending before a court of this State, the court in  
24 which such action or proceeding is pending **shall**, upon motion of a  
25 party to such action or proceeding, stay the action or proceedings  
26 until an arbitration is had in accordance with the order to arbitrate or  
27 until such earlier time as the court specifies.” (Emphasis added.)

28 Like Section 1281.2, Section 1281.4 uses the word “shall” and is mandatory. Thus,

1 if the Court orders arbitration of the instant dispute between the parties, all further judicial  
2 proceedings in this action must be stayed.

3 A stay preserving the status quo pending the conclusion of the arbitration promotes  
4 the efficient settlement of disputes and eliminates multiplicity of actions. *Fed'l Ins. Co. v.*  
5 *Superior Court* (1998) 60 Cal.App.4th 1370, 1375 (“In the absence of a stay, the continuation of  
6 proceedings in the trial court disrupts the arbitration proceedings and can render them  
7 ineffective.”)

8 Defendant should not be forced to bear the burden and expense of litigation while  
9 participating in arbitration, and the Court should guard against the possibility of inconsistent  
10 results or rendering ineffective the ultimate arbitration award. These considerations warrant a  
11 mandatory stay of this action.

12 **IV. DEFENDANT IS ENTITLED TO RECOVER ITS COSTS IN BRINGING**  
13 **THIS PETITION**

14 Pursuant to Code of Civil Procedure § 1293.2, Defendant is entitled to an award of  
15 its costs in bringing this Petition:

16 “The court shall award costs upon any judicial proceeding under this  
17 title as provided in Chapter 6 (commencing with Section 1021) of  
18 Title 14 of Part 2 of this code.”

19 Due to Plaintiff’s refusal to submit his claim against Defendant to arbitration as  
20 required by the LMIC Policy, even after the arbitration provision was pointed out to him and his  
21 counsel by Defendant’s counsel, Defendant was forced to bring this Petition to Compel  
22 Arbitration. Thus, pursuant to Code of Civil Procedure § 1293.2, Defendant is entitled to recover  
23 its costs in seeking to compel Plaintiff’s compliance with the arbitration provision of the LMIC  
24 Policy. The costs incurred by Defendant in connection with this Petition are \$320.00. [WBL  
25 Decl., ¶ 19.]

26 **V. CONCLUSION**

27 For the foregoing reasons, Defendant respectfully submits that this Court should  
28 order Plaintiff to arbitrate the claims asserted in his Complaint, and that all proceedings in this

1 matter must be stayed pending completion of arbitration. Additionally, Defendant respectfully  
2 submits that the Court should award it costs in the amount of \$320.00.

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4 DATED: October 3, 2008

Respectfully submitted,

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By: \_\_\_\_\_  
WBL & Mary F. Mock  
Attorneys for Defendant LAWYERS' MUTUAL  
INSURANCE COMPANY

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