

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CENTURY SURETY COMPANY,

Appellant,

vs.

DANA ANDREW, AS LEGAL  
GUARDIAN OF RYAN T. PRETNER;  
AND RYAN T. PRETNER,

Respondents.

Case No. 73756

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**APPENDIX TO RESPONDENT'S ANSWERING BRIEF**

**VOL. 1 OF 11**

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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DANA ANDREW, as Legal Guardian of )  
 RYAN T. PRETNER, and RYAN T. PRETNER, )  
 individually, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 CENTURY SURETY COMPANY, a foreign )  
 corporation; DOES I through X, inclusive, )  
 )  
 Defendants. )  
 )

CASE NO.: 2:12-cv-00978

**PLAINTIFFS' MOTION FOR**  
**SUMMARY JUDGMENT**

Plaintiffs Dana Andrew, as Legal Guardian of Ryan T. Pretner and Ryan T. Pretner, individually (hereinafter collectively "Plaintiffs"), by and through their attorneys of record, PRINCE & KEATING, hereby submits this Motion for Summary Judgment.

This Motion is made and based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file herein, and any such argument the Court may entertain at a hearing on the Motion.

I.

**INTRODUCTION**

This is a diversity action for insurance bad faith. Defendant Century Surety Company (hereinafter “Century”) insured Blue Streak Auto Detailing, LLC (hereinafter “Blue Streak”) and its owner, Michael A. Vasquez (hereinafter “Vasquez”). Plaintiffs Dana Andrew (hereinafter “Andrew”) in her capacity as co-legal guardian for Ryan T. Pretner (hereinafter “Pretner”); and Pretner, individually (collectively referred to as “Plaintiffs”), filed an action in state court seeking damages on account of catastrophic personal injuries arising out of a motor vehicle/bicycle accident that occurred on or about January 12, 2009. Plaintiffs alleged claims in the Complaint which triggered coverage under the Century policy. Despite notice of the lawsuit, Century refused to provide a defense to either Blue Streak or its owner, Vasquez. As a result, a Default Judgment was entered against Blue Streak and Vasquez in the amount of \$18,050,185.45 on April 11, 2012.

In an effort to avoid the result of such a large judgment, Vasquez and Blue Streak entered into a covenant not to execute with Plaintiffs and, in exchange, assigned all of their rights against Century to Plaintiffs. The purpose of this action is to enforce the \$18,050,185.45 plus Default Judgment as a result of Century’s bad faith.

II.

**STATEMENT OF FACTS**

***A. Facts of Loss***

On January 12, 2009, Pretner was riding his bicycle eastbound on the shoulder of St. Rose Parkway in Las Vegas, Nevada. While Pretner was lawfully riding his bicycle on the shoulder of the road, Vasquez, while in the course and scope of his employment with Blue Streak, was

driving a 2007 Ford F-150 pickup truck and struck Pretner in the protective helmet causing him to be violently thrown from his bicycle resulting in a serious, catastrophic, and life altering brain injury. (See Exhibit "1")<sup>1</sup>. Pretner incurred more than \$2,000,000.00 in medical expenses.

### **B. The Century Policy**

At the time of the loss, a policy of liability insurance coverage was in effect issued by Century to Blue Streak. (See Exhibit "2"). Blue Streak is a Nevada limited liability company. Vasquez is a member and its sole owner. (See Exhibit "3"). Blue Streak is in the mobile detail business. (See Exhibit "4"). At the time of underwriting, Century knew Blue Streak and Vasquez had no physical location. (See Exhibit "5"). Century knew that Vasquez operated the business from home. *Id.* Century also knew that Vasquez drove the "company" trucks home every night including the subject Ford F-150. *Id.*

The policy included commercial automobile liability insurance coverage. Section I defines covered autos as follows:

#### **SECTION I – COVERED AUTOS**

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### **A. Description of Covered Auto Designation Symbols**

...

##### **29 Non-Owned "Autos" Used in Your Garage Business**

Any "auto" you do not own, lease, hire, rent or borrow used in connection with your garage business described in the Declarations. This includes "autos" owned by your "employees" or partners (if you are a partnership), members (if you are a limited liability company), or members of their

<sup>1</sup> All exhibits attached hereto – except Exhibit Nos. 25, 26 and 27 - are documents produced by Defendant in its FRCP 26(f) production.

households while used in your garage business. (Emphasis added).

At the time of the accident, Vasquez was driving a truck he owned. He was the sole member of Blue Streak. Thus, the Ford F-150 was a covered vehicle as a non-owned auto.

Section II of the policy governs the scope of liability coverage. Section II(a) provides, in relevant part as follows:

## SECTION II – LIABILITY COVERAGE

### A. Coverage

#### 1. “Garage Operations” – Other Than Covered “Autos”

- a. We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies caused by an “accident” and resulting from “garage operations” other than the ownership, maintenance or use of covered “autos”.

We have the right and duty to defend any “insured” against a “suit” asking for these damages. However, we have no duty to defend any “insured” against a “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may investigate and settle any claim or “suit” as we consider appropriate. Our duty to defend or settle ends when the applicable Liability Coverage Limit of Insurance – “Garage Operations” – Other Than Covered “Autos” has been exhausted by payment of judgments or settlements. (Emphasis added).

- b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “accident” occurs in the coverage territory;
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the policy period, no “insured” listed under **Who Is An Insured** and no “employee” authorized by you to give or receive notice of an

“accident” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed “insured” or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

...

## 2. “Garage Operations” – Covered “Autos”

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from “garage operations” involving the ownership, maintenance or use of covered “autos”.

We will also pay all sums an “insured” legally must pay as a “covered pollution cost or expense” to which this insurance applies, caused by an “accident” and resulting from “garage operations” involving the ownership, maintenance or use of covered “autos”. However, we will only pay for the “covered pollution cost or expense” if there is either “bodily injury” or “property damage” to which this insurance applies that is caused by the same “accident”. (Emphasis added)

The policy defines garage operations as follows:

**H.** “Garage operations” means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. “Garage operations” includes the ownership, maintenance or use of the “autos” indicated in Section **I** of this Coverage Form as covered “autos”. “Garage operations” also include all operations necessary or incidental to a garage business.

Under the terms of the policy, and as emphasized above, Century reserved the right to control all settlement negotiations and the defense of any litigation. Neither Blue Streak nor Vasquez had that right.

...

**C. Century Denies Pretner's Claim**

Following the accident, the claim was reported to Century. (See Exhibit "6"). Century commenced an investigation. The sole focus of the investigation was whether Vasquez was using the truck for business purposes at the time of the loss. (See Exhibit "7"). Century hired an independent adjuster, Mike Chorak to investigate the accident. As part of his investigation, Mr. Chorak, among other things, took a recorded statement of Vasquez. In an email from senior claims adjuster, Charles Holland, he told Mr. Chorak to focus his investigation this way:

Detailed statement of insured please cover the following, what is Blue Streak, a sole proprietorship, a corp, or what. Who is the business license made out to? Ask Mike Vasquez to detail his afternoon, when did he finish work, where did he go, did he see cyclist? Was it dark (I think it was)? On the errands or shopping, have him detail what he was doing, who he was shopping for, was there ANY business errand or shopping, don't ask him that but to conclude that part, "so this was all personal, no business?" might be a good question. Call if questions.

(See Exhibit "8").

On May 26, 2009, Plaintiffs' former counsel made a demand upon Century to settle for its policy limits in exchange for a complete release. (Exhibit "9"). On June 5, 2009, Century issued its denial letter to Blue Streak and Vasquez. (See Exhibit "10"). The denial was based principally on the position that the Ford F-150 was not being used as part of "garage operations" (i.e., business purposes) at the time of the accident. *Id.* On June 15, 2009, Century rejected Plaintiffs policy limits demand by reason of its denial. (See Exhibit "11").

**D. The Lawsuit Against Vasquez and Blue Streak**

On January 7, 2011, Plaintiffs' filed a lawsuit against Vasquez and Blue Streak. (See Exhibit "12"). In the Complaint, the Plaintiffs alleged that Vasquez: (1) was an agent and/or employee of Blue Streak; (2) at the time of the accident was driving the Ford F-150 in the course and scope of his employment with Blue Streak; and (3) was negligent in operating the truck



1  
2 causing injury to Pretner. In addition to claims for negligence against Vasquez, direct tort claims  
3 were asserted against Blue Streak for negligent entrustment and respondeat superior.

4 The allegations in Plaintiffs' Complaint, if accepted as true, would trigger coverage under  
5 the Century policy requiring it to provide a defense. **However, rather than provide a defense,**  
6 **Century completely abandoned completely its insured by not providing a defense and**  
7 **closing its file.**  
8

9 *E. Century Refuses to Defend Blue Streak and Vasquez Despite Being Aware of*  
10 *The Lawsuit*

11 On March 3, 2011, Plaintiffs' current counsel, Dennis Prince informed Century of his  
12 representation of the Plaintiffs. (See Exhibit "13"). In an attachment to the letter dated March 3,  
13 2011, a copy of the Complaint was attached. In the March 3, 2011 letter, Plaintiffs' counsel  
14 indicated to Century that based upon their legal research, coverage existed under the Century  
15 policy. Century was further informed that Pretner had incurred past medical expenses of more  
16 than \$2,600,000.00 substantially in excess of the \$1,000,000.00 coverage limit. A facsimile of  
17 the March 3, 2011 letter was, in fact, received by Century. *Id.* Lisa M. Henderson, an in-house  
18 claims attorney for Century, responded to the March 3, 2011 letter in an email dated March 7,  
19 2011. Ms. Henderson advised that she was the claims attorney assigned to handle the claim  
20 against Blue Streak and that she could not disclose the policy without written consent from the  
21 insured. (See Exhibit "14"). Prior to sending Plaintiffs a copy of the Century policy, it sought  
22 approval from its insured, Michael Vasquez. (See Exhibit "15"). On March 8, 2011, Vasquez  
23 provided the necessary written consent to Century. (See Exhibit "16"). On March 8, 2011, a  
24 copy of the policy was provided by Century to Plaintiffs' counsel. (See Exhibit "17").  
25  
26

27 The lawsuit was acknowledged in the electronic notes by a manager employed by Century,  
28 James Carp on March 24, 2011. (See Exhibit "18"). The suit papers were then referred to in-

1  
2 house counsel, Henderson. On March 7, 2011, in-house counsel Henderson summarized the  
3 Complaint, including the fact that the Complaint alleged that its insured was using the truck for  
4 business purposes related to mobile detailing. (See **Exhibit “19”**). In-house counsel Henderson  
5 even noted that the allegations of the Complaint included claims for negligent entrustment and  
6 respondeat superior. Despite the allegations in the Complaint, in-house counsel Henderson  
7 indicated that the insured was not in the course and scope but on a personal errand not related to  
8 business at the time of the accident. In addition, notwithstanding the fact that the Complaint  
9 contained allegations which would otherwise trigger coverage under the policy, Century elected  
10 not to employ counsel for Blue Streak and Vasquez and provide a defense. In fact, on March 31,  
11 2011, Century informed Blue Streak and Vasquez that after a “complete review” of the  
12 Complaint, again advised there was no coverage and thus, it would not provide a defense. (See  
13 **Exhibit “20”**).

14  
15  
16 *F. Century’s Refusal to Defend Blue Streak and Vasquez Resulted in Defaults*

17 The Complaint was served on Blue Streak on April 7, 2011 and Vasquez on April 13,  
18 2011. Timely Answers were not filed. On June 27, 2011, defaults were entered against Blue  
19 Streak and Vasquez. (**Exhibit “21”**). On June 27, 2011, letters were sent to in-house counsel  
20 Henderson, as well as Charles Holland, Century’s senior claims handler, enclosing copies of the  
21 defaults. (**Exhibit “22”**). Plaintiffs’ counsel requested that Ms. Henderson and Mr. Holland  
22 contact his office to discuss the matter in further detail. At that point, Century clearly knew  
23 that Plaintiffs’ next step was to pursue default judgment. Once again, rather than providing a  
24 defense and seek to set aside the defaults, in-house counsel Henderson responded by email on the  
25 same day, June 27, 2011, advising that Century had no coverage, that Progressive was handling  
26 the matter and that the defaults were being forwarded to Progressive. (**Exhibit “23”**). Notably,  
27  
28

1  
2 according to an activity log note, on June 27, 2011, Henderson stated that since Century had no  
3 coverage it “cannot defend insured against same.” **Exhibit “24”**). After receiving the defaults,  
4 Century shockingly closed its file and took no further action. In short, Century took the riskiest of  
5 all litigation strategies by not providing a defense to its insured.  
6

7 Vasquez was insured by Progressive, individually. Blue Streak was not insured by  
8 Progressive. Blue Streak’s insurance is through Century.

9 Progressive, pursuant to its policy of insurance issued to Vasquez, hired attorney George  
10 Ranalli as defense counsel. Mr. Ranalli ultimately represented Vasquez as well as Blue Streak as  
11 part of the settlement negotiations.  
12

13 ***F. Settlement Agreement and Covenant Not to Execute***

14 Due to the catastrophic nature of the injury and financial exposure, Plaintiffs, Vasquez,  
15 and Blue Streak entered into a Settlement Agreement and Covenant Not to Execute. In essence,  
16 in exchange for payment of the Progressive \$100,000.00 policy as well as a Covenant Not to  
17 Execute against the assets of Vasquez and Blue Streak, Vasquez and Blue Streak assigned all of  
18 their rights against Century and any other applicable insurer to Plaintiffs. (**See Exhibit “25”**).  
19

20 Thereafter, on or about February 15, 2012, Plaintiffs filed an Application for Entry of  
21 Default Judgment pursuant to NRCP 55(b)(2) for a judicial determination of damages. (**Exhibit**  
22 **“26”**). A hearing was held on April 11, 2012 before the Honorable Douglas Herndon. Pursuant  
23 to the Default Judgment entered on April 11, 2012, Judge Herndon decided the factual issues as  
24 follows:  
25

- 26 1. On January 12, 2009, Ryan T. Pretner was riding his bicycle traveling  
27 eastbound on the paved shoulder of St. Rose Parkway. While riding his  
28 bicycle, Defendant Vasquez negligently collided with Pretner violently  
throwing him from his bicycle to the ground resulting in serious,  
catastrophic and life altering injuries.

2. At the time of the accident, Vasquez was an employee and/or agent of Defendant Blue Streak Auto Detailing, LLC. At the time of the accident, Vasquez was in the course and scope of his employment and/or agency of Blue Streak acting in furtherance of its business interests. Accordingly, Defendant Blue Streak is legally liable for the injuries and damages sustained by Pretner caused by Defendant Vasquez's negligence.

3. As a result of the negligence of the Defendants, Pretner sustained catastrophic and life altering injuries. Among the injuries Pretner sustained was a severe traumatic brain injury. For a significant period of time following the accident, Pretner was in a comatose state. Pretner underwent extensive medical work up and treatment. Pretner is now disabled from working.

*Id.*

The total amount of the Default Judgment was \$18,050,185.45. On April 11, 2012, a Notice of Entry of Judgment was served upon counsel for Vasquez and Blue Streak. (**Exhibit "27"**). No timely appeal was filed following the entry of default judgment. Also, neither Blue Streak nor Vasquez sought relief from the judgment. The total amount of the judgment as of the filing of this motion including post-judgment interest is \$18,483,759.20. The per diem interest on the judgment is \$2,596.25.

### III.

#### LEGAL ARGUMENT

##### A. THE APPLICABLE LEGAL STANDARDS

###### 1) The Operative State Law.

When sitting in diversity, a federal district court must apply the substantive law of the forum state in which it resides. *Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938). In the absence of controlling precedent from the Nevada Supreme Court, a federal district court must use its own best judgment to predict how the state's highest court would decide the relevant substantive issue. *Allstate Ins. Co. v. Sanders*, 495 F.Supp.2d 1104, 1106 (D. Nev. 2007). Additionally, in

1 the absence of Nevada Supreme Court precedent, “federal courts exercising diversity jurisdiction  
2 may look to other state-court decisions, well-reasoned decisions from other jurisdictions, and any  
3 other available authority to determine how the state court would resolve the issue.” *Santana v.*  
4 *Zilog, Inc.*, 95 F.3d 780, 783 (9<sup>th</sup> Cir.1996) (emphasis added). The procedural aspects of this  
5 case, however, will still be governed by federal law. *Associated Aviation Underwriters, Inc. v.*  
6 *Vegas Jet, LLC*, 106 F.Supp.2d 1051, 1053 (D. Nev. 2000).

7  
8  
9 **2) The Legal Standard for Summary Judgment.**

10 Summary judgment is appropriate when “the pleadings, the discovery and disclosure  
11 materials on file, and any affidavits show there is no genuine issue as to any material fact and that  
12 the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c); see *Celotex Corp. v.*  
13 *Catrett*, 477 U.S. 317, 330 (1986). An issue is “genuine” if there is a sufficient evidentiary basis  
14 on which a reasonable fact-finder could find for the nonmoving party and a dispute is “material”  
15 if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby,*  
16 *Inc.*, 477 U.S. 242, 248-49 (1986). In evaluating a summary judgment motion, a court views all  
17 facts and draws all inferences in the light most favorable to the nonmoving party. *Kaiser Cement*  
18 *Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9<sup>th</sup> Cir.1986). Thus, where reasonable  
19 minds could differ on the material facts at issue, summary judgment is not appropriate. *Warren v.*  
20 *City of Carlsbad*, 58 F.3d 439, 441 (9<sup>th</sup> Cir.1995), cert. denied, 516 U.S. 116 S.Ct. 1261, 134  
21 L.Ed.2d 209 (1996).

22  
23  
24 Where there is no issue of fact to be determined, and the only issue to be determined is the  
25 application of the undisputed facts to the subject insurance policy, the interpretation of the policy  
26 is a question of law. *Washoe Cnty v. Transcontinental Ins. Co.*, 110 Nev. 798 (1994); *Grand*  
27 *Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 (1992); *Nationwide Mutual Ins. Co.*  
28

1  
2 *v. Moya*, 108 Nev. 578 (1992). An insurance contract that is valid, enforceable, and unambiguous  
3 must be construed and enforced as it is plainly written. *See Farmers Ins. Exchange v. Young*, 108  
4 Nev. 328 (1992). In a diversity case, substantive summary judgment issues are determined by  
5 state law. *Bank of Cal. v. Opie*, 663 F.2d 977, 980 (9<sup>th</sup> Cir.1981).

6  
7 a. **There Are No Genuine Issues of Material Fact for Trial as Century is**  
8 **Bound by the Default Judgment as a Matter of Law Because Century**  
9 **Purposefully Chose Not to Defend Its Insured in The Underlying**  
10 **Lawsuit.**

11 When a suit is tendered for a defense, the insurer receives the chance to be heard.  
12 *Hamilton v. Maryland Casualty*, 41 P.3d 128, 135 (Cal. 2002). When an insurer refuses to  
13 provide a defense it rejects the opportunity to contest its liability and is bound by the resulting  
14 judgment. *Id.* Furthermore, an insurer who has wrongfully abandoned its insured by not  
15 providing a defense has no right to re-litigate a trial court judgment even where default or  
16 uncontested proceedings followed. *Pruyn v. Agricultural Ins. Co.*, 42 Cal.Rptr.2d 295, 304 (Cal.  
17 App. 1995); *Amato*, 61 Cal. Rptr.2d at 918; *see also Gray*, 419 P.2d at 178-179.

18 A judgment entered against an insured under either by way of a stipulated judgment or  
19 default judgment is binding upon the insurer who has wrongfully abandoned its insured and may  
20 be enforced directly through an assignment. *Pruyn*, 42 Cal.Rptr.2d at 304. As explained by the  
21 court in *Pruyn*:

22  
23 There is sound reason why this should be so. The insurer not only had a  
24 right to participate in and to control the litigation, it had a duty to do so. An  
25 insurer who has wrongfully abandoned its insured should not be heard to  
26 complain or allowed to re-litigate the trial court's judgment merely because  
27 the default or uncontested proceedings followed, and were related to, an  
28 agreement between the insured and the claimant. Whatever the terms of the  
settlement, the entry of judgment was based upon an independent review  
and adjudication of the evidence by the trial court. An insured who has  
breached its contract is properly bound by the result of such trial  
proceedings and will not be heard to raise the policy's no action clause in  
defense. (Emphasis added).

1  
2  
3 *Id.*

4 Here, there is no question that Century purposely chose not to defend Blue Streak or  
5 Vasquez despite knowing that the Complaint contained allegations which if proven true would  
6 create coverage under the terms and conditions of the policy. When Century was provided with  
7 the notice of defaults, it took no action to protect its insureds. Century turned its back completely  
8 on its insureds and abandoned them. There are now judicial findings of fact which are binding  
9 upon Century that, in fact, create coverage under the Century policy. By breaching its duty to  
10 defend its insureds against the allegations contained in the Plaintiffs' Complaint, it is liable for  
11 the full amount of the underlying judgment. Century is also bound by all factual determinations  
12 made by the Court in the Default Judgment. By not providing a defense to its insureds, Century is  
13 now bound by the resulting default judgment in favor of Plaintiffs. *Pershing Park Villas*  
14 *Homeowners Association v. United Pacific Insurance Company*, 219 F.3d 895 (9<sup>th</sup> Cir. 2000);  
15 *Amato v. Mercury Casualty Company*, 61 Cal.Rptr.2d 909 (Cal. App. 1997); *Clemmen v.*  
16 *Hartford Insurance Company*, 587 P.2d 1098 (Cal. 1978); *see also Gray v. Zurich Ins. Co.*, 419  
17 P.2d 168 (Cal. 1966). Thus, there is no genuine issue of material fact for trial on any issue.  
18  
19

20 b. **There is No Genuine Issue of Material Fact for Trial That Pretner's**  
21 **Claim is a Covered Claim as a Matter of Law Because Century Has**  
22 **No Right to Even Contest Coverage.**

23 An insurer who acts in bad faith by not providing a defense also waives the right to even  
24 raise the defense that the claim was covered at all. *Ledcor Industries, Inc. v. Mutual of Enumclaw*  
25 *Insurance Company*, 206 P.3d 1255, 1261 (Wash. App. 2009); *Kirk v. Mt. Airy Insurance*  
26 *Company*, 951 P.2d 1124 (Wash. 1998). In *Gray*, the California Supreme Court held that an  
27 insurer who failed to provide a defense was obligated to pay a resulting judgment even though it  
28



1  
2 was not covered by the policy as a matter of law. 419 P.2d at 178-179. Thus, waiving any right  
3 to assert a coverage defense. *Id*; *see also Amato*, 61 Cal.Rptr.2d 909.

4 As explained by the court in *Kirk*:

5 When the insurer breaches the duty to defend in bad faith the insurer should  
6 be held liable not only in contract for the cost of defense but also should be  
7 estopped from asserting the claim was outside the scope of the contract and,  
8 accordingly, that there is no coverage. The coverage by estoppel remedy  
9 creates a strong incentive for the insurer to act in good faith and protect the  
10 insured against the insurer's bad faith conduct.

11 *Kirk*, 951 P.2d at 1128 (emphasis added).

12 In addition, there is no longer even a question that this is a covered claim. Pursuant to  
13 Nevada law, a party may obtain entry of default against a party that fails to file a responsive  
14 pleading within the time mandated by the Nevada Rules of Civil Procedure. *Lomastro v.*  
15 *American Family Mutual Insurance Company*, 124 Nev. 1060, 95 P.3d 339 (2008). An entry of a  
16 default constitutes an admission by the defendants of all material facts and claims made in the  
17 Complaint. *Id*. Moreover, the entry of a default resolves the issues of liability and causation  
18 under all theories for relief, leaving open only the extent of damages. *Id*.

19 Here, the default judgment resolves all factual issues about whether the claim is even  
20 covered. By reason of the default pursuant to *Lomastro*, the District Court determined that  
21 Vasquez was negligent and was acting in the course and scope of employment at the time of the  
22 accident in furtherance of Blue Streak's business. This triggers coverage under the policy.

23 By reason of its breach of the duty to defend Century has no right to contest to the default  
24 judgment including its amount or even contest there is no coverage. Thus, there are no genuine  
25 issues of material fact for trial. And, as explained below, Plaintiffs are entitled to judgment as a  
26 matter of law.  
27  
28

...



**B. STANDARD FOR CONTRACTUAL CONSTRUCTION**

Under Nevada law, an insurance policy is a contract of adhesion. *Farmers Insurance Group v. Stonik*, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994). Accordingly, the language of an insurance policy is broadly interpreted in order to afford the greatest possible coverage to the insured. *Id.* An insurance policy may restrict coverage only if the policy's language "clearly and distinctly communicates to the insured the nature of the limitation." *Vitale v. Jefferson Ins. Co.*, 116 Nev. 590, 594, 5 P.3d 1054, 1057 (2000). Any ambiguity or uncertainty in an insurance policy must be construed against the insurer and in favor of the insured. *Id.* Whether a provision is ambiguous depends on whether it creates reasonable expectations of coverage as drafted. *Powell v. Liberty Mut. Fire Ins. Co.*, 252 P.3d 668, 672 (Nev. 2011) (quoting *United Nat'l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 1157 (Nev. 2004)). Ultimately, a court should interpret an insurance policy to effectuate the reasonable expectations of the insured. *Id.* (quoting *Nat'l Union Fire Ins. v. Reno's Exec. Air*, 100 Nev. 360, 364, 682 P.2d 1380, 1383 (1984)).

**C. SCOPE OF THE DUTY TO DEFEND**

Insurance policies create a hierarchy of duties between the insurer and the insured. *Allstate Insurance Company v. Miller*, 125 Nev. 300, 309, 212 P.3d 318, 324 (2009). At the top of this hierarchy are two general duties: the duty to defend and the duty to indemnify. *Id.* The duty to defend contains two potentially conflicting rights: the insurer's right to control settlement discussions and its right to control litigation against the insured. *Id.* The right to control litigation creates the duty to defend insureds from lawsuits which contain allegations that fall within the scope of the policy's insurance coverage. *Id.* An insurer's duty to defend attaches when the insured tenders the defense to the insurer. The duty to defend is broader than the duty to indemnify. See *Benchmark Insurance Company v. Sparks*, \_\_\_\_ Nev. \_\_\_\_, 254 P.3d 617, 620

(2011). The duty to defend is triggered whenever there is even the potential for indemnification arises and continues until this potential for indemnification ceases. *Id.*

Under Nevada law, an insurer must defend any suit brought against its insured that potentially seeks damages within the coverage of the policy. *Rockwood Ins. Co. v. Federated Capital Corp.*, 694 F.Supp. 772, 776 (D. Nev.1988). Further, **“[i]f facts are alleged which, if proven, would give rise to the duty to indemnify, then the insurer must defend. It is immaterial whether the claim asserted is false, fraudulent, or unprovable. The potentiality of covered liability is the test.”** *Id.* (emphasis added). Determining whether an insurer owes a duty to defend is achieved by comparing the allegations of the complaint with the terms of the policy. *United National Ins. Co. v. Frontier Ins. Co.*, 120 Nev. 678, 99 P.3d 1153, 1158 (2004).

So long as the claim(s) fall within the policy coverage, the duty to defend is triggered. *Newmont USA Ltd. v. American Home Assurance*, 676 F.Supp.2d 1146, 1157 (E.D. Wash. 2009).

An insurers duty to defend is determined by comparing the complaint’s allegations to the policy terms. *Loosmore v. Perent*, 613 N.W.2d 923, 929 (Wis. App. 2000). The duty to defend is triggered by the allegations contained within the “four corners” of the complaint. *Id.* See also *Benjamin v. Amica Mutal Ins. Co.*, 140 P.3d 1210, 1214 (Utah 2006) (applying four corners test in determining insurer’s breached duty to defend.) The duty to defend focuses on the nature of the claim, and has nothing to do with the merits of the claim. *Loosemore*, 613 N.W.2d at 929. The reason the duty to defend is broader than the duty to indemnify is because it covers not just claims under which the insurer may be liable, but also from which the insured could be found liable. See *Rayburn Lawn & Landscape Designers, Inc. v. Plaster Development Company, Inc.*, 255 P.3d 268 (2011); see also *United National*, 120 Nev. at 689, 99 P.3d at 1158. An insurer must even defend some lawsuits where liability under the policy ultimately fails to materialize to

1  
2 avoid liability for a resulting judgment. *See Amato*, 61 Cal.Rptr.2d at 914; *see also Montrose*  
3 *Chemical Corporation v. Superior Court*, 24 Cal.Rptr.2d 467 (1993).

4 Based upon the disparity in the bargaining strength, rules contractual construction requires  
5 the court to be cognizant of the reasonable expectations of the parties. The court in *Gray* also  
6 ultimately explained why the duty to defend is broader than the duty to indemnify. While there  
7 may be uncertainty whether there is an ultimate duty to indemnify at the end of litigation, the duty  
8 to defend is by definition more expansive to meet the objectives and expectations of the insured.  
9

10 As explained by the court in *Gray*:

11 At the threshold we note that the nature of the obligation to defend is itself  
12 necessarily uncertain. Although insurers have often insisted that the duty  
13 only arises if the insurer is bound to indemnify the insured, this very  
14 contention creates a dilemma. No one can determine whether the third party  
15 suit does or does not fall within indemnification coverage of the policy until  
16 that suit is resolved: in the instant case the determination of whether the  
17 insured was engaged in intentional negligent or even wrongful conduct  
18 depended upon the judgment in the Jones suit and, indeed, even after the  
19 judgment no one could positive whether it rested on the finding of  
20 plaintiff's negligent or his intentional conduct. The carrier's obligation to  
21 indemnify inevitably will not be defined until the adjudication of the very  
22 action which it should have defended hence. Hence the policy contains its  
23 own seeds of uncertainty. The insurer has held out a promise that by its  
24 very nature is ambiguous.

25 419 P.2d at 173.

26 Here, Century was provided with the Complaint on March 17, 2011, before it was even  
27 served on Vasquez and Blue Streak. At that time, it also knew that Pretner's damages were well  
28 in excess of the \$1,000,000.00 policy limit. Century knew that its insureds faced potential  
liability exposure substantially in excess of the available insurance coverage. Thus, the duty to  
defend was of paramount importance to both Vasquez and Blue Streak. The Complaint was even  
reviewed by an in-house attorney employed by Century. Century was aware that the Complaint  
contained allegations that Vasquez was driving the Ford F-150 for Blue Streak's business

1 purposes and in the course and scope of his employment. Applying the “four corners” test, the  
 2 duty to defend was clearly triggered. Century, to its and its insureds detriment, refused to provide  
 3 a defense. Century was also provided with the defaults. Century again re-examined its position  
 4 and, again, chose not to provide a defense even in the face of defaults. Instead, Century chose to  
 5 close its file, walk away from its insureds and leave them hanging in the balance with a ruinous  
 6 financial judgment staring them in their face.  
 7

8  
 9 Notably, while Century’s position was that Vasquez was operating the Ford F-150 outside  
 10 the scope of his employment, it is of no consequence that Century believed that Vasquez was not  
 11 driving the truck for business purposes. The mere allegation in the Complaint, even if factually  
 12 wrong, required Century to provide a defense. Specifically, even if Century thought the claim  
 13 was completely meritless, it was still required to provide Blue Streak and Vasquez a defense.  
 14 *Loosmoore*, 613 N.W.2d at 929 (holding that an insurer must defend even meritless lawsuits).  
 15

16 **D. SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE AN INSURER WHO**  
 17 **WRONGLY REFUSES TO DEFEND ITS INSURED IS LIABLE FOR THE FULL**  
 18 **AMOUNT OF AN EXCESS JUDGMENT**

19 In a third-party setting, the insurer has complete control over the litigation and settlement  
 20 process. *Rupp v. Continental Insurance Company*, 627 F.Supp.2d 1304 (D. Utah 2008). In the  
 21 third-party context, the insured is wholly dependent upon the insurer to see that in dealing with  
 22 third-party claims that the insured’s interests are protected by providing a defense as well as  
 23 indemnifying for covered claims. *Id. at 1319*. When an insurer breaches its duty to defend is  
 24 exposed to consequential and punitive damage awards in excess of the policy limits. *Id.*; see also  
 25 *Black v. Allstate Insurance Company*, 100 P.3d 1163, 1169 (Utah 2004).  
 26

27 An insurer who refuses to defend an insured does so at its own risk. *Comunale v. Trader*  
 28 *& General Insurance Company*, 328 P.2d 198, 202 (1958); see also *Thomas v. Western World*

1  
2 *Insurance Company*, 343 So.2d 1298, 1304 (Fla. App. 1997). An insurer who chooses not to  
3 provide a defense to a lawsuit chooses the “riskiest of all litigation strategies and must suffer the  
4 consequences” of such a risky strategy. *Transportation Ins. Co. v. Piedmont Construction Group,*  
5 *LLC*, 686 S.E.2d 824, 829 (Ga. App. 2009) (holding that an insurer who failed to provide a  
6 defense had no right to challenge amounts spent by insured in defending a lawsuit).

7  
8 It is the majority rule that an insurer who breaches the duty to defend is liable for the full  
9 amount of a resulting judgment, even if in excess of policy limits. *Besel v. Viking Ins. Co.*, 49  
10 P.3d 887, 891 (Wash. 2002); *Amato*, 61 Cal.Rptr.2d at 912-913; *Rupp*, 627 F.Supp.2d 1304, 1324  
11 (D. Utah 2008); *Comunale*, 328 P.2d at 202; *see also Miller*, 125 Nev. at 313-314, 212 P.3d at  
12 327-328. An insurer who breaches the duty to defend by providing no defense is also liable for  
13 the full amount of a resulting default judgment against its insureds as well. *See Amato*, 61.  
14 Cal.Rptr.2d at 914-915. When the insurer refuses to provide a defense and there is a resulting  
15 default judgment, the default judgment is proximately caused by the insurer’s breach of the duty  
16 to defend as a matter of law. *Amato*, 61 Cal.Rptr.2d at 915; *see also Miller*, 125 Nev. at 314-315,  
17 212 P.3d at 327-328.

18  
19 For example, in *Amato*, the insurer did not defend a personal injury lawsuit. A default  
20 judgment was taken against the insured for an amount substantially in excess of the policy limits.  
21 The insured brought an action against the insurer for breach of the implied covenant of good faith  
22 and fair dealing by not providing a defense. The Court in *Amato* held that a breach of the duty to  
23 defend by an insurer rendered it liable for the entire amount of the resulting default judgment and  
24 the insurer was precluded from challenging the amount of the judgment or any factual findings.  
25

26  
27 The Court in *Amato* further held that an insurer who wrongfully refused to defend was  
28 subject to automatic liability for the full amount of the resulting judgment. In this regard the court

in *Amato* stated:

An insurer's wrongful refusal to defend will automatically subject to liability for both costs of defense and any adverse judgment the insured suffers, even when the judgment was rendered on a theory not within the policy coverage. [Citation omitted]. An insurer that fails or refuses to defend a third party action against its insured on the grounds that the claim involved in the action is not covered by the policy may be held liable for an excess judgment because of its refusal – even though, had it defended the third party action, it might have escaped liability for the resulting judgment. (Emphasis added).

*Id. at 914.*

In *Pershing Park Villas Homeowners Association v. United Pacific Insurance Company*, 219 F.3d 895 (9<sup>th</sup> Cir. 2000), the Ninth Circuit reaffirmed the imposition of automatic liability for a default judgment where the insurer wrongfully refuses to provide a defense to its insured. Where the failure to defend is wrongful, it violates the covenant of good faith and fair dealing, and the insurer will be liable for all consequential damage regardless of foreseeability. *Id. at 901.* It is no defense that the underlying judgment against the insured is even on a theory outside the scope of coverage. *Id. at 901-902.*

To avoid being subject to automatic liability for the entire amount of an excess judgment where there is a wrongful refusal to provide a defense, an insurer has a simple solution as outlined by the court in *Amato*:

An insurer that fails or refuses to defend a third-party action against its insured, on the ground that the claim involved in the action is not covered by the policy, may be held liable for an excess judgment because of its refusal – even though, had it defended the third-party action, it might have escaped liability for the resulting judgment. . . . [To avoid this dilemma the insurer] can obtain a declaratory judgment determining whether there is coverage . . . or it can defend under a reservation of right to dispute liability for the third-party judgment.

*Id. at 914.*

For example, in *Gray*, a lawsuit was filed against an insured for assault. The insurer



1 denied coverage and refused to provide a defense of an action where the Complaint alleged an  
2 intentional tort and was outside the policy coverage. Judgment was entered against the insured  
3 for an intentional tort and the insured sued the insurer for bad faith for not providing him a  
4 defense. The Court ruled as a matter of law that the insurer acted in bad faith by not providing a  
5 defense and was liable for the resulting judgment even though it was outside the scope of  
6 coverage. The Court in *Gray* went on to describe how simple it is for an insurer to avoid being  
7 bound by a resulting judgment even one not covered by the policy by stating as follows:  
8

10 In any event, if the insurer adequately reserves its rights to assert the  
11 noncoverage defense later, it will not be bound by the judgment. If the  
12 injured party prevails, that party or the insured will assert his claim against  
13 the insurer. At this time the insurer can raise the noncoverage defense  
14 previously reserved. In this manner the interests of insured and insurer in  
15 defending against the injured party's primary suit will be identical; the  
16 insurer will not face the suggested dilemma.  
17 *Gray*, 419 P.2d at 178.

18 Thus, an insurer who believes it has coverage defenses may simply defend under a  
19 reservation of rights and seek a declaratory judgment. *Newmont USA, Ltd. v. American Home*  
20 *Assurance Co.*, 676 F.Supp.2d 1146, 1157-58 (E.D. Wash. 2009). By doing so, the insurer avoids  
21 breaching the duty to defend and liability for an excess or uncovered judgment. *Id.*

22 This case reflects the ultimate act of abandonment by an insurer. First, Century denied  
23 coverage. Second, it rejected a policy limits demand. Then, when it received the lawsuit  
24 asserting claims clearly within the scope of coverage, it stood by the denial and refused to provide  
25 a defense. Century then received the defaults against both insureds on June 27, 2011. This  
26 should have created a sense of urgency, but it did not. Century again made a conscious choice not  
27 to defend by not immediately hiring counsel to set the defaults aside and defend its insureds.  
28 Rather, Century did nothing but close its file! Clearly, this action was for its own benefit and not  
its insureds. As a sophisticated insurer and represented by counsel during the claim phase, it

1 knew this course of action created a significant risk for its insureds and itself of substantial  
 2 liability exposure. Century knew the risk, created the risk, and ignored the risk. Century and  
 3 Century alone is responsible for the consequences of its actions. A reasonable insurer would have  
 4 issued a reservation of rights and provided a defense under a reservation of rights. If a jury found  
 5 that Vasquez was in the course and scope of his employment, Century would owe the  
 6 \$1,000,000.0 policy limit. If a jury found that Vasquez was not in the course and scope, it likely  
 7 would owe nothing. Either way, the insureds would have received the protection it expected and  
 8 Century would have discharged its obligations. However, because Century chose the riskiest of  
 9 all strategies, it must now accept the legal consequences of its actions.

12 **E. BLUE STREAK AND VASQUEZ WERE FREE TO PROTECT THEMSELVES FROM AN**  
 13 **EXCESS JUDGMENT BECAUSE CENTURY REFUSED TO PROVIDE A DEFENSE**

14 When a liability insurer denies coverage and refuses to provide a defense, the insured is  
 15 free to make the best good faith deal possible with the third party including a stipulated judgment  
 16 with a covenant not to execute. *Hamilton v. Maryland Casualty*, 41 P.3d 128, 134 (Cal. 2002);  
 17 *USAA v. Alaska Insurance Company*, 114 Cal.Rptr.2d 449, 453 (Cal. App. 2002); *Pruyn*, 42 Cal.  
 18 Rptr.2d at 303. Also, where an insurer breaches the duty to provide a defense the duty of  
 19 cooperation does not prevent the insured from entering into a settlement with the claimant and  
 20 assigning his rights under the policy as consideration therefor. *Damron v. Sledge*, 460 P.2d 997  
 21 (Ariz. 1969); *see also Colonial Insurance Company v. Surety Control Company, Inc.*, 269 P.3d  
 22 695 (Ariz. App. 2012).

25 An insured's claims for breach of contract and breach of the duty of good faith and fair  
 26 dealing are assignable against an insurer. *See Gallegos v. Malco Enterprises of Nevada, Inc.*,  
 27 \_\_\_\_ Nev. \_\_\_\_, 255 P.3d 1287 (2012) (approving a judicial assignment of a breach of bad  
 28 contract and bad faith against an insurer). An action for damages in excess of the policy limits



1 based upon an insurer's wrongful breach of the duty of good faith and fair dealing including the  
2 duty to defend is assignable whether the action is considered sounding in tort or contract.  
3  
4 *Comunale*, 328 P.2d at 202.

5 When an insurer denies coverage, conflicting interests develop between the insured and  
6 insurer. *See Safeway Insurance Company v. Guerrero*, 106 P.3d 1020 (Ariz. 2005). Where the  
7 insurer fails to provide a defense, the insured is freed from its contractual prohibition on  
8 settlement without the insurer's approval. *Id. at 1024*. In such a case, the insured is freed from its  
9 contractual obligations entitling it to protect themselves against personal liability. *Id.* Where an  
10 insurer totally abandons its insured by breaching the duty to defend, such abandonment waives the  
11 insurer's right under the policy to approve a settlement. *See National Union Fire Insurance*  
12 *Company of Pittsburgh v. Continental Illinois Corporation*, 673 F.Supp. 267 (N.D. Ill. 1987).  
13  
14

15 In this case, as previously discussed, Century clearly breached its duty to defend Blue  
16 Streak and Vasquez. Blue Streak and Vasquez were left to defend themselves against the  
17 claims asserted by Plaintiffs. As such, Blue Streak and Vasquez were within their rights to enter  
18 into a stipulation and covenant not to execute in order to protect themselves from an excess  
19 judgment.  
20

21 **F. A COVENANT NOT TO EXECUTE DOES NOT RELIEVE CENTURY OF ANY**  
22 **OBLIGATION TO PAY THE RESULTING DEFAULT**

23 Here, Century may argue that Blue Streak and Vasquez have not sustained damages by  
24 reason of the covenant not to execute. This argument would be misplaced. The fact that there is  
25 an excess judgment against an insured itself constitutes the damage that permits the insured (or its  
26 assignee) to recover for breach of the implied covenant of good faith and fair dealing. *Comunale*,  
27 328 P.2d at 201-202. Moreover, it is no defense by an insurer who has breached its duty of good  
28 faith and fair dealing by abandoning its insured by refusing to provide a defense that the insured

1  
2 has not been harmed by a resulting excess judgment where it protects itself by entering into a  
3 covenant not to execute and an assignment. *See Rupp*, 627 F.Supp.2d at 1324; *see also*  
4 *Christiansen v. Holiday Rent A Car*, 845 P.2d 1316 (Utah App. 1992).

5 Likewise, it is of no consequence that the judgment has not been paid in full by the  
6 insured in order for the assignee to look to the insurer for full recovery. It is the majority view in  
7 American jurisprudence that an insurer is liable for the full amount of a judgment where it  
8 breaches its duties with an insured even if the insured has not satisfied the judgment or has no  
9 ability to satisfy the judgment. *See Frankennuth Mutual Insurance Company v. Keeley*, 447  
10 N.W.2d 691 (Mich. 1989). When an insurer breaches its duty to defend an insured and there is a  
11 resulting excess judgment, including a stipulated judgment, the insurer remains liable for the  
12 entire amount of the judgment as the insured has been presumptively damaged. *See Besel*, 49  
13 P.3d at 891. As explained by the court in *Besel*:

16 Washington courts have properly recognized that a covenant not to execute  
17 coupled with an assignment and settlement agreement is not a release  
18 permitting the insurer to escape its obligation. [citation omitted]. A  
19 covenant not to execute coupled with an assignment and settlement  
20 agreement does not release a tortfeasor from the liability; it is simply an  
21 agreement to seek recovery only from a specified asset – proceeds of the  
22 insurance policy and the rights owed by the insurer to the insured. If there  
23 is a judgment in excess of the policy whether it is a stipulated judgment or a  
24 default judgment the insured has been presumptively damaged even though  
25 the judgment has not been satisfied.

26 *Id.*

27 The majority of courts have concluded that a covenant not to execute is not the equivalent  
28 of a release and it does not totally extinguish the effects of the judgment. *See Gainsco Insurance*  
*Company v. Amoco Production Company*, 53 P.3d 1051, 1061 (Wyoming 2002). As explained by  
the Wyoming Supreme Court in *Gainsco*:

The judgment may affect the insured's credit in the future. For that reason

1  
2 the court finds that, despite the existence in the settlement of a covenant not  
3 to execute, the insured retains a cause of action for the third party bad faith  
4 that may be assigned to the claimant.

5 *Id. at 1060.*

6 The court in *Gainsco* went on to state that:

7 We agree with the rationale of *Spangler* and those cases that find that the  
8 inclusion of a covenant not to execute and the settlement agreement  
9 between the insured and a claimant, under the circumstances of the case  
10 now before us, does not act to negate the fact that a judgment has been  
11 entered against the insured and, therefore, does not bar the claimant, an  
12 assignee of the insured, from pursuing a claim against the insurer for third-  
13 party bad faith. The existence of the judgment, with or without a covenant  
14 not to execute, is a detriment to the insured sufficient to support an  
15 assignable tort claim. Public policy favors this result in that it allows an  
16 insurer to reach a reasonable settlement in a case that is being defended  
17 under a reservation of rights and it discourages an insurer from rejecting a  
18 reasonable settlement offer. The insured is adequately protected by the  
19 requirement of such settlements be reasonable and by its ability to raise the  
20 issues of fraud and collusion.

21 *Id. at 1061.*

22 Even where a judgment has been confessed and the insured has been given a covenant not  
23 to execute, an insured still has suffered actual damages and may maintain (or its assignee) a bad  
24 faith action against the insurer for breach of its obligations. *Nunn v. Mid-Century Insurance*  
25 *Company*, 244 P.3d 116, 122-23 (Colo. 2011). As explained by the Colorado Supreme Court in  
26 *Nunn*:

27 As such, we adopt the judgment rule and conclude that an insured who has  
28 suffered a judgment in excess of policy limits, even if the judgment is  
confessed and the insured is protected by a covenant not to execute, has  
suffered actual damages and will be permitted to maintain an action against  
its insurer for bad faith breach of the duty to settle. Thus, we hold that the  
stipulated excess judgment against James was sufficient to establish actual  
damages as an element of the bad faith claim against Mid-Century.  
Summary judgment on that basis was therefore improper, and the judgment  
of the court of appeals is reserved.

*Id.*

Applying the reasoning set forth above to the present case, Century cannot escape liability even though Blue Streak and Vasquez entered into a covenant not to execute. Instead, Century is still liable for the full amount of the resulting excess judgment because Vasquez and Blue Streak suffered actual damages as a result of Century's bad faith.

**G. THERE IS NO EVIDENCE OF FRAUD OR COLLUSION BECAUSE THE DAMAGES WERE JUDICIALLY DETERMINED**

Finally, Century may argue that it should have the right to dispute Pretner's damages. This argument is also misplaced because Century knew of the litigation, had an opportunity to defend, knew of the defaults, and had an opportunity to have the defaults set aside, it is bound by the resulting judgment in excess of limits. *See Clemmen v. Hartford Insurance Company*, 587 P.2d 1098, 1108-09 (Cal. 1978); *see also Amato*, 61 Cal.Rptr.2d at 914-915; *Pruyn*, 42 Cal.Rptr.2d at 303; *Comunale*, 328 P.2d at 201-202.

A default judgment results only after the Court conducts a hearing to consider the Plaintiffs' evidence and to award such damages which the evidence shows to be just. *Amato*, 61 Cal.Rptr.2d at 918. A default judgment proceeding involves significant independent adjudicatory involvement by the judiciary thereby mitigating to the greatest extent possible a fraudulent or collusive settlement between an insured and a claimant. *Pruyn*, 42 Cal.Rptr.2d at 304-05. It is for this reason default judgments are binding upon insurers who abandoned their insured. *Amato*, 61 Cal.Rptr.2d at 918; *Pruyn*, 47 Cal.Rptr.2d at 304; *see also Pershing*, 219 F.3d at 901-02.

Here, there is no doubt Century abandoned its insureds repeatedly by not providing a defense. It knew that the insureds were at severe risk of a default judgment when it received the defaults. However, instead of taking the appropriate steps to defend their insureds, Century took no action. By closing its file, it turned its back on its own insureds leaving them to protect themselves the best way they could – through a covenant not to execute and an assignment. The

1 settlement came only after Century denied the claim, rejected policy limits demand, and  
2 wrongfully refused to provide a defense.  
3

4 In addition, there was no stipulated or confessed judgment thereby eliminating the risk of  
5 fraud or collusion. The parties contemplated that the damages and other relief would be judicially  
6 determined. Neither Plaintiffs nor Vasquez and Blue Streak had any involvement in determining  
7 the amount of the judgment. And, in fact, the damages were awarded pursuant to NRCP 55(b)(2)  
8 by the filing of an application for entry of default judgment, providing notice and a hearing where  
9 the Court considered Plaintiffs' evidence. There can be no credible or good faith argument that  
10 the judgment was the product of fraud, collusion or the damages were not reasonable under the  
11 facts of this case.  
12

13 The state court conducted a hearing before the entry of judgment. The issue of fraud and  
14 collusion typically surrounds a stipulated judgment. None of those concerns are present here  
15 when the amount of the judgment was judicially determined after an application, a hearing and  
16 judicial consideration.  
17

#### 18 IV.

#### 19 CONCLUSION

20 As the assignee of Vasquez and Blue Streak's rights, Plaintiffs have the right to all  
21 damages caused by Century's bad faith refusal to provide a defense. As a proximate result of  
22 Century's wrongful refusal to defend the action, a default judgment in the amount of  
23 \$18,050,185.45 was entered. The judgment accrues interest at a rate of \$2,596.25 per day.  
24

25 ...

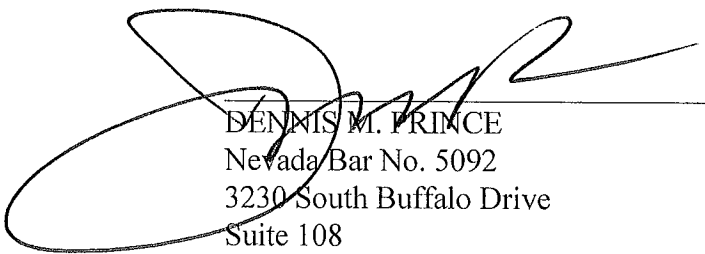
26 ...

27 ...  
28

1  
2 Plaintiffs' request that judgment be entered in their favor in the amount of \$18,050,185.45  
3 plus accrued post-judgment interest as allowed by Nevada law until satisfied as set forth in the  
4 default judgment.

5 DATED this 25 day of September, 2012.

6  
7 **PRINCE & KEATING**

8  
9   
10 DENNIS M. PRINCE  
11 Nevada Bar No. 5092  
12 3230 South Buffalo Drive  
13 Suite 108  
14 Las Vegas, Nevada 89117  
15 Attorney for Plaintiffs  
16 *Dana Andrew as Legal Guardian of*  
17 *Ryan T. Pretner and Ryan T. Pretner*  
18  
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28

COUNTY OF CLARK )  
 )  
STATE OF NEVADA )

1. I am an attorney duly licensed to practice law in the State of Nevada.
2. I am one of the attorneys of record for Plaintiffs Dana Andrew as Legal Guardian of Ryan T. Pretner and Ryan T. Pretner, individually I have personal knowledge of the facts and am competent to testify to the matters stated herein.

4. True and correct copies of the following documents are attached exhibits:

- **Exhibit 1:** Traffic Accident Report
- **Exhibit 2:** Blue Streak's Century Insurance Declarations Sheet
- **Exhibit 3 :** Century Insurance Garage Application
- **Exhibit 4:** Selected portion of Blue Streak's Century Underwriting Insurance Application describing Blue Streak as a mobile automobile detailing company.
- **Exhibit 5:** Selected portion of Blue Streak's Century Underwriting Insurance Application indicating that Blue Streak does not have a physical location.
- **Exhibit 6:** Claim report of the accident.
- **Exhibit 7:** Email correspondence from Jim Karp to Charles Holland.
- **Exhibit 8:** Email correspondence from Charles Holland to Mike Chorak.
- **Exhibit 9:** Demand letter from Plaintiffs' former counsel Sylvia Esparza, Esq..
- **Exhibit 10:** Century Insurance's June 5, 2009 denial letter to Blue Streak and Vasquez.
- **Exhibit 11:** Century Insurance's correspondence rejecting Sylvia Esparza's demand letter.
- **Exhibit 12:** Complaint filed in case A-11-632845-C in the Eighth Judicial District Court of Nevada.
- **Exhibit 13:** Letter of representation from Dennis M. Prince.
- **Exhibit 14:** March 7, 2011 Correspondence from claims attorney Lisa Henderson advising that Century cannot disclose any policy information without the written consent of the named insured.
- **Exhibit 15:** March 8, 2011 Correspondence from Lisa Henderson to Michael Vasquez seeking consent to disclose copy of insurance.



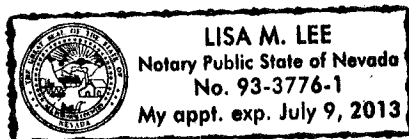
- **Exhibit 16:** March 8, 2011 Correspondence from Michael Vasquez to Lisa Henderson authorizing permission to disclose copy of insurance.
- **Exhibit 17:** March 8, 2011 Correspondence from Jen Bussard to Dennis Prince providing a copy of Blue Streak's insurance policy.
- **Exhibit 18:** Selected portions of Century's electronic notes acknowledging the lawsuit against Blue Streak and Vasquez.
- **Exhibit 19:** Electronic notes by in house counsel Lisa Henderson summarizing the Complaint.
- **Exhibit 20:** March 31, 2011 correspondence from Lisa Henderson to Michael Vasquez advising that there was no coverage for the claim.
- **Exhibit 21:** Defaults entered against Blue Streak and Michael Vasquez in Case No. A-11-632845-C.
- **Exhibit 22:** June 27, 2011 correspondence from Dennis Prince to Lisa Henderson providing copies of Defaults entered against Blue Streak and Michael Vasquez.
- **Exhibit 23:** June 27, 2011 correspondence from Lisa Henderson to Dennis Prince advising that Century has no coverage for the claims against Blue Streak and Michael Vasquez.
- **Exhibit 24:** Log Notes from June 27, 2011 by Lisa Henderson stating that "Century had no coverage and cannot defend insured against same."
- **Exhibit 25:** Settlement Agreement and Covenant Not to Execute.
- **Exhibit 26:** Plaintiffs' Application for Entry of Default Judgment.
- **Exhibit 27:** Notice of Entry of Default Judgment served upon counsel for Vasquez and Blue Streak.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dennis M. Prince

SUBSCRIBED and SWORN to before me this 25 day of September, 2012.

NOTARY PUBLIC in and for said County  
And State





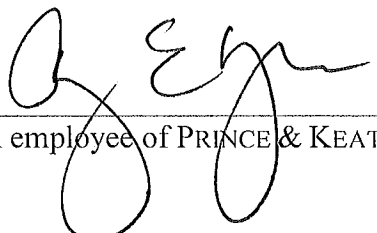
**CERTIFICATE OF MAILING**

I hereby certify that on the 25 day of September, 2012, I caused service of the foregoing  
**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** to be made by depositing a true  
and correct copy of same in the United States Mail, postage fully prepaid, addressed to the  
following:

Alan J. Lefebvre, Esq.  
William D. Schuller, Esq.  
Kolesar & Leatham  
400 South Rampart Boulevard, Suite 400  
Las Vegas, NV 89145  
(702) 362-7800 phone  
(702) 362-9472 facsimile

Maria Louise Cousineau, Esq.  
Sedgwick, LLP  
801 South Figueroa Street, 19<sup>th</sup> Floor  
Los Angeles, CA 90017  
(213) 426-6900 phone  
(213) 426-6921 facsimile

Attorneys for Defendant

  
An employee of PRINCE & KEATING

# **EXHIBIT “1”**

# **EXHIBIT “1”**

03/03/2011 13:54

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Event Number 09-00812		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 11/14/04		Accident Number:	
Vehicle # 0002		Occupants 1		Agency Name: HENDERSON POLICE DEPARTMENT	
Direction of Travel: <input type="checkbox"/> North <input checked="" type="checkbox"/> South <input type="checkbox"/> East <input type="checkbox"/> West		Highway / Street Name: ST ROSE PARKWAY		Travel Lane #:	
Vehicle: <input checked="" type="checkbox"/> Straight <input type="checkbox"/> Left Turn <input type="checkbox"/> Right Turn <input type="checkbox"/> Wrong Way <input type="checkbox"/> Passing <input type="checkbox"/> Lending Parked <input type="checkbox"/> Leaving Lane <input type="checkbox"/> Enter Parked <input type="checkbox"/> Lane Change <input type="checkbox"/> Unknown		Action: <input type="checkbox"/> Backing <input type="checkbox"/> Right Turn <input type="checkbox"/> Parked <input type="checkbox"/> Stopped <input type="checkbox"/> Stopping <input type="checkbox"/> Entering Lane <input type="checkbox"/> Other Turning <input type="checkbox"/> Driveway Vehicle <input type="checkbox"/> Other			
Driver: Last Name, First Name, Middle Name, Initials		Transported By: <input type="checkbox"/> Not Transported <input type="checkbox"/> EMS <input type="checkbox"/> Police <input type="checkbox"/> Unknown			
Street Address:		Transported To:			
City:		State / Country: <input type="checkbox"/> NV		Zip Code:	
Phone Number:		Person Type: 1		Seating Position:	
Injury Severity:		Injury Location:			
Airbag:		Airbag Switch:		Ejected:	
Trapped:					
Compliance: <input type="checkbox"/> Not Involved <input type="checkbox"/> Not Involved <input type="checkbox"/> Not Involved		Endorsements:		Restrictions:	
Alcohol/Drug Involvement: <input type="checkbox"/> Not Involved <input type="checkbox"/> Not Involved <input type="checkbox"/> Not Involved		Method of Determination (check up to 2): <input type="checkbox"/> Field Sobriety Test <input type="checkbox"/> Urine Test <input type="checkbox"/> Blood Test <input type="checkbox"/> Breathalyzer <input type="checkbox"/> Blood Test <input type="checkbox"/> Driver Admission <input type="checkbox"/> Preliminary Breath Test		Test Result:	
Vehicle Year:		Vehicle Make:		Vehicle Model:	
Vehicle Year:		Vehicle Make:		Vehicle Model:	
Plate / Permit No.:		State: <input type="checkbox"/> NV		Expiration Date:	
Vehicle Identification Number:		Vehicle Color:		BLACK	
Registered Owner Name:		Registered Owner Address:		860 RODDENBERRY ST, LAS VEGAS, NEVADA 89123	
Insurance Company Name:		Policy Number:		Effective:	
Insurance Company Address or Phone Number:					
Vehicle Towed:		Towed By:			
Removed To:					
Traffic Control: 1) Speed Zone 4) Stop Sign 2) Signal Light 5) Yield Sign 3) Flashing Light 6) R. R. Sign 4) School Zone 7) R. R. Crossing 5) Red Signal 8) R. R. Signal 6) No Passing 9) Marked Lane 7) No Control 10) Time Chains/Snow Req. 8) Warning Sign 11) Permit/Snow Green 9) Turn Signal 12) Unknown 13) Other		Distance Traveled After Impact: From To Limit 16 25 50		Extent Of Damage: 1) Minor 2) Moderate 3) Major 4) Total 5) None 6) Unknown	
Sequence Of Events:		Collision With Fixed Object:		Most Harmful Event:	
Code # Description		Collision With Fixed Object:		Most Harmful Event:	
1st 202 PEDAL CYCLIST		Collision With Fixed Object:		Most Harmful Event:	
2nd		Collision With Fixed Object:		Most Harmful Event:	
3rd		Collision With Fixed Object:		Most Harmful Event:	
4th		Collision With Fixed Object:		Most Harmful Event:	
5th		Collision With Fixed Object:		Most Harmful Event:	
Violation		NOG		Citation Number	
Violation		NOG		Citation Number	
Investigator(s)		ID Number		Date	
MATUSZAK JR., ROGER H		794		01/12/2009	
Reviewed By		Date Reviewed			
GAYER683		01/20/2009			

## Vehicle Information

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Event Number: 09-00812		STATE OF NEVADA TRAFFIC ACCIDENT REPORT VEHICLE INFORMATION SHEET Revised 1/14/04		Agent Number:	
Name: (Last Name, First Name, Middle Name, Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other		Agency Name: HENDERSON POLICE DEPARTMENT	
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restriction:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 2) Female <input type="checkbox"/> 3) Unknown	DOB:	Phone Number:	Injury Severity:	Injury Location:	
		Airbag:	Airbag Switch:	Ejected:	Trapped:
Name: (Last Name, First Name, Middle Name, Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restriction:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 2) Female <input type="checkbox"/> 3) Unknown	DOB:	Phone Number:	Injury Severity:	Injury Location:	
		Airbag:	Airbag Switch:	Ejected:	Trapped:
Name: (Last Name, First Name, Middle Name, Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restriction:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 2) Female <input type="checkbox"/> 3) Unknown	DOB:	Phone Number:	Injury Severity:	Injury Location:	
		Airbag:	Airbag Switch:	Ejected:	Trapped:
<input type="checkbox"/> 1) Trailing Unit 1 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:	
<input type="checkbox"/> 1) Trailing Unit 2 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:	
<input type="checkbox"/> 1) Trailing Unit 3 VIN:		Plate:	State: <input type="checkbox"/> 1) NV	Type:	
Commercial Vehicle Configuration					
<input type="checkbox"/> 1) Bus, 8 - 15 Occupants <input type="checkbox"/> 2) Tractor Only <input type="checkbox"/> 3) Tractor / Semi Trailer <input type="checkbox"/> 4) Bus, > 15 Occupants <input type="checkbox"/> 5) Tractor / Trailer <input type="checkbox"/> 6) Passenger Vehicle, (Max-Min) <input type="checkbox"/> 7) Single 2 Axle and 1 Tire <input type="checkbox"/> 8) Tractor / Doubles <input type="checkbox"/> 9) Light Truck, (Max-Min) <input type="checkbox"/> 10) Single > 3 Axle <input type="checkbox"/> 11) Tractor / Triples <input type="checkbox"/> 12) Other Heavy Vehicle <input type="checkbox"/> 13) Any 4 Tire Vehicle <input type="checkbox"/> 14) Truck with Trailer		Source <input type="checkbox"/> 1) Driver <input type="checkbox"/> 2) State Reg. <input type="checkbox"/> 3) Log Book <input type="checkbox"/> 4) Mile of Vehicle <input type="checkbox"/> 5) Shipping Papers / Trip Manifest <input type="checkbox"/> 6) Other			
Carrier Name:		Power Unit GVWR		<input type="checkbox"/> 1) 14,000 Lbs <input type="checkbox"/> 2) 16,000 - 20,000 Lbs <input type="checkbox"/> 3) 20,000 Lbs <input type="checkbox"/> 4) 24,000 Lbs <input type="checkbox"/> 5) Released	
Carrier Street Address:		City:	State: <input type="checkbox"/> 1) NV	Zip:	
Cargo Body Type		Placard #:	Type of Carrier	NAB Safety Report #:	
<input type="checkbox"/> 1) Solo <input type="checkbox"/> 2) Van / Box <input type="checkbox"/> 3) Grain, Gravel Chute <input type="checkbox"/> 4) Tank <input type="checkbox"/> 5) Concrete Mixer <input type="checkbox"/> 6) Bus, 8 - 15 Occupants <input type="checkbox"/> 7) Dump <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 9) Bus, > 15 Occupants <input type="checkbox"/> 10) Other <input type="checkbox"/> 11) Other		Diamond #:	<input type="checkbox"/> 1) Single State <input type="checkbox"/> 2) USPOV <input type="checkbox"/> 3) Canada <input type="checkbox"/> 4) Mexico <input type="checkbox"/> 5) None	Carrier Number:	

Vehicle Information

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Event Number: 09-00812		STATE OF NEVADA TRAFFIC ACCIDENT REPORT NON-MOTORIST INFORMATION SHEET Revised 10/4/04		Accident Number:	
Non-Motorist #: 0002		<input type="checkbox"/> 1) Adult <input type="checkbox"/> 2) Non-Contact (parent)		Agency Name: HENDERSON POLICE DEPARTMENT	
Non-Motorist Type <input type="checkbox"/> 1) Pedestrian <input type="checkbox"/> 6) Other Non-Motorist <input checked="" type="checkbox"/> 2) Pedal Cyclist <input type="checkbox"/> 7) Wheel Chair <input type="checkbox"/> 3) Skateboarder <input type="checkbox"/> 4) Other		Direction of Travel <input type="checkbox"/> 1) North <input type="checkbox"/> 2) South <input checked="" type="checkbox"/> 3) East <input type="checkbox"/> 4) West <input type="checkbox"/> 5) Unknown			
Non-Motorist Name (Last, First, Middle Initial) PRETNER, RYAN TERRY		Highway / Street Name: ST ROSE PARKWAY			
Street Address: 660 RODDENBERRY ST		Transported By: <input type="checkbox"/> 1) Not Transported <input checked="" type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
City: LAS VEGAS		State / County: <input checked="" type="checkbox"/> NV	Zip Code: 89123	Person Type: 16	Occupant Position: 16
DOB: 08/22/1971		Phone Number: (702) 663-2483	Injury Severity: A	Injury Location: 01	Occupant Restraint: 11
DOB / ID Card:		State: <input type="checkbox"/> NV	Alphabet: 01	Alcohol / Drugs: 01	Ejected: <input type="checkbox"/> Trapped: <input type="checkbox"/>
Non-Motorist Condition <input type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 2) Under Influence: Medication / Drugs / Alcohol <input type="checkbox"/> 3) Emotional <input checked="" type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Physical Impairment <input type="checkbox"/> 6) Fatigued / Asleep / Fainted <input type="checkbox"/> 7) Illness <input type="checkbox"/> 8) Other					
Method of Determination (Check up to 2) Alcohol / Drug Involvement <input type="checkbox"/> 1) Not Involved <input type="checkbox"/> 2) Alcohol <input checked="" type="checkbox"/> 3) Unknown <input type="checkbox"/> 4) Suspended Impairment <input type="checkbox"/> 5) Drugs Field Sobriety Test <input type="checkbox"/> Blood Test <input type="checkbox"/> Urine Test <input type="checkbox"/> Test Results Preliminary Breath Test <input type="checkbox"/> Evidentiary Breath Test					
Non-Motorist Action <input type="checkbox"/> 1) Entering or Crossing at Location <input type="checkbox"/> 2) Pushing Vehicle <input type="checkbox"/> 3) Improper Overtaking <input type="checkbox"/> 4) Wrong Side of Road <input checked="" type="checkbox"/> 5) Walking, Running, Playing, Cycling <input type="checkbox"/> 6) Working in Roadway <input type="checkbox"/> 7) Lying / Illegally in Roadway <input type="checkbox"/> 8) Not Visible <input type="checkbox"/> 9) Approaching or Leaving Vehicle <input type="checkbox"/> 10) Standing <input type="checkbox"/> 11) Fall to Yield Right of Way <input type="checkbox"/> 12) Dangling into Roadway <input type="checkbox"/> 13) Playing or Working on Vehicle <input type="checkbox"/> 14) Unknown <input type="checkbox"/> 15) Fail to Obey Traffic Signs, Signals, or Officer <input type="checkbox"/> 16) Inattentive <input type="checkbox"/> 17) Other <input type="checkbox"/> 18) Unknown					
Location Prior to Impact <input type="checkbox"/> 1) Marked Crosswalk at Intersection <input type="checkbox"/> 2) Shared Use Path or Trail <input type="checkbox"/> 3) On Highway, More than 10' from Travel Lanes <input type="checkbox"/> 4) At Intersection, No Crosswalk <input type="checkbox"/> 5) In Roadway <input type="checkbox"/> 6) Traffic Island <input type="checkbox"/> 7) Non-Intersection Crosswalk <input type="checkbox"/> 8) Shoulder <input type="checkbox"/> 9) Unknown <input type="checkbox"/> 10) Driveway Access Crosswalk <input type="checkbox"/> 11) Sidewalk <input type="checkbox"/> 12) Unknown <input type="checkbox"/> 13) Median <input type="checkbox"/> 14) Other <input type="checkbox"/> 15) Outside Highway					
Safety Equipment <input type="checkbox"/> 1) None <input type="checkbox"/> 2) Helmet <input type="checkbox"/> 3) Protective Pads <input type="checkbox"/> 4) Reflective Clothing <input type="checkbox"/> 5) Lighting <input type="checkbox"/> 6) Unknown <input type="checkbox"/> 7) Other					
Bike Lane / Path <input type="checkbox"/> 1) No Bike Lane Path <input type="checkbox"/> 2) Striped Bicycle Lane - Both Sides <input type="checkbox"/> 3) Bicycle Route (Signed) <input type="checkbox"/> 4) Separate Bicycle Path / Trail <input type="checkbox"/> 5) Striped Bicycle Lane - Right Side Only <input type="checkbox"/> 6) Unknown <input type="checkbox"/> 7) Striped Bicycle Lane - Left Side Only <input type="checkbox"/> 8) Other					
Vehicle Number(s) Striking Non-Motorist: #1: #2: #3: Non-Motorist Speed Estimate From 15 To 25 Limit 60					
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) NRS <input type="checkbox"/> 3) CO / MC <input type="checkbox"/> 4) Ending (1)		Violation		NCS	
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) NRS <input type="checkbox"/> 3) CO / MC (2)		Violation		NCS	
Investigator(s): MATUSZAK JR, ROGER H		ID Number: 704	Date: 01/12/2009	Reviewed By: GAYER683	Date Reviewed: 01/20/2009

## Non-Motorist Information

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CSC000110

Andrew v CSC  
CF000110

R.App. 000035

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Event Number: 09-00812		STATE OF NEVADA TRAFFIC ACCIDENT REPORT NON-MOTORIST INFORMATION SHEET Revised 10/1/04		Accident Number:	
		Agency Name: HENDERSON POLICE DEPARTMENT			
Non-Motorist: (Last Name, First Name, Middle Name, Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 2) Unknown <input type="checkbox"/> 3) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
DLN / ID Card:	State: <input type="checkbox"/> 1) NV	Airbag:	Airbag Switch:	Ejected:	Trapped:
Non-Motorist: (Last Name, First Name, Middle Name, Suffix)		Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other			
Street Address:		Transported To:			
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:
<input type="checkbox"/> 1) Male <input type="checkbox"/> 2) Unknown <input type="checkbox"/> 3) Female	DOB:	Phone Number:	Injury Severity:	Injury Location:	
DLN / ID Card:	State: <input type="checkbox"/> 1) NV	Airbag:	Airbag Switch:	Ejected:	Trapped:
Non-Motor Vehicle Description					
Make / Manufacturer:		Model:	Type:	Color:	
BICYCLE				BLACK	
Identification / Serial Number:		Non-Motor Vehicle Removed By:			
Owner Name: <input checked="" type="checkbox"/> 1) Separate Non-Motorist		Non-Motor Vehicle Removed To:			
PRETNER, RYAN TERRY					
Street Address:		City:	State: <input type="checkbox"/> 1) NV	Zip Code:	
660 RODDENBERRY ST, LAS VEGAS, NEVADA 89123					
1st Contact Area		Damage to Non-Motor Vehicle		Non-Motor Vehicle Damaged Area	
Pedal Cyclist / Non-Motor Vehicle 		<input checked="" type="checkbox"/> 1) Minor <input type="checkbox"/> 2) Moderate <input type="checkbox"/> 3) Major <input type="checkbox"/> 4) Total <input type="checkbox"/> 5) None <input type="checkbox"/> 6) Unknown		<input type="checkbox"/> 1) Front <input type="checkbox"/> 2) Rear <input type="checkbox"/> 3) Right Side <input type="checkbox"/> 4) Left Side <input type="checkbox"/> 5) Right Front <input type="checkbox"/> 6) Right Rear <input type="checkbox"/> 7) Left Front <input type="checkbox"/> 8) Left Rear <input type="checkbox"/> 9) Top <input type="checkbox"/> 10) Bottom <input type="checkbox"/> 11) Unknown <input type="checkbox"/> 12) Other	
Sequence Of Events					
Code #	Description	Collision With Fixed Object	Non-Human Event	Non-Motor Vehicle Action	
1st	202 PEDAL CYCLIST	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> 1) Straight <input type="checkbox"/> 2) Stopping <input type="checkbox"/> 3) Left Turn <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 6) Other	
2nd		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 7) Evolving <input type="checkbox"/> 8) Entering Lane <input type="checkbox"/> 9) Leaving Lane <input type="checkbox"/> 10) Lane Change <input type="checkbox"/> 11) Unknown	
3rd		<input type="checkbox"/>	<input type="checkbox"/>		
4th		<input type="checkbox"/>	<input type="checkbox"/>		
5th		<input type="checkbox"/>	<input type="checkbox"/>		
Non-Motorist Information					

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Andrew v CSC  
CF000111

CSC000111

R.App. 000036



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Event Number: 08-00812	STATE OF NEVADA TRAFFIC ACCIDENT REPORT	Accident Number:
		Agency Name: HENDERSON POLICE DEPARTMENT

Description of Accident / Narrative:

Pavement Markings and Type:

FBI NARRATIVE:

This is a preliminary report only; no assessment of fault or liability should be determined from this initial report.

V1, a white 2007 Ford F-150 pickup bearing NV personalized plate JSTD1LD was traveling eastbound on St. Rose Parkway in the number three travel lane.

V1 was solely occupied by the driver Michael Vasquez (10-28-1986) of Henderson NV.

V2, a black bicycle of an unknown brand or make, was traveling eastbound on the paved shoulder of St. Rose Parkway. It is as yet undetermined which portion of the shoulder the bicyclist was traveling upon or whether he had strayed into the travel lane.

The rider of V2 was later identified as Ryan T. Preiner (08-22-1971) of Las Vegas NV.

The right side external mirror of V1 made contact with the back of the helmet of rider of V2. V2 was thrown to the ground and suffered severe head injuries. Whether these injuries are the result of the initial collision or impact with the ground is undetermined at this time.

Driver of V1 immediately stopped to render aid and notify Rescue and Police.

Rider of V2 is currently in critical condition at UMC Trauma and his current prognosis is poor.

This case remains open and further investigation is pending.

Attachments: 1 witness statement

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HPD 0016

DR# 09-00812  
PAGE 1 OF 1

HENDERSON POLICE DEPARTMENT  
**TRAFFIC ACCIDENT STATEMENT**  
 REFER TO PM-1525

To be submitted to Police Records by the Investigating Officer(s)	
NAME: <u>Michael Vasquez</u>	DATE OF BIRTH: <u>10-28-1986</u>
ADDRESS: <u>1986 Via Firenze</u>	
TELEPHONE NUMBER(S): <u>702-755-2106</u>	
YEAR, MAKE AND MODEL OF VEHICLE: <u>White Ford F150</u>	LICENSE # <u>1J5W11D</u>
Where was witness in relation to accident (exact location): <u>DRIVER</u>	
DESCRIBE WHAT HAPPENED, GIVING DATE AND TIME, LOCATION, AND PEOPLE INVOLVED BY NAME* ***PLEASE DO NOT WRITE ON REVERSE SIDE, ASK OFFICER FOR ADDITIONAL STATEMENT FORM***	
<u>I was driving East down St Rose Parkway from Executive Rd</u> <u>I was going about 45-50 MPH and there was a biker</u> <u>riding his bike going the same direction with no reflectors</u> <u>and when I noticed him it was too late and I hit him.</u> <u>after I noticed the accident I stopped and called 911. I was</u> <u>driving in the 3rd lane and the biker must have been in</u> <u>my lane because as soon as I noticed him I already hit him.</u>	
<small>NRS 484.236, False Reports: Any person who gives information in oral or written reports as required in NRS Chapter 484, knowing or having reason to believe that such information is false, is guilty of a gross misdemeanor.</small>	
<u>[Signature]</u> WITNESSING OFFICER/PH	<u>[Signature]</u> SIGNATURE

HPD 0016

City of Henderson, NV

Revised: 01/02/2008

CSC000113

Andrew v CSC  
CF000113

R.App. 000038



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 Printed date/time: 3/24/09 12:58

## Incident Report

Page 1 of 4

HENDERSON POLICE  
 223 LEAD ST,  
 HENDERSON, NEVADA 89015

Incident Number: 09-00812-001

Incident Summary

Incident Type: ACCIDENT WITH INJURY	Report Type: SUPPLEMENTAL INCIDENT
Inc Occurred Address: ST ROSE PKWY, HENDERSON, NEVADA 89052	Section/Beat: WESTW7
Inc Occurred Start: 01/12/2009 17:22	Inc Occurred End: 01/12/2009 22:05
Domestic: N	Blas Motivation: U
Contact Nature: DISPATCHED	Gang Related: U
Reporting Officer: MATUSZAK JR., ROGER	Report Taken: 01/12/2009 21:20
Case Status: ACTIVE	Substance: U
Disposition: OPEN CASE	Reported Date/Time: 01/12/2009 17:24
	Primary Assigned Officer:
	Disposition Date: 01/13/2009 00:00

Property Involved

Property # 0001	Evidence: No
Event Assoc/Orig status: EVIDENCE	Original Status Date: 1/12/2009 21:20:00
Current Status: EVIDENCE	Original Value:
	Current Status Date: 1/12/2009 21:20:00
	Current Value:
Property Type:	
Description: BLACKBERRY, METALIC RING, HEART MONITOR, GLOVES, SOCKS, WATCH, SHOES, I	
Make/Brand:	Model:
Color:	Quantity: 1
Serial/Lot#:	Owner Applied#:
NCIC Date:	NCIC Reported By:
NCIC#:	NCIC Cancelled:

Property # 0002	Evidence: No
Event Assoc/Orig status: EVIDENCE	Original Status Date: 1/12/2009 21:20:00
Current Status: EVIDENCE	Original Value:
	Current Status Date: 1/12/2009 21:20:00
	Current Value:
Property Type:	
Description: WHITE AND GRAY COLORED HELMET GIRO BRAND NAME	
Make/Brand: GIRO	Model:
Color:	Quantity: 1
Serial/Lot#:	Owner Applied#:
NCIC Date:	NCIC Reported By:
NCIC#:	NCIC Cancelled:

Andrew v CSC  
 CF000114

CSC000114

R.App. 000039

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 Printed date/time: 3/24/09 12:50

## Incident Report

Page 2 of 4

HENDERSON POLICE  
 223 LEAD ST,  
 HENDERSON, NEVADA 89015

Incident Number: 09-00812-001

Narratives

ENTERED DATE/TIME: 1/12/2009 21:20:00

NARRATIVE TYPE: INCIDENT

SUBJECT: FBR NARRATIVE

AUTHOR: MATUSZAK JR., ROGER

On January 12, 2009, at approximately 1724 hours, I, Officer Avery P#1546, Officer Clear P#1387 and Officer Morrison P#1352 were dispatched to an accident near Executive Airport Drive on St. Rose Parkway. Dispatch advised a bicyclist was struck by a vehicle in the eastbound lane. The subject was unconscious and breathing. Also, dispatch reported the subject was bleeding from the mouth.

I arrived in the area and observed several vehicles parked on the shoulder of the road going east bound on St. Rose Parkway about 450 yards prior to the intersection of Executive Airport Drive.

I observed there was a moderate amount of traffic flow traveling east bound on St. Rose Parkway. I observed it to be dark outside with the only illumination coming from the street lights located at the intersection of St. Rose Parkway and Executive Airport Drive.

I observed a male subject (Later identified as Ryan Pretner 8-22-71) on the right hand shoulder on east bound St. Rose Parkway. I observed the bicycle Pretner was riding to be on top of him and a large (Approximately 3') pool of blood coming from Pretner's head area. I observed Pretner to be wearing a red, green and white colored bicycle type suit, and a white and gray colored bicycle helmet. I did not observe the bicycle to have a head light or tail light. I did not observe the suit Pretner was wearing to have any type of illumination devices to make it more readily visible. Pretner's body was positioned on the shoulder of the road with his head towards the south and his feet towards the north. His feet were in close proximity to the solid white line. It appeared Pretner had not been moved from the position he was in as a result of the accident.

I observed there was debris on the shoulder of the road from Vasquez's mirror and a pair of sunglasses belonging to Pretner.

I contacted the driver of the vehicle which struck Pretner, Michael Vasquez (10-28-86). Vasquez stated he had just gotten off work. Vasquez stated he was travelling in the #3 lane of travel and estimated his speed at about 45-50 MPH due to just turning onto St. Rose Parkway from Executive Airport Drive. Vasquez stated he was paying attention and did not observe Pretner riding his bicycle on the shoulder. Vasquez stated as soon as he observed Pretner, Vasquez swerved into the #2 east bound lane to avoid striking Pretner. Vasquez's passenger side mirror struck Vasquez in the back. Vasquez stated he pulled over to the side of the road and called 911 after he realized the vehicle Vasquez was driving struck Pretner.

I observed Vasquez's vehicle and observed the mirror to be broken which was consistent with Vasquez's statement. I observed the asphalt area and I did not observe any skid marks.

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## Incident Report

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 223 LEAD ST.  
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Incident Number: 09-00812-001

There were no independent witness identified at the scene who stated they observed the collision between Vasquez's vehicle and Pretner.

Henderson Fire Department, Rescue 87 arrived on scene and transported Pretner to University Medical Center (UMC) Trauma to treat his injuries.

I marked the final resting spot of Vasquez's tires as well as the sunglasses, and the bicycle Pretner was riding.

Officer Abreau P#1592 arrived at the scene and took digital photographs of the scene which he later uploaded onto digital evidence at the West Substation.

I then went to UMC and contacted a member of the medical team which was treating Pretner for his injuries. UMC staff directed me to where Pretner's personal belongings were, which I photographed and then impounded all property as evidence. Included with his personal belongings was the bicycle helmet that Pretner was wearing when I observed him on the roadway earlier.

I contacted Nina Daniels who works for Quest Diagnostics as a Laboratory Technician and requested a blood draw from Pretner. I obtained a blood draw kit from my bag. I opened the kit and observed there to be two glass vials inside which contained a white powdery substance. I gave the two vials to Daniels, who then obtained a blood draw from Pretner's left arm. Daniels then gave me the vials which I filled out and sealed closed with evidence tape. Daniels and I completed the Blood Draw Declaration which I submitted with the report.

I contacted Pretner's sister, Dana Andrew (9-7-74) who stated Pretner is an avid bicyclist who rides his bike daily for about 20-30 miles. Pretner was training for an upcoming bicycle race Pretner planned on racing in. Andrew stated Pretner's bike suit had reflective material in it but I did not observe any reflective material.

Prior to leaving the hospital, one of the team of doctors treating Pretner stated Pretner had bleeding in the brain. There was nothing internally crushed indicating Pretner was run over by the vehicle. The doctor advised the prognosis was not good for Pretner.

Later at the West Substation, I impounded Pretner's property into evidence. I uploaded the pictures I took onto digital evidence.

I then booked the blood draw at the Main Station.

While I was at UMC impounding Pretner's property, the Traffic Bureau was notified. The Traffic Bureau, (Officer Matuszak P#794) responded to the scene and assumed the investigation.

I contacted dispatch who advised the sunset time, according to the National Weather Service, for January 12.

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HENDERSON, NEVADA 89015

Incident Number: 09-00812-001

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2009 was 1647 hours.

The above events transpired in the City of Henderson, County of Clark, State of Nevada.

Attachments: 1

CO: Officer Matuszak P#794

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## Incident Report

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HENDERSON POLICE  
223 LEAD ST,  
HENDERSON, NEVADA 89015

Incident Number: 09-00812-002

### Incident Summary

Incident Type: ACCIDENT WITH INJURY	Report Type: SUPPLEMENTAL INCIDENT
Inc Occurred Address: ST ROSE PKWY, HENDERSON, NEVADA	Sector/Beat: WESTAV7
Inc Occurred Start: 01/12/2009 17:20	Inc Occurred End: 01/12/2009 17:21
Report Taken: 01/13/2009 23:45	Substance: U
Domestic: N	Bias Motivation:
Gang Related: U	Reported Date/Time: 01/12/2009 17:23
Contact Nature: DISPATCHED	Primary Assigned Officer:
Reporting Officer: CLEAR, JAIME	Disposition Date: 01/20/2009 09:00
Case Status: ACTIVE	Disposition: OPEN CASE

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## Incident Report

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HENDERSON POLICE  
223 LEAD ST,  
HENDERSON, NEVADA 89016

Incident Number: 09-00812-002

### Narratives

ENTERED DATE/TIME: 1/13/2009 23:45:00

NARRATIVE TYPE: INCIDENT

SUBJECT: FBR NARRATIVE

AUTHOR: CLEAR, JAIME

On 01/12/09 at approximately 1730 hours I, Officer J. Clear #1387 arrived in the area of St. Rose Parkway, east of Executive Airport, reference an injury accident.

When I arrived there was a male subject laying on the pavement in e/b lanes, partially in the #3 lane and partially on the shoulder. Henderson Paramedics already had the male subject on a backboard and quickly transported him to UMC hospital.

I questioned numerous bystanders that had stopped to render aid. No one that stopped saw any part of the accident. They all stated that as they drove up on the accident they saw the male subject laying next to his bike partially in the roadway.

I set up numerous cones and flares, holding the accident scene while the Motor's Unit completed their investigation.

cc: none

attach: 0

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## Incident Report

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HENDERSON POLICE  
 233 LEAD ST.  
 HENDERSON, NEVADA 89015

Incident Number: 09-00812-003

Incident Summary

Incident Type: ACCIDENT WITH INJURY	Report Type: SUPPLEMENTAL INCIDENT
Inc Occurred Address: ST ROSE PKWY, HENDERSON, NEVADA 89052	Sector/Beat: WEST/V8
Inc Occurred Start: 02/02/2009 10:29	Inc Occurred End: 02/02/2009 10:29
Domestic: N	Report Taken: 02/02/2009 10:29
Bias Motivation:	Substance: U
Contact Nature:	Gang Related: N
Reporting Officer: MATUSZAK JR., ROGER	Reported Date/Time:
Primary Assigned Officer:	
Case Status: CLOSED	Disposition Date: 02/03/2009 00:00
Disposition: ADULT ARREST, WARRANT OR CITATION	

Offenses

Statute Code: 484.324 Enhancers:  
 Statute Desc: FAIL TO YIELD RIGHT OF WAY TO PERSON RIDING BICYCLE-M  
 Counts: 1 Statute Severity: MISDEMEANOR

Persons Involved

Person#: 0001 Can ID Suspect: No  
 Event Association: QITED Contact Date/Time: 02/02/2009 00:00  
 Name: VASQUEZ, MICHAEL ANTHONY  
 DOB: 10/28/1986 Age: 22 - 22 Sex: MALE Race: HISPANIC  
 Height: 5'7" - 5'7" Weight: 152 - 152 lbs Eye Color: UNKNOWN Hair Color: BROWN  
 Address: 683 ELLIOT PEAK, LAS VEGAS, NEVADA 89123 Sector/Beat:  
 Phone Type 1: HOME Phone# 1: (702) 891-8975 Ext 1:  
 Phone Type 2: Phone# 2: Ext 2:  
 Occupation: BUSER Employer/School:

Person Offenses

Statute Code: 484.324 Enhancers:  
 Statute Desc: FAIL TO YIELD RIGHT OF WAY TO PERSON RIDING BICYCLE-M  
 Counts: 1



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## Incident Report

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HENDERSON POLICE  
223 LEAD ST,  
HENDERSON, NEVADA 89015

Incident Number: 09-00812-003

### Narratives

ENTERED DATE/TIME: 2/2/2009 10:29:00

NARRATIVE TYPE: INCIDENT

SUBJECT: FBR NARRATIVE

AUTHOR: MATUSZAK JR., ROGER

#### ImFACTS:

WEATHER CONDITIONS WERE OBTAINED FROM THE NATIONAL WEATHER SERVICE AT  
HENDERSON EXECUTIVE AIRPORT.

READING AT: 1740 HRS

TEMPERATURE: 61 DEGREES

HUMIDITY: 24%

WIND VELOCITY: NE at 12 MPH

BAROMETRIC PRESSURE: 27.7 8

VISIBILITY: 10 Miles +

SKIES: Clear

#### ROADWAY:

The collision occurred on St. Rose Parkway approximately 1340' east of the intersection with Executive Airport Drive. The collision was on the right side edge of the roadway.

St. Rose Parkway at the location of this collision is an asphalt surfaced roadway. The roadway is relatively straight and level with no line of sight obstructions in either direction of travel. This roadway runs in a primarily east to west direction.

It is best described as a two-way multi lane highway with an unprotected median separating eastbound from westbound traffic. There are three travel lanes on the eastbound portion of the roadway and three through lanes and the beginning of a left turn lane in the westbound direction. For the purposes of this investigation the westbound travel lanes do not bear. There is a paved shoulder on the right (south) side of the road and a smaller paved shoulder on the left (north) side of the road. For specific dimensions see the narrative portion of this report.

There is no curbing on either the north or south side of the roadway and the edge of pavement runs off level to the roadway with the side of the road being groomed hard packed sand and gravel. B

#### TRAFFIC CONTROL:

St. Rose Parkway is a posted 55 MPH speed zone. There are raised markers separating the travel lanes. The right side of the road is delineated by a solid white line painted onto the roadway surface. The left side of the roadway is delineated by a solid yellow line painted onto the road surface. There is no additional control of the roadway in the area of the collision. □

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## Incident Report

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 223 LEAD ST,  
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Incident Number: 09-00812-003

## PHYSICAL EVIDENCE:

The scene of the accident was diagrammed using a Leica GPS Smart Rover data collector. The information from this device was downloaded into Crash Zone 8.5, a CAD program used to complete a diagram of the scene.

Digital photographs of the scene were taken by Crime Scene Analyst Patrick Farrell of the Henderson Police Department. These photographs were later downloaded into the DESS (Digital Evidence Storage System).

Officer K. Avery responded to University Medical Center Trauma where he took digital photographs of the victim's personal effects and obtained a blood sample from the victim for later testing. The results of this blood test are pending. See Officer Avery's supplemental report for specific details.

The clothing of the victim, to include his helmet and shoes, was impounded as well as his cell phone and a silver metal ring. These items were impounded by Officer Avery.

The bicycle and sunglasses of the victim were impounded by the reporting Officer.

## VEHICLES:

Vehicle 1, hereafter referred to as V1, is a white 2007 Ford F-150 Crew Cab Pickup truck bearing NV license plate JSTD7LD, VIN 1FTPW14527KD22209.

Vehicle 2, hereafter referred to as V2, is a black Orbea Orca bicycle with a serial number of SNMAT8D0D0366.

## OCCUPANTS:

V1 was solely occupied by the driver, Michael Anthony Vasquez (10-28-1986) of 1886 Via Firenze Drive Henderson, NV 89044. Michael Vasquez has a valid class C NV driver license # 1701672805.

V2 was being operated by Ryan Terry Pretner (08-22-1971) of 880 Roddenberry Las Vegas NV 89123. n

## II. STATEMENTS:

The following statement is transcribed in its entirety without regard to spelling or grammatical errors so as not to alter the meaning and intent of its author:

Michael Vasquez

I was driving East down St Rose Parkway from Executive Rd I was going about 45 -50 mph and there was a biker riding his bike going the same direction with no reflectors and when I noticed him it was to late and I hit him. After I noticed the accident I stopped and called 911. I was driving in the 3rd lane and the biker must of been in my lane because as soon as I noticed him I already hit him.

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## III. NARRATIVE:

On 01-12-2009, at approximately 1815 hours, I, Officer R. Matuszak #794, was called out from my residence in reference to a serious injury accident that had occurred on eastbound St. Rose Parkway just east of Executive Airport Drive in the City of Henderson.

Upon my arrival in the area I noted that the two right most (#2 and #3) travel lanes of eastbound St. Rose Parkway just east of Executive Airport Drive had been closed to traffic by several Police Patrol units using cones and flares. I noted that parked along side the roadway approximately 300' east of the immediate scene was a white truck. There was a bicycle lying on its left side on the shoulder of the roadway in the immediate vicinity of the Police Units.

I spoke to Sgt. R. Rysewyk and Officer J. Clear who were among the first units to arrive. They advised me that the rider of the bicycle had been transported to University Medical Center Trauma unit for a severe head injury. Officer K. Avery responded to the Trauma Center where he took photographs of the victim and impounded the victim's clothing, helmet and personal items. Officer Avery also obtained a blood sample from the victim for processing.

I walked the scene of the accident and observed the following; on the south side of the roadway near the white fog line there was a black bicycle (V2) lying on its left side with the front wheel pointing south. Just east of V2 there was a large pool of blood from the victim. This was approximately 4' from the position of the bicycle.

Immediately east of the blood pool, there was a pair of white sunglasses presumably belonging to the victim. These were near the edge of pavement. Also, from this point and continuing east-southeast, was a debris field made up of several pieces of plastic and glass from the outside right mirror of V1; see photographs for specific locations and details of the debris.

Approximately 275' further east of this area, I observed V1 was stopped and parked on the south shoulder of St. Rose Parkway. The vehicle's lights were out and the vehicle was not running. I conducted a brief exterior examination of the vehicle and noted the following. The right outside mirror was broken off and parts of the base and mounting assembly were still attached to the truck. There was an impression on the right side front window of V1 which appeared to be from the outside mirror striking the side window with a significant amount of force sufficient to leave an impression in the glass and embed parts of the mirror into the glass as well.

I observed minor scuffs to the right front door of V1 which were black in color. There was a small scratch congruent to a body line on the right rear door of V1 and a small scratch and dent on the same door lower down.

On the front bumper I observed a small gouge in the plastic bodywork just below the bumper. This damage appeared to be older and unrelated to the collision which I was investigating. In a later conversation with Michael Vasquez, I learned that this was from road debris on a previous date. There was no corresponding damage or scuffing to the undercarriage of V1. The damage to V2 was inconsistent to this damage.

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Additionally I noted that the front side windows of V1 appeared to have an extremely dark tint applied. I was later able to measure the window tint as 02%. Refer to NRS 484.6195 for specifics, but paraphrased it states that the front side windows may have a tint of 35% with a plus or minus of 07%. Michael advised that the vehicle was purchased with the tint as-is from the dealer.

Examination of the right side tires and undercarriage of V1 were inconclusive in that there was no evidence of damage or collision with another object.

CSA Patrick Farrell was on scene taking digital photographs of the scene and the vehicles involved. He later downloaded these photographs into the HPD DESS.

I then examined V2 more closely and noted that the right side of the bicycle was undamaged and appeared to be intact. I inspected the tires looking for any scuffing or other indication that the bicycle itself had been struck and there was no such evidence. I then righted the bicycle and examined the left side. I observed that the saddle had a scuff on the left rear quarter. There was a small abrasion to the front brake padding/hand support on the left handlebar. There was a small scratch to the left pedal and several small scratches to the left rear wheel axle bolt. There was no other damage noted.

I then looked for safety devices on the bicycle; i.e. reflectors or lighting equipment and there was none affixed to the bicycle whatsoever. The bicycle itself is constructed of what appears to be carbon fiber and there are no reflective surfaces on the bicycle.

Sgt. J. O'Neill who is assigned to the traffic bureau diagrammed the scene using a Leica GPS Smart Rover. I later downloaded this data to Crash Zone 8.5 and with this information I created a scene diagram which is attached to this report.

I spoke to the driver of V1 who remained at the scene and was accompanied by his mother during my interview with him. Officer R. Galbraith who was also on scene was with me when I spoke to Michael Vasquez. Vasquez had verbally identified himself as he did not have his driver license in his possession. It was later confirmed that Michael has a valid class C NV driver license.

I explained to Michael Vasquez that he was not under arrest and that at this time there were no charges pending against either of the involved. I asked him if he would be willing to answer questions in regard to the accident and he consented. I specifically asked him questions pertaining to what his destination was and he stated that he was on his way to his Uncle's home coming from his house. I asked Michael if he had been drinking or taking any drugs either illicit or prescription and he stated that he did not. I asked if he was currently under the care of a dentist or physician and he stated that he was not. I asked when he had slept last and he stated that he had slept the prior evening and gotten a full night sleep. I inquired as to whether Michael required corrective lenses for either reading or driving and he stated that he did not.

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Incident Number: 09-00812-003

In speaking to Vasquez, I noted that he was completely lucid and understood all my questions. His eyes were clear and he gave no outward indications of being under the influence of either drugs or alcohol. His mannerisms and actions at the scene were that of a concerned individual and he repeatedly asked the condition of the victim. I advised him that I had no further information other than that the victim was currently undergoing medical treatment and I had no prognosis.

Michael stated that he had been on his way to his Uncle's house and had just made a right turn from northbound Executive Airport Drive onto St. Rosa Parkway into the furthest right eastbound lane. Michael said that there was no traffic moving his direction and that there were no other cars around him when he made his turn.

Vasquez said that he continued travelling eastbound in the right most lane and he saw no one on the roadway at the time. He said that his headlamps were on and that they were set to Automatic which was later verified. I also checked to see that the automatic setting was operative and it was. Michael said that he heard a loud noise on his right side which was when he simultaneously saw the bicyclist and struck him. He immediately commented that he saw no lights or reflectors on the bicycle and that it was dark out at the time of the collision.

Michael said he immediately pulled over to the right side of the roadway and saw the bicyclist lying on the shoulder of the road and called 911.

I spoke to Officer J. Clear who was among the first arriving units and asked her what the lighting conditions were. She stated that she had arrived and that her headlights were not on. She further said that though there was no direct sunlight there was sufficient ambient lighting to see a considerable distance.

I called the National Weather Service and verified that sunset on January 12th 2009 was at 1647 hours. Based upon the time of the collision, V2 should have been equipped with reflectors and lights as required by NRS 484.513 and the time requirements as outlined in NRS 484.545.

V1 was released at the scene to the driver, Michael Vasquez. V2 was impounded for safekeeping as the victim's identity was unknown at that time.

I later received a phone call from Officer Avery who advised that he had been contacted by a person identifying themselves as the sister of the victim rider. Dana Andrew said that the victim was her brother, Ryan Terry Pretner (08-22-1971). From Andrew, Officer Avery was able to provide all the personal information regarding the victim.

Officer Avery then met me at the Henderson Police Department West Substation where I was able to examine the clothing and other items belonging to Pretner. I first examined the helmet which was taken to the hospital with the victim by HFD Rescue. The helmet was a light colored helmet with what appeared to be damage to the back portion of the helmet. There were no reflective devices affixed to the helmet.

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The clothing worn by the victim was a multi-colored bicycling jersey and garment combining both shorts and a tank top type upper garment. There was a zip-up jacket of the same material and color. These items appear to have been cut from the victim by HFD Rescue. The clothing consisted of a white background with broad red and green stripes covering the garment along with various logos. This garment is typical of those worn by bicycling enthusiasts. Digital photographs were taken of the garment using a flash. There was no reflective material on any portion of the garment.

I then examined the shoes worn by the rider. These were clip-on type shoes designed to be used with special pedals affixed to the bicycle. The shoes had two small reflective squares on the heel portion of the shoe and were each approximately 3/16" square. The squares were placed vertically on the heel of each shoe. There was also a blackberry phone and a silver metal ring. All these items were impounded for evidentiary and safekeeping purposes.

As of the time of this report, Pretner is still listed in critical condition in the Trauma ICU at UMC. His injuries are listed as severe head trauma with internal bleeding and swelling of the brain. His condition has remained unchanged for the time since his initial treatment and surgery to relieve the pressure and swelling. There is some brain activity and medical staff is hopeful that he may regain consciousness but are unable to provide a time-line for the patient due to the uncertain nature of head injuries.

On 02-02-2009 I again met with

Michael Vasquez where he was cited for Failing to Yield Right of Way to a Bicyclist; a misdemeanor violation of NRS 484.324. Citation number H-106730-A.

## IV.a CALCULATIONS:

Due to the nature of this collision I am unable to conduct speed workups. There is insufficient physical evidence to make any accurate calculations; and any estimates as to the speed of the vehicles involved would be merely conjecture on my part.

## V.n VEHICLE DISPOSITION:

V1 was released to Michael Vasquez at the scene.

V2 is currently impounded in the HPD Evidence Vault for safekeeping.

□

## VI.e CONCLUSION:

V2 was travelling eastbound on St. Rose Parkway on or near the white fog line on the south side of the roadway. Per NRS 484.509 V2 was operating his bicycle in a manner consistent to that described in the NRS specifically NRS 484.509-1.

V1 was traveling eastbound on St. Rose Parkway in the number 3 travel lane. At a point approximately 1340' east of Executive Airport Drive, the driver of V1 struck the rider of V2 with the outside right mirror of V1 causing

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Incident Number: 09-00812-003

substantial bodily harm to the rider of V2.

Pursuant to NRS 464.324 subsections 1(b) and 4(a), driver of V1 did not operate his vehicle in a manner to ensure the safety of the bicyclist.

## Contributing Factors:

There was an insignificant amount of reflective material on the rider of V2 as well as V2 itself.

V1 had extremely dark tinting on the front side windows, later measured at 02%.

Lighting conditions were deteriorating at the time of the collision as the sun had set at 1647 hours though some ambient light was still available.

## VII.2 ASSISTING UNITS ON SCENE:

Unit arrival time in parenthesis \* denotes traffic unit

## HPD UNITS

Ofc L. Morrison (1730) Ofc J. Clear (1730) Ofc A. Abreau (1732)  
 Ofc K. Avery (1752) Sgt R. Rysewyk (1737) CSA P. Farrell (1820)  
 Ofc R. Matuszak\* (1640) Sgt T. O'Neill\* (1851) Ofc R. Galbraith\* (1855)

## HPD UNITS

Unit arrival time in parenthesis

Battalion 9 (1729) Rescue 97 (1729) REngine 95 (1730)

## VIII. APPLICABLE NEVADA REVISED STATUTES CITED IN ABOVE TEXT

"It should be noted that these Statutes are copied from the Nevada Law Library Website: " <http://www.leg.state.nv.us/lew1.cfm>

NRS 464.145 "Roadway" defined. "Roadway" means that portion of a highway which is improved and ordinarily used for vehicular traffic, exclusive of the shoulder.

(Added to NRS by 1973, 448)

## NRS 464.324 Vehicles and bicycles.

1. The driver of a motor vehicle shall not:

(a) Intentionally interfere with the movement of a person lawfully riding a bicycle, or

(b) Overtake and pass a person riding a bicycle unless he can do so safely without endangering the person riding the bicycle.

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2. The driver of a motor vehicle shall yield the right-of-way to any person riding a bicycle on the pathway or lane. The driver of a motor vehicle shall not enter, stop, stand, park or drive within a pathway or lane provided for bicycles except:

- (a) When entering or exiting an alley or driveway;
- (b) When operating or parking a disabled vehicle;
- (c) To avoid conflict with other traffic;
- (d) In the performance of official duties;
- (e) In compliance with the directions of a police officer; or
- (f) In an emergency.

3. Except as otherwise provided in subsection 2, the driver of a motor vehicle shall not enter or proceed through an intersection while driving within a pathway or lane provided for bicycles.

4. The driver of a motor vehicle shall:

- (a) Exercise due care to avoid a collision with a person riding a bicycle; and
- (b) Give an audible warning with the horn of the vehicle if appropriate and when necessary to avoid such a collision.

5. The operator of a bicycle shall not:

- (a) Intentionally interfere with the movement of a motor vehicle; or
- (b) Overtake and pass a motor vehicle unless he can do so safely without endangering himself or the occupants of the motor vehicle.

(Added to NRS by 1991, 2226; A 1997, 730; 1999, 1664)

NRS 484.503. Traffic laws apply to person riding bicycle. Every person riding a bicycle upon a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle except as otherwise provided in NRS 484.504 to 484.513, inclusive, and except as to those provisions of this chapter which by their nature can have no application.

(Added to NRS by 1957, 504; A 1997, 1728)

NRS 484.509. Operating bicycle on roadway.

1. Every person operating a bicycle upon a roadway shall, except:

- (a) When travelling at a lawful rate of speed commensurate with the speed of any nearby traffic;
- (b) When preparing to turn left; or
- (c) When doing so would not be safe.

He shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

2. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(Added to NRS by 1957, 504; A 1991, 2229)

NRS 484.513. Lamps, reflectors and brakes required on bicycles.

1. Every bicycle when in use at night must be equipped with:

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CSC000128

R.App. 000053

03/03/2011 13:54

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PRINCE KEATING LLP

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Printed date/time: 3/24/09 12:59

## Incident Report

Page 10 of 10

HENDERSON POLICE  
223 LEAD ST,  
HENDERSON, NEVADA 89015

Incident Number: 09-00812-003

- (a) A lamp on the front which emits a white light visible from a distance of at least 500 feet to the front;
  - (b) A red reflector on the rear of a type approved by the Department which must be visible from 50 feet to 300 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle; and
  - (c) Reflective material of a sufficient size and reflectivity to be visible from both sides of the bicycle for 600 feet when directly in front of the lawful lower beams of the head lamps of a motor vehicle, or in lieu of such material, a lighted lamp visible from both sides from a distance of at least 500 feet.
2. Every bicycle must be equipped with a brake which will enable the operator to make the wheels skid on dry, level, clean pavement.

(Added to NRS by 1957, 505; A 1961, 136; 1975, 30; 1985, 1464, 1952; 1991, 2229)

NRS 484.545 When lighted lamps are required.

1. Every vehicle upon a highway of this State, subject to exceptions with respect to parked vehicles as stated in this chapter, must display lighted lamps and illuminating devices as respectively required in this chapter for different classes of vehicles:

- (a) At any time from one-half hour after sunset to one-half hour before sunrise;
- (b) At any other time when, because of insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of 1,000 feet ahead; and
- (c) When directed by an official traffic control device.

2. Every vehicle upon a highway must be equipped with stop lights, turn signals and other signaling devices to be lighted in the manner prescribed for the use of such devices.

[Part 6:166;1925; A 1939, 316; 1945, 268; 1955, 40]-NRS A 1969, 1211; 2001, 1507)

### CASE DISPOSITION:

This case is closed by adult citation # H-106730-A.

CC: DCA

Attachments: Scene Diagram

□

CSC000129

Andrew v CSC  
CF000129

R.App. 000054

## **EXHIBIT “2”**

## **EXHIBIT “2”**



# Century Surety Company

465 Cleveland Avenue  
Westerville, Ohio 43082

614-895-2000  
www.centurysurety.com

## COMMERCIAL LINES POLICY COMMON POLICY DECLARATIONS

**POLICY NO.:** CCP502869

**NAMED INSURED AND ADDRESS:**

BLUE STREAK AUTO DETAILING

3675 E POST RD  
SUITE B  
LAS VEGAS

NV 89120

**NEW**

**CODE NO.:** 5718A

**INSUREDS AGENT:**

THE HARRIS AGENCY

5105 S DURANGO DR  
SUITE 100  
LAS VEGAS

NV 89113

**POLICY PERIOD:** From: 06/27/2008 To: 06/27/2009 at 12:01 A.M. Standard time at your mailing address shown above.

**Business Description:** AUTO DETAILING AND WASH

Individual Joint Venture Partnership Limited Liability Company (LLC) X Organization (Other than Partnership, LLC or Joint Venture)

**IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.**

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.**

	<b>PREMIUM</b>
GARAGE COVERAGE FORM	\$ 1,508.00

25 % of the Policy Premium is fully earned as of the effective date of this policy and is not subject to return or refund. TOTAL \$ 1,508.00

Service of Suit (if form CCP 20 10 is attached) may be made upon:

HERITAGE GENERAL AGENCY INSURANCE SERVICES

ERNST & YOUNG BLDG, 725 S FIGUEROA ST, 19 FL, LOS ANGELES, CA 90017

Form(s) and Endorsement(s) made a part of this policy at time of issue\*:

SEE ATTACHED SCHEDULE OF FORMS: CIL 15 00b 02 02

\*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing false or deceptive statement is guilty of insurance fraud.

**COMPANY REPRESENTATIVE:**

HERITAGE GENERAL AGENCY INSURANCE SVCS

THE ERNST & YOUNG BLDG

725 S FIGUEROA ST, 19TH FLOOR

LOS ANGELES

CA 90017

Countersigned By \_\_\_\_\_

Authorized Representative

07/24/2008 TLH

**IN WITNESS WHEREOF,** this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly Authorized Agent of this Company at the Agency hereinbefore mentioned.

Secretary

President

CSCP 10 01 03 06

COMPANY

Andrew v CSC  
POL000001

CSC000229

R.App. 000056

# Century Surety Company

## Garage Coverage Form Declarations

### ITEM ONE

POLICY NO.: CCP502869

EFFECTIVE DATE: 06/27/2008  
12:01A.M. Standard Time

NAMED INSURED: BLUE STREAK AUTO DETAILING

### ITEM TWO

#### SCHEDULE OF COVERAGES AND COVERED AUTOS

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the Covered Autos Section of the Garage Coverage Form next to the name of the coverage. Entry of a symbol next to Liability provides coverage for "garage operations".

COVERAGES	COVERED AUTOS (Entry of one or more of the symbols from the Covered Autos Section of the Garage Coverage Form shows which autos are covered autos.)	LIMIT			PREMIUM
LIABILITY	29	Each "Accident" "Garage Operations"		Aggregate -- "Garage Operations"	\$ 1,508
		"Auto" Only	Other Than "Auto" Only	Other Than "Auto" Only	
		\$ 1,000,000	\$ 1,000,000	\$ 2,000,000	
PERSONAL INJURY PROTECTION (or equivalent No-fault Coverage)		SEPARATELY STATED IN EACH P.I.P. ENDORSEMENT MINUS \$ DED.			\$
ADDED PERSONAL INJURY PROTECTION (or equivalent Added No-fault Coverage)		SEPARATELY STATED IN EACH ADDED P.I.P. ENDORSEMENT.			\$
PROPERTY PROTECTION INSURANCE (Michigan only)		SEPARATELY STATED IN THE P.P.I. ENDORSEMENT MINUS \$ DED. FOR EACH ACCIDENT.			\$
MEDICAL PAYMENTS		\$			\$
MEDICAL EXPENSE AND INCOME LOSS BENEFITS (Virginia only)		SEPARATELY STATED IN EACH MEDICAL EXPENSE AND INCOME LOSS BENEFITS ENDORSEMENT			\$
UNINSURED MOTORISTS		\$			\$
UNDERINSURED MOTORISTS (When not included in Uninsured Motorists Coverage)		\$			\$
GARAGEKEEPERS COMPREHENSIVE COVERAGE		\$ EACH LOCATION MINUS \$ DED. FOR EACH CUSTOMER'S AUTO FOR LOSS CAUSED BY THEFT OR MISCHIEF OR VANDALISM SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT;			\$
GARAGEKEEPERS SPECIFIED CAUSES OF LOSS COVERAGE		OR \$ EACH LOCATION MINUS \$ DED. FOR EACH CUSTOMER'S AUTO FOR ALL PERILS SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT			\$

POLICY NUMBER: CCP502869ITEM TWO

## SCHEDULE OF COVERAGES AND COVERED AUTOS (Cont'd)

COVERAGES	COVERED AUTOS (Entry of one or more of the symbols from the Covered Autos Section of the Garage Coverage Form shows which autos are covered autos.)	LIMIT	PREMIUM
GARAGEKEEPERS COLLISION COVERAGE		\$ EACH LOCATION MINUS \$ DED. FOR EACH COVERED AUTO.	\$
PHYSICAL DAMAGE COMPREHENSIVE COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO, BUT NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING. See Supplementary Schedule For Dealers "Autos" And "Autos" Held For Sale By Trailer Dealers And Non-Dealers.	\$
PHYSICAL DAMAGE SPECIFIED CAUSES OF LOSS COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM. See Supplementary Schedule For Dealers "Autos" And "Autos" Held For Sale By Trailer Dealers And Non-Dealers.	\$
PHYSICAL DAMAGE COLLISION COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO. See Supplementary Schedule For Dealers "Autos" And "Autos" Held For Sale By Trailer Dealers And Non-Dealers.	\$
PHYSICAL DAMAGE TOWING AND LABOR		\$ For Each Disablement Of A Private Passenger "Auto".	\$
			\$
		PREMIUM FOR ENDORSEMENTS	\$
		TRIA COVERAGE	\$
		* ESTIMATED TOTAL PREMIUM	\$ 1,508

\* This policy may be subject to final audit.

ENDORSEMENTS ATTACHED TO THIS POLICY (other than applicable Forms and Endorsements shown elsewhere in the policy):

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:

THIS DECLARATION MUST BE COMPLETED BY THE ATTACHMENT OF A SUPPLEMENTARY SCHEDULE.

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POL000003

CSC000231

R.App. 000058

POLICY NUMBER: CCP502869

COMMERCIAL AUTO  
CA 03 01 03 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DEDUCTIBLE LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<b>Named Insured:</b> BLUE STREAK AUTO DETAILING
<b>Endorsement Effective Date:</b> 06/27/2008
<b>Countersignature Of Authorized Representative</b>
<b>Name:</b> Not Applicable
<b>Title:</b> Not Applicable
<b>Signature:</b> Not Applicable
<b>Date:</b> Not Applicable

**SCHEDULE**

Liability Deductible:	\$	1,000	Per "Accident"
"Property Damage" Deductible:	\$		Per "Accident"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

Liability Coverage is changed as follows:

**A. Liability Coverage Deductible**

The damages caused in any one "accident" that would otherwise be payable under Liability Coverage will be reduced by the Liability Deductible shown in the Schedule prior to the application of the Limit of Insurance provision.

**B. Property Damage Liability Coverage Deductible**

The damages that would otherwise be payable under Liability Coverage for "property damage" caused in any one "accident" will be reduced by the "Property Damage" Deductible shown in the Schedule prior to the application of the Limit of Insurance provision.

CA 03 01 03 06

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POL000004

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**C. Our Right To Reimbursement**

To settle any claim or "suit" we may pay all or any part of any deductible shown in the Schedule. If this happens, you must reimburse us for the deductible or the part of the deductible we paid.

CAG 1919 0807

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## GARAGE OPERATIONS LIMITATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

**GARAGE COVERAGE FORM**

### SCHEDULE

The following work and operations are included within the definition of "Garage operations":

AUTO DETAILING AND WASH

Coverage for classifications, operations or premises not shown above can only be covered if agreed to, in writing, by us as evidenced by endorsement to this policy.

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POL000006

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## GARAGE COVERAGE FORM – NON-DEALERS' AND TRAILER DEALERS' SUPPLEMENTARY SCHEDULE

POLICY NUMBER: CCF502869

**ITEM THREE****LOCATIONS WHERE YOU CONDUCT GARAGE OPERATIONS**

LOCATION NO.	ADDRESS State Your Main Business Location As Location No. 1.
1	3675 E POST RD, STE B, LAS VEGAS, NV 89120
2	
3	

**ITEM FOUR**

LIABILITY COVERAGE – PAYROLL RATING BASIS FOR YOUR PREMISES AND OPERATIONS AND NONOWNED AUTOS USED IN YOUR BUSINESS. REFER TO ITEM SIX FOR THE LIABILITY PREMIUMS FOR THE COVERED AUTOS YOU HIRE OR BORROW. REFER TO ITEM SEVEN FOR COVERED AUTOS YOU OWN.

LOCATION NO.	ESTIMATED PAYROLL	RATE PER \$100 OF PAYROLL	PREMIUM
1	\$ 10,400	\$ 14.499	\$ 1,508
2	\$	\$	\$
3	\$	\$	\$
TOTAL PREMIUM			\$ 1,508

**ITEM FIVE****GARAGEKEEPERS COVERAGES AND PREMIUMS**

Location No.	Coverages	Limit Of Insurance For Each Location (Absence of a limit or deductible below means that the corresponding ITEM TWO limit or deductible applies.)
1	Comprehensive	\$ MINUS \$ DEDUCTIBLE FOR EACH CUSTOMER'S AUTO FOR LOSS CAUSED BY THEFT OR MISCHIEF OR VANDALISM SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT; OR
	Specified Causes Of Loss	\$ MINUS \$ DEDUCTIBLE FOR ALL PERILS SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT.
	Collision	\$ MINUS \$ DEDUCTIBLE FOR EACH CUSTOMER'S AUTO.
2	Comprehensive	\$ MINUS \$ DEDUCTIBLE FOR EACH CUSTOMER'S AUTO FOR LOSS CAUSED BY THEFT OR MISCHIEF OR VANDALISM SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT; OR
	Specified Causes Of Loss	\$ MINUS \$ DEDUCTIBLE FOR ALL PERILS SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT.
	Collision	\$ MINUS \$ DEDUCTIBLE FOR EACH CUSTOMER'S AUTO.

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POLICY NUMBER: CCP502869**ITEM FIVE (Cont'd)**

3	Comprehensive	\$	MINUS \$	DEDUCTIBLE FOR EACH CUSTOMER'S AUTO FOR LOSS CAUSED BY THEFT OR MISCHIEF OR VANDALISM SUBJECT TO MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT; OR
	Specified Causes Of Loss	\$	MINUS \$	DEDUCTIBLE FOR ALL PERILS SUBJECT TO MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT.
	Collision	\$	MINUS \$	DEDUCTIBLE FOR EACH CUSTOMER'S AUTO.

**PREMIUM FOR ALL LOCATIONS**

Comprehensive	\$
Specified Causes Of Loss	\$
Collision	\$

**DIRECT COVERAGE OPTIONS**

Indicate below with an "X" which, if any, Direct Coverage Option is selected.

☐ **EXCESS INSURANCE**

If this box is checked, Garagekeepers Coverage remains applicable on a legal liability basis. However, coverage also applies without regard to your or any other "insured's" legal liability for "loss" to a "customer's auto" on an excess basis over any other collectible insurance regardless of whether the other insurance covers your or any other "insured's" interest or the interest of the "customer's auto's" owner.

☐ **PRIMARY INSURANCE**

If this box is checked, Garagekeepers Coverage is changed to apply without regard to your or any other "insured's" legal liability for "loss" to a "customer's auto" and is primary insurance.

**ITEM SIX****SCHEDULE OF HIRED OR BORROWED COVERED AUTO COVERAGE AND PREMIUMS**

LIABILITY COVERAGE - RATING BASIS, COST OF HIRE				
STATE	ESTIMATED COST OF HIRE FOR EACH STATE	RATE PER EACH \$100 COST OF HIRE	FACTOR (If Liability Coverage Is Primary)	PREMIUM
	\$	\$		\$
TOTAL PREMIUM				\$

Cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners or "employees" or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

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POLICY NUMBER: CCP502869

## PHYSICAL DAMAGE COVERAGE

COVERAGES	LIMIT OF INSURANCE THE MOST WE WILL PAY DEDUCTIBLE	ESTIMATED ANNUAL COST OF HIRE	RATE PER EACH \$100 ANNUAL COST OF HIRE	PREMIUM
COMPREHENSIVE	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO, BUT NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING.	\$	\$	\$
SPECIFIED CAUSES OF LOSS	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM.	\$	\$	\$
COLLISION	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO.	\$	\$	\$
TOTAL PREMIUM				\$

## ITEM SEVEN

## SCHEDULE OF COVERED AUTOS YOU OWN

Covered Auto No.	DESCRIPTION			PURCHASED				TERRITORY	
	Year, Model, Trade Name, Body Type Serial Number (S) Vehicle Identification Number (VIN)			Original Cost New		Actual Cost & NEW (N) USED (U)		Town & State Where The Covered Auto Will Be Principally Garaged	
1				\$		\$			
2				\$		\$			
3				\$		\$			
4				\$		\$			
5				\$		\$			
Covered Auto No.	CLASSIFICATION								
	Radius Of Operation	Business Use s= service r= retail c= commercial	Size GVW, GCW Or Vehicle Seating Capacity	Age Group	Primary Rating Factor		Secondary Rating Factor	Code	EXCEPT For Towing, All Physical Damage Loss Is Payable To You And The Loss Payee Named Below As Interests May Appear At The Time Of The Loss.
					Liab.	Phy. Dam.			
1									
2									
3									
4									
5									

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POLICY NUMBER: CCP502869**ITEM SEVEN****SCHEDULE OF COVERED AUTOS YOU OWN (Cont'd)**

Covered Auto No.	COVERAGES – PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)						
	LIABILITY		PERSONAL INJURY PROTECTION		ADDED P.I.P.	PROPERTY PROTECTION (Michigan Only)	
	Limit	Premium	Limit Stated In Each P.I.P. End. Minus Deductible Show n Below	Premium	Limit Stated In Each Added P.I.P. End. Premium	Limit Stated In P.I.P. End. Minus Deductible Show n Below	Premium
1	\$	\$	\$	\$	\$	\$	\$
2	\$	\$	\$	\$	\$	\$	\$
3	\$	\$	\$	\$	\$	\$	\$
4	\$	\$	\$	\$	\$	\$	\$
5	\$	\$	\$	\$	\$	\$	\$
Total Premium		\$		\$	\$		\$

Covered Auto No.	COVERAGES – PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)					
	AUTO MEDICAL PAYMENTS		COMPREHENSIVE		SPECIFIED CAUSES OF LOSS	
	Limit	Premium	Limit Stated In ITEM TWO Minus Deductible Show n Below	Premium	Limit Stated In ITEM TWO Minus Deductible Show n Below	Premium
1	\$	\$	\$	\$	\$	\$
2	\$	\$	\$	\$	\$	\$
3	\$	\$	\$	\$	\$	\$
4	\$	\$	\$	\$	\$	\$
5	\$	\$	\$	\$	\$	\$
Total Premium		\$		\$		\$

Covered Auto No.	COVERAGES – PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)			
	COLLISION		TOWING & LABOR	
	Limit Stated In ITEM TWO Minus Deductible Show n Below	Premium	Limit Per Disablement	Premium
1	\$	\$	\$	\$
2	\$	\$	\$	\$
3	\$	\$	\$	\$
4	\$	\$	\$	\$
5	\$	\$	\$	\$
Total Premium		\$		\$

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POL000010

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POLICY NUMBER: CCP502869**ITEM EIGHT**

**MEDICAL PAYMENTS COVERAGE – PREMISES AND OPERATIONS – NONOWNED AUTOS USED IN YOUR BUSINESS (REFER TO ITEM SEVEN FOR MEDICAL PAYMENTS PREMIUMS FOR COVERED AUTOS YOU OWN.)**

COVERAGE	PREMIUM DETERMINATION	PREMIUM
Auto Medical Payments Only	Auto Medical Payments Premium equals % of the Liability Premium.	\$
Premises and Operations Medical Payments (Does not apply to bodily injury caused by any auto)	Premises and Operations Medical Payments Premium equals % of the Liability Premium.	\$
Premises and Operations and Auto Medical Payments	Premises and Operations and Auto Medical Payments Premium equals % of the Liability Premium.	\$

**ITEM NINE**

**PHYSICAL DAMAGE COVERAGE – AUTOS HELD FOR SALE – TYPES OF COVERED AUTOS AND INTERESTS IN THESE AUTOS – PREMIUMS – REPORTING OR NONREPORTING BASIS**

The Physical Damage Coverage provisions of the Garage Coverage Form relating to dealers apply to those "autos" held for sale by non-dealers and trailer dealers.

Each of the following Physical Damage Coverage coverages that is indicated in ITEM TWO applies only to the types of "autos" and interests indicated below by "X".

COVERAGES	TYPES OF "AUTOS"		INTERESTS COVERED			
	New "Autos"	Used "Autos" Demonstrators	Your Interest In Covered "Autos" You Own	Your Interest Only In Financed Covered "Autos"	Your Interest And The Interest Of Any Creditor Named As A Loss Payee	All Interests In Any "Auto" Not Owned By You Or Any Creditor While In Your Possession On Consignment For Sale
Comprehensive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Specified Causes Of Loss	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Collision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

LOCATION NO.	COVERAGES	LIMIT OF INSURANCE FOR EACH LOCATION	RATES	PREMIUM
1	Comprehensive	\$ MINUS \$ DEDUCTIBLE FOR EACH COVERED AUTO FOR LOSS CAUSED BY THEFT OR MISCHIEF OR VANDALISM SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT; OR \$ MINUS \$ DEDUCTIBLE FOR ALL PERILS		\$
	Specified Causes Of Loss	SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT.		
2	Comprehensive	\$ MINUS \$ DEDUCTIBLE FOR EACH COVERED AUTO FOR LOSS CAUSED BY THEFT OR MISCHIEF OR VANDALISM SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT; OR \$ MINUS \$ DEDUCTIBLE FOR ALL PERILS		\$
	Specified Causes Of Loss	SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT.		

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CSC000239

Andrew v CSC  
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R.App. 000066



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POLICY NUMBER: CCP502869

**ITEM NINE (Cont'd)**

3	Comprehensive	\$ MINUS \$ DEDUCTIBLE FOR EACH COVERED AUTO FOR LOSS CAUSED BY THEFT OR MISCHIEF OR VANDALISM SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT; OR \$ MINUS \$ DEDUCTIBLE FOR ALL PERILS				\$
	Specified Causes Of Loss	SUBJECT TO \$ MAXIMUM DEDUCTIBLE FOR ALL SUCH LOSS IN ANY ONE EVENT.				
All	Collision	\$ MINUS \$ DEDUCTIBLE FOR EACH COVERED AUTO.				\$
		BLANKET ANNUAL COLLISION RATES				
		First \$50,000	\$50,001 to \$100,000	Over \$100,000	Adjustment Factor	Premium
						\$
<b>TOTAL PREMIUM</b>						\$

Our limit of insurance for "loss" at locations other than those stated in ITEM THREE.

\$ Additional locations where you store covered "autos"

\$ In transit

**PREMIUM BASIS** – Reporting (Quarterly or Monthly) or Nonreporting (Indicate Basis Agreed Upon by "X").☐ **REPORTING BASIS** (Quarterly or Monthly as indicated below by "X")

You must report to us on our form the location of your covered "autos" and their total value at each such location. For your main sales location identified as location no. 1, you must include the total value of all covered "autos" you have furnished or made available to yourself, your executives, your "employees" or family members and other non-"employees", and covered "autos" that are temporarily displayed or stored at locations other than those stated in ITEM THREE above. For your main sales location you must include the total value of all service vehicles.

**YOUR REPORTING BASIS IS:**☐ **QUARTERLY**

You must give us your first report by the fifteenth of the fourth month after the policy begins. Your subsequent reports must be given to us by the fifteenth of every third month. Your reports must contain the value for the last business day of every third month coming within the policy period.

☐ **MONTHLY**

You must give us your reports by the fifteenth of every month. Your reports will contain the total values you had on the last business day of the preceding month.

Premiums will be calculated pro rata of the annual premium for the exposures contained in each report. At the end of each policy year we will add the monthly premiums or the quarterly premiums to determine your final premium due for the entire policy year. The estimated total premiums shown above will be credited against the final premium due.

☐ **NONREPORTING BASIS**

Stated limit of insurance shown above applies.

Loss Payee – Any loss is payable as interest may appear to you and:

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CSC000240

Andrew v CSC  
POL000012

R.App. 000067

Policy Number CCP502869

CIL 15 00b 02 02

**SCHEDULE OF FORMS AND ENDORSEMENTS**

(other than applicable forms and endorsements shown elsewhere in the policy)

Forms and Endorsements applying to the Coverage Parts listed below and made a part of this policy at time of issue:

Form/ Endt. #	Edition Date	Title	Total # of forms selected: 15
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**Forms Applicable to this Coverage Part - INTERLINE-ALL COVERAGE PARTS**

CIL 15 00B 02 02.....SCHEDULE OF FORMS AND ENDT  
 CSCP 10 00 02 04.....POLICY JACKET  
 CSCP 10 01 03 06.....COMMON POLICY DECLARATIONS  
 CCP 20 10 03 07.....SERVICE OF SUIT CLAUSE  
 IL 00 03 09 07.....CALCULATION OF PREMIUM  
 IL 00 17 11 98.....COMMON POLICY CONDITIONS

**Forms Applicable to this Coverage Part - GARAGE**

CAG 1900 12 03.....GARAGE COVERAGE FORM DECLARATIONS  
 CA 00 05 10 01.....GARAGE COVERAGE FORM  
 CA 01 36 10 01.....NV CHANGES  
 CA 03 01 03 06.....DEDUCTIBLE LIABILITY COVERAGE  
 CA 23 84 01 06.....EXCLUSION OF TERRORISM  
 CAG 1917 03 06.....REDUCED LIMITS ENDT-YOUTHFUL DRIVERS  
 CAG 1919 08 07.....GARAGE OPERATIONS LIMITATION ENDT  
 CAG 1951 12 03.....GARAGE COV FORM-NON-DEALERS SCHEDULE  
 IL 00 21 05 04.....NUCLEAR ENERGY LIAB EXCL ENDT

CAG1901(01/08) - ADDITIONAL CONDITIONS AND EXCLUSIONS  
 IL0110(07/01) - NEVADA CHANGES - CONCEALMENT; MISREPRESENTATION OR FRAUD

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CCP 20 10 03 07

## SERVICE OF SUIT CLAUSE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE PART  
COMMERCIAL AUTO COVERAGE PART  
COMMERCIAL CRIME COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
COMMERCIAL EXCESS LIABILITY COVERAGE PART  
OCEAN MARINE COVERAGE PARTS  
ASSISTED LIVING CLAIMS MADE LIABILITY COVERAGE PART  
REAL ESTATE AGENTS ERRORS & OMISSIONS COVERAGE

It is agreed that in the event of the failure by us to pay any amount claimed to be due hereunder, we will, at your request, submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

It is further agreed that service of process in such suit may be made upon the person or organization shown in the Policy Declarations or upon us at the address shown in the policy jacket.

And that in any suit instituted against any one of them upon this contract, we will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of us in any such suit and/or upon your request to give a written undertaking to you that we will enter a general appearance upon our behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory, or district of the United States of America, which makes provision therefore, we hereby designate the Superintendent, Commissioner, or Directors of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on your behalf or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

CCP 20 10 0307

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IL 00 03 09 07

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CALCULATION OF PREMIUM**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

IL 00 03 09 07

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## COMMON POLICY CONDITIONS

All Coverage parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advanced written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or

- b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate services or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

COMMERCIAL AUTO  
CA 00 05 10 01**GARAGE COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VI – Definitions.

**SECTION I – COVERED AUTOS**

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

**A. Description Of Covered Auto Designation Symbols**

Symbol	Description Of Covered Auto Designation Symbols	
<b>21</b>	Any "Auto"	
<b>22</b>	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
<b>23</b>	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
<b>24</b>	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
<b>25</b>	Owned "Autos" Subject To No-Fault	Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
<b>26</b>	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
<b>27</b>	Specifically Described "Autos"	Only those "autos" described in Item Seven of the Non-Dealers' and Trailer Dealers' Supplementary Schedule or Item Nine of the Dealers' Supplementary Schedule for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to a power unit described in Item Seven or Item Nine).
<b>28</b>	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners, (if you are a partnership), members (if you are a limited liability company) or members of their households.
<b>29</b>	Non-Owned "Autos" Used In Your Garage Business	Any "auto" you do not own, lease, hire, rent or borrow used in connection with your garage business described in the Declarations. This includes "autos" owned by your "employees" or partners (if you are a partnership), members (if you are a limited liability company), or members of their households while used in your garage business.

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Symbol	Description Of Covered Auto Designation Symbols	
30	"Autos" Left With You For Service, Repair, Storage Or Safekeeping	Any customer's land motor vehicle or trailer or semitrailer while left with you for service, repair, storage or safekeeping. Customers include your "employees", and members of their households, who pay for the services performed.
31	Dealers "Autos" And "Autos" Held For Sale By Non-Dealers Or Trailer Dealers (Physical Damage Coverages)	Any "autos" and the interests in these "autos" described in Item Seven of the Dealers' Supplementary Schedule or Item Nine of the Non-Dealers' and Trailer Dealers' Supplementary Schedule.

#### B. Owned Autos You Acquire After The Policy Begins

1. If Symbols **21**, **22**, **23**, **24**, **25**, or **26** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **27** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

#### C. Certain Trailers And Temporary Substitute Autos

If Liability coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;

- c. Servicing;
- d. "Loss"; or
- e. Destruction.

#### SECTION II – LIABILITY COVERAGE

##### A. Coverage

##### 1. "Garage Operations" – Other Than Covered "Autos"

- a. We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies caused by an "accident" and resulting from "garage operations" other than the ownership, maintenance or use of covered "autos".

We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the applicable Liability Coverage Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" has been exhausted by payment of judgments or settlements.

- b. This insurance applies to "bodily injury" and "property damage" only if:
  - (1) The "accident" occurs in the coverage territory;
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and



(3) Prior to the policy period, no "insured" listed under **Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "accident" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed "insured" or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any "insured" listed under **Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "accident" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" listed under **Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "accident" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

## 2. "Garage Operations" – Covered "Autos"

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from "garage operations" involving the ownership, maintenance or use of covered "autos".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from "garage operations" involving the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance – "Garage Operations" – Covered "Autos" has been exhausted by payment of judgments or settlements.

### 3. Who Is An Insured

a. The following are "insureds" for covered "autos":

- (1) You for any covered "auto".
- (2) Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (a) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
  - (b) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (c) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is your "garage operations".
  - (d) Your customers, if your business is shown in the Declarations as an "auto" dealership. However, if a customer of yours:
    - (i) Has no other available insurance (whether primary, excess or contingent), they are an "insured" but only up to the compulsory or financial responsibility law limits where the covered "auto" is principally garaged.
    - (ii) Has other available insurance (whether primary, excess or contingent) less than the compulsory or financial responsibility law limits where the covered "auto" is principally garaged, they are an "insured" only for the amount by which the compulsory or financial responsibility law limits exceed the limit of their other insurance.

(e) A partner (if you are a partnership), or a member (if you are a limited liability company), for a covered "auto" owned by him or her or a member of his or her household.

(3) Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

b. The following are "insureds" for "garage operations" other than covered "autos":

(1) You.

(2) Your partners (if you are a partnership), members (if you are a limited liability company), "employees", directors or shareholders but only while acting within the scope of their duties.

#### 4. Coverage Extensions

##### a. Supplementary Payments

In addition to the Limit of Insurance, we will pay for the "insured":

(1) All expenses we incur.

(2) Up to \$2,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.

(5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.

(6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

##### b. Out-Of-State Coverage Extensions

While a covered "auto" is away from the state where it is licensed we will:

(1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.

(2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

#### B. Exclusions

This insurance does not apply to any of the following:

##### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". But for "garage operations" other than covered "autos" this exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### 2. Contractual

Liability assumed under any contract or agreement. But this exclusion does not apply to liability for damages:

a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

b. That the "insured" would have in the absence of the contract or agreement.

##### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

**4. Employee Indemnification And Employer's Liability**

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.
- c. A person arising out of any:
  - (1) Refusal to employ that person;
  - (2) Termination of that person's employment; or
  - (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- d. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (1), (2) or (3) above are directed.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

**5. Fellow Employee**

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

**6. Care, Custody Or Control**

"Property damage" to or "covered pollution cost or expense" involving:

- a. Property owned, rented or occupied by the "insured";
- b. Property loaned to the "insured";
- c. Property held for sale or being transported by the "insured"; or
- d. Property in the "insured's" care, custody or control.

But this exclusion does not apply to liability assumed under a sidetrack agreement.

**7. Leased Autos**

Any covered "auto" while leased or rented to others. But this exclusion does not apply to a covered "auto" you rent to one of your customers while their "auto" is left with you for service or repair.

**8. Pollution Exclusion Applicable To "Garage Operations" – Other Than Covered "Autos"**

- a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (1) At or from any premises, site or location that is or was at any time owned or occupied by, or rented or loaned to, any "insured";
  - (2) At or from any premises, site or location that is or was at any time used by or for any "insured" or others for the handling, storage, disposal, processing or treatment of waste;
  - (3) At or from any premises, site or location on which any "insured" or any contractors or subcontractors working directly or indirectly on any "insured's" behalf are performing operations:
    - (a) To test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of the "pollutants"; or
    - (b) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such "insured", contractor or subcontractor; or

- (4) That are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any "insured" or any person or organization for whom you may be legally responsible.

Paragraphs **a.(1)** and **a.(3)(b)** do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire. A hostile fire means one that becomes uncontrollable, or breaks out from where it was intended to be.

Paragraph **a.(1)** does not apply to "bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building.

Paragraph **a.(3)(b)** does not apply to "bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from material brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.

**b.** Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants";
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the "insured" would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**9. Pollution Exclusion Applicable To "Garage Operations" – Covered "Autos"**

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

**a.** That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";

(2) Otherwise in the course of transit by or on behalf of the "insured"; or

(3) Being stored, disposed of, treated or processed in or upon the covered "auto";

**b.** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

**c.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if the "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants".

Paragraphs **b.** and **c.** above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**10. Racing**

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

**11. Watercraft Or Aircraft**

Any watercraft or aircraft except watercraft while ashore on premises where you conduct "garage operations".

**12. Defective Products**

"Property damage" to any of your "products", if caused by a defect existing in your "products" or any part of your "products", at the time it was transferred to another.



**13. Work You Performed**

"Property damage" to "work you performed" if the "property damage" results from any part of the work itself or from the parts, materials or equipment used in connection with the work.

**14. Loss Of Use**

Loss of use of other property not physically damaged if caused by:

- a. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.
- b. A defect, deficiency, inadequacy or dangerous condition in your "products" or "work you performed". But this exclusion, **14.b.**, does not apply if the loss of use was caused by sudden and accidental damage to or destruction of your "products" or "work you performed" after they have been put to their intended use.

**15. Products Recall**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your "products" or "work you performed" or other property of which they form a part, if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**16. War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

**17. Liquor Liability**

"Bodily injury" or "property damage" for which an "insured" may be held liable by reason of:

- a. Causing or contributing to the intoxication of any person;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you use the premises in part for the following purposes:

- (1) Serving or furnishing alcoholic beverages for a charge whether or not such activity:

- (a) Requires a license; or
- (b) Is for the purpose of financial gain or livelihood; or

- (2) Serving or furnishing alcoholic beverages without a charge, if a license is required for such activity.

**C. Limit Of Insurance****1. Aggregate Limit Of Insurance – "Garage Operations" – Other Than Covered "Autos"**

For "garage operations" other than the ownership, maintenance or use of covered "autos", the following applies:

Regardless of the number of "insureds", claims made or "suits" brought or persons or organizations making claims or bringing "suits", the most we will pay for the sum of all damages involving "garage operations" other than "auto" is the Aggregate Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" for Liability Coverage shown in the Declarations.

Damages payable under the Aggregate Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" consist of damages resulting from "garage operations", other than the ownership, maintenance or use of the "autos" indicated in Section I of this Coverage Form as covered "autos", including the following coverages, if provided by endorsement:

- a. "Personal injury" liability coverage;
- b. "Personal and advertising injury" liability coverage;
- c. Host liquor liability coverage;
- d. Fire legal liability coverage;
- e. Incidental medical malpractice liability coverage;
- f. Non-owned watercraft coverage;
- g. Broad form products coverage.

Damages payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" are not payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Covered "Autos".

Subject to the above, the most we will pay for all damages resulting from all "bodily injury" and "property damage" resulting from any one "accident" is the Each "Accident" Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" for Liability Coverage shown in the Declarations.

All "bodily injury" and "property damage" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

The Aggregate Limit of Insurance – "Garage Operations" Other Than Covered "Autos" applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Aggregate Limit of Insurance – "Garage Operations" – Other Than Covered "Autos".

## **2. Limit Of Insurance – "Garage Operations" – Covered "Autos"**

For "accidents" resulting from "garage operations" involving the ownership, maintenance or use of covered "autos", the following applies:

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" involving a covered "auto" is the Each "Accident" Limit of Insurance – "Garage Operations" – Covered "Autos" for Liability Coverage shown in the Declarations.

Damages and "covered pollution cost or expense" payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Covered "Autos" are not payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Other Than Covered "Autos".

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

## **D. Deductible**

We will deduct \$100 from the damages in any "accident" resulting from "property damage" to an "auto" as a result of "work you performed" on that "auto".

## **SECTION III – GARAGEKEEPERS COVERAGE**

### **A. Coverage**

1. We will pay all sums the "insured" legally must pay as damages for "loss" to a "customer's auto" or "customer's auto" equipment left in the "insured's" care while the "insured" is attending, servicing, repairing, parking or storing it in your "garage operations" under:

#### **a. Comprehensive Coverage**

From any cause except:

- (1) The "customer's auto's" collision with another object; or
- (2) The "customer's auto's" overturn.

#### **b. Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft; or
- (3) Mischief or vandalism.

#### **c. Collision Coverage**

Caused by:

- (1) The "customer's auto's" collision with another object; or
- (2) The "customer's auto's" overturn.

2. We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for any loss to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

### **3. Who Is An Insured**

The following are "insureds" for "loss" to "customer's autos" and "customer's auto" equipment:

- a. You.
- b. Your partners (if you are a partnership), members (if you are a limited liability company), "employees", directors or shareholders while acting within the scope of their duties as such.

### **4. Coverage Extensions**

The following applies as Supplementary Payments. In addition to the Limit of Insurance, we will pay for the "insured":

- a. All expenses we incur.

- b. The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- c. All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- d. All costs taxed against the "insured" in any "suit" against the "insured" we defend.
- e. All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

#### B. Exclusions

1. This insurance does not apply to any of the following:

##### a. Contractual Obligations

Liability resulting from any agreement by which the "insured" accepts responsibility for "loss".

##### b. Theft

"Loss" due to theft or conversion caused in any way by you, your "employees" or by your shareholders.

##### c. Defective Parts

Defective parts or materials.

##### d. Faulty Work

Faulty "work you performed".

2. We will not pay for "loss" to any of the following:

- a. Tape decks or other sound reproducing equipment unless permanently installed in a "customer's auto".
- b. Tapes, records or other sound reproducing devices designed for use with sound reproducing equipment.
- c. Sound receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "customer's auto" manufacturer for the installation of a radio.
- d. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measuring equipment.

#### C. Limit Of Insurance And Deductible

1. Regardless of the number of "customer's autos", "insureds", premiums paid, claims made or "suits" brought, the most we will pay for each "loss" at each location is the Garagekeepers Coverage Limit of Insurance shown in the Declarations for that location minus the applicable deductibles for "loss" caused by collision; and
  - a. Theft or mischief or vandalism; or
  - b. All perils.
2. The maximum deductible stated in the Declarations for Garagekeepers Coverage Comprehensive or Specified Causes of Loss Coverage is the most that will be deducted for all "loss" in any one event caused by:
  - a. Theft or mischief or vandalism; or
  - b. All perils.
3. Sometimes to settle a claim or "suit", we may pay all or any part of the deductible. If this happens you must reimburse us for the deductible or that portion of the deductible that we paid.

#### SECTION IV – PHYSICAL DAMAGE COVERAGE

##### A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:
  - a. **Comprehensive Coverage**  
From any cause except:
    - (1) The covered "auto's" collision with another object; or
    - (2) The covered "auto's" overturn.
  - b. **Specified Causes Of Loss Coverage**  
Caused by:
    - (1) Fire, lightning or explosion;
    - (2) Theft;
    - (3) Windstorm, hail or earthquake;
    - (4) Flood;
    - (5) Mischief or vandalism; or
    - (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".
  - c. **Collision Coverage**  
Caused by:
    - (1) The covered "auto's" collision with another object; or
    - (2) The covered "auto's" overturn.

**2. Towing – Non-Dealers Only**

If your business is shown in the Declarations as something other than an "auto" dealership, we will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

**3. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

**4. Coverage Extension****a. Transportation Expenses**

If your business is shown in the Declarations as something other than an "auto" dealership, we will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**b. Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

**B. Exclusions**

- 1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

**b. War Or Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

- 2. We will not pay for "loss" to any of the following:

- a. Any covered "auto" leased or rented to others unless rented to one of your customers while their "auto" is left with you for service or repair.
- b. Any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such contest or activity.
- c. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
- d. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.

- e. Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.
- f. Any accessories used with the electronic equipment described in Paragraph e. above.
- c. Under the Collision Coverage, "loss" to any covered "auto" while being driven or transported from the point of purchase or distribution to its destination if such points are more than 50 road miles apart.

Exclusions 2.e. and 2.f. do not apply to:

- a. Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or
- b. Any other electronic equipment that is:
  - (1) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
  - (2) An integral part of the same unit housing any sound reproducing equipment described in a. above and permanently installed in the opening of the dash or console of the covered "auto" normally used by the manufacturer for installation of a radio.

### 3. False Pretense

We will not pay for "loss" to a covered "auto" caused by or resulting from:

- a. Someone causing you to voluntarily part with it by trick or scheme or under false pretenses; or
- b. Your acquiring an "auto" from a seller who did not have legal title.
- 4. If your business is shown in the Declarations as an "auto" dealership, we will not pay for:
  - a. Your expected profit, including loss of market value or resale value.
  - b. "Loss" to any covered "auto" displayed or stored at any location not shown in Item Three of the Declarations if the "loss" occurs more than 45 days after your use of the location begins.

d. Under the Specified Causes of Loss Coverage, "loss" to any covered "auto" caused by or resulting from the collision or upset of any vehicle transporting it.

5. We will not pay for "loss" to a covered "auto" due to "diminution in value".

**6. Other Exclusions**

We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

- a. Wear and tear, freezing, mechanical or electrical breakdown;
- b. Blowouts, punctures or other road damage to tires.

**C. Limits Of Insurance**

1. The most we will pay for "loss" to any one covered "auto" is the lesser of:

- a. The actual cash value of the damaged or stolen property as of the time of "loss"; or
- b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

4. For those businesses shown in the Declarations as "auto" dealerships, the following provisions also apply:

- a. Regardless of the number of covered "autos" involved in the "loss", the most we will pay for all "loss" at any one location is the amount shown in the Auto Dealers Supplementary Schedule for that location. Regardless of the number of covered "autos" involved in the "loss", the most we will pay for all "loss" in transit is the amount shown in the Auto Dealers Supplementary Schedule for "loss" in transit.

**b. Quarterly Or Monthly Reporting Premium Basis**

If, on the date of your last report, the actual value of the covered "autos" at the "loss" location exceeds what you last reported, when a "loss" occurs we will pay only a percentage of what we would otherwise be obligated to pay. We will determine this percentage by dividing your total reported value for the involved location by the value you actually had on the date of your last report.



If the first report due is delinquent on the date of "loss", the most we will pay will not exceed 75 percent of the Limit of Insurance shown in the Auto Dealers Supplementary Schedule for the applicable location.

**c. Non-Reporting Premium Basis**

If, when "loss" occurs, the total value of your covered "autos" exceeds the Limit of Insurance shown in the Declarations, we will pay only a percentage of what we would otherwise be obligated to pay. We will determine this percentage by dividing the limit by the total values you actually had when "loss" occurred.

**D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations provided that:

**1. "Auto" Dealers Only Special Deductible Provisions**

If your business is shown in the Declarations as an "auto" dealership:

- a. The Comprehensive or Specified Causes of Loss Coverage deductible applies only to "loss" caused by:

- (1) Theft or mischief or vandalism; or
- (2) All perils.

- b. Regardless of the number of covered "autos" damaged or stolen, the per "loss" deductible for Comprehensive or Specified Causes of Loss Coverage shown in the Declarations is the maximum deductible applicable for all "loss" in any one event caused by:

- (1) Theft or mischief or vandalism; or
- (2) All perils.

**2. Non-Dealers Only Special Deductible Provisions**

If your business is shown in the Declarations as something other than an "auto" dealership, the Comprehensive Coverage deductible does not apply to "loss" caused by fire or lightning.

**SECTION V – GARAGE CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

**A. Loss Conditions**

**1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire.



The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

**2. Duties In The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the accident or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
  - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
  - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
  - (4) Authorize us to obtain medical records or other pertinent information.
  - (5) Submit to examination at our expense, by physicians of our choice, as often as we reasonably require.
- c. If there is "loss" to a covered "auto" or its equipment you must also do the following:
  - (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
  - (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.

- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

### 3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

### 4. Loss Payment – Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

### 5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

## B. General Conditions

### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

### 2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

### 4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

### 5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:

(1) Excess while it is connected to a motor vehicle you do not own.

(2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability coverage is primary for any liability assumed under an "insured contract".

- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

**6. Premium Audit**

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

**7. Policy Period, Coverage Territory**

Under this Coverage Form, we cover:

- a. "Bodily injury", "property damage" and "losses" occurring; and
- b. "Covered pollution cost or expense" arising out of "accidents" occurring

during the policy period shown in the Declarations and within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico;
- d. Canada; and
- e. Anywhere in the world if:
  - (1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
  - (2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "bodily injury", "property damage", "covered pollution cost or expense" and "losses" while a covered "auto" is being transported between any of these places.

The coverage territory is extended to anywhere in the world if the "bodily injury" or "property damage" is caused by one of your "products" which is sold for use in the United States of America, its territories or possessions, Puerto Rico or Canada. The original "suit" for damages resulting from such "bodily injury" or "property damage" must be brought in one of these places.

**8. Two Or More Coverage Forms Or Policies Issued By Us**

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

**SECTION VI – DEFINITIONS**

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means a land motor vehicle, "trailer" or semitrailer.
- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.
- D. "Covered pollution cost or expense" means any cost or expense arising out of:
  1. Any request, demand, order or statutory or regulatory requirement; or
  2. Any claim or "suit" by or on behalf of a governmental authority demanding

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured";

(3) Being stored, disposed of, treated or processed in or upon the covered "auto"; or

- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if the "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E. "Customer's auto" means a customer's land motor vehicle, "trailer" or semitrailer. It also includes any "customer's auto" while left with you for service, repair, storage or safekeeping. Customers include your "employees", and members of their households who pay for services performed.
- F. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- G. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

H. "Garage operations" means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. "Garage operations" includes the ownership, maintenance or use of the "autos" indicated in Section I of this Coverage Form as covered "autos". "Garage operations" also include all operations necessary or incidental to a garage business.

I. "Insured" means any person or organization qualifying as an insured in the Who Is an Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

J. "Insured contract" means:

1. A lease of premises;
2. A sidetrack agreement;
3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. That part of any other contract or agreement pertaining to your garage business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
6. An elevator maintenance agreement;
7. That part of any contract or agreement entered into, as part of your garage business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

1. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - a. Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
  - b. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
2. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.
3. That pertains to the loan, lease or rental of an "auto", to you or any of your "employees" if the "auto" is loaned, leased or rented with a driver.

- 4. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- 5. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing.
- K. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- L. "Loss" means direct and accidental loss or damage. But for Garagekeepers Coverage only, "loss" also includes any resulting loss of use.
- M. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- N. "Products" includes:
  - a. The goods or products you made or sold in a garage business; and
  - b. The providing of or failure to provide warnings or instructions.
- O. "Property damage" means damage to or loss of use of tangible property.
- P. "Suit" means a civil proceeding in which:
  - 1. Damages because of "bodily injury" or "property damage"; or
  - 2. A "covered pollution cost or expense", to which this insurance applies, are claimed."Suit" includes:
  - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- Q. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- R. "Trailer" includes semitrailer.
- S. "Work you performed" includes:
  - a. Work that someone performed on your behalf; and
  - b. The providing of or failure to provide warnings or instructions.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF TERRORISM

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
SINGLE INTEREST AUTOMOBILE PHYSICAL DAMAGE INSURANCE POLICY  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. The following definitions are added and apply under this endorsement wherever the term terrorism, or the phrase any injury, damage, loss or expense, are enclosed in quotation marks:

1. "Terrorism" means activities against persons, organizations or property of any nature:

a. That involve the following or preparation for the following:

- (1) Use or threat of force or violence; or
- (2) Commission or threat of a dangerous act; or
- (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. When one or both of the following applies:

- (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
- (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

2. "Any injury, damage, loss or expense" means any injury, damage, loss or expense covered under any Coverage Form or Policy to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal injury", "personal and advertising injury", "loss", loss of use, rental reimbursement after "loss" or "covered pollution cost or expense", as may be defined under this Coverage Form, Policy or any applicable endorsement.

B. Except with respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage, Garagekeepers Coverage – Customers' Sound Receiving Equipment or the Single Interest Automobile Physical Damage Insurance Policy, the following exclusion is added:

### EXCLUSION OF TERRORISM

We will not pay for "any injury, damage, loss or expense" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". "Any injury, damage, loss or expense" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury, damage, loss or expense. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or



2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
5. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
6. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
  - a. Physical injury that involves a substantial risk of death; or
  - b. Protracted and obvious physical disfigurement; or
  - c. Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraphs **B.5.** and **B.6.** are exceeded.

With respect to this Exclusion, Paragraphs **B.5.** and **B.6.** describe the thresholds used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Policy or any applicable endorsement.

- C. With respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage, Garagekeepers Coverage – Customers' Sound Receiving Equipment or the Single Interest Automobile Physical Damage Insurance Policy, the following exclusion is added:

#### **EXCLUSION OF TERRORISM**

We will not pay for any "loss", loss of use or rental reimbursement after "loss" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
5. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold in Paragraph **C.5.** is exceeded.

With respect to this Exclusion, Paragraph **C.5.** describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Policy or any applicable endorsement.

**D.** In the event of any incident of "terrorism" that is not subject to the Exclusion in Paragraphs **B.** or **C.**, coverage does not apply to "any injury, damage, loss or expense" that is otherwise excluded under this Coverage Form, Policy or any applicable endorsement.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

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2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "Special nuclear material" or "by-product material";

"Source material", "special nuclear material," and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEVADA CHANGES

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### I. Changes In Conditions

A. For a covered "auto" licensed in, or "Garage Operations" conducted in, Nevada, the **Other Insurance Condition** is changed by adding the following:

1. When two Coverage Forms providing liability coverage apply to an "auto" and:

a. One provides coverage to a named insured engaged in the business of selling, repairing, servicing, delivering, testing, road testing, parking or storing "autos", and

b. The other provides coverage to a person not engaged in that business, and

c. At the time of an "accident" a person described in **1.b.** is operating the "auto", then

that person's liability insurance is primary and the Coverage Form issued to a business described in **1.a.** is excess over any insurance available to that person.

2. When two Coverage Forms providing liability coverage apply to an "auto" and:

a. One provides coverage to a named insured engaged in the business of repairing or servicing "autos", and

b. The other provides coverage to a person not engaged in that business, and

c. At the time of an "accident" a person described in **2.b.** is operating an "auto" owned by the business described in **2.a.** as a temporary substitute auto while that person's "auto" is being repaired or serviced by the business described in **2.a.**, then

that person's liability coverage is primary and the Coverage Form issued to the business described in **2.a.** is excess over any insurance available to that person.

B. The Conditions Provision is amended as follows:

The **Transfer Of Rights Of Recovery Against Others To Us** Provision does not apply to Medical Payments.

### II. Anti-Stacking Provisions

The contrasting type contained in this endorsement is in compliance with Nevada statutory requirements that anti-stacking provisions be prominently displayed in the policy, binder or endorsement.

Exclusions **2.** and **3.** in the Auto Medical Payments Coverage Endorsement are replaced by the following:

**2. "BODILY INJURY" SUSTAINED BY YOU OR ANY "FAMILY MEMBER" WHILE "OCCUPYING" OR STRUCK BY ANY VEHICLE (OTHER THAN A COVERED "AUTO") OWNED BY YOU OR FURNISHED OR AVAILABLE FOR YOUR REGULAR USE.**