

CLERK OF THE COURT

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS, INC.,  
Plaintiff,

v.

OREGON MUTUAL INSURANCE  
COMPANY, DAVE SANDIN, and SANDIN  
& CO.,  
Defendants.

Case No.: A-12-672158-C  
Dept. No.: XXVI

**DAVE SANDIN AND SANDIN &  
CO.'S MOTION FOR SUMMARY  
JUDGMENT**

Defendants Dave Sandin and Sandin & Co. (the "Sandin defendants") move the Court for summary judgment in their favor on O.P.H. of Las Vegas, Inc.'s ("Plaintiff" or "O.P.H.") claims. Plaintiff has asserted claims for fraud in the inducement (third cause of action), fraud (fourth cause of action), breach of fiduciary duty (fifth cause of action), violations of NRS 686A.310 (sixth cause of action), and negligence (seventh cause of action) against the Sandin defendants. In this action, Plaintiff improperly seeks to impose liability on the Sandin defendants for its own failure to pay its insurance premium, which resulted in the cancellation of its insurance policy and the denial of coverage for a loss that occurred after cancellation of the policy.

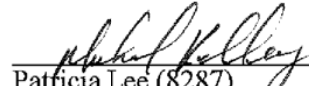
The Sandin defendants were hired to procure insurance for Plaintiff. They did so, and not without great difficulty due to Plaintiff's credit history and coverage requirements. In fact,

1 it is undisputed that the policy they procured would have provided coverage for the loss  
2 Plaintiff complains of had Plaintiff paid its premiums in a timely manner. There are no  
3 genuine issues of material fact and the Sandin defendants are entitled to judgment as a matter  
4 of law in their favor on Plaintiff's claims.

5 This motion is based on the papers and pleadings filed herein, NRCP 56, the following  
6 points and authorities, the exhibits attached hereto, and any oral argument that may be heard by  
7 this Court.

8 DATED this 17<sup>th</sup> day of March, 2015.

9 HUTCHISON & STEFFEN, LLC

10  
11   
12 Patricia Lee (8287)  
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17 *Attorneys for defendants*  
18 *Dave Sandin and Sandin & Co.*  
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**NOTICE OF MOTION**

TO: ROBERT L. LANGFORD & MARGARET A. McLEITCHIE, attorneys for O.P.H. OF LAS VEGAS INC.; and

TO: ROBERT W. FREEMAN & PRISCILLA L. O'BRIANT, attorneys for OREGON MUTUAL INSURANCE CO.:

PLEASE TAKE NOTICE that the undersigned will bring **DAVE SANDIN AND SANDIN & CO.'S MOTION FOR SUMMARY JUDGMENT** before Department XXVI of the above entitled Court in courtroom 3H on the 21 day of APRIL, 2015, at the hour of 9:30 o'clock, A.m., or as soon thereafter as counsel may be heard.

DATED this 17<sup>th</sup> day of March, 2015.

HUTCHISON & STEFFEN, LLC

  
\_\_\_\_\_  
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**MEMORANDUM OF POINTS AND AUTHORITIES****1. Introduction.**

This suit arose as a result of an August 17, 2012 fire that destroyed Plaintiff's restaurant at 4833 West Charleston Boulevard in Las Vegas, Nevada. The Sandin defendants procured insurance for Plaintiff from Oregon Mutual Insurance Company ("Oregon Mutual" or "OMI") for coverage of its restaurant. Plaintiff was to pay all of its premiums directly to Oregon Mutual. Approximately seven months into the policy period, Plaintiff failed to pay the monthly premium due on July 26, 2012. On August 1, 2012, Oregon Mutual sent a notice of cancellation for non-payment to Plaintiff, warning Plaintiff that failure to cure the missed premium would result in cancellation of its policy, effective August 16, 2012. Plaintiff did not make its July premium, and the policy was cancelled accordingly. The fire occurred one day later. Not surprisingly, Oregon Mutual has denied Plaintiff's claim, and Plaintiff has been trying to shift the blame for its lack of coverage ever since.

Plaintiff has asserted claims for fraud in the inducement (third cause of action), fraud (fourth cause of action), breach of fiduciary duty (fifth cause of action), violations of NRS §686A.310 (sixth cause of action), and negligence (seventh cause of action) against the Sandin defendants. Plaintiff can prove no set of facts that would support the claims it has alleged against the Sandin defendants. Indeed, the Sandin defendants are entitled to judgment in their favor as a matter of law on all claims asserted. The Sandin defendants were not notified of Plaintiff's delinquent premium, as Plaintiff admits in its complaint, and were not responsible for ensuring that Plaintiff paid its monthly premiums. They cannot be held responsible for Oregon Mutual's cancellation of Plaintiff's policy and subsequent denial of Plaintiff's claim. This case is simple. Plaintiff did not pay its premium; Oregon Mutual cancelled the policy; Plaintiff's restaurant was destroyed by fire; and Oregon Mutual denied its claim. Although tragic, Plaintiff only has itself to blame. O.P.H.'s president testified as follows regarding the missed premium:

Had I done my work that I'm paying myself to do to make sure that all this stuff gets paid in a timely manner, . . . we wouldn't be sitting here, either. So that is the procedure. I didn't do my job in that moment. That's all I can say about



1 that. I mean, it's a mishap in the company. There is no, I'm not trying to blame  
2 anybody for that payment not being made on July 26th, you know?

3 Deposition of Stephan Freudenberger, attached hereto as Ex. A, at 120:17 – 121:1.

4 **2. Statement of Undisputed Facts.**

5 1. O.P.H. operated an Original Pancake House Restaurant at 4833 West Charleston  
6 Boulevard in Las Vegas, Nevada (the "Restaurant").<sup>1</sup> Stephan Freudenberger is the president  
7 of O.P.H. and Lynda Snyder is the corporate office manager of O.P.H. and reports to Mr.  
8 Freudenberger.<sup>2</sup>

9 2. Defendant Dave Sandin is an insurance agent or broker based in Oregon.<sup>3</sup>

10 3. In the early 2000s, Dave Sandin and his colleague began working with O.P.H.  
11 and other Original Pancake House franchisees. Dave Sandin's colleague was initially the lead  
12 agent for O.P.H. and Dave Sandin was his assistant. In or around 2005, David Sandin became  
13 the insurance agent for O.P.H. and he has been the insurance agent for O.P.H. through August  
14 2012, except for over two years when O.P.H. was with a different agency.<sup>4</sup>

15 4. Though they are based in Oregon, the Sandin defendants were licenced to sell  
16 insurance in Nevada. Dave Sandin first became licensed to sell insurance in Nevada in 2005.  
17 Dave Sandin, Anthony Sandin (a non-party), and Sandin & Co. were all licensed in Nevada  
18 when Sandin & Co. took over O.P.H.'s account from Dave Sandin's former employer in 2010.  
19 Dave Sandin, Anthony Sandin and Sandin & Co. have worked on Plaintiff's account since  
20 2010. Sandin & Co.'s and Anthony Sandin's respective Nevada licences expired on June 1,  
21 2013. Dave Sandin's Nevada license expired on April 1, 2011.<sup>5</sup>

22  
23 <sup>1</sup> Plaintiff's Complaint, ¶ 2.

24 <sup>2</sup> Plaintiff's Response to Defendants' Oregon Mutual Interrogatories to Plaintiff (Set One),  
attached hereto as Ex. B, Response No. 1.

25 <sup>3</sup> Deposition of David Sandin, Vol. I, attached hereto as Ex. C, at 10:11-18, 19:25 – 20:9.

26 <sup>4</sup> *Id.*, at 167:7 – 174:11.

27 <sup>5</sup> Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc.'s First Set of  
28 Interrogatories, attached hereto as Ex. D, Responses No 12; Deposition of David Sandin, Vol. I (Ex. C),

1           5.       In December 2011, the Sandin defendants had to urgently obtain a new policy to  
2 cover the Restaurant. Plaintiff's previous carrier, Fireman's Fund, charged high premiums and  
3 Plaintiff expressed to Dave Sandin its displeasure with Fireman's Fund on multiple levels,  
4 most notably the cost of its premiums and claims handling policies and procedures. Dave  
5 Sandin explained to Plaintiff that Fireman's Fund's premium increases were significant and  
6 affected the entire hospitality industry, and that he had successfully moved several clients to  
7 Allied Insurance due to Allied Insurance's competitive rates and better long-term fit for  
8 Plaintiff's coverage needs. Plaintiff decided to purchase a policy from Allied Insurance.<sup>6</sup>

9           6.       Plaintiff had a claim the first week of its policy with Allied Insurance. As a  
10 result of this claim, Allied Insurance reviewed Plaintiff's credit history and ultimately cancelled  
11 Plaintiff's policy due to Plaintiff's poor credit. Allied Insurance's cancellation of this policy  
12 left Oregon Mutual as the next best alternative that was willing to accept Plaintiff at a premium  
13 Plaintiff was willing and able to pay and that was available to negotiate terms of the policy  
14 during the holiday season. As David Sandin testified, his "top six carriers would not write  
15 [O.P.H.'s] insurance because of their loss history and their bad credit." Therefore, in  
16 December 2011, the Sandin defendants recommended Oregon Mutual's insurance to Plaintiff  
17 based on Plaintiff's coverage needs.<sup>7</sup>

18           7.       Oregon Mutual issued a Businessowner Protector Policy to Plaintiff that covered  
19 the Restaurant (the "Policy").<sup>8</sup>

20  
21  
22 \_\_\_\_\_  
23 at 218:13 – 219:7.

24           <sup>6</sup> Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc.'s First Set of  
25 Interrogatories (Ex. D), Responses No 11; Deposition of David Sandin, Vol. I (Ex. C), at 209:11 –  
26 212:15.

27           <sup>7</sup> *Id.*; 30(b)(6) Deposition of David Sandin, attached hereto as Ex. E, at 38:18-22.

28           <sup>8</sup> See Businessowner Protector Policy issued by Oregon Mutual Insurance Company, attached  
hereto as Ex. F (OPH0001POL – OPH0098POL) (authenticated by Deposition of Jerry Masonheimer,  
attached hereto as Ex. G, at 69:1-25).

1           8.     The Policy's term was from December 26, 2011 through December 26, 2012.<sup>9</sup>  
2 Sandin & Co. is identified as the agent on the Policy.<sup>10</sup>

3           9.     Plaintiff received monthly statements for the premiums directly from Oregon  
4 Mutual.<sup>11</sup>

5           10.    Oregon Mutual mailed a billing statement directly to Plaintiff for the payment  
6 due on or before July 26, 2012, and Plaintiff received the billing statement in July, 2014.<sup>12</sup>

7           11.    Plaintiff failed to pay its monthly premium due on July 26, 2012.<sup>13</sup>

8           12.    Oregon Mutual sent a cancellation notice to Plaintiff on August 1, 2012, with an  
9 effective cancellation date of August 16, 2012.<sup>14</sup>

10          13.    On August 13, 2012, prior to the cancellation of the Policy, Plaintiff realized  
11 that it did not make the monthly premium for July. Plaintiff, however, did not contact anyone  
12 at Oregon Mutual or the Sandin defendants regarding its failure to pay the July premium.<sup>15</sup> In  
13 fact, Plaintiff cut a check on August 13, 2012 to Oregon Mutual for the July premium but never  
14 mailed it before the Policy was cancelled.<sup>16</sup>

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16           <sup>9</sup> *Id.*

17           <sup>10</sup> *Id.* (OPH0002POL).

18           <sup>11</sup> Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc.'s First Set of  
19 Interrogatories (Ex. D), Response No 7; Deposition of Linda Snyder, attached hereto as Ex. H, at 32:16-  
20 25; Deposition of Stephan Freudenberger (Ex. A), at 46:19-21.

21           <sup>12</sup> See Billing Statement dated July 9, 2012, attached hereto as Ex. I (OPH - 0290); Deposition  
22 of Linda Snyder (Ex. H), at 79:23 – 80:22 (authenticating Ex. I).

23           <sup>13</sup> Deposition of Stephan Freudenberger (Ex. A), at 90:8-23.

24           <sup>14</sup> See Notice of Cancellation, attached hereto as Ex. J (OPH0022MSC – OPH0023MSC)  
25 (authenticated by Deposition of Deborah Mosher, attached hereto as Ex. K, at 62:25 – 64:4); Listing of  
26 Provision Cancel Notices, attached hereto as Ex. L (OPH - 0101 – OPH - 0102) (authenticated by  
27 Deposition of Deborah Mosher (Ex. K), at 22:5 – 45:2).

28           <sup>15</sup> Deposition of Linda Snyder (Ex. H), at 90:7 – 95:14.

<sup>16</sup> *Id.*; Payment Record of Check to Oregon Mutual Insurance Group, attached hereto as Ex. M  
(SAN 000111) (authenticated by Deposition of Linda Snyder (Ex. H), at 90:7 – 95:14).

1 14. The Sandin defendants did not receive a notice of cancellation.<sup>17</sup>

2 15. On August 13, 2012, Plaintiff representative, Linda Snyder, contacted defendant  
3 Dave Sandin to report a break-in that occurred at the restaurant overnight between August 10,  
4 2012 and August 11, 2012.<sup>18</sup>

5 16. On August 16, 2012, Ms. Snyder spoke with Dave Sandin to obtain a claim  
6 number for the break-in.<sup>19</sup>

7 17. The Sandin defendants did not know about Oregon Mutual's cancellation of  
8 Plaintiff's insurance policy for non-payment, and therefore did not inform Ms. Snyder that the  
9 Policy had been cancelled or that it was in danger of being cancelled during these  
10 conversations.<sup>20</sup>

11 18. There is no agreement between O.P.H. and the Sandin defendants that requires  
12 the Sandin defendants to provide notice to O.P.H. of a pending policy cancellation.<sup>21</sup>

13 19. On August 17, 2012, a fire destroyed the Restaurant.<sup>22</sup>

14 20. On August 17, 2012, after a fire destroyed the Restaurant and after the Policy  
15 had already been cancelled, the Sandin defendants became aware that the Policy had been  
16

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17 <sup>17</sup> See Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc's First Set  
18 Requests for Admission, attached hereto as Ex. N, Response No. 1.; Defendant Oregon Mutual  
19 Insurance Company's Response to David Sandin's First Set of Requests for Admissions, attached  
20 hereto as Ex. O, Response Nos. 1 & 2

21 <sup>18</sup> See Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc's First Set  
22 Requests for Admission (Ex. N), Response No. 14; Plaintiff's Response to Defendant Oregon Mutual  
Interrogatories to Plaintiff (Set One) (Ex. B), Response No. 2; Deposition of Linda Snyder (Ex. H), at  
87:4-13.

23 <sup>19</sup> See Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc's First Set  
24 Requests for Admission (Ex. N), Responses Nos. 15 & 16.

25 <sup>20</sup> See Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc's First Set  
26 Requests for Admission (Ex. N), Response No. 11; Defendant Dave Sandin's Answers to Plaintiff  
O.P.H. of Las Vegas, Inc.'s First Set of Interrogatories (Ex. D), Responses Nos. 4 & 10.

27 <sup>21</sup> Deposition of Neal Bordenave, attached hereto as Ex. S, at 72:11-16.

28 <sup>22</sup> Deposition of Linda Snyder (Ex. H), at 129:8-22.

1 cancelled.<sup>23</sup>

2 21. On August 17, 2012 after the Sandin defendants became aware that the Policy  
3 had been cancelled, Dave Sandin contacted Plaintiff and notified Plaintiff that the Policy had  
4 been cancelled.<sup>24</sup>

5 22. As a result of the cancellation of Plaintiff's Policy for non-payment on August  
6 16, 2012, Oregon Mutual has denied coverage for the loss caused by the fire.<sup>25</sup>

7 23. The sole reason for cancellation of the Policy was due to Plaintiff's failure to  
8 pay its July 26, 2012 premium on or before August 15, 2012.<sup>26</sup>

9 24. Had Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy  
10 would have been in full force and effect on August 16, 2012 and August 17, 2012.<sup>27</sup>

11 25. Had the Policy not been cancelled, Oregon Mutual would have continued to  
12 adjust the claim for the fire and Oregon Mutual would have paid losses covered under the  
13 Policy subject to the terms, conditions, exclusions and limitations of the Policy.<sup>28</sup>

14 ///

15 ///

16 ///

17  
18 <sup>23</sup> Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc.'s First Set of  
19 Interrogatories (Ex. D), Responses Nos. 5 & 9; Deposition of David Sandin, Vol. I (Ex. C), at 254:12 –  
20 255:16.

21 <sup>24</sup> Defendant Dave Sandin's Answers to Plaintiff O.P.H. of Las Vegas, Inc.'s First Set of  
22 Interrogatories (Ex. D.), Responses Nos. 6 & 9.

23 <sup>25</sup> See Letter dated August 20, 2012 from Oregon Mutual Insurance Company to OPH of Las  
24 Vegas, Inc., attached hereto as Ex. P (OPH - 0094 – OPH - 0095) (authenticated by Deposition of Linda  
25 Snyder (Ex. H), at 84:15 – 85:8 and Deposition of Jerry Masonheimer (Ex. G), at 56:17 – 57:25); Non-  
26 Payment Cancellation, attached hereto as Ex. Q (OPH - 0098 – OPH - 0099) (authenticated by  
27 Deposition of Linda Snyder (Ex. H), at 100:17 – 101:2).

28 <sup>26</sup> Defendant Oregon Mutual Insurance Company's Response to David Sandin's Second Set of  
Requests for Admissions, attached hereto as Ex. R, Response No. 7.

<sup>27</sup> *Id.*, Response No. 8.

<sup>28</sup> *Id.*, Response Nos. 9 & 10.

1     **3.     Legal Argument.**

2     **A.     The Summary Judgment Standard.**

3             Summary judgment allows courts to avoid unnecessary trials where no material factual  
4     disputes exist. *See Northwest Motorcycle Ass'n v. U.S. Dept. of Agriculture*, 18 F.3d 1468,  
5     1471 (9th Cir. 1994). Summary judgment under NRCP 56 is appropriate when the pleadings,  
6     depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly  
7     before the court demonstrate that no genuine issue of material fact exists, and the moving party  
8     is entitled to judgment as a matter of law. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121  
9     P.3d 1026, 1031 (2005). A genuine issue of material fact is one that affects the outcome of the  
10    litigation and requires a trial to resolve differing versions of the truth. *See S.E.C. v. Seaboard*  
11    *Corp.*, 677 F.2d 1297, 1300-01 (9th Cir. 1982). There is no material issue of fact if the  
12    evidence is such that a reasonable jury could not return a verdict for the non-moving party.  
13    *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002); *see also Wood v.*  
14    *Safeway*, 121 Nev. at 731, 121 P.3d at 1031 (abrogating the “slightest doubt” standard).

15            The Court must view all evidence, facts, and inferences in a light most favorable to the  
16    non-moving party. *See Sahara Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212,  
17    214, 984 P.2d 164, 165 (1999). Although the moving party bears the initial burden of  
18    demonstrating the absence of a disputed material fact, the non-moving party must respond by  
19    demonstrating the existence of a disputed material fact. *Id.*; *Premiere Digital Access, Inc. v.*  
20    *Central Telephone Co.*, 360 F. Supp.2d 1161, 1164 (D. Nev. 2005) (requiring a non-moving  
21    party to demonstrate “significant probative evidence” to defeat a motion for summary  
22    judgment). In this regard, “in order to defeat summary judgment, the nonmoving party must  
23    transcend the pleadings, and, by affidavit or other admissible evidence, introduce specific facts  
24    that show a genuine issue of material fact.” *Cuzze v. University & Community College System*  
25    *of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007). If the non-moving party fails to  
26    satisfy this burden, a court must enter summary judgment and avoid a needless trial. *See*  
27    *Sahara Gaming Corp.*, 115 Nev. at 214, 984 P.2d at 165.

1 Here, Plaintiff has manufactured five causes of action against the Sandin defendants,  
2 which in reality, all arose due to its own failure to pay its premium. Despite its attempts to pass  
3 the blame to the Sandin defendants, only Plaintiff was responsible for payment of its policy  
4 premium. As a result of Plaintiff's failure to pay its premium to Oregon Mutual, Oregon  
5 Mutual cancelled the Policy and denied Plaintiff's claim of loss occurring after the  
6 cancellation. Therefore, the Sandin defendants are entitled to summary judgment in their favor  
7 on Plaintiff's claims.

8 **B. The Sandin defendants did not owe a fiduciary duty to O.P.H. Therefore, the**  
9 **Sandin defendants are entitled to judgment as a matter of law on Plaintiff's**  
10 **breach of fiduciary duty claim.**

11 (1) *Under Nevada law, an insurance agent does not owe a fiduciary duty to its client.*

12 In Nevada, insurance agents do not have a fiduciary relationship with their clients. An  
13 "insurance agent is obliged to use reasonable diligence to place the insurance and seasonably to  
14 notify the client if he is unable to do so." *Keddie v. Beneficial Insurance, Inc.*, 94 Nev. 418,  
15 420, 580 P.2d 955, 956 (1978).<sup>29</sup> The Nevada Supreme Court has further stated that "[a]n  
16 insurance agent or broker does not owe the insured any additional duties other than procuring  
17 the requested insurance." *Flaherty v. Kelly*, 2013 WL 7155078 (Nev. Dec. 18, 2013)  
18 (unpublished). It has been further stated that "no Nevada court has imposed on insurance  
19 brokers a fiduciary duty toward insureds." *CBC Financial, Inc. v. Apex Insurance Managers,*  
20 *LLC*, 291 Fed.Appx. 30, \*4 (9th Cir. Aug. 14, 2008) (unpublished). The testimony of O.P.H.'s  
21 expert, Neal Bordenave, supports this. Mr. Bordenave testified as follows:

22 Q. Do you know what the articulated legal standard is in Nevada for the duty  
23 that an agency/broker owes to the insured?

24 A. The articulated duty, just using reasonable care and judgment in providing  
25 coverage.

26 Q. In placing coverage?

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27 <sup>29</sup> See also *Havas v. Carter*, 89 Nev 497, 499-500, 515 P.2d 397, 399 (1973) ("the general rule  
28 [is] that an insurance agent or broker who undertakes to procure insurance for another owes an  
obligation to his client to use reasonable diligence in attempting to place the insurance and to  
seasonably notify the client if he, the agent or broker, is unable to obtain the insurance").

1 A. Placing coverage, yes.

2 Deposition of Neal Bordenave, attached hereto as Ex. S, at 59:18-24.

3 The Sandin defendants satisfied their only duty as Plaintiff's insurance broker by  
4 procuring a policy for Plaintiff that included (among other things) fire loss coverage. O.P.H.'s  
5 expert testified that the Sandin defendant met their duty in placing the Policy with Oregon  
6 Mutual:

7 Q. Do you agree that the Sandin defendants procured the proper type of  
8 insurance that was requested by the insured?

9 A. Yes.

10 Q. By placing that policy with OMI?

11 A. Yes.

12 Ex. S, at 113:17-22; *see also* Ex. S, at 109:25 – 110:12; 136:6-11.

13 There is no evidence that the Oregon Mutual Policy would not have covered its loss if  
14 Plaintiff paid its July premium in a timely manner. In fact, Plaintiff's claim was denied solely  
15 because of non-payment, not for lack of fire coverage. Oregon Mutual has stated that the sole  
16 reason for cancellation of the Policy was due to Plaintiff's failure to pay its July 26, 2012  
17 premium on or before August 15, 2012. *See* Statement of Undisputed Fact, ¶ 23, *supra*. Had  
18 Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy would have been in full  
19 force and effect on August 16, 2012 and August 17, 2012. *Id.*, ¶ 24. Had the Policy not been  
20 cancelled, Oregon Mutual would have continued to adjust the claim for the fire and Oregon  
21 Mutual would have paid losses covered under the Policy subject to the terms, conditions,  
22 exclusions and limitations of the Policy. *Id.*, ¶ 25.<sup>30</sup>

23 Because the Sandin defendants recommended an insurer and secured a policy for  
24 Plaintiff that met all of its coverage needs, the Sandin defendants satisfied their legal duty to  
25 Plaintiff as Plaintiff's broker. Therefore, the Sandin defendants are entitled to summary

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26 <sup>30</sup> *See* Deposition of O.P.H.'s expert, Neal Bordenave (Ex. S), at 116:15-21 ("Q. And then the  
27 paragraph – two paragraphs down after the one that we just looked at, in the middle there it reads 'The  
28 OMI policy was procured and would have covered the fire if the insurance premium payments had been  
current.' Do you agree with that statement? A. Yes.").



1 judgment on Plaintiff's breach of fiduciary duty claim.

2 The case of *GlobalNet Financial.Com, Inc. v. Frank Crystal & Co.*, 449 F.3d 377 (2d  
3 Cir. 2006) is instructive. In *GlobalNet*, an insured filed claims against the insurance broker for  
4 professional negligence, breach of fiduciary duty, and breach of contract based on the broker's  
5 alleged failure to notify the insured of the notice of intent to cancel and the cancellation notice  
6 for nonpayment of premium. The district court granted the broker's motion for summary  
7 judgment on all the claims. On appeal, the Second Circuit affirmed the order by the district  
8 court. In stating that the district court properly granted summary judgment to the broker, the  
9 appellate court reasoned:

10 GlobalNet is unable to prevail on its claims because Crystal was not the cause of  
11 the cancellation of coverage. The Financing Agreement between AICCO and  
12 GlobalNet, which Crystal was not a party to, set forth AICCO's right to cancel  
13 GlobalNet's coverage for non-payment of premiums in explicit terms. **Thus,**  
14 **GlobalNet was fully aware of the monthly payment schedule, its obligations**  
15 **to make the monthly premium payments, and the consequences of its**  
16 **failure to pay the premiums each month in accordance with the Financing**  
17 **Agreement. The Notice of Intent to Cancel and the Cancellation Notice**  
18 **were both sent to GlobalNet at the address that GlobalNet had requested its**  
19 **mail to be sent to, to wit, the Mizner address. That the mail was not**  
20 **forwarded to GlobalNet at its London office was not Crystal's failure. Indeed,**  
21 **the District Court found that GlobalNet's own concession bolsters the**  
22 **proposition that it was negligent in missing the premium payment: "Global[N]et**  
23 **acknowledges that because of the confusion surrounding the completion of the**  
24 **tender offer, Global[N]et 'inadvertently ... missed premium payment' on its D &**  
25 **O coverage." It was GlobalNet's negligence that caused the cancellation of**  
26 **the insurance coverage.**

19 *GlobalNet*, 449 F.3d at 388 (emphasis added).

20 (2) *The Sandin defendants did not have an affirmative duty to remind plaintiff to pay its*  
21 *monthly premium.*

22 The Sandin defendants had no duty to Plaintiff above and beyond procuring the  
23 underlying insurance policy. The Sandin defendants certainly had no affirmative duty to ensure  
24 that Plaintiff paid its monthly premium in accordance with its contractual obligations with  
25 Oregon Mutual. It is not the duty of the broker to ensure that the insurer (Oregon Mutual) and  
26 the insured (Plaintiff) are complying with the terms of their contract, to which the broker is not  
27 even a party.

28 Nothing in the history of the relationship between O.P.H. and Dave Sandin altered the

1 duty owed by the Sandin defendants to O.P.H. (*i.e.*, imposed on Dave Sandin an affirmative  
2 duty to ensure that Plaintiff paid its monthly premium in accordance with its contractual  
3 obligations with Oregon Mutual). In her deposition, Linda Snyder testified that Dave Sandin  
4 had previously notified O.P.H. on three different occasions (in 2006, 2008, and then again in  
5 2009) that O.P.H. was late paying a premium and, accordingly, O.P.H. paid the premium prior  
6 to the policy being cancelled.<sup>31</sup> O.P.H.'s response to an interrogatory further states that "Dave  
7 Sandin informed Plaintiff on or about March 23, 2006 that Plaintiff's February 2006 payment  
8 was late and/or outstanding, and on or around May 13, 2008 that Plaintiff's May 2008 payment  
9 was late and/or outstanding. In addition, Dave Sandin set up Plaintiff's account with Fireman's  
10 Fund Insurance (a previous insurance policy) for auto-pay beginning in May 2009 until  
11 December 2011."<sup>32</sup> These statements by Ms. Snyder and O.P.H. are false. Between February  
12 2006 and October 2008, it is undisputed that Dave Sandin was employed by Heffernan  
13 Insurance Brokers and was subject to a non-compete agreement. During this time, Dave  
14 Sandin was not the broker for O.P.H. Therefore, he could not have notified O.P.H. of late or  
15 missed payments or anything related to O.P.H.'s insurance policy. Dave Sandin did not broker  
16 any policies for O.P.H. during this time period either.<sup>33</sup> Furthermore, after O.P.H. missed a  
17 payment to Fireman's Fund, Fireman's Fund required that O.P.H. be set up for automatic  
18 payments.<sup>34</sup>

19 Even if this purported duty did exist, it would only arise upon the Sandin defendants'  
20 receipt of notice from Oregon Mutual that the Policy was in danger of cancellation for non-  
21 payment. As noted above, the Sandin defendants were never notified of the foregoing, as  
22

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23 <sup>31</sup> Deposition of Linda Snyder (Ex. H), at 85:10-86:3; 118:11-119:21; 152:11-153:17; 164:24-  
24 165:22.

25 <sup>32</sup> Plaintiff O.P.H. of Las Vegas, Inc.'s Answers to Defendant Dave Sandin's First Set of  
26 Interrogatories, Response No. 1, attached hereto as Ex. T.

27 <sup>33</sup> Deposition of Dave Sandin, Vol. II, attached hereto as Ex. U at 292:25 – 293:16; 314:1-17.

28 <sup>34</sup> Deposition of David Sandin, Vol. I (Ex. C), at 183:4 – 193:18.

Plaintiff admits in its complaint: “Defendant OREGON MUTUAL did not send a cancellation notice to Defendant DAVE SANDIN” and “Defendant DAVE SANDIN did not receive a cancellation notice.” See Complaint, ¶¶ 27 and 28. Absent this notice, any purported duty to inform Plaintiff of its failure to pay never arose. To this point, Mr. Freudenberger testified as follows:

Q. If Dave Sandin did not actually receive notice of the late payment and pending cancellation, did you still expect him to notify you?

....

THE WITNESS: It’s a foolish question. How could he inform me about something he doesn’t know about?

....

Q. Do you not have that expectation if Mr. Sandin doesn’t have the information about the late payment? Does that expectation go out the window?

A. How can he inform me about something he doesn’t know about? How can you ask that question? If I find out that a man doesn’t know something, then how can I expect him to tell me about it? You cannot seriously ask me that?

Q. Yes, I am asking you that.

A. I don’t, it’s a foolish question. He cannot inform me about something he doesn’t know about.

Q. That –

A. So how could I have the expectation he’s going to tell me about something that he doesn’t know about?

Ex. A, at 90:25 – 92:6. Linda Snyder further testified that “no notice was given, not only to us, but to Dave Sandin as well.” Ex. H, at 174:11-12. O.P.H.’s expert further testified that the Sandin defendants did not have actual notice of the provisional policy cancellation and if an agent does not have notice of a pending cancellation, the agent cannot inform the insured of the pending cancellation. Ex. S, at 60:11-17; 76:18-23.

Plaintiff’s claim for breach of fiduciary duty is partly based on the allegation that the Sandin defendants had a duty “to ensure that PLAINTIFF was warned regarding notices of cancellation.” Complaint, ¶¶ 69 & 70. However, Plaintiff’s claim, to use Mr. Freudenberger’s own words, is “foolish” because Plaintiff presumes the Sandin defendants were notified of

1 Plaintiff's delinquency but in the same pleading Plaintiff admits that the Sandin defendants had  
2 no notice. Complaint, ¶¶ 27 & 28. The Sandin defendants lack of notice of the pending  
3 cancellation absolves them of any liability for any breach of the manufactured "affirmative  
4 duty to inform" Plaintiff of impending cancellation for non-payment.

5 In short, the Sandin defendants had no affirmative duty to ensure that Plaintiff  
6 continually paid its monthly premium to preserve its status as an insured under its Policy with  
7 Oregon Mutual. Even if an insurance broker had an affirmative duty to advise an insured of  
8 pending cancellation for non-payment, such duty would arise only on the broker's receipt of  
9 notice by the insurer. This precondition never occurred. Therefore, no such duty existed.  
10 Accordingly, the Sandin defendants are entitled to judgment as a matter of law on Plaintiff's  
11 breach of fiduciary duty claim.

12 **C. The Sandin defendants are entitled to judgment as a matter of law on Plaintiff's**  
13 **claim for violation of NRS 686A.310.**

14 Plaintiff has asserted a claim against the Sandin defendants for violation of NRS  
15 686A.310, contending that "Defendant Dave Sandin engaged in unfair insurance practices, for  
16 example, when he misrepresented to Plaintiff facts relating to coverage at issue, including  
17 whether Defendant Oregon Mutual would provide the notice required." Complaint, ¶ 75. NRS  
18 686A.310(1) provides:

19 1. Engaging in any of the following activities is considered to be an unfair  
20 practice:

- 21 (a) Misrepresenting to insureds or claimants pertinent facts or insurance  
22 policy provisions relating to any coverage at issue.
- 23 (b) Failing to acknowledge and act reasonably promptly upon  
24 communications with respect to claims arising under insurance policies.
- 25 (c) Failing to adopt and implement reasonable standards for the prompt  
26 investigation and processing of claims arising under insurance policies.
- 27 (d) Failing to affirm or deny coverage of claims within a reasonable time  
28 after proof of loss requirements have been completed and submitted by  
the insured.
- (e) Failing to effectuate prompt, fair and equitable settlements of claims  
in which liability of the insurer has become reasonably clear.
- (f) Compelling insureds to institute litigation to recover amounts due  
under an insurance policy by offering substantially less than the amounts  
ultimately recovered in actions brought by such insureds, when the  
insureds have made claims for amounts reasonably similar to the  
amounts ultimately recovered.

(g) Attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

(h) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured, or the representative, agent or broker of the insured.

(i) Failing, upon payment of a claim, to inform insureds or beneficiaries of the coverage under which payment is made.

(j) Making known to insureds or claimants a practice of the insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(k) Delaying the investigation or payment of claims by requiring an insured or a claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(l) Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(m) Failing to comply with the provisions of NRS 687B.310 to 687B.390, inclusive, or 687B.410.

(n) Failing to provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.

(o) Advising an insured or claimant not to seek legal counsel.

(p) Misleading an insured or claimant concerning any applicable statute of limitations.

Importantly, NRS 686A.310(2) provides that "*an insurer is liable to its insured* for any damages sustained by the insured as a result of the commission of any act set forth in subsection 1 as an unfair practice." (Emphasis added).

In filing a claim for violation of NRS 686A.310 against the Sandin defendants, Plaintiff ignores the clear language of subsection 2 that provides that "*an insurer is liable to its insured.*" Pursuant to the plain terms of the subject statute, an insurance agent cannot be held liable to its clients for violation of NRS 686A.310. Indeed, the Nevada Supreme Court has held that only an insurer can be liable for unfair claims practices proscribed in NRS 686A.310. *See Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 969 P.2d 949 (1998).

In *Bartgis*, the plaintiff filed a claim for violations of the Nevada Unfair Claims Practices Act proscribed in NRS 686A.310 against the medical insurer and the policy

1 administrator. *Id.* at 1257, 969 P.2d at 955. At trial, the jury found both the insurer and policy  
2 administrator liable for violations of NRS 686A.310. *Id.* On appeal, the policy administrator  
3 argued “that it is not an insurer within the meaning of the applicable statutory definition and,  
4 thus, it cannot be held liable for alleged unfair claims practices proscribed under NRS  
5 686A.310 because the statute applies only to insurance companies.” *Id.* at 1263, 969 P.2d at  
6 959. The Nevada Supreme Court agreed with this argument and reversed the jury’s  
7 determination that the policy administrator was liable for violating NRS 686A.310.  
8 Specifically, the Court “conclude[d] that NRS 686A.310 does not apply to [the administrator of  
9 the policy] because it is not an insurer or company within the meaning of the applicable  
10 statutory law.” *Id.* at 1264, 969 P.2d at 960. The Court also reasoned that “there is no  
11 indication that the legislature intended NRS 686A.310 to apply to other entities beyond  
12 insurers.” *Id.* at 1263, 969 P.2d at 959.

13 Like the policy administrator in *Bartgis*, the Sandin defendants are not insurers. Rather,  
14 they are insurance agents and cannot be liable for violation of NRS 686A.310 pursuant to the  
15 statute’s plain terms and the Supreme Court’s holding in *Bartgis*. Accordingly, the Sandin  
16 defendants are entitled to judgment as a matter of law on Plaintiff’s claim for violation fo NRS  
17 686A.310.

18 **D. Whether or not Dave Sandin was licensed in Nevada is not the proximate cause of**  
19 **Oregon Mutual’s cancellation of Plaintiff’s Policy and subsequent refusal to cover**  
20 **Plaintiff’s claim of loss; rather, it was solely and exclusively Plaintiff’s failure to**  
21 **pay its premium that caused its loss as set forth in the complaint.**

22 The Sandin defendants are entitled to judgement as a matter of law on Plaintiff’s claims  
23 for fraud in the inducement, fraud, and negligence because there is no connection between  
24 defendant Dave Sandin’s failure to be licensed as a non-resident procurer of insurance and  
25 Plaintiff’s resulting damages. For every cause of action Plaintiff pleaded, there must be a  
26 nexus between the alleged bad act (Dave Sandin’s lack of an appropriate non-resident license)  
27 and the damages alleged. *See Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007)  
28 (“Proximate cause limits liability to foreseeable consequences that are reasonably connected to  
both the defendant’s misrepresentation or omission and the harm that the misrepresentation or

omission created.”); *see also Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1052 (2010) (“[B]oth intentional and negligent misrepresentation require a showing that the claimed damages were caused by the alleged misrepresentations.”); *Yamaha Motor Co., USA v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (“This court has long recognized that to establish proximate causation ‘it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances.’”) (internal citations omitted). Here, this nexus is lacking as Dave Sandin’s licensee status did not cause or contribute to Plaintiff’s alleged damages, nor did any alleged misrepresentations concerning his licensing status result in Plaintiff’s failure to pay its policy premium, Oregon Mutual’s subsequent cancellation of Plaintiff’s policy, and Oregon Mutual’s denial of Plaintiff’s claim of loss based on the cancellation. *See Equity Diamond Brokers, Inc. v. Transnational Insurance Co.*, 785 N.E.2d 816, 822 (Ohio Ct. App. 2003) (“[A]ny alleged negligence by appellees in failing to obtain the proper licenses was not the proximate cause of EDB’s loss and the trial court did not err in granting summary judgment in favor of appellees.”).

Plaintiff’s damages would have occurred regardless of whether Dave Sandin had an appropriate insurance broker license. Oregon Mutual’s denial of Plaintiff’s claim was based solely on Plaintiff’s failure to pay its premium. O.P.H.’s expert testified that “OMI cancelled for nonpayment.” Ex. S, at 117:3-7. There is no connection between Dave Sandin’s lapsed Nevada license and Plaintiff’s own failure to pay its policy premium.<sup>35</sup> There can also be no logical or reasonable connection between Dave Sandin’s licensing status and Oregon Mutual’s failure to abide by the clear contract terms requiring it to properly notify both the Sandin defendants and Plaintiff of Plaintiff’s late payment of its premium.

**E. Plaintiff’s claim for negligence fails as a matter of law because an insured is not granted a private right of action against an agent for failure to be licensed.**

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<sup>35</sup> *See* Deposition of O.P.H.’s expert, Neal Bordenave (Ex. S), at 93:3-7 (“Q. Is it your professional opinion that Mr. Sandin’s failure to renew his non-resident’s agent license in Nevada caused O.P.H. to be damaged. A. No.”).

1 As stated above, Plaintiff has asserted a claim against the Sandin defendants for  
2 negligence, asserting that "DAVE SANDIN conducted business in Nevada as an insurance  
3 agent without being licensed as such, in violation of Nev. Rev. Stat. § 683A.201." Complaint,  
4 ¶ 84. Plaintiff also asserts that Dave Sandin's failure to comply with the license statute  
5 constitutes negligence *per se*. *Id.*, ¶ 88. Although it is true that Dave Sandin's Nevada license  
6 expired at the time the Oregon Mutual policy was issued, Anthony Sandin and Sandin & Co's  
7 Nevada licenses were still valid. Indeed, the Policy identifies Sandin & Co. as the agent for the  
8 O.P.H., not Dave Sandin. *See* Ex. F (OPH0002POL). Additionally, NRS 683A.201 does not  
9 provide for a private right of action. NRS 683A.201(1) & (3) states,

10 1. A person shall not sell, solicit or negotiate insurance in this state for any  
11 class of insurance unless the person is licensed for that class of insurance.

12 . . . .

13 3. A person required to be licensed in this state who transacts insurance without  
14 a license is subject to an administrative fine of not more than \$1,000 for each  
15 violation.

16 Therefore, Plaintiff's negligence claim must be dismissed as a matter of law because  
17 NRS 683A.201 does not provide for a private right of action.<sup>36</sup> Rather, it provides for an  
18 administrative fine. *Cf. Hinegardner v. Marcor Resorts, L.P.V.*, 108 Nev. 1091, 1095-96, 844  
19 P.2d 800, 803 (1992) ("[W]e note that in the absence of evidence of legislative intent to impose  
20 civil liability, a violation of a penal statute is not negligence *per se*.").

21 Further, in order to prevail on a cause of action for negligence *per se*, the injury must be  
22 of the type against which the statute was intended to protect. *See Anderson v. Baltrusaitis*, 113  
23 Nev. 963, 944 P.2d 797 (1997); *Sagebrush Ltd. v. Carson City*, 99 Nev. 204, 660 P.2d 1013  
24 (1983) ("[V]iolation of a statute may constitute negligence *per se* only if the injured party  
25 belongs to the class of persons that the statute was intended to protect, and the injury is of the

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26 <sup>36</sup> *See* Deposition of O.P.H.'s expert, Neal Bordenave (Ex. S), at 93:8-12; 108:15-23 ("Q. Do  
27 you know whether or not there's a private right of action? Do you know what I mean when I say that,  
28 'private right of action' in Nevada against agent/brokers for failing to maintain their state - non-  
resident state license? A. I think it's an administrative action.").



1 type that the statute was intended to prevent.”). “Whether a legislative enactment provides a  
2 standard of conduct in the particular situation presented by the plaintiff is a question of  
3 statutory interpretation and construction for the court.” *Sagebrush*, 99 Nev. at 208, 660 P.2d at  
4 1015. Oregon Mutual’s cancellation of Plaintiff’s insurance policy due to Plaintiff’s failure to  
5 pay the premium is not the type of injury that NRS 683A.201 is intended to prevent. *See*  
6 *Equity Diamond Brokers, Inc. v. Transnational Insurance Co.*, 785 N.E.2d 816, 822 (Ohio Ct.  
7 App. 2003) (“Further, even if we were to hold that appellees’ alleged violations of Ohio’s  
8 insurance licensing statutes were negligence per se, EDB was still not entitled to judgment as a  
9 matter of law. Proof of negligence per se is not proof of liability per se. EDB was still required  
10 to demonstrate that the appellees’ negligence was the proximate cause of its damages.”).

11 Ultimately, the Sandin defendants – licensed or otherwise – procured a policy that, but  
12 for Plaintiff’s failure to pay, would have been in effect at the time of the fire. Therefore, the  
13 Sandin defendants are entitled to judgment as a matter of law on Plaintiff’s negligence claim.<sup>37</sup>

14 **F. The Sandin defendants did not misrepresent Dave Sandin’s license status to**  
15 **O.P.H.**

16 Plaintiff’s claims for fraud and fraud in the inducement against the Sandin defendants  
17 fail as a matter of law because there is no evidence that the Sandin defendants misrepresented  
18 anything to Plaintiff. Although Dave Sandin’s Nevada license had expired at the time Oregon  
19 Mutual issued the Policy to Plaintiff, Sandin & Co. and Anthony Sandin were licensed in  
20 Nevada at all relevant times. Thus, Sandin & Co. was authorized to broker insurance for its  
21 Nevada clients, including O.P.H., in December 2011. As stated above, the Policy identifies  
22 Sandin & Co. as the agent for the O.P.H., not Dave Sandin. *See* Ex. F (OPH0002POL). In  
23 short, there was no misrepresentation.

24 Plaintiff also asserts that “SANDIN INSURANCE, by and through its agent Defendant  
25 DAVE SANDIN, misrepresented that Defendant OREGON MUTUAL was a reliable and

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26 <sup>37</sup> *See Ashwood v. Clark Cnty.*, 113 Nev. 80, 87, 930 P.2d 740, 744 (1997) (holding that the  
27 district court properly granted summary judgment to the defendants on the negligence claim because  
28 the plaintiff was not a member of the class of persons the provision of the building code was meant to  
protect).

1 appropriate insurance company for PLAINTIFF'S needs . . . ." Complaint, ¶ 63. Plaintiff,  
2 however, is incorrect. In December 2011, the Sandin defendants had to scramble to find an  
3 insurance carrier for Plaintiff after its prior carrier cancelled the policy due to Plaintiff's poor  
4 credit and loss history. *See* Statement of Undisputed facts, ¶¶ 5 & 6, *supra*. As David Sandin  
5 testified, his "top six carriers would not write [O.P.H.'s] insurance because of their loss history  
6 and their bad credit." Therefore, in December 2011, the Sandin defendants recommended  
7 Oregon Mutual's insurance to Plaintiff based on Plaintiff's coverage needs. *Id.*; Ex. E, at  
8 38:18-22.

9 Additionally, Oregon Mutual met Plaintiff's needs as an insurance carrier until Plaintiff  
10 failed to pay the July premium. The sole reason for cancellation of the Policy was due to  
11 Plaintiff's failure to pay its July 26, 2012 premium on or before August 15, 2012. Had Plaintiff  
12 paid its July 26, 2012 premium by August 15, 2012, the Policy would have been in full force  
13 and effect on August 16, 2012 and August 17, 2012 when the fire occurred. Had the Policy not  
14 been cancelled, Oregon Mutual would have continued to adjust the claim for the fire and  
15 Oregon Mutual would have paid losses covered under the Policy subject to the terms,  
16 conditions, exclusions and limitations of the Policy.

17 Because a necessary element of the fraud and fraudulent inducement<sup>38</sup> claims is  
18 missing, namely a misrepresentation, these claims fail as a matter of law and the Sandin  
19 defendants are entitled to judgment in their favor.

20 ///

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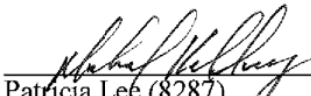
21  
22 <sup>38</sup> *See Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 144 (2014),  
23 reh'g denied (Nov. 25, 2014) ("To prove a fraud claim, the plaintiff must show that the defendant made  
24 a false representation that the defendant knew or believed was false, that the defendant intended to  
25 persuade the plaintiff to act or not act based on the representation, and that the plaintiff had reason to  
26 rely on the representation and suffered damages."); *J.A. Jones Const. Co. v. Lehrer McGovern Bovis,*  
27 *Inc.*, 120 Nev. 277, 290 91, 89 P.3d 1009, 1018 (2004) ("To establish fraud in the inducement, Jones  
28 must prove by clear and convincing evidence each of the following elements: (1) a false representation  
made by LMB, (2) LMB's knowledge or belief that the representation was false (or knowledge that it  
had an insufficient basis for making the representation), (3) LMB's intention to therewith induce Jones  
to consent to the contract's formation, (4) Jones's justifiable reliance upon the misrepresentation, and  
(5) damage to Jones resulting from such reliance.").

**4. Conclusion.**

For the foregoing reasons, defendants Dave Sandin and Sandin & Co. respectfully request that this Honorable Court enter an order granting summary judgment in their favor on Plaintiff's claims of fraud in the inducement (third cause of action), fraud (fourth cause of action), breach of fiduciary duty (fifth cause of action), violations of NRS 686A.310 (sixth cause of action), and negligence (seventh cause of action).

DATED this 17<sup>th</sup> day of March, 2015.

HUTCHISON & STEFFEN, LLC

  
 Patricia Lee (8287)  
 Michael S. Kelley (10101)  
 Peccole Professional Park  
 10080 West Alta Drive, Suite 200  
 Las Vegas, NV 89145

*Attorneys for defendants  
 David Sandin and Sandin & Co.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC, and that on this 17<sup>th</sup> day of March, 2015, I caused the above and foregoing document entitled **DAVE SANDIN AND SANDIN & CO.'S MOTION FOR SUMMARY JUDGMENT** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via electronic mail; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie, Esq.  
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*Attorneys for Oregon Mutual Insurance  
 Company*

  
 An employee of Hutchison & Steffen, LLC

- 1 4. Although factually distinguishable, *Keddie* is instructive because it stands for the  
2 proposition that had the insured done what it was supposed to do, the insurance  
3 policy would have covered its loss and, therefore, the broker obtained coverage  
4 that “met the insured’s needs” and is not liable for the resulting loss.

5 In *Keddie*, *Keddie* sought to obtain insurance through the defendant broker for his boat,  
6 but failed to tell the broker that the boat would be used for commercial fishing purposes. *See*  
7 *Keddie v. Beneficial Ins., Inc.*, 94 Nev. 418, 419, 580 P.2d 955 (1978). No insurance was ever  
8 procured, and in the mean time, the boat was destroyed by fire during a commercial fishing  
9 expedition. The *Keddie* Court found that had insurance been procured pursuant to the  
10 application *Keddie* submitted, it would never have covered the loss anyway. *Id.* Therefore, the  
11 broker/agent would not be held liable. As noted by the *Keddie* Court, the agreement to procure  
12 the insurance must be for a policy of insurance that would have covered the loss incurred. *Id.*,  
13 internal citations omitted.

14 Here, the Sandin defendants obtained appropriate insurance for plaintiff which, had  
15 plaintiff paid its premium, would have covered the loss. Under *Keddie*, the insured is still  
16 responsible for its actions, which is what the Sandin defendants argue here. They could not  
17 have possibly foreseen that Oregon Mutual would not comply with Nevada law or its contract  
18 with plaintiff, and there was no indication that Oregon Mutual would fail to properly notify  
19 plaintiff or the Sandin defendants that the plaintiff’s policy was in danger of being cancelled.  
20 The Sandin defendants obtained insurance for plaintiff that, had plaintiff paid its premium,  
21 would have covered the loss. Therefore, under *Keddie*, the Sandin defendants are not liable  
22 under a “failure to procure” theory.

- 23 5. Dave Sandin’s expired license is not the proximate cause of plaintiff’s failure to  
24 pay its premium and Oregon Mutual’s cancellation of the policy.

25 As explained, *supra*, the Sandin defendants procured insurance that, but for plaintiff’s  
26 failure to pay its premium, would have covered plaintiff’s loss. Therefore, all of plaintiff’s  
27 claims against the Sandin defendants based on its allegation that the Sandin defendants failed  
28 to procure coverage that met plaintiff’s needs, must be dismissed. This includes plaintiff’s  
claims based on Dave Sandin’s licensing status. The Sandin defendants could not have known  
that Oregon Mutual would not comply with his contractual and legal duties to plaintiff during

1 the course of their relationship and cannot be charged with knowledge of something that had  
2 not occurred at the time the policy was procured. In any case, plaintiff failed to show how  
3 Dave Sandin's licensing status is in any way connected to Oregon Mutual's improper notice  
4 practices. Had Dave Sandin's Nevada license not lapsed at the time the policy with Oregon  
5 Mutual was brokered for plaintiff, Oregon Mutual would have still failed to properly notify the  
6 Sandin defendants and plaintiff of the missed premium payment. Plaintiff fails to show how  
7 Dave Sandin's licensing status is in anyway connected to Oregon Mutual's improper notice  
8 practices.

9 All of plaintiff's claims based on Dave Sandin's licensing status must therefore  
10 similarly fail because the Sandin defendants had no legal duty to police Oregon Mutual's  
11 compliance with Nevada law once a policy that met plaintiff's coverage needs was properly  
12 procured. The status of Dave Sandin's licensure does not change this fact, either. Therefore,  
13 all of plaintiff's claims against the Sandin defendants based on Dave Sandin's licensing status  
14 must be dismissed because the Sandin defendants procured insurance that met plaintiff's needs  
15 and thus had no continued duty to police plaintiff and Oregon Mutual's relationship, and even  
16 if they did, plaintiff has not properly pleaded the required nexus between Dave Sandin's lapsed  
17 Nevada license and Oregon Mutual's improper notice and plaintiff's resulting damages.

18 **6. Conclusion**

19 Ultimately, every argument plaintiff makes in its opposition merely buttresses its claims  
20 that, allegedly, Oregon Mutual violated Nevada law and the terms of the insurance policy.  
21 Nothing in its opposition demonstrates how the Sandin defendants can be liable under any  
22 theory of this case. Once the Sandin defendants procured an insurance policy that provided the  
23 coverage plaintiff required, it had no duty to then ensure that Oregon Mutual and plaintiff  
24 complied with the terms of that policy. "[Plaintiff] was entitled to expect that Oregon Mutual  
25 would comply with its obligation to provide notice of cancellation to the Sandin defendants and  
26 that the Sandin defendants would in turn warn them so they avoided a lapse in insurance."  
27 Oregon Mutual never supplied the Sandin defendants with notice of the impending  
28 cancellation, which plaintiff explicitly alleged in its complaint and must therefore be accepted

**HUTCHISON & STEFFEN**

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1 as true for purposes of this motion. Absent this notice, and absent a legal duty to do so (which  
2 plaintiff has not and cannot demonstrate exists under Nevada law), the Sandin defendants  
3 cannot be held responsible for Oregon Mutual's failure to cover plaintiff's loss and must be  
4 dismissed from this suit.

5 DATED this 24 day of January, 2013.

6 HUTCHISON & STEFFEN, LLC

7 

8 Patricia Lee (8287)

9 Z. Kathryn Branson (11540)

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14 kbranson@hutchlegal.com

15 *Attorneys for defendants*

16 *David Sandin and Sandin & Co.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 24<sup>th</sup> day of January, 2013, I caused the above and foregoing document entitled **REPLY IN SUPPORT OF MOTION TO DISMISS** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via electronic mail; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie  
 LANGFORD MCLETCHE LLC  
 616 S. Eighth Street  
 Las Vegas, NV 89101

*Attorneys for plaintiff  
 O.P.H. of Las Vegas Inc.*

V. Andrew Cass  
 Kristin E. Meredith  
 LEWIS BRISBOIS BISGAARD & SMITH LLP  
 6385 S. Rainbow Blvd., Suite 600  
 Las Vegas, NV 89118

*Attorneys for Oregon Mutual Insurance Co.*

  
 An employee of Hutchison & Steffen, LLC



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**February 13, 2013**

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A-12-672158-C      O.P.H. of Las Vegas, Inc., Plaintiff(s)  
vs.  
Oregon Mutual Insurance Company, Defendant(s)

---

**February 13, 2013      9:00 AM      Defendants David Sandin and Sandin & Company's  
Motion to Dismiss**

**HEARD BY:** Sturman, Gloria

**COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Ying Pan

**RECORDER:** Rosalyn Navara

|                 |                        |                                |
|-----------------|------------------------|--------------------------------|
| <b>PARTIES</b>  | Branson, Z. Kathryn    | Attorney for Sandin Defendants |
| <b>PRESENT:</b> | Lee, Patricia          | Attorney for Sandin Defendants |
|                 | McLetchie, Margaret A. | Attorney for Plaintiff         |

**JOURNAL ENTRIES**

Attorney Kristin Meredith (Bar No. 11655) appearing for Attorney Vincent Cass, on behalf of Defendant, Oregon Mutual Insurance Company.

Arguments by counsel regarding duty of insurance broker, cancellation of policy, and licensing issue of insurance broker. Court FINDS, Nevada has a low pleading standard, Plaintiff should have an opportunity to conduct Discovery. COURT ORDERED, motion DENIED WITHOUT PREJUDICE.

Ms. McLetchie to prepare proposed Order.

**OOJ**

Patricia Lee (8287)  
Z.Kathryn Branson (11540)  
HUTCHISON & STEFFEN, LLC  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Tel: (702) 385-2500  
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plee@hutchlegal.com  
kbranson@hutchlegal.com

*Attorneys for defendants  
David Sandin and Sandin & Co.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS, INC.,

Plaintiff,

v.

OREGON MUTUAL INSURANCE  
COMPANY, DAVE SANDIN, and SANDIN  
& CO.,

Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVII

**OFFER OF JUDGMENT**

TO: O.P.H. OF LAS VEGAS, INC.; and

TO: MAGGIE MCLETCHIE, ESQ., its attorney of record:

Pursuant to NRCP 68 and/or NRS 17.115, defendants Dave Sandin and Sandin & Co.  
(the "Sandin defendants") offer judgment to be taken by plaintiff, OPH of Las Vegas, Inc.  
("OPH"), against the Sandin defendants in this action, in the amount of TWO THOUSAND  
DOLLARS AND NO/100 (\$2,000.00).

This offer precludes a separate allowance of costs, fees and interest.

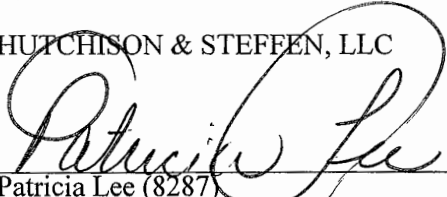
This offer is made for the purposes specified in NRCP 68 and/or NRS 17.115 and to  
resolve all claims set forth in OPH's complaint against the Sandin defendants, as alleged in  
OPH's complaint on file herein. This Offer of Judgment should not be construed as either an  
admission that any individual or entity is liable in this action, or that OPH has suffered any

1 specific damages. Accordingly, and pursuant to the foregoing rules and statutes, judgment  
2 against the offering defendants may not be entered unless specifically ordered by the District  
3 Court.

4 Pursuant to NRCP 68 and NRS 17.115, this offer will expire ten (10) days after the date  
5 of its service on OPH.

6 DATED this 14<sup>th</sup> day of February, 2013.

7 HUTCHISON & STEFFEN, LLC

8   
9

10 Patricia Lee (8287)  
11 Z. Kathryn Branson (11540)  
12 Peccole Professional Park  
13 10080 West Alta Drive, Suite 200  
14 Las Vegas, NV 89145  
15 pleeutchlegal.com  
16 kbranson@hutchlegal.com

17 *Attorneys for defendants*  
18 *David Sandin and Sandin & Co.*  
19  
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27  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 14<sup>th</sup> day of February, 2013, I caused the above and foregoing document entitled **OFFER OF JUDGMENT** to be served as follows:

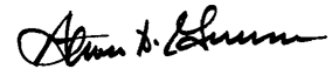
- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via electronic mail; and/or
- ☐ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie  
LANGFORD MCLETCHE LLC  
616 S. Eighth Street  
Las Vegas, NV 89101

*Attorneys for plaintiff*  
*O.P.H. of Las Vegas Inc.*

  
An employee of Hutchison & Steffen, LLC



CLERK OF THE COURT

1 **NEOJ**  
2 Patricia Lee (8287)  
3 Z.Kathryn Branson (11540)  
4 HUTCHISON & STEFFEN, LLC  
5 10080 West Alta Drive, Suite 200  
6 Las Vegas, NV 89145  
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9 plee@hutchlegal.com  
10 kbranson@hutchlegal.com

11 *Attorneys for defendants*  
12 *David Sandin and Sandin & Co.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 O.P.H. OF LAS VEGAS, INC.,  
16 Plaintiff,

17 v.

18 OREGON MUTUAL INSURANCE  
19 COMPANY, DAVE SANDIN, and SANDIN  
20 & CO.,

21 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVII

**NOTICE OF ENTRY OF ORDER  
DENYING THE SANDIN  
DEFENDANTS' MOTION TO  
DISMISS**

22 NOTICE IS HEREBY GIVEN that an **ORDER DENYING THE SANDIN**  
23 **DEFENDANTS' MOTION TO DISMISS** was entered in the above-entitled matter on March  
24 12, 2013. A copy of the Order is attached hereto.

25 DATED this 22 day of March, 2013.

HUTCHISON & STEFFEN, LLC



26 Patricia Lee (8287)  
27 Z. Kathryn Branson (11540)  
28 Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
plee@hutchlegal.com  
kbranson@hutchlegal.com  
*Attorneys for defendants*  
*David Sandin and Sandin & Co.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 22<sup>nd</sup> day of March, 2013, I caused the above and foregoing document entitled **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via electronic mail; and/or
- ☐ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

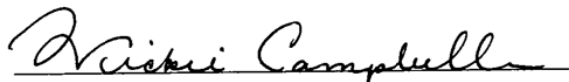
to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie  
LANGFORD MCLETCHIE LLC  
616 S. Eighth Street  
Las Vegas, NV 89101

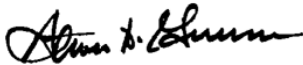
*Attorneys for plaintiff  
O.P.H. of Las Vegas Inc.*

V. Andrew Cass  
Kristin E. Meredith  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

*Attorneys for Oregon Mutual Insurance Co.*



An employee of Hutchison & Steffen, LLC



CLERK OF THE COURT

1 **ORD**

2 Patricia Lee (8287)  
3 Z.Kathryn Branson (11540)  
4 HUTCHISON & STEFFEN, LLC  
5 10080 West Alta Drive, Suite 200  
6 Las Vegas, NV 89145  
7 Tel: (702) 385-2500  
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9 plee@hutchlegal.com  
10 kbranson@hutchlegal.com

11 *Attorneys for defendants*  
12 *David Sandin and Sandin & Co.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 O.P.H. OF LAS VEGAS, INC.,  
16 Plaintiff,

17 v.

18 OREGON MUTUAL INSURANCE  
19 COMPANY, DAVE SANDIN, and SANDIN  
20 & CO.,  
21 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVII

**ORDER DENYING THE SANDIN  
DEFENDANTS' MOTION TO  
DISMISS**

22 Defendants Dave Sandin and Sandin & Co's (the "Sandin defendants") motion to  
23 dismiss came on for hearing before this Court on February 13, 2013. Patricia Lee and Z.  
24 Kathryn Branson of Hutchison & Steffen, LLC appeared on behalf of the Sandin defendants.  
25 Margaret A. McLetchie of Langford McLetchie, LLC appeared on behalf of plaintiff, O.P.H. of  
26 Las Vegas, Inc. The Court, having considered the respective papers and submissions of each  
27 party, having heard the arguments of counsel at the hearing, and good cause appearing:  
28

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///

**HUTCHISON & STEFFEN**

A PROFESSIONAL LLC

PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

**HUTCHISON & STEFFEN**

A PROFESSIONAL LLC  
PECCOLE PROFESSIONAL PARK  
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LAS VEGAS, NV 89145

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IT IS HEREBY ORDERED that the Sandin defendants' motion to dismiss is DENIED  
without prejudice.

DATED this Jan day of March, 2013.

  
THE HONORABLE GLORIA STURMAN

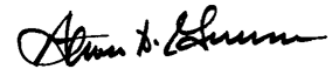


Respectfully submitted by:  
HUTCHISON & STEFFEN, LLC

  
Patricia Lee (8287)  
Z. Kathryn Branson (11540)  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
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*Attorneys for defendants  
David Sandin and Sandin & Co.*





CLERK OF THE COURT

1 ANS  
2 Patricia Lee (8287)  
3 Z.Kathryn Branson (11540)  
4 HUTCHISON & STEFFEN, LLC  
5 10080 West Alta Drive, Suite 200  
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9 plee@hutchlegal.com  
10 kbranson@hutchlegal.com

11 *Attorneys for defendants*  
12 *Dave Sandin and Sandin & Co.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 O.P.H. OF LAS VEGAS, INC.,  
16 Plaintiff,

17 v.

18 OREGON MUTUAL INSURANCE  
19 COMPANY, DAVE SANDIN, and SANDIN  
20 & CO.,

21 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVII

**DAVE SANDIN AND SANDIN &  
CO.'S ANSWER TO COMPLAINT**

22 Defendants Dave Sandin and Sandin & Co. (together the "Sandin defendants") hereby  
23 respond to plaintiff O.P.H. of Las Vegas Inc.'s ("OPH" or "plaintiff") complaint as follows:

24 **JURISDICTION**

25 1. The Sandin defendants are without knowledge or information sufficient to form  
26 a belief as to the truth of the allegations contained in paragraph 1 and therefore deny the same.

27 **PARTIES**

28 2. The Sandin defendants are without knowledge or information sufficient to form  
a belief as to the truth of the allegations contained in paragraph 2 and therefore deny the same.

3. The Sandin defendants are without knowledge or information sufficient to form  
a belief as to the truth of the allegations contained in paragraph 3 and therefore deny the same.

4. The Sandin defendants admit that defendant Sandin & Co. is also known as

**HUTCHISON & STEFFEN**

A PROFESSIONAL LLC  
PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

1 Sandin Insurance Group. The Sandin defendants deny the remaining allegations contained in  
2 paragraph 4.

3 5. The Sandin defendants admit the allegations contained in paragraph 5.

4 6. The Sandin defendants deny the allegations contained in paragraph 6 to the  
5 extent that this paragraph calls for a legal conclusion. As to the remainder of the allegations  
6 contained in paragraph 6, the Sandin defendants deny the same.

7 7. The Sandin defendants deny the allegations contained in paragraph 7.

8 8. The Sandin defendants are without knowledge or information sufficient to form  
9 a belief as to the truth of the allegations contained in paragraph 8 and therefore deny the same.

10 9. The Sandin defendants are without knowledge or information sufficient to form  
11 a belief as to the truth of the allegations contained in paragraph 9 and therefore deny the same.

12 10. The Sandin defendants are without knowledge or information sufficient to form  
13 a belief as to the truth of the allegations contained in paragraph 10 and therefore deny the same.

14 **FACTUAL ALLEGATIONS**

15 11. The Sandin defendants admit that Dave Sandin has worked with plaintiff on and  
16 off for the past ten years. The Sandin defendants deny the remaining allegations contained in  
17 paragraph 11.

18 12. The Sandin defendants are without knowledge or information sufficient to form  
19 a belief as to the truth of the allegations contained in paragraph 12 and therefore deny the same.

20 13. The Sandin defendants deny the allegations contained in paragraph 13.

21 14. The Sandin defendants are without knowledge or information sufficient to form  
22 a belief as to the truth of the allegations contained in paragraph 14 and therefore deny the same.

23 15. The Sandin defendants are without knowledge or information sufficient to form  
24 a belief as to the truth of the allegations contained in paragraph 15 and therefore deny the same.

25 16. The Sandin defendants admit that Oregon Mutual was one of many insurance  
26 companies that Dave Sandin recommended to plaintiff. The Sandin defendants deny the  
27 remaining allegations contained in paragraph 16.

28 17. The Sandin defendants admit that in December of 2011 defendant Oregon

1 Mutual issued a Businessowner Protector Policy to plaintiff, and that plaintiff and defendant  
2 Oregon Mutual thereby entered an insurance contract which protected OPH and the Original  
3 Pancake House restaurant located at 4170 South Fort Apache Road, Las Vegas, Nevada (the  
4 "Contract"). The Sandin defendants deny the remaining allegations contained in paragraph 17.

5 18. The Sandin defendants admit the allegations contained in paragraph 18.

6 19. The Sandin defendants admit the allegations contained in paragraph 19.

7 20. The Sandin defendants admit the allegations contained in paragraph 20.

8 21. The Sandin defendants deny the allegations contained in paragraph 21.

9 22. The Sandin defendants are without knowledge or information sufficient to form  
10 a belief as to the truth of the allegations contained in paragraph 22 and therefore deny the same.

11 23. The Sandin defendants are without knowledge or information sufficient to form  
12 a belief as to the truth of the allegations contained in paragraph 23 and therefore deny the same.

13 24. The Sandin defendants admit that plaintiff failed to pay one month's premium  
14 due on July 26, 2012. The Sandin defendants deny the remaining allegations contained in  
15 paragraph 24.

16 25. The Sandin defendants admit the allegations contained in paragraph 25.

17 26. The Sandin defendants deny the allegations contained in paragraph 26.

18 27. The Sandin defendants admit the allegations contained in paragraph 27.

19 28. The Sandin defendants admit the allegations contained in paragraph 28.

20 29. The Sandin defendants deny the allegations contained in paragraph 29.

21 30. The Sandin defendants admit that Linda Snyder reported an alleged break-in to  
22 defendant Dave Sandin of Sandin Insurance. The Sandin defendants are without knowledge or  
23 information sufficient to form a belief as to the truth of the allegations contained in paragraph  
24 30 and therefore deny the same.

25 31. The Sandin defendants admit the allegations set forth in paragraph 31.

26 32. The Sandin defendants deny the allegation contained in paragraph 32.

27 33. The Sandin defendants admit the allegations contained in paragraph 33.

28 34. The Sandin defendants deny the allegations contained in paragraph 34.

35. The Sandin defendants deny the allegations contained in paragraph 35.

36. The Sandin defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 and therefore deny the same.

37. The Sandin defendants deny the allegations contained in paragraph 37.

38. The Sandin defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 and therefore deny the same.

39. The Sandin defendants deny the allegations contained in paragraph 39.

40. The Sandin defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 and therefore deny the same.

41. The Sandin defendants admit the allegations contained in paragraph 41.

42. The Sandin defendants deny the allegations contained in paragraph 42.

**FIRST CAUSE OF ACTION**  
**Breach of Contract**  
**(Against defendant Oregon Mutual)**

43. The Sandin defendants repeat and reallege their answers to the preceding paragraphs of the complaint as though fully set forth herein and incorporate the same by reference.

44. This paragraph calls for a legal conclusion to which no response is required. To the extent a response is required, the Sandin defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 and therefore deny the same.

45. The Sandin defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 and therefore deny the same.

**SECOND CAUSE OF ACTION**  
**Breach of the Covenant of Good Faith and Fair Dealing / Bad Faith**  
**(Against Oregon Mutual)**

46. The Sandin defendants repeat and reallege their answers to the preceding paragraphs of the complaint as though fully set forth herein and incorporate the same by reference.

47. This paragraph calls for a legal conclusion to which no response is required. To

1 the extent a response is required, the Sandin defendants are without knowledge or information  
2 sufficient to form a belief as to the truth of the allegations contained in paragraph 47 and  
3 therefore deny the same.

4 48. The Sandin defendants are without knowledge or information sufficient to form  
5 a belief as to the truth of the allegations contained in paragraph 48 and therefore deny the same.

6 49. This paragraph calls for a legal conclusion to which no response is required. To  
7 the extent a response is required, the Sandin defendants are without knowledge or information  
8 sufficient to form a belief as to the truth of the allegations contained in paragraph 49 and  
9 therefore deny the same.

10 50. The Sandin defendants are without knowledge or information sufficient to form  
11 a belief as to the truth of the allegations contained in paragraph 50 and therefore deny the same.

12 **THIRD CAUSE OF ACTION**  
13 **Fraud in the Inducement**  
14 **(Against all defendants)**

15 51. The Sandin defendants repeat and reallege their answers to the preceding  
16 paragraphs of the complaint as though fully set forth herein and incorporate the same by  
17 reference.

18 52. The Sandin defendants deny the allegations contained in paragraph 52.

19 53. The Sandin defendants deny the allegations contained in paragraph 53.

20 54. The Sandin defendants deny the allegations contained in paragraph 54.

21 55. The Sandin defendants are without knowledge or information sufficient to form  
22 a belief as to the truth of the allegations contained in paragraph 55 and therefore deny the same.

23 56. The Sandin defendants are without knowledge or information sufficient to form  
24 a belief as to the truth of the allegations contained in paragraph 56 and therefore deny the same.

25 57. The Sandin defendants are without knowledge or information sufficient to form  
26 a belief as to the truth of the allegations contained in paragraph 57 and therefore deny the same.

27 58. The Sandin defendants deny the allegations contained in paragraph 58.

28 59. The Sandin defendants admit that plaintiff purchased an Oregon Mutual policy  
from the Sandin defendants for its business insurance needs. The Sandin defendants deny the

1 remaining allegations contained in paragraph 59.

2 60. The Sandin defendants deny the allegations contained in paragraph 60.

3 **FOURTH CAUSE OF ACTION**

4 **Fraud**

4 **(Against the Sandin defendants)**

5 61. The Sandin defendants repeat and reallege their answers to the preceding  
6 paragraphs of the complaint as though fully set forth herein and incorporate the same by  
7 reference.

8 62. The Sandin defendants deny the allegations contained in paragraph 62.

9 63. The Sandin defendants deny the allegations contained in paragraph 63.

10 64. The Sandin defendants deny the allegations contained in paragraph 64.

11 65. The Sandin defendants deny the allegations contained in paragraph 65.

12 66. The Sandin defendants deny the allegations contained in paragraph 66.

13 67. The Sandin defendants deny the allegations contained in paragraph 67.

14 **FIFTH CAUSE OF ACTION**

15 **Breach of Fiduciary Duty**

15 **(Against Sandin defendants)**

16 68. The Sandin defendants repeat and reallege their answers to the preceding  
17 paragraphs of the complaint as though fully set forth herein and incorporate the same by  
18 reference.

19 69. The Sandin defendants deny the allegations contained in paragraph 69.

20 70. The Sandin defendants deny the allegations contained in paragraph 70.

21 71. The Sandin defendants deny the allegations contained in paragraph 71.

22 **SIXTH CAUSE OF ACTION**

23 **Violations of Nev. Rev. Stat. § 686A.310**

23 **(Against all defendants)**

24 72. The Sandin defendants repeat and reallege their answers to the preceding  
25 paragraphs of the complaint as though fully set forth herein and incorporate the same by  
26 reference.

27 73. This paragraph calls for a legal conclusion to which no response is required. To  
28 the extent a response is required, the Sandin defendants deny the allegations contained in

1 paragraph 73.

2 74. This paragraph calls for a legal conclusion to which no response is required. To  
3 the extent a response is required, the Sandin defendants are without knowledge or information  
4 sufficient to form a belief as to the truth of the allegations contained in paragraph 74 and  
5 therefore deny the same.

6 75. The Sandin defendants deny the allegations contained in paragraph 75.

7 76. The Sandin defendants deny the allegations contained in paragraph 76.

8 77. This paragraph calls for a legal conclusion to which no response is required. To  
9 the extent a response is required, the Sandin defendants are without knowledge or information  
10 sufficient to form a belief as to the truth of the allegations contained in paragraph 77 and  
11 therefore deny the same.

12 78. The Sandin defendants deny the allegations contained in paragraph 78.

13 **SEVENTH CAUSE OF ACTION**

14 **Negligence  
(Against all defendants)**

15 79. The Sandin defendants repeat and reallege their answers to the preceding  
16 paragraphs of the complaint as though fully set forth herein and incorporate the same by  
17 reference.

18 80. This paragraph calls for a legal conclusion to which no response is required. To  
19 the extent a response is required, the Sandin defendants deny the allegations set forth in  
20 paragraph 80.

21 81. This paragraph calls for a legal conclusion to which no response is required. To  
22 the extent a response is required, the Sandin defendants deny the allegations contained in  
23 paragraph 81.

24 82. This paragraph calls for a legal conclusion to which no response is required. To  
25 the extent a response is required, the Sandin defendants deny the allegations contained in  
26 paragraph 82.

27 83. This paragraph calls for a legal conclusion to which no response is required. To  
28 the extent a response is required, the Sandin defendants are without knowledge or information

1 sufficient to form a belief as to the truth of the allegations contained in paragraph 83 and  
2 therefore deny the same.

3 84. This paragraph calls for a legal conclusion to which no response is required. To  
4 the extent a response is required, the Sandin defendants deny the allegations contained in  
5 paragraph 84.

6 85. The Sandin defendants deny the allegations contained in paragraph 85.

7 86. The Sandin defendants deny the allegations contained in paragraph 86.

8 87. The Sandin defendants deny the allegations contained in paragraph 87.

9 88. The Sandin defendants deny the allegations contained in paragraph 88.

10 89. The Sandin defendants deny the allegations contained in paragraph 89.

11 90. The Sandin defendants deny the allegations contained in paragraph 89.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 Plaintiff's complaint fails to state a claim on which relief may be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 Plaintiff's complaint, and each cause of action or claim for relief asserted therein, is  
17 barred by the doctrine of laches and/or unclean hands.

18 **THIRD AFFIRMATIVE DEFENSE**

19 Any damages suffered by plaintiff, if any, were caused by the acts and/or omissions of  
20 plaintiff itself.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 Any damages suffered by plaintiff, if any, were caused by the acts and/or omissions of  
23 third parties over whom defendant had no control.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 By its own conduct, plaintiff is estopped from maintaining this action.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 Plaintiff has waived its rights to bring this action.

28 ///



1                                   **SEVENTH AFFIRMATIVE DEFENSE**

2           Plaintiff has suffered no damages and is therefore entitled to no relief.

3                                   **EIGHTH AFFIRMATIVE DEFENSE**

4           Plaintiff has not pleaded any valid claim upon which an award of attorneys' fees or  
5 costs could be based.

6                                   **NINTH AFFIRMATIVE DEFENSE**

7           Plaintiff's claims against the Sandin defendants are not premised on any cognizable  
8 duty owed by the Sandin defendants under the law and therefore the Sandin defendants are not  
9 legally responsible for any of plaintiff's damages as alleged herein.

10                                  **TENTH AFFIRMATIVE DEFENSE**

11           There is no nexus between plaintiff's alleged damages and the Sandin defendants'  
12 actions and/or omissions as alleged herein.

13                                  **ELEVENTH AFFIRMATIVE DEFENSE**

14           Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been  
15 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon filing  
16 the Answer, and therefore, the Sandin defendants reserves the right to amend its Answer to  
17 allege additional affirmative defenses if subsequent investigation warrants.

18                                  **TWELFTH AFFIRMATIVE DEFENSE**

19           NRS 683A.201 does not provide a private right of action to plaintiff.

20                                  **THIRTEENTH AFFIRMATIVE DEFENSE**

21           The Sandin defendants hereby incorporate by reference those affirmative defenses  
22 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the  
23 event further investigation or discovery reveals the applicability of any such defenses, the  
24 Sandin defendants reserve the right to seek leave of Court to amend this answer to specifically  
25 assert any such defense. Such defenses are herein incorporated by reference for the specific  
26 purpose of not waiving any such defense.

27                                  **FOURTEENTH AFFIRMATIVE DEFENSE**

28           The Sandin defendants deny each and every allegation of plaintiff's complaint not

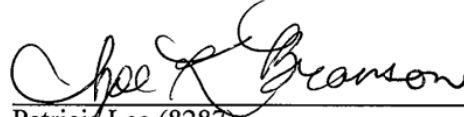
specifically admitted or otherwise pleaded to herein.

WHEREFORE, the Sandin defendants pray as follows:

1. That plaintiff take nothing by way of its complaint;
2. That plaintiff's complaint and all causes of action against the Sandin defendants be dismissed with prejudice;
3. For attorneys' fees, costs, and interest accrued; and
4. For such other and further relief that the Court deems just and proper.

DATED this 3 day of April, 2013.

HUTCHISON & STEFFEN, LLC



Patricia Lee (8287)  
Z. Kathryn Branson (11540)  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
pleeutchlegal.com  
kbranson@hutchlegal.com  
*Attorneys for defendants*  
*Dave Sandin and Sandin & Co.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 3<sup>rd</sup> day of April, 2013, I caused the above and foregoing document entitled **DAVE SANDIN AND SANDIN & CO.'S ANSWER TO COMPLAINT** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ to be served via electronic mail pursuant to the parties' consents to receive service electronically; and/or
- ☐ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie  
 LANGFORD MCLEITCHIE LLC  
 616 S. Eighth Street  
 Las Vegas, NV 89101

*Attorneys for plaintiff  
 O.P.H. of Las Vegas Inc.*

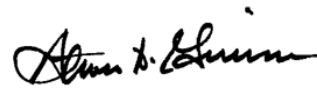
V. Andrew Cass  
 Kristin E. Meredith  
 LEWIS BRISBOIS BISGAARD & SMITH LLP  
 6385 S. Rainbow Blvd., Suite 600  
 Las Vegas, NV 89118

*Attorneys for Oregon Mutual Insurance Co.*

David J. Winterton, Esq.  
 Winterton & Associates  
 1140 N. Town Center Dr., Suite 120  
 Las Vegas, NV 89144

*Arbitrator*

  
 An employee of Hutchison & Steffen, LLC



CLERK OF THE COURT

1 MARGARET A. MCLEITCHIE, ESQ.

Nevada Bar No. 10931

2 DANIEL B. HEIDTKE, ESQ.

Nevada Bar No. 12975

3 **LANGFORD MCLEITCHIE LLC**

616 S. Eighth Street

4 Las Vegas, NV 89101

5 Tel: (702) 471-6565

Fax: (702) 471-6540

6 maggie@nvlitigation.com

7 *Attorneys for Plaintiff*

*O.P.H. of Las Vegas Inc.*

9  
10 **DISTRICT COURT**

11 **CLARK COUNTY NEVADA**

12 O.P.H. of Las Vegas Inc.,

Case No.: A-12-672158

13  
14 Plaintiff

Dept. No.: XXVII

15  
16 vs.

**MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT**

17 Oregon Mutual Insurance Company, Dave  
18 Sandin, and Sandin & Co.,

19 Defendants.  
20  
21

22 COMES NOW, Plaintiff O.P.H. of Las Vegas, Inc. (hereinafter "OPH"), by and  
23 through its attorneys of record, Margaret A. McLetchie, Esq., and Daniel B. Heidtke, Esq.,  
24 of LANGFORD MCLEITCHIE LLC, and hereby moves this Court pursuant to Nev. R. Civ.  
25 P. 56 for Partial Summary Judgment against Defendant Oregon Mutual Insurance Company  
26 (hereinafter "OMI") with respect to the question of liability as to its First Cause of Action:  
27  
28

1 Breach of Contract, Second Cause of Action: Implied Covenant of Good Faith and Fair  
2 Dealing, and Sixth Cause of Action: Violation of Nev. Rev. Stat. 686A.310, on the grounds  
3 that there is no genuine issue of material fact as to liability and that the moving party is  
4 entitled to judgment as a matter of law.

5 This Motion is based upon the papers and pleadings on file herein, the  
6 Memorandum of Points and Authorities submitted in support hereof, any attached exhibits,  
7 and any oral argument which this Court may entertain.  
8

9  
10 DATED this 27<sup>th</sup> day of November, 2013.  
11

12 /s/ Daniel B. Heidtke, Esq.  
13 DANIEL B. HEIDTKE, ESQ.  
14 Nevada Bar No. 12975  
15 MARGARET A. MCLETCHIE, ESQ.  
16 Nevada Bar No. 10931  
17 **LANGFORD MCLETCHIE LLC**  
18 616 S. Eighth Street  
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21 Fax: (702) 471-6540  
22 maggie@nvlitigation.com  
23 *Attorneys for Plaintiff*  
24 *O.P.H. of Las Vegas Inc.*  
25  
26  
27  
28

**NOTICE OF MOTION**

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that the foregoing Motion will be brought for hearing  
on the 08 day of JANUARY, ~~2018~~, at the hour of 9:00 A.m., or as soon thereafter as  
the matter can be heard. 2014

Respectfully submitted,

LANGFORD MCLETCHIE LLC

/s/ Daniel B. Heidtke, Esq.

Daniel B. Heidtke, Esq.  
Nevada Bar No. 12975  
Langford McLetchie LLC  
616 S. Eighth St.  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On August 17, 2012, a fire completely destroyed the Original Pancake House located at 4833 W. Charleston, Las Vegas, Nevada 89146, owned by Plaintiff O.P.H. of Las Vegas Inc. (“OPH”). On that same day, OPH submitted a claim to its insurance company, Oregon Mutual Insurance Company (OMI), who issued claim number 151999 for the loss associated with the fire. Later that day, OMI indicated to OPH’s insurance broker, Dave Sandin, that the loss would not be covered by OMI. OMI’s reason: OPH’s policy had been canceled for failure to pay its July 2012 premium. According to a notice generated by OMI and dated July 31, 2012 (the “July 31 Notice”), OMI canceled OPH’s insurance policy effective as of 12:01 a.m., August 16, 2012.

OPH maintains that it never received the July 31 Notice, nor any other notice or communication that would have alerted OPH of any pending cancellation prior to the fire. Another source of the dispute between OPH and OMI in this matter is whether the pre-cancellation notice provided to the Sandin defendants was also legally “provided.”<sup>1</sup>

However, these issues are irrelevant to this Motion. Regardless of whether the July 31 Notice was sent or received, the July 31 Notice did not comply with Nevada law. As a result, OMI did not effectively cancel the policy with OPH at 12:01 a.m. on August 16, 2012, and the insurance remained in effect when the fire occurred. Accordingly, OMI’s liability with respect to OPH’s insurance policy – as a result of its defective notice of cancellation – can be established as a matter of law.

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<sup>1</sup> It is OPH’s contention that merely posting a pre-cancellation notice to OMI’s online portal (called “BizLink”) was akin to posting the notice on a bulletin board at OMI, and not sufficient to comply with OMI’s statutory and contractual requirement to provide notice to the Sandin defendants.

## II. STATEMENT OF UNDISPUTED FACTS (“SUF”)

| # | Undisputed Fact   | Source   |
|---|---|--|
| 1 | OMI and OPH entered into a Business owner Protector Policy (the “Policy”).  | Portion of Policy, attached hereto as Ex. 1, (OPH0001POL).   |
| 2 | The Policy’s coverage dates were December 26, 2011 until December 26, 2012.   | Id.  |
| 3 | The Policy provides:<br><br>“A.2. We [OMI] may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least: [...] b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.”  | Portion of Policy, attached hereto as Ex. 2, (OPH0070POL).   |
| 4 | The Policy provides:<br><br>“N. Notices (1) Notice of cancellation or nonrenewal will be mailed, first class or certified, or delivered to the first Named Insured at the last mailing address known to us and will state: (a) The specific reason for cancellation or nonrenewal, and (b) The effective date of nonrenewal. (2) We will also provide a copy of the notice of cancellation, for both policies in effect less than 70 days and policies in effect 70 days or more, to the agent who wrote the policy.” | Portion of Policy, attached hereto as Ex. 3, (OPH0074POL).   |
| 5 | Plaintiff admits having mistakenly failed to timely pay the premium due on July 26, 2013.   | See Complaint at ¶ 24, and Answer at ¶ 16, on file herein.   |
| 6 | A Notice of Cancellation was generated by OMI on July 31, 2012. (hereinafter referred to as the “July 31 Notice”)   | Oregon Mutual Insurance Group, Notice of Cancellation, dated July 31, 2012 attached hereto as Ex. 4 (OPH0022MSC – OPH0023MSC). |



| #  | Undisputed Fact  | Source  |
|----|--|---|
| 7  | The July 31 Notice, in pertinent part, states as follows:<br>1. “We did not receive the required premium payment on your account by the date it was due. We appreciate your business and hope we can continue to serve your insurance needs. If we receive at least the minimum due on this account by 08/15/12, we will continue your coverage without interruption. If we do not receive the minimum due by 08/15/12, each policy listed below will be cancelled effective the time and date shown opposite that policy number.” | Portion of Oregon Mutual Insurance Group, Notice of Cancellation, dated July 31, 2012 attached hereto as Ex. 4 (OPH0022MSC).  |
| 8  | The July 31 Notice, in pertinent part, states as follows:<br>2. The July 31 Notice also indicated that the Policy “is cancelled as of 12:01 a.m. standard time on 08/16/12.”   | Id.   |
| 9  | No August 2012 Invoice concerning the Policy was ever mailed or delivered to OPH.  | Defendant Oregon Mutual Insurance Company’s Response to O.P.H. of Las Vegas Inc.’s Second Set of Requests for Admissions; see Response to Request No. 34, attached hereto as Ex. 5. |
| 10 | On August 11, 2012 the OPH at 4833 W. Charleston, Las Vegas, Nevada, 89146 (the “Charleston Location”) was broken into and vandalized.   | Defendant Oregon Mutual Insurance Company’s Responses to Plaintiff’s First Request for Admissions; see Response to Request No. 15, attached hereto as Ex. 6.                        |
| 11 | According to the July 31 Notice, the Policy was cancelled at 12:01 a.m., on August 16, 2012.   | Ex. 4 (OPH0022MSC).   |

| #  | Undisputed Fact   | Source   |
|----|---|--|
| 12 | On August 16, 2012, OMI issued claim number 151991 for the loss stemming from break-in and vandalism at the Charleston Location.  | See August 16, 2012 Oregon Mutual Group Loss Notice, attached hereto as Ex. 7 (SAN000078).   |
| 13 | During the early morning hours of August 17, 2012, the Charleston Location caught fire and was completely destroyed.  | See Las Vegas Sun article, "After fire, owner undecided on fate of Original Pancake House," dated August 17, 2012; attached hereto as Ex. 8 (OPH0114 – OPH0115). |
| 14 | On August 17, 2012, OMI issued claim number 151999 for the loss stemming from the fire at the Charleston Location.  | See August 17, 2012 Oregon Mutual Group Loss Notice, attached hereto as Ex. 9 (SAN000079).   |
| 15 | On August 20, 2012, OMI denied OPH's claim for the fire at the Charleston Location, indicating that the Policy had been cancelled on August 16, 2012 and thus the fire occurred when OPH was no longer covered by the Policy. | See August 20, 2012 Letter from Jerry Masonheimer, sent Certified Mail, Return Receipt Requested; attached hereto as Ex. 10, (OPH0020CF2 – OPH0021CF2).          |
| 16 | On August 21, 2012, OMI generated a document entitled "Non-Payment Cancellation." (hereinafter referred to as the "August 21 Notice")   | See August 21, 2012 Oregon Mutual Insurance Company, Non-Payment Cancellation, attached hereto as Ex. 11 (OPH0019MSC – OPH0020MSC).                              |

| #  | Undisputed Fact   | Source                            |
|----|---|-----------------------------------|
| 17 | The August 21 Notice, in pertinent part, states as follows:<br>1. "Policy No. BSP716685 [...] Termination Effective Date 08/16/12 12:01 A.M., Standard Time."   | Ex. 11 (OPH0019MSC).              |
| 18 | The August 21 Notice, in pertinent part, states as follows:<br>2. "This policy has been cancelled for non-payment of premium. Legal notice was mailed to the payor as listed in our records. Coverage for the payor's interest is terminated effective the termination date and hour shown above..."  | Id.                               |
| 19 | The August 21 Notice, in pertinent part, states as follows:<br>3. "If this notice of cancellation or non-renewal does not state the facts on which our decision is based we will supply that information within 6 days after receipt of a written request by you. Please mail inquiries to: Oregon Mutual Insurance Company, PO Box 808, McMinnville, OR. 97128." | Ex. 11 (OPH0020MSC).              |
| 20 | On August 22, 2012, OPH sent OMI Check #2850, dated August 13, 2012, for the July 2012 Invoice.   | Ex. 12 (OPH0062CF2 – OPH0069CF2). |
| 21 | On August 24, 2012, OMI returned Check #2850, dated 08/13/12, in the amount of \$2,814.75 to OPH.   | Id.                               |

### III. LEGAL ARGUMENT

Summary judgment is appropriate when the moving party is entitled to judgment as a matter of law, and no genuine issue remains for trial. *Shepard v. Harrison*, 100 Nev. 178, 678 P.2d 670 (1984); NRCP 56. Nev. R. Civ. P. 56(c) states, in pertinent part, "A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." NRCP 56(c).

///

1 OMI's failure to send legally effective notice prior to the effective date of  
2 cancelation resulted in an ineffective cancelation of the Business owners Protector Policy  
3 number BSP716685 (the "Policy"), and thus, the Policy was still in effect on August 17,  
4 2012. OMI's failure to provide legally effective notice resulted in: (1) breach of contract  
5 (First Cause of Action); (2) breach of the covenant of good faith and fair dealing (Second  
6 Cause of Action); and (3) violations of Nev. Rev. Stat. 686A.310 (Sixth Cause of Action).  
7 Accordingly, at this stage of the proceedings, summary judgment may be entered on the  
8 issue of OMI's liability pursuant to the Policy and Nevada law.

9 **A. OMI Breached The Policy By Failing To Provide Notice.**

10 OMI breached the Policy by failing to provide notice and summary judgment is  
11 appropriate as to OMI's liability as to the First Cause of Action. "Interpreting an insurance  
12 contract is a question of law." *In re Endoscopy Ctr. Of S. Nevada, LLC*, 451 B.R. 527,  
13 549-50 (Bankr. D. Nev. 2011) (citing *Farmers Insurance Exchange v. Neal*, 119 Nev. 62,  
14 64, 64 P.3d 472, 473 (Nev. 2003)). As the Nevada Supreme Court has held, "[a]n  
15 insurance policy is a contract of adhesion and should be interpreted broadly, *affording the*  
16 *greatest possible coverage to the insured.*" *Farmers Ins. Grp. v. Stonik By & Through*  
17 *Stonik*, 110 Nev. 64, 67, 867 P. 2d 389, 391 (1994)(*emphasis added*). OMI was required  
18 by both the Policy and Nevada law to provide notice to OPH. OMI's July 31 Notice was  
19 defective according to Nevada law. As a result, the Policy was still in effect on the date of  
20 the fire (August 17, 2012), the Policy terms were breached by OMI, and OMI is liable for  
21 the resulting harm suffered by OPH.  
22

23 **1. OMI was required by the Policy and Nevada law to provide**  
24 **notice.**

25 On August 16, 2012 at 12:01 A.M., OMI canceled the Policy because OPH failed to  
26 pay the July 2012 premium. (See August 21 Notice, Ex. 11; p. OPH0019MSC –  
27 OPH0020MSC; Statement of Undisputed Facts ("SUF") No. 16.) OMI was required, by  
28

1 both the Policy terms and Nevada law,<sup>2</sup> to provide notice to OPH prior to the effective date  
2 of cancellation. According to the Policy, OMI was required to provide notice to OPH at  
3 least “10 days before the effective date of cancellation if we cancel for nonpayment of  
4 premium.” (Ex. 2; p. OPH0070POL; SUF No. 3.) According to Nevada law, OMI was  
5 required to send notice to OPH 10 days prior to termination for nonpayment of a premium.  
6 See NRS 687B.320(2) (“No cancellation under subsection 1 is effective until in the case of  
7 [failure to pay a premium when due] at least 10 days ... after the notice is delivered or  
8 mailed to the policyholder.”)

9 The “notice” that is the focus of the Policy (See Ex. 2; OPH0070POL; SUF No. 3)  
10 and the notice contemplated in Nev. Rev. Stat. 687B.320, must be the July 31 Notice;  
11 notices sent after termination are not the type of pre-cancellation notices contemplated by  
12 the Policy and mandated by Nev. Rev. Stat. 678B.320. The Policy states: “We may cancel  
13 this policy by mailing or delivering to the first Named Insured written notice of  
14 cancellation at least: [...] (b) 10 days *before* the effective date of cancellation if we cancel  
15 for nonpayment of premium.” (Ex. 2; OPH0070POL; SUF 3.) (*emphasis added*) The  
16 Nevada Supreme Court has considered Nev. Rev. Stat. 687B.320 and has stated as follows,  
17 “[b]y enacting [Nev. Rev. Stat. 687B.320], the legislature determined that individuals must  
18 be afforded notice that their insurance is *about* to lapse...” *Daniels v. Nat’l Home Life*  
19 *Assur. Co.*, 103 Nev. 674, 677, 747 P.2d 897, 899 (1987) (*emphasis added*). In fact, the  
20 Nevada Supreme Court held that an insurance contract “which does not provide for notice  
21 prior to termination for failure to pay a premium when due ... *is against the public policy*  
22 *of Nevada and thus is unenforceable.*” *Id.*

23 Thus, according to the terms of the Policy, Nev. Rev. Stat. 687B.320, and Nevada  
24 Supreme Court precedent, OMI was required to provide notice prior to the termination for  
25 failure to pay a premium when due (Ex. 2, p. OPH0070POL; SUF No. 3). See NRS

26  
27  
28 <sup>2</sup> The Policy was (and is) subject to Nevada law because the Policy was issued for delivery  
in Nevada. See NRS 687B.010.

1 687B.320; *see also Daniels*, 103 Nev. at 677. In this case, the only notice sent prior to the  
2 termination was the July 31 Notice.

3 **2. OMI failed to provide legally sufficient pre-cancellation notice**  
4 **to OPH.**

5 OMI was required to send pre-cancellation notice to OPH at least 10 days prior to  
6 the date of termination. *See* NRS 687B.320; (See also Ex. 2, OPH0070POL; SUF No. 3.)  
7 In addition to sending notice within a certain time frame prior to cancellation, certain terms  
8 concerning pre-cancellation notice are required by Nevada law. *See* NRS 687B.360. Nev.  
9 Rev. Stat. 687B.360 provides:

10 If a notice of cancellation or nonrenewal under NRS 687B.310 to 687B.420,  
11 inclusive, does not state with reasonable precision the facts on which the  
12 insurer's decision is based, the insurer shall supply that information within 6  
13 days after receipt of a written request by the policy holder. *No notice is*  
14 *effective unless it contains adequate information about the policyholder's*  
*right to make such a request.*

15 NRS 687B.360 (*emphasis added*). As addressed above, the only pre-cancellation notice  
16 sent in this case was the July 31 Notice. As a result, the July 31 Notice must have  
17 complied with Nev. Rev. Stat. 687B.320 and Nev. Rev. Stat. 687B.360 in order to comply  
18 with the terms of the Policy and Nevada law.<sup>3</sup> *See Daniels*, 103 Nev. at 677. As discussed  
19 below, because the July 31 Notice failed to comply with Nev. Rev. Stat. 687B.360, OMI  
20 failed to provide legally sufficient notice as required by the Policy and Nevada law. As a  
21 result, OMI breached the Policy, and did not effectively cancel the Policy prior to August  
22 17, 2012.

23 <sup>3</sup> If it was possible for OMI to comply with the terms of the notice provisions in the Policy,  
24 while not complying with Nev. Rev. Stat. 687B.360, the Policy itself would be against the  
25 public policy of Nevada. *See Daniels*, 103 Nev. at 677. This should not be the result  
26 because it would allow OMI to receive compensation for a contract that it drafted and then  
27 allow OMI to turn around and escape liability by claiming that the contract it drafted was  
28 against public policy. *C.f. Farmers Ins. Grp. v. Stonik By & Through Stonik*, 110 Nev. 64,  
67, 867 P. 2d 389, 391 (1994) (“[a]n insurance policy is a contract of adhesion and should  
be interpreted broadly, *affording the greatest possible coverage to the insured.*”) (*emphasis*  
*added*).

1 The July 31 Notice was not effective to cancel the policy. The July 31 Notice does  
2 not contain any information about OPH's right to make a written request for information to  
3 OMI. (See Ex. 4.) (Compare e.g. AMCO Insurance Company, Notice of Cancellation of  
4 Insurance, attached hereto as Ex. 13 (SAN000139): "You have a right to make a written  
5 request to us for more explicit detail on the reason your policy has been terminated.")<sup>4</sup>

6 The California Court of Appeal, First District, considered the same issue in *Ilene*  
7 *Lee v. Industrial Indemnity Company, Inc., et al.*, 223 Cal. Rptr. 254, 177 Cal. App. 3d 921  
8 (1986) ("*Ilene Lee*"). In *Ilene Lee*, Ms. Lee, the plaintiff, was mailed a bill for \$73.00,  
9 generated as a result of an increase in coverage. *Id.* at 255. Without realizing that the  
10 mailing was a bill, Ms. Lee put the bill away without reading it or paying the amount due.  
11 *Id.* After that time, no additional bills were sent to Ms. Lee. *Id.* In December 1981, the  
12 insurer mailed a notice of cancelation to Ms. Lee that stated:

13 You are hereby notified in accordance with the terms and conditions of the  
14 above mentioned policy that your insurance will cease at and from the  
15 hour and date mentioned above due to nonpayment of premium. Premium  
16 adjustment, if any, will be made as soon as practicable.

17 *Id.* Similar to the July 31 Notice sent by OMI, the notice mailed by the insurer to Ms. Lee  
18 indicated that the insurance coverage would cease in the future. (See Ex. 5, at  
19 OPH0022MSC; SUF No. 9); see *Ilene Lee*, 177 Cal. App. at 923. Most importantly to the  
20 instant matter, the Court found that the "notice did not contain the statement required by  
21 Insurance Code section 677 that [the Plaintiff] could, upon written request, obtain a  
22 statement of facts upon which cancellation was based."

23  
24  
25 <sup>4</sup> Although, a later notice, sent on August 21, 2012 (after the fire) at least references the  
26 right to make a written request for the reasons of cancellation (see Ex. 12; OPH0020MSC;  
27 SUF No. 21, "... we will supply that information within 6 days after receipt of a written  
28 request by you."), the August 21, 2012 notice was not effective to cancel the policy prior to  
the fire. See NRS 387B.320(2) (Notice of cancelation for nonpayment of premium not  
effective until "... at least 10 days ... after the notice is delivered or mailed to the  
policyholder.")

1 At the time *Ilene Lee* was decided California Insurance Code section 677  
2 provided as follows:

3 All notices of cancellation shall be in writing, mailed to the named insured  
4 at the address shown in the policy, or to his last known address, and shall  
5 state, with respect to policies in effect after the time limits specified in  
6 Section 676, (a) which of the grounds set forth in Section 676 is relied  
7 upon, and (b) that, upon written request of the named insured, the insurer  
8 shall furnish the facts on which the cancellation is based.

9 *Ilene Lee*, 177 Cal. App. 3d at 923, n. 1. While it has since been amended, California  
10 Insurance Code Section 677, at the time the Court considered the statute in *Ilene Lee*, was  
11 substantially similar to Nev. Rev. Stat. 687B.360 as written today:

12 If a notice of cancellation or nonrenewal under NRS 687B.310 to  
13 687B.420, inclusive, does not state with reasonable precision the facts on  
14 which the insurer's decision is based, the insurer shall supply that  
15 information within 6 days after receipt of a written request by the  
16 policyholder.

17 NRS 687B.360. Just like the prior version of the California Insurance Code, no notice is  
18 effective in Nevada unless it contains adequate information about the policyholder's right  
19 to make such a request. NRS 687B.360. As a result, the July 31 Notice, was ineffective to  
20 cancel the Policy.

21 In *Ilene Lee*, the court held that the lower court erred in failing to grant summary  
22 judgment in favor of the insured because the insurer's failure to include the mandatory  
23 language required by Insurance Code section 677 "rendered the purported cancellation of  
24 [the policy] ... null and void." *Id.* at 258. Here, OPH is likewise entitled to summary  
25 judgment in its favor because the July 31 Notice was null and void.

26 OMI may claim in this case that the July 31 Notice was sufficient because the  
27 "facts on which the insurer's decision is based" were evident and, thus, that information  
28 about the right to request the reasons for cancelation was not necessary to comply with  
Nev. Rev. 687B.360. However, the Nevada Department of Insurance has made clear that is  
not the case. It has explained Nev. Rev. Stat. 687B.360's requirements as follows: "No



1 notice is effective unless it contains adequate information about the policyholder's right to  
2 make such a request *even if the notice does include the reason for cancellation or*  
3 *nonrenewal*. Adequate information includes the address to write to receive the reasons for  
4 cancellation." (See e.g. Property and Casualty Review Standards Checklist, p. 2 of 7,  
5 attached hereto as Ex. 15.)(*emphasis added*)(  
6 [http://doi.nv.gov/uploadedFiles/doinvgov/\\_public-](http://doi.nv.gov/uploadedFiles/doinvgov/_public-)  
7 [documents/Insurers/ReviewStandardsChecklist.pdf](http://doi.nv.gov/uploadedFiles/doinvgov/_public-documents/Insurers/ReviewStandardsChecklist.pdf), November 26, 2013). As a result, the  
8 July 31 Notice was legally deficient. Accordingly OMI's failure to send pre-cancellation  
9 notice resulted in a breach of the Policy and a violation of Nevada law.

10 **3. OMI's failure to provide notice occurred before OPH was**  
11 **required to pay the July premium.**

12 OMI was required to provide notice 10 days prior to the effective date of  
13 cancellation. See NRS 687B.320; (See also Ex. 2; p. OPH0070POL; SUF No. 3). The  
14 effective date of cancellation, according to the July 31 Notice, was August 16, 2012. (See  
15 Ex. 4; OPH0022MSC; SUF No. 6.) According to the July 31 Notice, OPH had until August  
16 15, 2012 to pay the July premium. (See Ex. 4, at OPH0022MSC; SUF No. 7.) Thus, OMI  
17 claims that OPH breached the terms of the Policy on August 16, 2012 at 12:01 a.m., which  
18 resulted in cancellation of the Policy due to nonpayment.

19 However, OMI never sent a legally sufficient notice of cancellation 10 days prior  
20 to August 16, 2012.<sup>5</sup> If OMI maintains that the Policy was canceled on August 16, 2012,  
21 then by failing to provide legally sufficient pre-cancellation notice at least 10 days  
22 beforehand, OMI breached the Policy on August 6, 2012 (i.e., ten days prior to the date of  
23 cancellation). Therefore, OMI's breach occurred prior to the date upon which any breach  
24

25 \_\_\_\_\_  
26 <sup>5</sup> The first legally sufficient notice of cancellation was not generated by OMI until August  
27 21, 2012 (Ex. 12; SUF 17), and that notice was not effective to cancel the Policy until  
28 August 31, 2012 at the earliest (see *id.*). See NRS 387B.320(2) (Notice of cancellation for  
nonpayment of premium not effective until "... at least 10 days ... *after* the notice is  
delivered or mailed to the policyholder.")(*emphasis added*).).

1 by OPH as a result of nonpayment could have occurred (i.e., August 15, 2012 – the last day  
2 to send payment for the July 2012 premium according to the July 31 Notice).

3 Even without determining *when* OMI’s breach occurred, the Policy was still in  
4 effect on the date of the fire (August 17, 2012). *See* Nev. Rev. Stat. 687B.320; *see also*  
5 *Kotlar*, 83 Cal. App. 4th 1121, 100 Cal. Rptr. 2d 246 (“*If a cancelation is defective, the*  
6 *policy remains in effect even if the premiums are not paid.*”) Nev. Rev. Stat. 687B.320  
7 provides:

8 1. Except as otherwise provided in subsection 3, no insurance policy that  
9 has been in effect for at least 70 days or that has been renewed may be  
10 cancelled by the insurer before the expiration of the agreed term or 1 year  
11 from the effective date of the policy or renewal, whichever occurs first,  
12 except on any one of the following grounds:

13 (a). Failure to pay a premium when due  
14 [...]

15 2. *No cancellation* under subsection 1 is *effective until in the case of*  
16 *paragraph (a) of subsection 1 at least 10 days* and in the case of any other  
17 paragraph of subsection 1 at least 30 days *after the notice is delivered or*  
18 *mailed to the policyholder.*

19 NRS 687B.320(1)(a); NRS 687B.320(2)). As the Nevada Division of Insurance has more  
20 succinctly explained: “No cancellation is effective until at least 10 days after the notice is  
21 delivered to the policy holder for failure to pay a premium when due, or until at least 30  
22 days for all other grounds.” (Ex. 14; p. 1 of 7.)

23 Thus, because the July 31 Notice was ineffective, and no valid cancellation was  
24 sent 10 days before the fire, OMI was – and is – required to pay the covered losses incurred  
25 as a result of the fire at the Charleston Location on August 17, 2012. Further, even if the  
26 Court does not determine that the failure to send a proper notice constitutes breach of  
27 contract, failing to cover the loss constitutes a breach because the July 31 Notice was void.  
28 *See, e.g., Mazzuca v. Fund Ins. Cos.*, 90 Nev. 409, 412 (Nev. 1974) (an insurer “is bound  
by the terms of the original policy until [a] cancellation becomes effective” and if a loss  
occurs prior to a cancellation, “the parties are bound by the original insurance contract.”);

1 *Hlene Lee*, 177 Cal. App. at 928 (illegal pre-cancellation is void). Again, summary  
2 judgment is appropriate as to OMI's cause of action for breach of contract.

3 **B. OMI Breached the Implied Covenant of Good Faith and Fair Dealing.**

4  
5 Summary judgment is also appropriate as to OMI's liability as to the Second  
6 Cause of Action in OPH's Complaint. In Nevada, the covenant of good faith and fair  
7 dealing is implicit in every insurance contract. *U.S. Fid. & Guar. Co. v. Peterson*, 540 P.2d  
8 1070, 1071 (Nev. 1975). Derived from the covenant of good faith and fair dealing is the  
9 fiduciary-like duty between an insurer and insured. *Powers v. United Services Auto. Ass'n*,  
10 114 Nev. 690, 962 P.2d 596, 603 (1998). The fiduciary-like duty "is basically a statement  
11 of the kind of good faith duty owed by an insurer to a first-party insured." *Id.* (citing *Tynes*  
12 *v. Bankers Life Co.*, 224 Mont. 350, 730 P.2d 1115, 1124-26 (1986)). Therefore, in an  
13 insurance contract, the fiduciary nature of the relationship between insurer and insured is  
14 part of the covenant of good faith and fair dealing, a breach of which is bad faith. *Id.* "An  
15 insurer fails to act in good faith when it refuses 'without proper cause' to compensate the  
16 insured for a loss covered by the policy." *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789,  
17 858 P.2d 380, 382 (1993) (quoting *Peterson*, 540 P.2d at 1071).

18 The breach of the covenant of good faith and fair dealing in this case is separate  
19 and apart from liability for breach of contract. Indeed, "...refusing without proper cause to  
20 compensate its insured for a loss covered by the policy ... may give rise to a cause of action  
21 in tort for breach of an implied covenant of good faith and fair dealing." *U. S. Fid. &*  
22 *Guar. Co. v. Peterson*, 91 Nev. 617, 620, 540 P.2d 1070, 1071 (1975). As the Nevada  
23 Supreme Court has held "[t]he duty violated arises not from the terms of the insurance  
24 contract but is a duty imposed by law, the violation of which is a tort." *Id.* (citing *Silberg v.*  
25 *California Insurance Company*, 11 Cal.3d 452, 113 Cal. Rptr. 711, 521 P.2d 1103 (1974)).

26 OPH maintains that the terms of the Policy, and the notice required thereby, must  
27 have complied with Nev. Rev. Stat. 687B.360. However, even if this Court were to find  
28 that the terms of the Policy are not explicitly governed by Nev. Rev. Stat. 687B.360 and

1 subsequently deny summary judgment on that basis,<sup>6</sup> OMI should nonetheless be held  
2 liable as a matter of law for breach of the implied covenant of good faith and fair dealing as  
3 a result of the legally defective July 31 Notice.

4 OMI chose to do business in Nevada by insuring a Nevada-based business.  
5 Accordingly, OMI should be subject to the duties imposed by Nevada law. Nevada law  
6 requires that a notice include the language specified in Nev. Rev. Stat. 687B.360  
7 concerning the right to make a written request, and the only notice that is contemplated by  
8 the relevant Nevada statutes is the pre-cancellation notice, which must be sent 10 days prior  
9 to cancellation. *See* NRS 687B.010 *et seq.* Thus, failure to abide by Nev. Rev. Stat.  
10 687B.360 was a violation of a duty imposed by Nevada law, and a violation of that duty by  
11 OMI resulted in a breach of the implied covenant of good faith and fair dealing. *See*  
12 *Peterson*, 91 Nev. at 620, 540 P.2d at 1071 (citing *Silberg*, 113 Cal. Rptr. 711, 521 P.2d  
13 1103 (1974)).

14 In this case, OMI refused to compensate OPH for the fire loss without proper  
15 cause. The basis for OMI's determination that it was not required to compensate OPH for  
16 its loss was its determination that the Policy was canceled at 12:01 a.m., on August 16,  
17 2012. However, in order for OMI to cancel OPH for nonpayment of its July 2012  
18 premium, OMI must have provided pre-cancellation notice as required by Nev. Rev. Stat.  
19 687B.320 and Nev. Rev. Stat. 687B.360. As detailed above, OMI failed to abide by Nev.  
20 Rev. Stat. 687B.360 and thus, OMI did not effectively cancel the Policy on August 16,  
21 2012. Because the Policy was not effectively canceled prior to August 17, 2012, OMI's  
22 refusal to compensate OPH for the fire loss was done "without proper cause" and it  
23 breached the covenant of good faith and fair dealing, and is liable for damages. *See*

24  
25  
26 <sup>6</sup> Nev. Rev. Stat. 687B.310(2) provides that "[t]he contract may provide terms more  
27 favorable to policyholders than are required by NRS 687B.310 to 687B.420, inclusive,"  
28 which further supports the conclusion that the notice required by the Policy should be  
governed by and subject to the written request requirements set forth in Nev. Rev. Stat.  
687B.360. *See* NRS 687B.310(2).

1 *Pemberton*, 109 Nev. 789, 858 P.2d at 382 (1993).<sup>7</sup> Accordingly, on that basis, summary  
2 judgment on the issue of OMI's breach of the implied covenant of good faith and fair  
3 dealing is appropriate at this stage of the proceedings.

4 **C. OMI Failed to Comply with Nevada Law and Is Liable for Its Unfair**  
5 **Practice.**

6 Summary judgment is also appropriate as to the Sixth Cause of Action in OPH's  
7 Complaint. According to Nev. Rev. Stat. 686A.310(m), "[f]ailing to comply with the  
8 provisions of Nev. Rev. Stat. 687B.310 to 687B.390, inclusive, or 687B.410," is considered  
9 to be an unfair practice. NRS 686A.310(m). Pursuant to Nev. Rev. Stat. 686A.310(2),  
10 OMI is liable to OPH for any damages sustained by OPH as a result of OMI's failure to  
11 comply with Nev. Rev. Stat. 687B.320 and Nev. Rev. Stat. 687B.360. *See* NRS  
12 686A.310(2). OMI's failure to comply with its statutory duty to provide OPH notice has  
13 proximately caused OPH damages, including but not limited to, the losses associated with  
14 the fire, the loss associated with OMI's failure to compensate for the fire, and losses  
15 associated with OPH having to pursue this litigation. But for OMI's determination that the  
16 July 31 Notice fulfilled all of its legal and contractual requirements – and thus terminated  
17 the Policy on August 16, 2012 – OMI would not have denied OPH's claim for loss  
18 sustained as a result of the fire.

19 OMI's failure to provide legally effective notice prior to the date of cancellation and  
20 OMI's decision to claim the Policy was canceled prior to the fire, together constitute an  
21 unfair practice. *See* NRS 686A.310(m). Accordingly, OMI should be held liable as a  
22 matter of law.

23 ///

24 ///

25  
26  
27 <sup>7</sup> OPH maintains that the fire was a "covered loss," which, but for its reliance on the  
28 cancellation of the Policy prior to the fire occurring, OMI would have covered the damages  
stemming from the fire.

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/s/ Daniel B. Heidtke, Esq.  
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*Attorneys for Plaintiff*  
*O.P.H. of Las Vegas Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of November, 2013, a copy of the foregoing  
MOTION FOR PARTIAL SUMMARY JUDGMENT was sent by U.S. MAIL, postage  
fully prepaid, to the following counsel of record:

Patricia Lee  
Z. Kathryn Branson  
Hutchison & Steffen LLC  
10080 W. Alta Dr., Ste. 200  
Las Vegas, Nevada 89145  
*Attorneys for Defendants Dave Sandin and Sandin & Co.*

Priscilla O'Briant  
Robert Freeman  
Lewis Brisbois Bisgaard & Smith LLP  
6385 S. Rainbow Blvd., Ste. 600  
Las Vegas, Nevada 89118  
*Attorneys for Defendant Oregon Mutual Insurance Company*

/s/ Kristalle Herda

EMPLOYEE of Langford McLetchie LLC

1 substantially damaged.

2 **FIFTH CAUSE OF ACTION**

3 **Breach of Fiduciary Duty**  
4 **(Against Sandin Defendants)**

5 68. PLANTIFF repleads, realleges and incorporates by reference each  
6 and every allegation set forth above in paragraphs 1 through 67 as if fully set forth herein.

7 69. The SANDIN DEFENDANTS had a duty to recommend an  
8 appropriate insurer and coverage to PLAINTIFF, and to ensure that PLAINTIFF was  
9 warned regarding notices of cancellation.  
10

11 70. The SANDIN DEFENDANTS failed to recommend an appropriate  
12 insurer and coverage to PLAINTIFF and to ensure notices of cancellation were provided to  
13 PLAINTIFF, and deviated from the standard of care of a reasonably competent insurance  
14 agent.  
15

16 71. As a direct and proximate result of the breaches of the SANDIN  
17 DEFENDANTS fiduciary duties, PLAINTIFF has been significantly and substantially  
18 damaged.  
19

20 **SIXTH CAUSE OF ACTION**

21 **Violations of Nev. Rev. Stat. § 686A.310**  
22 **(Against All Defendants)**

23 72. Plaintiff repleads, realleges and incorporates by reference each and  
24 every allegation set forth above in paragraphs 1 through 71 as if fully set forth herein.

25 73. Nev. Rev. Stat. § 686A.310 prohibits DEFENDANTS from  
26 engaging in unfair practices in settling claims.  
27

28 ///



1           74.       Defendant OREGON MUTUAL engaged in unfair insurance  
2 practices by, among other things:

- 3           •       Misrepresenting to PLANTIFF pertinent facts relating to coverage  
4 at issue, including whether it would provide the notice required and  
5 whether Defendant DAVE SANDIN was legally permitted to sell  
6 insurance in Nevada, which is prohibited by Nev. Rev. Stat.  
7 § 686A.310(1)(a).  
8
- 9           •       Failing to act reasonably promptly upon communications from  
10 PLANTIFF with respect to its claim for the LOSS, which is required  
11 by Nev. Rev. Stat. § 686A.310(1)(b).  
12
- 13          •       On information and belief, failing to adopt and implement  
14 reasonable standards for processing claims as required by Nev. Rev.  
15 Stat. § 686A.310(1)(c).  
16
- 17          •       Failing to effectuate prompt, fair and equitable settlement of the  
18 claim for the LOSS, given that its liability is reasonably clear. Nev.  
19 Rev. Stat. § 686A.310(1)(e).  
20
- 21          •       Failing to comply with the notice requirements for a midterm  
22 cancellation set forth in Nev. Rev. Stat. § 687B.320. Nev. Rev. Stat. §  
23 686A.310(1)(m).  
24

25           75.       Defendant DAVE SANDIN engaged in unfair insurance practices,  
26 for example, when he misrepresented to PLANTIFF pertinent facts relating to coverage at  
27 issue, including whether Defendant OREGON MUTUAL would provide the notice  
28

1 required and whether he was legally permitted to sell insurance in Nevada, which is  
2 prohibited by Nev. Rev. Stat. § 686A.310(1)(a).

3 76. Defendant SANDIN INSURANCE is responsible for the acts and/or  
4 omissions of Defendant DAVE SANDIN.

5  
6 77. Nev. Rev. Stat. § 686A.310(2) provides a private right of action  
7 against those engaging in unfair practices outlined in Nev. Rev. Stat. § 686A.310(1).

8 78. PLAINTIFF has suffered damages as a result of the  
9 DEFENDANTS' violations of Nev. Rev. Stat. § 686A.310.

10  
11 **SEVENTH CAUSE OF ACTION**

12 **Negligence**  
13 **(Against All Defendants)**

14 79. Plaintiff repleads, realleges, and incorporates by reference each and  
15 every allegation set forth above in paragraphs 1 through 78 as if fully set forth herein.

16 80. Under Nevada law (Nev. Rev. Stat. § 598.0923), a corporation  
17 engages in a deceptive trade practice when it, among other things, knowingly:

- 18 • "Conducts the business or occupation without all required state,  
19 county or city licenses." Nev. Rev. Stat. § 598.0923(1).
- 20 • "Fails to disclose a material fact in connection with the sale or  
21 lease of goods or services." Nev. Rev. Stat. § 598.0923(2).
- 22 • "Violates a state or federal statute or regulation relating to the sale  
23 or lease of goods or services." Nev. Rev. Stat. § 598.0923(3).

24  
25 81. Defendant OREGON MUTUAL conducted business in Nevada  
26 using an unlicensed agent, which is prohibited by Nevada law, and also violated state law  
27 and regulations regarding the sale of insurance in Nevada.

1           82.           On information and belief, Defendant OREGON MUTUAL  
2 knowingly made false representations in a transaction, for instance failing to disclose the  
3 material fact that Defendant DAVE SANDIN was not licensed and that it would provide  
4 copies of cancellation notices to the agent.

5  
6           83.           Defendant OREGON MUTUAL violated federal and state statutes,  
7 including (but not limited to) Nev. Rev. Stat. § 686A.310 and Nevada Administrative Code  
8 687B.530, which requires that “[e]ach insurer shall also provide a copy of the notice of  
9 cancellation of a policy to the agent who wrote the policy.”

10  
11           84.           Defendant DAVE SANDIN conducted business in Nevada as an  
12 insurance agent without being licensed as such, in violation of Nev. Rev. Stat. § 683A.201,  
13 and state regulations regarding the sale of insurance in Nevada. Nev. Rev. Stat.  
14 § 683A.201 mandates that no person shall “sell, solicit, or negotiate insurance in this state  
15 for any class of insurance unless the person is licensed for that class of insurance.”

16  
17           85.           Defendant DAVE SANDIN also knowingly failed to disclose that  
18 material fact to PLAINTIFF and the related fact that he was not qualified to sell insurance  
19 in Nevada and follow Nevada law (including Nevada’s notice requirements), and thus  
20 knowingly made false representations in a transaction.

21  
22           86.           Defendant DAVE SANDIN also violated federal and state statutes  
23 and regulations, including (but not limited to) Nev. Rev. Stat. § 686A.310.

24           87.           Defendant SANDIN INSURANCE is liable for the acts and/or  
25 omissions of Defendant DAVE SANDIN.

26 ///

27 ///

1           88.           DEFENDANTS' violations of Nevada's Deceptive Trade Practices  
2 Act constitute negligence *per se*, and render DEFENDANTS liable for the damages  
3 proximately caused as a result thereof.

4           89.           PLAINTIFF belongs to the class of persons that Nevada's Deceptive  
5 Trade Practices Act was designed to protect.

6           90.           The injuries suffered by PLAINTIFF are the type of injuries the  
7 Deceptive Trade Practices Act was meant to prevent.

8  
9                                   **PRAYER FOR RELIEF**

10  
11           **WHEREFORE, Plaintiff respectfully prays as follows:**

12           A. For a trial by jury on all issues;

13           B. Judgment against Defendants:

- 14                   • Requiring them to disgorge, and return to Plaintiff, all monies paid to them
- 15                   by Plaintiff, either directly or as commission on the sale of insurance;
- 16                   • Requiring Defendants to fully pay for the claim for the Loss, as required
- 17                   by the Contract;
- 18                   • For prejudgment interest;
- 19                   • For compensatory damages in excess of \$50,000 and all compensatory
- 20                   damages allowable under the law;
- 21                   • For punitive damages in an amount sufficient to punish and deter
- 22                   Defendants from engaging in any such conduct in the future and as an
- 23                   example to others not to engage in such conduct;
- 24                   • For an additional amount to account for additional taxes Plaintiff may be
- 25
- 26
- 27
- 28

1 called upon to pay in relation to awards made herein; and

- 2 • For the costs of this action together with reasonable attorney's fees and  
3 costs.  
4

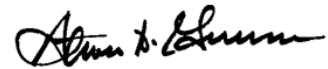
5 C. For declaratory relief making clear that the policy issued to Plaintiff by  
6 Oregon Mutual is in full effect and the claim for the Loss must be honored;

7 D. For injunctive relief and for such other and further relief as the Court shall  
8 deem just and proper.  
9

10 Respectfully submitted this, the 19<sup>th</sup> day of November, 2012.

11  
12 By: 

13 Margaret A. McLetchie  
14 Nevada Bar No. 10931  
15 LANGFORD MCLEITCHIE, LLC  
16 616 S. Eighth Street  
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21 *Attorneys for Plaintiff*  
22  
23  
24  
25  
26  
27  
28



CLERK OF THE COURT

1 **MTD**  
Patricia Lee (8287)  
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6  
7 *Attorneys for defendants*  
*David Sandin and Sandin & Co.*

8  
9  
10 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 O.P.H. OF LAS VEGAS, INC.,  
12 Plaintiff,

13 v.

14 OREGON MUTUAL INSURANCE  
COMPANY, DAVE SANDIN, and SANDIN  
15 & CO.,

16 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVII

**MOTION TO DISMISS**

17  
18 Defendants Dave Sandin and Sandin & Co. (the "Sandin defendants") move the Court  
19 for dismissal of O.P.H. of Las Vegas, Inc.'s ("plaintiff") complaint against them for failure to  
20 state a claim for which relief can be granted pursuant to NRCP 12(b)(5).<sup>1</sup> Plaintiff improperly  
21 seeks to impose liability on the Sandin defendants for its own failure to pay its premium, the  
22 result of which its insurance policy was cancelled and plaintiff was thereafter denied coverage  
23 for a loss that occurred after cancellation of the policy.

24 The Sandin defendants were hired to procure insurance for plaintiff. They did so, and  
25

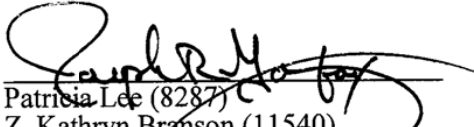
26  
27 <sup>1</sup> The causes of action alleged against the Sandin defendants are as follows: fraud in the  
28 inducement (third cause of action), fraud (fourth cause of action), breach of fiduciary duty (fifth  
cause of action), violations of NRS §686A.310 (sixth cause of action), and negligence (seventh  
cause of action).

1 not without great difficulty due to plaintiff's credit history and coverage requirements. In fact,  
2 the policy they procured would have provided coverage for the loss plaintiff complains of had  
3 plaintiff paid its premiums in a timely manner. Even accepting all of the allegations set forth in  
4 plaintiff's complaint as true, plaintiff cannot prove any set of facts that would support a claim  
5 against the Sandin defendants for Oregon Mutual Insurance Company's ("Oregon Mutual")  
6 cancellation of plaintiff's policy for non-payment.

7 This motion is based on the papers and pleadings filed herein, NRCP 12(b)(5), the case  
8 law set forth below, the following points and authorities, and any oral argument that may be  
9 heard by this court.

10 DATED this 26<sup>th</sup> day of December, 2012.

11 HUTCHISON & STEFFEN, LLC

12   
13 Patricia Lee (8287)  
14 Z. Kathryn Branson (11540)  
15 Peccole Professional Park  
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20 *Attorneys for defendants*  
21 *Dave Sandin and Sandin & Co.*  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION**

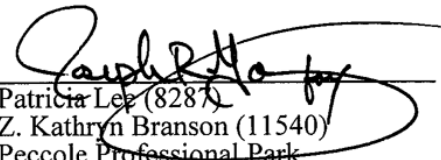
TO: MARGARET A. McLETCHIE, attorney for O.P.H. OF LAS VEGAS INC.; and

TO: V. ANDREW CASS and KRISTIN E. MEREDITH, attorneys for OREGON MUTUAL INSURANCE CO.:

PLEASE TAKE NOTICE that the undersigned will bring defendants Dave Sandin and Sandin & Co.'s Motion to Dismiss before Department XXVII of the above entitled court in courtroom 16B/16D on the 30 day of Jan, 2013, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard.

DATED this 26<sup>th</sup> day of December, 2012.

HUTCHISON & STEFFEN, LLC

  
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*Attorneys for defendants  
Dave Sandin and Sandin & Co.*



**MEMORANDUM OF POINTS AND AUTHORITIES****1. INTRODUCTION**

This suit arose as a result of the August 17, 2012 fire that destroyed plaintiff's restaurant at 4833 West Charleston Boulevard in Las Vegas, Nevada. The Sandin defendants procured insurance for plaintiff from Oregon Mutual for coverage of its restaurant. Plaintiff was to pay all of its premiums directly to Oregon Mutual. Approximately seven months into the policy period, plaintiff failed to pay the monthly premium due July 26, 2012. On August 1, 2012, Oregon Mutual sent a notice of cancellation for non-payment to plaintiff, warning it that failure to cure the missed payment would result in cancellation of its policy, effective August 16, 2012. Plaintiff did not make its July payment, and the policy was subsequently cancelled. The fire occurred one day later. Not surprisingly, Oregon Mutual has denied plaintiff's claim, and plaintiff has been trying to shift the blame for its lack of coverage ever since. Plaintiff has made numerous allegations against the Sandin defendants in an attempt to drag them into a lawsuit that, in reality, should be between plaintiff and its insurer, Oregon Mutual. Plaintiff can prove no set of facts that would support the claims it has alleged against the Sandin defendants. The Sandin defendants were not notified of plaintiff's delinquent premium payment, as plaintiff admits in its complaint, and were not responsible for ensuring that plaintiff paid its monthly premiums. They cannot be held responsible for Oregon Mutual's cancellation of plaintiff's policy and subsequent denial of plaintiff's claim. This case is simple. Plaintiff did not pay its premium; Oregon Mutual cancelled the policy; plaintiff's restaurant was destroyed by fire; and Oregon Mutual denied its million dollar claim. While tragic, plaintiff only has itself to blame.

**2. FACTUAL BACKGROUND**

Plaintiff hired defendants to procure a certificate of insurance on its behalf, covering the Original Pancake House Restaurant at 4833 West Charleston Boulevard in Las Vegas, Nevada (the "Restaurant"). *See* Complaint, ¶¶2, 14. Sandin & Co. and non-party Anthony Sandin, the owner of Sandin & Co., are both licensed to procure insurance in Nevada. Defendant Dave Sandin is not. *Id.* at ¶20. In December of 2011, the Sandin defendants recommended Oregon

1 Mutual's insurance to plaintiff based on plaintiff's coverage needs. *Id.* at ¶16. Oregon Mutual  
2 issued a Businessowner Protector Policy to plaintiff, and plaintiff and Oregon Mutual thereby  
3 entered into an insurance contract that protected the Restaurant (the "Contract"). *Id.* at ¶17.  
4 Consistent with Nevada law, the Contract provides that Oregon Mutual must provide a copy of  
5 any cancellation notice to the agent as well as to the insured (here, plaintiff). *Id.* at ¶18. The  
6 Contract's policy period was December 26, 2011 through December 26, 2012. *Id.* at ¶19.

7 Plaintiff "mistakenly" failed to pay its monthly premium due July 26, 2012. *Id.* at ¶24.  
8 Oregon Mutual sent a cancellation notice to plaintiff on August 1, 2012, with an effective  
9 cancellation date of August 16, 2012, which plaintiff alleges it did not receive until after the  
10 policy was cancelled. *Id.* at ¶¶ 25, 26. Oregon Mutual did not send a notice of cancellation to  
11 the Sandin defendants. *Id.* at 27, 28. On August 13, 2012, plaintiff representative, Linda  
12 Snyder, contacted defendant Dave Sandin to report a break-in that occurred at the restaurant  
13 overnight between August 10, 2012 and August 11, 2012. *Id.* at ¶30. On August 16, 2012, Ms.  
14 Snyder spoke with Dave Sandin to obtain a claim number for the break-in. *Id.* at ¶33. The  
15 Sandin defendants did not know about Oregon Mutual's cancellation of plaintiff's insurance  
16 policy for non-payment, and therefore did not inform Ms. Snyder that the policy had been  
17 cancelled or that it was in danger of being cancelled during these conversations. *Id.* at ¶27, 28,  
18 34.

19 On August 17, 2012, a fire destroyed the Restaurant, which Ms. Snyder reported to the  
20 Sandin defendants that same day. *Id.* at ¶36, 37. As a result of cancellation of plaintiff's policy  
21 for non-payment on August 16, 2012, Oregon Mutual has denied coverage for the loss. *Id.* at  
22 ¶41.

### 23 3. LEGAL ARGUMENT

24 The Court has the authority to dismiss plaintiff's claims against the Sandin defendants  
25 pursuant to NRCP 12(b)(5). NRCP 12(b)(5) provides that a complaint may be dismissed if the  
26 pleading fails to state a claim on which relief may be granted. In analyzing a motion to dismiss  
27 pursuant to NRCP 12(b)(5), the Court must "construe the pleadings liberally and draw every  
28 fair intendment in favor of the plaintiff." *Squires v. Sierra Nev. Educ. Found., Inc.*, 107 Nev.

1 902, 905, 823 P.2d 256, 257 (1991) (internal quotations omitted). All factual allegations of the  
2 complaint must be accepted as true. *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315,  
3 705 P.2d 126, 126 (1985). Claims are to be dismissed if it appears that the claimant can prove  
4 no set of facts which would entitle it to relief. *See Edgar v. Wagner*, 101 Nev. 226, 228, 699  
5 P.2d 110, 112 (1985). If the pleadings fail to set forth allegations sufficient to make out the  
6 elements of a right to relief, the action must be dismissed. *Id.* at 227-28, 699 P.2d at 111-12.

7 On appeal from an order granting a NRCP 12(b)(5) motion to dismiss, “[t]he sole issue  
8 presented . . . is whether a complaint states a claim for relief.” *Merluzzi v. Larson*, 96 Nev.  
9 409, 411, 610 P.2d 739, 741 (1980), *overruled on other grounds by Smith v. Clough*, 106 Nev.  
10 568, 796 P.2d 592 (1990). The court’s “task is to determine whether . . . the challenged  
11 pleading sets forth allegations sufficient to make out the elements of a right to relief.” *Edgar*,  
12 101 Nev. at 227, 699 P.2d at 111. The test for determining whether the allegations of a  
13 complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of  
14 the nature and basis of a legally sufficient claim and the relief requested. *Vacation Vill., Inc. v.*  
15 *Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994); *Ravera v. City of Reno*, 100  
16 Nev. 68, 70, 675 P.2d 407, 408 (1984).

17 Here, plaintiff has manufactured seven causes of action against the Sandin defendants,  
18 which in reality, all arose due to its own failure to pay its premium. Despite its attempts to pass  
19 the blame to the Sandin defendants, only plaintiff was responsible for payment of its policy  
20 premium. As a result of plaintiff’s failure to pay its premium to Oregon Mutual, Oregon  
21 Mutual cancelled its insurance policy and denied plaintiff’s claim of loss occurring after the  
22 cancellation. Under no set of facts can the Sandin defendants be liable for this sequence of  
23 events and plaintiff’s resulting damages.

24 A. **Plaintiff’s claim for failure to procure fails as a matter of law, because the**  
25 **Sandin defendants procured an insurance policy for plaintiff that would**  
**have covered its loss if plaintiff paid its monthly premium.**

26 Under Nevada law, insurance brokers have a duty to procure insurance that meets the  
27 insured’s needs, or timely notify the plaintiff that they are unable to do so. *See Keddie v.*  
28 *Beneficial Inc. and Jerry McDonald*, 94 Nev. 418, 580 P.2d 955 (1978). The only need at issue

1 is coverage for plaintiff's losses resulting from the August 17, 2012 fire.

2 Plaintiff does not allege that the Sandin defendants failed to procure a policy with fire  
3 coverage. In fact, plaintiff's complaint is completely silent as to the coverage provided under  
4 the Oregon Mutual policy. This is because the Sandin defendants satisfied their duty as  
5 plaintiff's insurance broker by procuring a policy for plaintiff that included fire loss coverage.  
6 Plaintiff's complaint is devoid of any allegations that the Oregon Mutual policy would not have  
7 covered its loss if plaintiff paid its July premium in a timely manner. In fact, plaintiff's claim  
8 was denied solely because of non-payment, not for lack of fire coverage.

9 Because the Sandin defendants recommended an insurer and secured a policy for  
10 plaintiff that met all of its coverage needs, the Sandin defendants satisfied their legal duty to  
11 plaintiff as plaintiff's broker, and plaintiff's claim based on a failure to procure fails as a matter  
12 of law.

13 **B. Plaintiff's claims fails as a matter of law because the Sandin defendants**  
14 **did not have an affirmative duty to remind plaintiff to pay its monthly**  
**premium or risk cancellation of its insurance policy with Oregon Mutual.**

15 Assuming *arguendo* that all of plaintiff's allegations are true, it cannot prevail on its  
16 other claims against the Sandin defendants because the Sandin defendants had no duty to  
17 plaintiff above and beyond procuring the underlying insurance policy. The Sandin defendants  
18 certainly had no affirmative duty to ensure that plaintiff paid its monthly premium in  
19 accordance with its contractual obligations with Oregon Mutual. It is not the duty of the broker  
20 to ensure that the insurer (Oregon Mutual) and the insured (plaintiff) are complying with the  
21 terms of their contract, to which the broker is not even a party.

22 In any event, this purported duty would only arise upon the Sandin defendants' receipt  
23 of notice from Oregon Mutual that the plaintiff's policy was in danger of cancellation for non-  
24 payment.<sup>2</sup> As noted above, the Sandin defendants were never notified of the foregoing, as  
25

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26 <sup>2</sup> The policy behind the contractual provision and Nevada law requiring that Oregon  
27 Mutual must provide a copy of any cancellation notice to the agent as well as to the insured is  
28 most likely to protect plaintiff from the exact incident that occurred here. That obligation,  
however, falls squarely on Oregon Mutual's shoulders, not the Sandin defendants.

1 plaintiff admits in its complaint: “Defendant OREGON MUTUAL did not send a cancellation  
2 notice to Defendant DAVE SANDIN” and “Defendant DAVE SANDIN did not receive a  
3 cancellation notice.” See Complaint at ¶¶ 27 and 28. Absent this notice, any purported duty to  
4 inform plaintiff of its failure to pay never arose.

5 Plaintiff alleges in its complaint that had the Sandin defendants received notice of  
6 Oregon Mutual’s intent to cancel plaintiff’s policy for non-payment and notified plaintiff of  
7 such, plaintiff would have cured the deficiency, its policy would not have been cancelled, and  
8 Oregon Mutual would have covered plaintiff’s August 17, 2012 loss. However, plaintiff’s  
9 argument presumes the Sandin defendants were notified of plaintiff’s delinquency when in  
10 actuality, they were not. Oregon Mutual’s failure to notify the Sandin defendants absolves them  
11 of any alleged liability for an alleged breach of the affirmative duty to inform plaintiff of  
12 impending cancellation for non-payment.

13 In short, the Sandin defendants had no affirmative duty to ensure that plaintiff  
14 continually paid its monthly premium to preserve its status as an insured under its policy with  
15 Oregon Mutual. Even if an insurance broker had an affirmative duty to advise an insured of  
16 pending cancellation for non-payment, such duty would arise only on the broker’s receipt of  
17 notice by the insurer. This precondition never occurred. Therefore, no such duty existed.  
18 Accordingly, the claims against the Sandin defendants must be dismissed as a matter of law  
19 pursuant to NRCPP 12(b)(5).

20 C. **Whether or not Dave Sandin was licensed in Nevada is not the proximate**  
21 **cause of Oregon Mutual’s cancellation of plaintiff’s policy and subsequent**  
22 **refusal to cover plaintiff’s claim of loss; rather, it was solely and exclusively**  
23 **plaintiff’s failure to pay its premium that caused its loss as set forth in the**  
24 **complaint.**

25 Plaintiff’s claim numbers three (fraud in the inducement), four (fraud), six (violations  
26 of NRS 686A.310, unfair practices in settling claims), and seven (negligence) must be  
27 dismissed because none of them properly plead a connection between defendant Dave Sandin’s  
28 failure to be licensed as a non-resident procurer of insurance and plaintiff’s resulting damages.  
For every cause of action plaintiff pleaded, there must be a nexus between the alleged bad act  
(Dave Sandin’s lack of an appropriate non-resident license) and the damages alleged. See

1 *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (“Proximate cause limits  
2 liability to foreseeable consequences that are reasonably connected to both the defendant’s  
3 misrepresentation or omission and the harm that the misrepresentation or omission created.”);  
4 *see also Yamaha Motor Co., USA v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998)  
5 (“This court has long recognized that to establish proximate causation ‘it must appear that the  
6 injury was the natural and probable consequence of the negligence or wrongful act, and that it  
7 ought to have been foreseen in the light of the attending circumstances.’”)(internal citations  
8 omitted). Here, this nexus is lacking as Dave Sandin’s licensee status did not cause or  
9 contribute to plaintiff’s alleged damages, nor did any alleged misrepresentations concerning his  
10 licensing status result in plaintiff’s failure to pay its policy premium, Oregon Mutual’s  
11 subsequent cancellation of plaintiff’s policy, and Oregon Mutual’s denial of plaintiff’s claim of  
12 loss based on the cancellation.

13 Plaintiff’s damages would have occurred regardless of whether Dave Sandin had an  
14 appropriate insurance broker license. Oregon Mutual’s denial of plaintiff’s claim was based  
15 solely on plaintiff’s failure to pay its premium. Plaintiff has alleged no set of facts that could  
16 possibly result in a connection between Dave Sandin’s lapsed Nevada license, and its own  
17 failure to pay its policy premium. There can also be no logical or reasonable connection  
18 between Dave Sandin’s licensing status and Oregon Mutual’s failure to abide by the clear  
19 contract terms requiring it to properly notify both the Sandin defendants and plaintiff of  
20 plaintiff’s late payment of its premium.

21 Further, in order to prevail on a cause of action for negligence per se, the injury must be  
22 of the type against which the statute was intended to protect. *See Anderson v. Baltrusaitis*, 113  
23 Nev. 963, 944 P.2d 797 (1997); *Sagebrush Ltd. v. Carson City*, 99 Nev. 204, 660 P.2d 1013  
24 (1983). Plaintiff fails to allege that Oregon Mutual’s cancellation of plaintiff’s insurance  
25 policy is the type of injury that the statute preventing unlicensed brokers from doing business in  
26 Nevada is intended to prevent.

27 Ultimately, the Sandin defendants – licensed or otherwise – procured a policy that, but  
28 for plaintiff’s failure to pay and, arguably, Oregon Mutual’s improper notification of

1 cancellation of the policy, would have covered plaintiff's losses alleged in its complaint.

2 Therefore, causes of action numbers three, four, six, and seven inasmuch as they assert that

3 Dave Sandin's licensing status somehow resulted in plaintiff's failure to pay and Oregon

4 Mutual's cancellation of plaintiff's insurance policy and denial of its claim of loss must be

5 dismissed pursuant to NRCP 12(b)(5).

6 **4. CONCLUSION**

7 Plaintiff's failure to pay its premium is the sole and proximate cause of Oregon

8 Mutual's cancellation of its insurance policy and resulting denial of a claim of loss occurring

9 after the cancellation. For the foregoing reasons, defendants Dave Sandin and Sandin & Co.

10 respectfully request that this Honorable Court enter an order dismissing plaintiff's case against  
11 them.

12 DATED this 26<sup>th</sup> day of December, 2012.

13 HUTCHISON & STEFFEN, LLC

14  
15  
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26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 26<sup>th</sup> day of December, 2012, I caused the above and foregoing document entitled **MOTION TO DISMISS** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via electronic mail; and/or
- ☐ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;


to the attorneys listed below at the address and emails indicated below:

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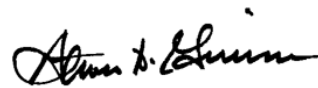
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CLERK OF THE COURT

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13 **DISTRICT COURT**

14 **CLARK COUNTY NEVADA**

15 O.P.H. of Las Vegas Inc.,

Case No.: A-12-672158

16 Plaintiff,

Dept. No.: XXVII

17 vs.

**OPPOSITION TO SANDIN  
DEFENDANTS' MOTION TO  
DISMISS**

18 Oregon Mutual Insurance Company, Dave  
19 Sandin, and Sandin & Co.,

20 Defendants.

21 **I. INTRODUCTION**

22 Rather than limiting themselves to the pleadings, in an attempt to distract from their  
23 high burden, Dave Sandin and Sandin & Co. (collectively, the "Sandin Defendants") cite  
24 self-serving "facts" that are outside the record. Specifically, the Sandin Defendants defame  
25 the Original Pancake House's credit history—which is both irrelevant and is improper of  
26 the Sandin Defendants to reveal in any case. Further, the Sandin Defendants misapprehend  
27 the nature of this lawsuit. It is not contested that the Original Pancake House ("O.P.H.")  
28 failed to make the July 26, 2012 insurance premium payment. However, both Nevada law  
and the underlying insurance contract require an insurer to provide notice of cancellation to

1 both the insured and the insured's agent before actually canceling a policy. For that legal  
2 and contractual requirement to provide the agent notice to have any meaning, an insurance  
3 company must actually provide the notice to the insured's agent and the agent must then act  
4 on the notice by contacting the insured to allow them to cure late payments.

5 Here, as the Complaint explains, while the Sandin Defendants deny they received  
6 notice, Oregon Mutual claims that it did in fact provide notice to the Sandin Defendants. If  
7 Oregon Mutual did provide notice to the Sandin Defendants, then the Sandin Defendants  
8 breached their duties to O.P.H. by failing to warn O.P.H. of the cancellation. Further, if  
9 Oregon Mutual did not send notice to the Sandin Defendants, the Sandin Defendants  
10 breached their duties to O.P.H. by recommending Oregon Mutual as a suitable insurance  
11 provider.<sup>1</sup> Not surprisingly, given Dave Sandin's failure to comply with Nevada law, he  
12 failed to recommend a suitable provider that would comply with Nevada notice  
13 requirements.

14 The Complaint alleges five causes of action against the Sandin Defendants: fraud in  
15 the inducement (the third cause of action three); fraud (the fourth cause of action), breach  
16 of fiduciary duty (the fifth cause of action); violation of Nev. Rev. Stat. § 686A.310 (the  
17 sixth cause of action), and negligence (seventh cause of action seven). O.P.H. has  
18 sufficiently pled each of these causes of action, and the Sandin Defendants' Motion to  
19 Dismiss must be denied.

20 ///

21 ///

22 ///

23 ///

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25  
26 <sup>1</sup> In any case, at this juncture, O.P.H. has no way of knowing whether valid notice was  
27 actually sent to the Sandin Defendants. Resolving that question is a factual matter to be  
28 probed through discovery and presented to a jury.

1     **II.     FACTS**

2             The Sandin Defendants state that in procuring insurance for O.P.H., they  
3 encountered “great difficulty due to plaintiff’s credit history and coverage requirements.”  
4 (Motion to Dismiss at p.1:24-2:1) This is untrue and unsupported. It is also irrelevant.

5             The truth is that O.P.H. “had a long-standing relationship of trust and reliance  
6 with the Sandin Defendants.” (Complaint at ¶ 12<sup>2</sup>.) Dave Sandin acted as O.P.H.’s  
7 insurance agent for a number of years and sold a number of policies to O.P.H. (*Id.* at ¶ 11.)  
8 Further, “[t]hroughout the course of dealing with the Sandin Defendants, O.P.H. relied on  
9 Defendant Dave Sandin to recommend suitable insurance...” (*Id.* at ¶ 14.)

10            O.P.H. trusted that the Sandin Defendants were properly licensed to sell insurance  
11 in Nevada. Dave Sandin, however, was not. (Motion to Dismiss at p. 4:27-28.) In  
12 December of 2011, O.P.H. had other insurance. However, Dave Sandin recommended that  
13 O.P.H. switch to Oregon Mutual. (*Id.* at ¶ 16.) O.P.H. followed Dave Sandin’s advice and  
14 entered a contract with Oregon Mutual. (*Id.* at ¶ 17.)

15            O.P.H. mistakenly failed to pay one month’s premium due under that insurance  
16 contract on July 26, 2012. (*Id.* at ¶ 24.) However, the insurance contract does not allow  
17 Oregon Mutual to cancel for nonpayment until notice has been provided to both O.P.H. and  
18 the insurance agent. (*Id.* at ¶ 18.)

19            As for notice to O.P.H., it is important to note that, contrary to the Sandin  
20 Defendants’ suggestion (Motion to Dismiss at p. 5:8-10), the Complaint does not state that  
21 Oregon Mutual provided a cancellation notice to O.P.H. In fact, the Complaint states:

22                     Defendant Oregon Mutual **claims** that it sent a cancellation notice  
23 to O.P.H. on August 1, 2012 with an effective cancellation date of  
24 August 16, 2012.

25            (Complaint, ¶ 25.) O.P.H. never received any notice. (*Id.* at ¶ 6.)

26            \_\_\_\_\_

27  
28     <sup>2</sup> Capitalization from the Complaint is not replicated here.

1 As for notice to the Sandin Defendants, O.P.H. does not have personal knowledge  
2 as to whether Oregon Mutual provided valid notice to the Sandin Defendants. Indeed,  
3 while the Sandin Defendants deny that they received notice (Motion to Dismiss at p. 5:10-  
4 11), Oregon Mutual asserts otherwise (Oregon Mutual's Answer at ¶ 19). Thus, whether  
5 Oregon Mutual actually did provide notice to the Sandin Defendants is a factual question  
6 which O.P.H. is entitled to discovery on.

7 If either Oregon Mutual or the Sandin Defendants had warned it of Oregon  
8 Mutual's intention to cancel the policy, O.P.H. would have made payment and had  
9 coverage. O.P.H. was entitled to rely on the fact that it would be protected against an  
10 accidental missed payment or potential problems such as mailing issues. Specifically, it  
11 was entitled to expect that Oregon Mutual would comply with its obligation to provide  
12 notice of cancellation to the Sandin Defendants and that the Sandin Defendants would in  
13 turn warn them so they avoided a lapse in insurance. Indeed, "[t]hroughout the course of  
14 dealing with the Sandin Defendants, O.P.H. relied on Defendant Dave Sandin to warn [it]  
15 when premium payments were late." (Complaint, ¶ 13.)

16 Not only did both Oregon Mutual and the Sandin Defendants fail to ensure that  
17 O.P.H. received notice of cancellation, they appear to have affirmatively obscured the fact  
18 that the coverage was in jeopardy. Both Oregon Mutual and the Sandin Defendants had  
19 contact with O.P.H after the notice of cancellation was allegedly sent. (Complaint at ¶ 33;  
20 ¶ 38.) Indeed, the Sandin Defendants had extensive contact with O.P.H. and failed to  
21 mention any notice of cancellation. (*Id.* at ¶ 33, ¶ 37.)

22 As a result of these events, O.P.H. was denied coverage for losses incurred in  
23 connection with a fire that occurred on August 17, 2012. (*Id.* at ¶36, ¶ 41.)

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1     **III.     LEGAL ARGUMENT**

2  
3     **A.     Standard for Motion to Dismiss Pursuant to Rule 12(b)(5)**

4     Nevada Rule of Civil Procedure 12(b)(5) allows the Court to dismiss a complaint  
5     for “failure to state a claim upon which relief can be granted.” However, motions to  
6     dismiss are rarely granted.

7     A Complaint need only contain “a short and plain statement of the claim showing  
8     that the pleader is entitled to relief.” Nev. R. Civ. P. 8(a). “The test for determining  
9     whether the allegations of a complaint are sufficient to assert a claim for relief is whether  
10    the allegations give fair notice of the nature and basis of a legally sufficient claim and the  
11    relief requested. *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484 (Nev. 1994) (quoting  
12    *Ravera v. City of Reno*, 100 Nev. 68, 70 (1984)) (recently cited in *Munda v. Summerlin Life*  
13    *& Health Ins. Co.*, 267 P.3d 771 (2011)).<sup>3</sup>

14    In evaluating whether a complaint is legally sufficient, “[a] court “must construe the  
15    pleading liberally and draw every fair intendment in favor of the [non-moving party].”  
16    *Vacation Village v. Hitachi Am.*, 110 Nev. at 484. “All factual allegations of the complaint  
17    must be accepted as true.” *Id.* (citing *Capital Mortgage Holding v. Hahn*, 101 Nev. 314,  
18    315 (1985)). The moving party bears a high burden in trying to show that a Complaint is  
19    not legally sufficient. “A complaint will not be dismissed for failure to state a claim ‘unless  
20    it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by

21    ///

22    ///

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24    ///

25  
26    <sup>3</sup> Despite recent changes in federal law establishing heightened pleading requirements (*see*,  
27    *e.g.*, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S.  
28    662(2009)), the Nevada standard remains unchanged and the high burden remains in place.

1 the trier of fact, would entitle him [or her] to relief.”” *Vacation Village*, 110 Nev. at 484.  
2 (*citing Edgar v. Wagner*, 101 Nev. 226, 228 (1985)).<sup>4</sup>

3 The Sandin Defendants cannot meet this high burden, and the Motion to Dismiss  
4 must be denied.

5  
6 **B. The Complaint Sufficiently Alleges That The Sandin Defendants**  
7 **Failed To Meet Legal Duties Owed To O.P.H.**

8 The Sandin Defendants try to give the impression that O.P.H. is irresponsible. That  
9 is not the case. The Sandin Defendants also argue that the Complaint is centered on the  
10 premise that the Sandin Defendants should have to remind O.P.H. to pay its bills each  
11 month. (*See* Motion to Dismiss at p. 7.) However, that is not the basis of O.P.H.’s claims.  
12 As the Complaint sufficiently alleges, O.P.H. was entitled to have Oregon Mutual provide a  
13 copy of any cancellation notice to the Sandin Defendants and, if that notice was made, the  
14 Sandin Defendants had a duty to warn it that its insurance coverage was in jeopardy. As  
15 detailed below, the Sandin Defendants also owed O.P.H. a duty to recommend an insurance  
16 provider that would fulfill its contractual obligations and follow Nevada law.

17 Notice of cancellation is required by both state law and by the contract.  
18 (Complaint, ¶ 18.) Nevada state law states that an insurer may cancel a policy for  
19 nonpayment of premiums by giving written notice of cancellation to the insured at least ten  
20 (10) days prior to cancellation. Nev. Rev. Stat. § 687B.320. That notice must also be sent  
21 to the agent. Nev. Admin. Code 687B.530 (“Each insurer shall also provide a copy of the  
22 notice of cancellation of a policy to the agent who wrote the policy.”). The Contract  
23 mirrors those provisions. (Complaint, ¶ 18.) As discussed more fully below, the  
24

25  
26  
27 <sup>4</sup> The Supreme Court scrutinizes orders dismissing complaints closely and reviews them *de*  
28 *novo*. *Munda*, 267 P.3d at 774 (Nev. 2011). “The standard of review for a dismissal under  
NRCp 12(b)(5) is rigorous . . .” *Vacation Village*, 110 Nev. at 484.

1 allegations in the Complaint sufficiently plead the Sandin Defendants' duties, and their  
2 breaches of those duties.

3  
4 **1. The Sandin Defendants Were Required To Warn O.P.H.**  
5 **Regarding Cancellation Notices.**

6 The Sandin Defendants correctly point out that the notice provisions are in place  
7 because the agent is the most appropriate entity to help an insured restore coverage and  
8 avoid loss:

9 The policy behind the contractual provision and Nevada law  
10 requiring that Oregon Mutual must provide notice to the agent as  
11 well as to the insured is most likely to protect plaintiff from the  
12 exact incident that occurred here.

13 (Motion to Dismiss, p. 7, fn. 2.) However, the Sandin Defendants are incorrect that the  
14 obligation to warn "falls squarely on Oregon Mutual's shoulders, not the Sandin  
15 [D]efendants." (*Id.* (emphasis in the original).) If the contractual provision and Nevada  
16 law providing for notice to the agent are to have any meaning and meet their policy goals  
17 of avoiding loss, then the Sandin Defendants must in turn be required to actually do  
18 something with the notice they receive.

19 The Sandin Defendants appear to concede this duty to warn on some level but argue  
20 that the "purported duty would only arise upon the Sandin [D]efendants' receipt of notice  
21 from Oregon Mutual that the plaintiff's policy was in danger of cancellation for non-  
22 payment." (Motion to Dismiss at p. 7.) What the Sandin Defendants fail to grasp is that  
23 the converse is also true: if the Sandin Defendants did receive notice from Oregon Mutual,  
24 they should have warned O.P.H. In fact, Oregon Mutual claims it did provide notice.  
25 (Oregon Mutual's Answer, ¶ 19.) While the Sandin Defendants claim otherwise (Motion to  
26 Dismiss at p. 8), that factual dispute of course cannot be resolved on a motion to dismiss.  
27 *See Nehls v. Leonard*, 97 Nev. 325, 328 (1981) ("A litigant has a right to trial where there

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///

1 is the slightest doubt as to the facts.”) Indeed, O.P.H. has no way of resolving the issue  
2 without the benefit of discovery.<sup>5</sup> O.P.H. has alleged that the Sandin Defendants failed to  
3 properly warn it of the notice of cancellation. (Complaint, ¶ 26.) At this juncture, that is  
4 all that is required and the Complaint is sufficient. *Vacation Village*, 110 Nev. at 484

5  
6 **2. The Sandin Defendants Owed O.P.H. The Duty of Procuring**  
7 **Appropriate Insurance.**

8 The Sandin Defendants maintain that their duties to O.P.H. were met by simply  
9 procuring an insurance policy with fire coverage. (Motion to Dismiss, p. 7:9-12.)  
10 However, their duty is broader: they had a duty to find O.P.H. suitable insurance. (*Keddie*  
11 *v. Beneficial Inc. and Jerry McDonald*, 94 Nev. 418, 420 (1978).) Indeed, the Sandin  
12 Defendants concede that they had the duty to find O.P.H. “insurance that meets the  
13 insured’s needs.” (Motion to Dismiss at p. 6:26-27 (citing *Keddie*, 94 Nev. 418).)

14 The Sandin Defendants did not procure insurance that met O.P.H.’s needs. O.P.H.  
15 had a long history of relying on the Sandin Defendants’ judgment and discretion in  
16 procuring insurance. Dave Sandin has been O.P.H.’s insurance agent for over ten years.  
17 (Complaint, ¶ 11.) Over those years, he has sold multiple business insurance policies to  
18 O.P.H. (*Id.*) O.P.H. has relied on Dave Sandin to recommend suitable insurance for its  
19 business needs. (*Id.* at ¶ 14.) Further, throughout their course of dealing, Dave Sandin has  
20 warned O.P.H. when its payments were late and O.P.H. has relied on Dave Sandin to do so.  
21 (*Id.* at ¶ 13.) Thus, the Sandin Defendants knew or should have known that they should  
22 find a provider that would provide both O.P.H. and the Sandin Defendants with notice.  
23 Finding O.P.H. appropriate insurance included finding an insurance provider who would

24  
25  
26  
27 <sup>5</sup> Further, there are both factual and legal questions as to whether the electronic notice was  
28 actually provided and whether it was sufficient.



1 follow Nevada State law and the terms of the contract, including giving notice of  
2 cancellation.

3       However, for unknown reasons, the Sandin Defendants suggested to O.P.H. that it  
4 switch to Oregon Mutual. (Complaint, ¶ 16.) O.P.H. followed its recommendation. (*Id.* at  
5 ¶¶ 16-17.) It did so at its peril because the Sandin Defendants failed to procure insurance  
6 that met O.P.H.'s needs. O.P.H. required an insurance provider that would abide by the  
7 contractual terms, and follow Nevada law. Nevada law and the Contract require that notice  
8 of cancellation be sent to both the insured and the insurance agent. (*Id.* at ¶ 18.) The  
9 Sandin Defendants claim Oregon Mutual never sent notice of cancellation to them.  
10 (Motion to Dismiss, p. 5:10-11.) O.P.H. did not receive notice until after the contract had  
11 been cancelled. (Complaint, ¶ 26.) If O.P.H. had received the notice prior to the  
12 cancellation, it would have remedied the late payment. (*Id.* at ¶ 32.) The Complaint  
13 sufficiently alleges the Sandin Defendants had a duty to find insurance that met O.P.H.'s  
14 needs, but failed to do so.

15       The Sandin Defendants' reliance on *Keddie* to argue that the Sandin Defendants  
16 cannot be liable despite these extensive allegations in the Complaint is misplaced. *Keddie*  
17 is factually distinguishable. 94 Nev. 418. There, the plaintiff was simply pursuing a  
18 negligence claim against an agent for failing to obtain an insurance policy to cover his boat  
19 before he suffered a loss. *Keddie*, 94 Nev. at 419. The Nevada Supreme Court found for  
20 the defendant agent because the plaintiff has failed to inform the agent that he needed  
21 commercial coverage—and, thus, the policy the agent was directed to procure would not  
22 have covered the loss in any case. *Keddie*, 94 Nev. at 420. Here, in contrast, the Sandin  
23 Defendants are not pursuing a negligence claim for failing to procure insurance in time and,  
24 unlike in *Keddie*, the Sandin Defendants were well aware that O.P.H. needed an insurance  
25 provider that would comply with the notice requirements, including by warning the Sandin  
26 Defendants themselves.

27 ///

28 ///

1                               **3. The Complaint Sufficiently Alleged A Cause of Action for**  
2                               **Breach of Fiduciary Duty.**

3               The Complaint sufficiently alleges that a fiduciary relationship existed between  
4 O.P.H. and the Sandin Defendants and that the Sandin Defendants' actions fell below that  
5 standard. The Nevada Supreme Court has defined a fiduciary relation as that which exists  
6 between "two persons when one of them is under a duty to act for or to give advice for the  
7 benefit of another upon matters within the scope of the relation." *See Stalk v. Mushkin*, 199  
8 P.3d 838, 843 (2009) quoting the Restatement (Second) of Torts § 874 cmt. a. Here,  
9 O.P.H. had a long history of relying on the Sandin Defendants' judgment and discretion in  
10 procuring insurance. Dave Sandin has been O.P.H.'s insurance agent for over ten years.  
11 (Complaint, ¶ 11.) Over those years, he has sold multiple business insurance policies to  
12 O.P.H. (*Id.*) O.P.H. has relied on Dave Sandin to recommend suitable insurance for its  
13 business needs. (*Id.* at ¶ 14.) Further, throughout their course of dealing, Dave Sandin has  
14 warned O.P.H. when its payments were late and O.P.H. has relied on Dave Sandin to do so.  
15 (*Id.* at ¶ 13.)

16               A breach of fiduciary duty seeks damages for injuries from tortious conduct of one  
17 who owes a fiduciary duty. *Stalk*, 199 P.3d at 843. The Complaint alleges that the Sandin  
18 Defendants failed to recommend an appropriate insurer. (Complaint, ¶ 70.) They further  
19 failed to ensure notices of cancellation were provided to O.P.H. and deviated from the  
20 standard of care of a reasonably competent insurance agent. (*Id.*)

21               As a result of the Sandin Defendants' failures to recommend an appropriate insurer  
22 and ensure that notices of cancellation were sent, O.P.H. failed to receive any notice of  
23 cancellation prior to cancellation of its contract. (*Id.* at ¶ 26, ¶ 71.) O.P.H. was harmed as  
24 a result: Oregon Mutual failed to compensate for its losses caused by the fire. (*Id.* at ¶ 41.)  
25 The Complaint pleads sufficient allegations to give the Sandin Defendants fair notice of the  
26 nature and basis of a claim of breach of fiduciary duty, and the Motion to Dismiss should  
27 be denied. *Vacation Village*, 110 Nev. at 484.

**C. The Complaint Sufficiently Alleges That The Sandin Defendants' Actions Were The Cause Of O.P.H.'s Injuries.**

The Sandin Defendants argue that that the third cause of action (fraud in the inducement), the fourth (fraud), the sixth (violations of Nev. Rev. Stat. 686A.310), and the seventh (negligence) should be dismissed for failing to plead a connection between Dave Sandin's failure to be licensed and O.P.H.'s damages (Motion to Dismiss, p. 8:23-26). It is not the case that the damages O.P.H. suffered would have occurred regardless of the Sandin Defendants' actions. (Motion to Dismiss, p. 4:14-16.) For example, as detailed above, if Oregon Mutual's claim that it did provide notice to the Sandin Defendants is correct, then the Sandin Defendants are unquestionably the cause of O.P.H.'s damages, as even they appear to concede. Thus, contrary to the Sandin Defendant's claim, the Complaint alleges a nexus between Dave Sandin's unlicensed sale of insurance and harm to O.P.H.<sup>6</sup>

Specifically, there is a nexus between Dave Sandin's lack of a license and the harm suffered. Dave Sandin was the agent for O.P.H., and O.P.H. worked directly with Dave Sandin. (Complaint, ¶ 11, ¶ 17; Motion to Dismiss, p. 4:24-25.) Dave Sandin was not licensed in Nevada. (Complaint, ¶ 20; Motion to Dismiss, p. 4:27-28.) Requiring that an agent be licensed in Nevada ensures that the agent is qualified to sell insurance in the State and to protect insureds. Dave Sandin directed O.P.H. to change providers to Oregon Mutual. (Complaint, ¶ 16). Given that he was unlicensed in Nevada, it is not surprising that Dave Sandin failed to recommend an insurer who was not going to comply with Nevada law regarding providing notice before cancellation. The Complaint sufficiently alleges this nexus between Dave Sandin's lack of a license and its harm. (See Complaint, ¶ 52, ¶ 60, ¶ 62, ¶ 67, ¶ 75, ¶ 78, ¶ 84.)

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<sup>6</sup> In addition, O.P.H. paid the Sandin Defendants for their service of finding insurance for O.P.H., which Defendants were not properly licensed to do. (Motion to Dismiss, p. 4:27-28.) The Complaint thus also prays for disgorgement for monies paid directly and as commission on the sale of insurance. (Complaint, p. 16:15-16.)

Further, the Sandin Defendants focus only on the nexus between Dave Sandin's lack of a license but ignore the other allegations of acts by the Sandin Defendants that O.P.H. alleges caused harm. Dave Sandin's lack of a license is not the only act by the Sandin Defendants at issue. For example, the Complaint also alleges that the Sandin Defendants misrepresented that Oregon Mutual was an appropriate insurance provider for O.P.H., including by misrepresenting that Oregon Mutual would follow state laws and the terms of the contract to provide notice of cancellation. (Complaint ¶ 16, ¶ 52, ¶ 63, ¶ 70, ¶ 75.) The Complaint alleges that these actions were the proximate cause of harm suffered by O.P.H. (*Id.* at ¶ 60, ¶ 67, ¶ 71, ¶ 78.) Further allegations of acts by the Sandin Defendants are included in each cause of action as detailed below. The Sandin Defendants strangely focus entirely on the lack of license, and fail to address any of the many other allegations at all (*see* Motion to Dismiss), and thus fail to meet the high burden for a motion to dismiss.

As detailed below, each cause of action is sufficient. The Complaint gives fair notice of the nature and basis of legally sufficient claims and the relief requested, and the Motion to Dismiss should thus be denied. *Vacation Village*, 110 Nev. at 484.

**1. The Complaint Sufficiently Alleges a Cause of Action for Fraud In the Inducement.**

The Complaint sufficiently alleges a claim for fraud in the inducement (third cause of action). A claim for fraud in the inducement must allege: (i) a false representation; (ii) the defendant's knowledge or belief that the representation is false; (iii) the defendant's intention to induce the plaintiff; (iv) the plaintiff's justifiable reliance on the misrepresentation; and (v) damage to the plaintiff resulting from the reliance. *See J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 102 Nev. 277, 291 (2004).

*(i) false representation*

The Complaint alleges that "Defendant Dave Sandin, misrepresented material facts, including but not limited to whether he was licensed in Nevada and that Oregon Mutual Insurance would meet O.P.H.'s needs." (Complaint, ¶ 52.)

1 *(ii) the defendant's knowledge or belief that the representation is false*

2 The Complaint alleges the Sandin Defendants knew these representations were false  
3 or had insufficient bases for making them. (Complaint, ¶¶ 53-54.)

4 *(iii) the defendant's intention to induce the plaintiff*

5 The Complaint further alleges these misrepresentations were made with the purpose  
6 of inducing O.P.H. to enter into the contract with Oregon Mutual, and obtaining payments.  
7 (*Id.* at ¶ 58.)

8 *(iv) the plaintiff's justifiable reliance*

9 O.P.H. had a long history of trust and reliance on the Sandin Defendants. (*Id.* at  
10 ¶¶ 11-12.) O.P.H. depended on the Sandin Defendants to procure appropriate insurance  
11 (*id.* at ¶ 14) and purchased Oregon Mutual insurance from the Sandin Defendants based on  
12 these misrepresentations (*id.* at ¶ 16, ¶ 59).

13 *(v) damage to the plaintiff resulting from the reliance*

14 Finally, the Complaint alleges that the insurance provider the Sandin Defendants  
15 recommended, Oregon Mutual, failed to follow state law and the terms of the contract,  
16 resulting in Oregon Mutual's failure to compensate for O.P.H.'s losses. (*Id.* at ¶ 41, ¶ 60.)  
17 O.P.H. paid premiums and depended on Oregon Mutual to compensate for losses, "as a  
18 direct and proximate result of Plaintiff's justifiable reliance on Defendant's  
19 misrepresentations." (*Id.* at ¶ 60.)

20 **2. The Complaint Sufficiently Alleges a Cause of Action for**  
21 **Fraud.**

22 Similarly, the Complaint sufficiently alleges a cause of action for fraud (fourth  
23 cause of action), including that the Sandin Defendants' misrepresentations were a  
24 proximate cause of O.P.H.'s injury. A claim of fraud requires: (i) a false representation  
25 made by the defendant; (ii) the defendant's knowledge or belief that the representation is  
26 false, or an insufficient basis in making the representation; (iii) the defendant's intention to  
27 induce the plaintiff to act; (iv) the plaintiff's justifiable reliance on the misrepresentation;

1 and (v) damage to the plaintiff resulting from such reliance. *See Bulbman v. Nevada Bell*,  
2 108 Nev. 105, 110-111 (1992).

3 *(i) a false representation made by the defendant*

4 In the Complaint, O.P.H. alleges, “Defendant Sandin Insurance, by and through its  
5 agent Defendant Dave Sandin, misrepresented that Defendant Oregon Mutual was a  
6 reliable and appropriate insurance company for O.P.H.’s needs, and that Defendant Oregon  
7 Mutual would provide notice to O.P.H. and to Defendant Dave Sandin before canceling the  
8 contract.” (Complaint, ¶ 63.)

9 *(ii) the defendants’ knowledge of falsity, or insufficient basis*

10 The Complaint alleges the Sandin Defendants knew or believed these  
11 representations to be false, or had insufficient bases for making them. (*Id.* at ¶ 64.)

12 *(iii) the defendant’s intention to induce the plaintiff to act*

13 The Complaint alleges that the Sandin Defendants made misrepresentations  
14 intending for O.P.H. to rely on them. (*Id.* at ¶ 65.) They were made as a part of the Sandin  
15 Defendants’ recommendation for O.P.H. to change insurers to Oregon Mutual in December  
16 of 2011. (*Id.* at ¶ 16.)

17 *(iv) the plaintiff’s justifiable reliance on the misrepresentation*

18 The Complaint sufficiently alleges justifiable reliance. O.P.H. and the Sandin  
19 Defendants had a long relationship history as insurance agent and insured. (*Id.* at ¶ 11.)  
20 Throughout those years, O.P.H. relied on the Sandin Defendants to recommend suitable  
21 insurance. (*Id.* at ¶ 14.) In justifiable reliance on the misrepresentations made by the  
22 Sandin Defendants (*id.* at ¶ 66) and signed a contract with Oregon Mutual in December of  
23 2011 (*id.* at ¶ 17).

24 *(v) damage to the plaintiff resulting from such reliance*

25 Lastly, the Complaint sufficiently alleges that O.P.H. has been substantially  
26 damaged as a direct and proximate result of those misrepresentations. (*Id.* at ¶ 67.)  
27 O.P.H.’s reliance on the Sandin Defendants and their representations induced O.P.H. to  
28 move their insurance policy to Oregon Mutual. (*Id.* at ¶ 12, ¶ 16.) They relied on Oregon

1 Mutual to compensate for losses because of the Sandin Defendants' representations of  
2 Oregon Mutual as an appropriate insurance provider, and of Dave Sandin as a licensed  
3 insurance agent. (Complaint, ¶ 63.) However, Oregon Mutual failed to be an appropriate  
4 insurance provider because it failed to follow state law and the terms of the contract,  
5 contrary to the Sandin Defendants' representation, resulting in failure to compensate for  
6 losses suffered by O.P.H. (*Id.* at ¶ 41, ¶ 60.)

7 **3. The Complaint Sufficiently Alleges a Cause of Action for**  
8 **Violation of violations of Nev. Rev. Stat. 686A.310 (Unfair Insurance**  
9 **Practices).**

10 The Complaint alleges that the Sandin Defendants violated Nevada statutes (the  
11 sixth cause of action) by selling insurance without a license, and also by failing to procure  
12 appropriate insurance for O.P.H., and that those violations were the proximate cause of the  
13 harm suffered by O.P.H.

14 The Sandin Defendants violated Nev. Rev. Stat. § 686A.310 by misrepresenting  
15 that Oregon Mutual would follow Nevada law and the terms of the contract by providing  
16 notice to O.P.H. (Complaint, ¶ 75.) Nev. Rev. Stat. § 686A.310 offers sixteen (16)  
17 activities "considered to be an unfair practice." The very first one of which is  
18 "misrepresenting to insureds or claimants pertinent facts or insurance policy provisions  
19 relating to any coverage at issue." Nev. Rev. Stat. § 686A.310(1)(a). Whether an  
20 insurance provider follows Nevada law and abides contractual provisions are "pertinent  
21 facts" that relate to coverage. (Complaint, ¶ 75.) The Sandin Defendants violated Nev.  
22 Rev. Stat. § 686A.310 by misrepresenting to O.P.H. that Oregon Mutual was an appropriate  
23 insurer. (*Id.* at ¶¶ 75-76.) O.P.H. changed insurance providers based on that  
24 representation. (*Id.* at ¶¶ 16-17, ¶ 59, ¶ 72.) In fact, Oregon Mutual failed to follow state  
25 law and the terms of the contract (*id.* at ¶ 27), leading to failure to cover losses suffered by  
26 O.P.H. (*id.* at ¶ 41.). Thus, O.P.H. sufficiently pled a connection between Sandin  
27 Defendant's actions and the harm suffered.  
28

1                   **4. The Complaint Sufficiently Alleges a General Cause of Action**  
2                   **for Negligence.**

3                   A negligence claim (seventh cause of action) requires four elements: (i) the  
4                   existence of a duty of care; (ii) a breach of that duty; (iii) causation; and (iv) damages.  
5                   *Sanchez v. Wal-Mart*, 221 P.3d 1276, 1280 (2009). One way of showing negligence is  
6                   negligence per se. The Complaint sufficiently alleges negligence per se but the  
7                   Complaint's allegations are not limited to such. The Complaint also sufficiently alleges a  
8                   general cause of action for negligence.

9                   *(i) duty*

10                  The Complaint alleges the Sandin Defendants owed O.P.H. duties, including  
11                  fiduciary duties, and a duty of reasonable care. (Complaint, ¶ 12, ¶ 14, ¶ 17, ¶ 69, ¶ 70, ¶  
12                  84, ¶ 85.)

13                  *(ii) breach of duty*

14                  The Sandin Defendants breached those duties by failing to recommend an  
15                  appropriate insurance provider (*id.* at ¶ 27, ¶ 41, ¶ 70), practicing without a license (*id.* at  
16                  ¶ 20, ¶ 80) and making material misrepresentations (*id.* at ¶ 34, ¶ 29, ¶ 52, ¶ 54, ¶¶ 62-63).  
17                  The Sandin Defendants actions fell below the standard of care of a reasonably competent  
18                  insurance agent. (*Id.* at ¶ 70.)

19                  *(iii) causation*

20                  The Sandin Defendants' breaches directly and proximately caused the harm O.P.H.  
21                  suffered. (*Id.* at ¶ 71, ¶ 88.) O.P.H. entered into an insurance contract with Oregon Mutual  
22                  as a result of the Sandin Defendants' representation of Oregon Mutual as a suitable  
23                  provider. (*Id.* at ¶¶ 16-17.) Oregon Mutual failed to follow state law and the terms of the  
24                  contract (*id.* at ¶ 27), leading to failure to cover losses suffered by O.P.H. (*id.* at ¶ 41).

25                  *(iv) damages*

26                  O.P.H. suffered loss from an August 17, 2012 fire (Complaint, ¶ 36), for which  
27                  Oregon Mutual denied coverage (*id.* at ¶ 41). As detailed above, the Complaint sufficiently  
28



1 alleges that O.P.H. would not have suffered the damages if it were not for the Sandin  
2 Defendants' breaches.

3 **5. The Complaint Sufficiently Alleges a General Cause of Action**  
4 **for Negligence Per Se**

5 Cause of action seven also sufficiently alleges a cause of action for negligence per  
6 se. A negligence per se claim arises when the duty is created by a statute. *Sanchez v. Wal-*  
7 *Mart Stores, Inc.*, 221 P.2d 1276, 1283 (2009). Violation of that statute establishes the  
8 duty and breach elements of negligence when the injured party is in the class of persons the  
9 statute is intended to protect and the type of injury is the type which the statute is intended  
10 to protect against. *Id.*

11 Nev. Rev. Stat. § 598.0923 says a person engages in a deceptive trade practice  
12 when in the course of business, they conduct that business without all required licenses,  
13 fail to disclose a material fact in connection with the sale or lease of goods or services, or  
14 violate a state statute relating to the sale or lease of goods or services. Nev. Rev. Stat.  
15 § 598.0923. As described above, the Sandin Defendants sold insurance without the  
16 required licenses, failed to disclose material facts in connection with procuring insurance  
17 for Plaintiff, and violated state statutes in doing so. (Complaint, ¶¶ 84-88.)

18 O.P.H., the insured, is in the class of persons that Nevada's Deceptive Trade  
19 Practices Act was designed to protect—consumers. (*Id.* at ¶ 89.) As the title suggests, the  
20 Act is intended to prevent the public from harm resulting from deceptive practices in sales  
21 and lease transactions. In *Erwin v. State*, the Nevada Supreme Court considered Nev. Rev.  
22 Stat. § 599, the subsequent chapter under Title 52, Trade Regulations and Prohibited Acts.  
23 111 Nev. 1535 (1995). There, the Court wrote “this area of law is prophylactic in nature so  
24 that the State can protect the marketplace and consumers from abuses.” *Id.* at 1543.  
25 Further, Nev. Rev. Stat. § 41.600 defines “consumer fraud” as “an act prohibited by NRS  
26 598.0915 to 598.0925, inclusive.” Nev. Rev. Stat. § 41.600(2)(e). O.P.H. was a consumer,  
27 relying on the Sandin Defendants to procure insurance.

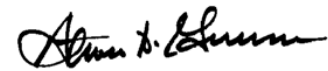
1 In addition, contrary to the Sandin Defendants' claim (*see* Motion to Dismiss, p.  
2 9:24-26) the Complaint alleges that the injuries suffered by O.P.H. are the types of injuries  
3 the Act is meant to prevent. (Complaint, ¶ 90 ("The injuries suffered by Plaintiff are the  
4 type of injuries the Deceptive Trade Practices Act was meant to prevent").) The Motion to  
5 Dismiss miscategorizes the harm as "Oregon Mutual's cancellation of Plaintiff's insurance  
6 policy." (Motion to Dismiss, p. 9:24-25.) In fact, the harm caused by the Sandin  
7 Defendants is broader, including procuring inadequate insurance for O.P.H. by  
8 misrepresenting Oregon Mutual as an adequate insurance provider. (Complaint, ¶ 82.)  
9 However, the Sandin Defendants recommended Oregon Mutual (*id.* at ¶ 16), who failed to  
10 follow state law and the terms of the contract, resulting in failure to compensate for losses  
11 (*id.* at ¶ 41). Thus, the Complaint sufficiently alleges a cause of action for negligence.

12 **IV. CONCLUSION**

13 Based on the forgoing, O.P.H. respectfully requests that the Sandin Defendants'  
14 Motion to Dismiss be denied. Of course, should this Court find that any causes should be  
15 dismissed, this Court should of course allow O.P.H. leave to amend its Complaint. Nev. R.  
16 Civ. P. 15(a); *See also, e.g., Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22 (2003)("[W]hen  
17 a complaint can be amended to state a claim for relief, leave to amend, rather than  
18 dismissal, is the preferred remedy.").

19  
20 Respectfully submitted this, the 10<sup>th</sup> day of January, 2013.

21  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS, INC.,  
Plaintiff,

v.

OREGON MUTUAL INSURANCE  
COMPANY, DAVE SANDIN, and SANDIN  
& CO.,

Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVII

**REPLY IN SUPPORT OF THE  
SANDIN DEFENDANTS' MOTION  
TO DISMISS**

The gist of plaintiff's complaint is quite clear and not "misapprehended" by the Sandin defendants: plaintiff did not pay its July 26, 2012 premium; Oregon Mutual cancelled its insurance policy as a result; Oregon Mutual did not provide notice of this cancellation to the Sandin defendants; plaintiff's restaurant was destroyed by fire; Oregon Mutual denied its million dollar claim; and plaintiff does not think it should be held to task for its faulty accounting practices. The Sandin defendants are not seeking to defame plaintiff by virtue of their motion: rather, they merely point to the clear and unequivocal allegations set forth in plaintiff's complaint stating that they – the Sandin defendants – were not provided notice of cancellation of plaintiff's policy, and despite this fact, are somehow responsible for plaintiff's failure to pay and Oregon Mutual's alleged failure to comply with Nevada law and the terms of the contract. See ¶¶ 27 and 28 ("Defendant OREGON MUTUAL did not send a cancellation

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1 notice to Defendant DAVE SANDIN. Defendant DAVE SANDIN did not receive a  
2 cancellation notice.”) While the Sandin defendants do not concede that they had any duty to  
3 police plaintiff’s and Oregon Mutual’s respective compliance with the contractual relationship  
4 between them, assuming *arguendo* that such duty might exist, it could only arise if the Sandin  
5 defendants had received notice that Oregon Mutual intended to cancel plaintiff’s policy. But  
6 they did not, and even more telling, plaintiff explicitly and clearly pleaded that not only did  
7 Oregon Mutual not send the Sandin defendants notice of the cancellation, but that Dave Sandin  
8 never received any such notice.

9 In addition, plaintiff’s complaint is a “failure to procure” action that must be dismissed  
10 because, ultimately, the Sandin defendants obtained insurance that met plaintiff’s needs but for  
11 plaintiff’s own failure to pay its premiums and Oregon Mutual’s faulty notice practices.  
12 Despite this, plaintiff claims that the Sandin defendants failed to procure suitable insurance for  
13 its coverage needs. In fact, Oregon Mutual would presumably have covered the loss alleged in  
14 this case had plaintiff paid its premiums. The fact that Oregon Mutual did not comply with  
15 Nevada law or the parties’ contract in its notice practices was, under no circumstances,  
16 foreseeable by the Sandin defendants. But for plaintiff’s own bad acts, its loss would have  
17 been covered by Oregon Mutual. The Sandin defendants cannot be held liable for failure to  
18 procure coverage that met plaintiff’s needs because the Sandin defendants did procure coverage  
19 that met plaintiff’s needs and, ultimately, it was plaintiff’s fault Oregon Mutual denied its  
20 claims, not the Sandin defendants’, and they could not possibly have foreseen that Oregon  
21 Mutual would not comply with Nevada notice requirements in this instance.

- 22 1. **The Sandin defendants did not receive notice of Oregon Mutual’s cancellation of**  
23 **plaintiff’s insurance policy, and therefore had no legal duty – implicit or explicit –**  
**to warn plaintiff their policy was about to be cancelled.**

24 Plaintiff alleges in its complaint as follows: “Defendant OREGON MUTUAL did not  
25 send a cancellation notice to Defendant DAVE SANDIN. Defendant DAVE SANDIN did not  
26 receive a cancellation notice.” See ¶¶ 27 and 28. It does not matter whether Oregon Mutual’s  
27 answer states otherwise. There is no set of facts which, if proven, could impose a duty on the  
28 Sandin defendants to warn plaintiff that its policy was about to be cancelled where the Sandin

1 defendants had not received notice of the cancellation themselves. And plaintiff's opposition is  
2 glaringly devoid of citation to even one case that imposes a duty on a broker of insurance to  
3 monitor the insurance company's actions after the insured and insurance company have entered  
4 into a contractual relationship. Absent a legal duty to warn plaintiff that its premium was late,  
5 plaintiff argues that it "relied" on the Sandin defendants to notify them of missed premium  
6 payments. Unfortunately, such reliance is unjustified and unreasonable. The Sandin  
7 defendants are not parties to the contract between plaintiff and Oregon Mutual, and are not  
8 required to ensure either party's compliance therewith. Regardless, plaintiff's complaint  
9 unequivocally states that the Sandin defendants did not receive a cancellation notice from  
10 Oregon Mutual. Therefore, the Sandin defendants cannot be held liable for plaintiff's failure to  
11 pay its premium and Oregon Mutual's resulting cancellation of the policy when they  
12 themselves were completely unaware that plaintiff had not made its premium payment, and that  
13 Oregon Mutual was about to cancel plaintiff's policy.

14 **2. Plaintiff is not entitled to discovery on issues that it affirmatively pleaded in its**  
15 **complaint and should not be permitted to rely on matters outside of the four**  
16 **corners of its complaint.**

17 Again, plaintiff clearly and unequivocally states in its complaint that the Sandin  
18 defendants did not receive a notice of cancellation from Oregon Mutual, and that plaintiff itself  
19 only received notice after the policy was actually cancelled.<sup>1</sup> See ¶¶ 26, 27, and 28. Strangely,  
20 plaintiff then requests discovery on these issues to determine if its allegations, as pleaded, are  
21 true. NRCP 56(f) relief is only available as a defense to a motion for summary judgment, and  
22 further, these facts as alleged are not disputed by the Sandin defendants. Whether plaintiff  
23 received notice or not is irrelevant to any alleged duty the Sandin defendants may have had to  
24 notify plaintiff that its premium payment was overdue. Plaintiff is not entitled to discovery on  
25 an issue that it affirmatively pleaded as truthful: that the Sandin defendants did not receive a  
26 cancellation notice from Oregon Mutual. Absent a legal or rational basis to allow plaintiff

27 <sup>1</sup> Contrary to plaintiff's statement on page 3, lines 19-23, the Sandin defendants properly  
28 argued that any notice of cancellation plaintiff received from Oregon Mutual – according to the  
allegations in its complaint – was received after the policy had already been cancelled.

1 discovery on these claims, its request should be summarily denied.

2 Plaintiff also complains that the Sandin defendants “defamed” it by noting that they  
3 struggled with finding suitable insurance for plaintiff because of its credit history, and that this  
4 comment references matters “outside of the pleadings.” Ironically, and in the same breath,  
5 plaintiff argues *ad nauseam* that the Sandin defendants told plaintiff to change insurance  
6 companies. Plaintiff never alleged this in its complaint. Not only is this statement completely  
7 inaccurate, but it presumes to place even more responsibility on the shoulders of the Sandin  
8 defendants than is even alleged in the complaint and, therefore, should be completely  
9 disregarded.

10 **3. The Sandin defendants could not have misrepresented to plaintiff that Oregon**  
11 **Mutual would not comply with Nevada law and the terms of its contract with**  
12 **plaintiff if they did not know and had no reason to know that it would not follow**  
13 **state law.**

14 The Sandin defendants had no reason to believe that Oregon Mutual would not comply  
15 with Nevada law or the terms of the policy requiring it to give notice of cancellation to both the  
16 broker of the insurance and the insured. Each and every one of plaintiff’s misrepresentation-  
17 based claims fails to assert how the Sandin defendants could be legally responsible for an act  
18 that Oregon Mutual had not yet committed when the Sandin defendants recommended Oregon  
19 Mutual to plaintiff. The same theory that exculpates a defendant for a third-party’s intervening  
20 and superseding act is at play here: the Sandin defendants cannot be held liable for the  
21 unforeseeable bad acts of Oregon Mutual. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d  
22 1026 (2005). And the Sandin defendants cannot misrepresent a fact that they did not know and  
23 had no reason to know: that Oregon Mutual would not provide them and plaintiff with the  
24 appropriate notices before cancelling the insurance policy.

25 Were this claim allowed to proceed, any agent could be sued any time a carrier  
26 breached its contractual obligations to the insured. This is tantamount to holding a car  
27 dealership responsible for a finance company’s breach of its financing agreement with the  
28 purchaser simply by virtue of the dealership’s procurement of the financing. This, of course,  
would be absurd, as are the present allegations.

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

O.P.H. OF LAS VEGAS, INC.,

Appellant,

v.

OREGON MUTUAL INSURANCE COMPANY;  
DAVE SANDIN; AND SANDIN & CO.,

Respondents.

Supreme Court No. 76966

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District Court No. A-12-8721-18  
Feb 22 2019 08:58 a.m.  
Elizabeth A. Brown  
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**APPELLANT'S**  
**APPENDIX VOL. 1 OF 4**

# **ALPHABETICAL INDEX TO APPELLANT'S APPENDIX – VOL. I**

| <b><u>DOCUMENT</u></b>   | <b><u>DATE</u></b> | <b><u>VOLUME</u></b> | <b><u>BATES RANGE</u></b> |
|--|--------------------|----------------------|---------------------------|
| Civil Cover Sheet; Complaint   | 11/19/2012         | I                    | APP00104-<br>APP00122     |
| Correspondence from OMI Re:<br>Policies were no longer in force  | 8/20/2012          | I                    | APP00001-<br>APP00103     |
| Court Minutes Motion for Attorney<br>Fees and Costs  | 11/17/2015         | III                  | APP00607                  |
| Court Minutes All Pending Motions  | 5/14/2015          | II                   | APP00378-<br>APP00379     |
| Court Minutes Defendants David<br>Sandin and Sandin & Company's<br>Motion to Dismiss   | 2/13/2013          | I                    | APP00160                  |
| Dave Sandin and Sandin & Co.'s<br>Answer to Complaint  | 4/3/2013           | I                    | APP00168-<br>APP00178     |
| David Sandin and Sandin & Co.'s<br>Motion for Attorney's Fees and Costs  | 9/2/2015           | III                  | APP00484-<br>APP00606     |
| Dave Sandin and Sandin & Co.'s<br>Motion for Summary Judgment  | 3/17/2015          | I                    | APP00199-<br>APP00222     |
| Defendants Dave Sandin and Sandin &<br>Co.'s Reply in Support of Their<br>Motion for Decision on Attorneys'<br>Fees and Motion for Additional<br>Attorneys' Fees and costs Associated<br>with Appeal | 12/6/2017          | IV                   | APP00694-<br>APP00781     |
| Motion for Decision on Attorneys'<br>Fees and Motion for Additional<br>Attorneys' Fees and Costs Associated<br>With Appeal   | 10/23/2017         | III                  | APP00624-<br>APP00683     |



|   |            |     |                       |
|---|------------|-----|-----------------------|
| Motion for Partial Summary Judgment   | 11/27/2013 | I   | APP00179-<br>APP00198 |
| Motion to Dismiss   | 12/26/2012 | I   | APP00123-<br>APP00133 |
| Notice of Appeal  | 9/11/2018  | IV  | APP00883-<br>APP00884 |
| Notice of Appeal  | 7/30/2015  | III | APP00450-<br>APP00479 |
| Notice of Entry of Judgment   | 8/13/2015  | III | APP00480-<br>APP00483 |
| Notice of Entry of Order Denying Plaintiff O.P.H. of Las Vegas Inc.'s Motion to Reconsider and/or Amend Judgment  | 6/12/2018  | IV  | APP00878-<br>APP00882 |
| Notice of Entry of Order Denying the Sandin Defendants' Motion to Dismiss   | 3/22/2013  | I   | APP00164-<br>APP00167 |
| Notice of Entry Order Findings of Facts, Conclusion of Law and Judgment in Favor of Dave Sandin and Sandin & Co. on their Motion for Attorneys' Fee and Costs | 3/16/2018  | IV  | APP00770-<br>APP00781 |
| Notice of Entry of Order Granting Defendants Dave Sandin and Sandin & Co.'s Motion for Summary Judgment   | 7/1/2015   | II  | APP00439-<br>APP00449 |
| Notice of Entry of Stipulation and Order for Dismissal with Prejudice   | 9/11/2018  | IV  | APP00885-<br>APP00888 |
| Offer of Judgment   | 2/14/2013  | I   | APP00161-<br>APP00163 |

|   |            |     |                     |
|---|------------|-----|---------------------|
| Opposition to Dave Sandin and Sandin & Co.'s Motion for Attorney's Fees and Costs   | 9/28/2015  | IV  | APP00587-APP00594   |
| Opposition to Dave Sandin and Sandin & Co.'s Motion for Summary Judgment  | 4/9/2015   | II  | APP00223-APP00377   |
| Opposition to Defendants Dave Sandin and Sandin & Co.'s Motion for Additional Attorneys' and Costs Associated with Appeal | 11/30/2017 | IV  | APP00684-APP00693   |
| Opposition to Sandin Defendant's Motion to Dismiss  | 1/10/2013  | I   | APP00134-APP00151   |
| Order Granting Defendants Dave Sandin and Sandin & Co.'s Motion for Summary Judgment                                      | 6/30/2015  | II  | APP00430-APP00438   |
| Plaintiff O.P.H. of Las Vegas Inc.'s Motion to Reconsider and/or Amend Judgment   | 3/30/2018  | IV  | APP00782-APP00816   |
| Plaintiff O.P.H. of Las Vegas Inc.'s Reply in Support of its Motion to Reconsider and/or Amend Judgment                   | 4/24/2018  | IV  | APP00834-APP00863   |
| Reply in Support of Dave Sandin and Sandin & Co.'s Motion for Attorney's Fees and Costs                                   | 11/10/2015 | III | APP00595-APP00606   |
| Reply in Support of the Sandin Defendants' Motion to Dismiss  | 1/24/2013  | I   | APP00152-APP00159   |
| Sandin Defendants' Opposition to Motion for Reconsideration   | 4/16/2018  | IV  | APP00817-APP00833   |
| Transcript of Hearing – Motion for Reconsideration  | 5/1/2018   | IV  | APP00864 – APP00877 |

|   |           |    |                       |
|---|-----------|----|-----------------------|
| Transcript of Proceedings – All<br>Pending Motions                  | 5/14/2015 | II | APP00380-<br>APP00429 |
| Transcript of Proceedings – Motion for<br>Attorney’s Fees and Costs | 2/6/2018  | IV | APP00608-<br>APP00623 |

LVEGAS 78140-1 282049v1



**OREGON MUTUAL INSURANCE COMPANY**

400 NE Baker Street, PO Box 808, McMinnville, OR 97128

800-888-2141 • FAX 503-376-9184

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**Commercial Lines**

September 11, 2012

RE: BSP716685 OPH OF LAS VEGAS INC

TO WHOM IT MAY CONCERN:

To the best of my knowledge this is a true and certified copy of the captioned policy from the period from 12/26/2011 to 12/26/2012 .

STEPHANIE STEVENS  
Commercial Lines Support



# OREGON MUTUAL INSURANCE COMPANY

P.O. Box 809, McMinnville, Oregon 97128

M2080B (7-11)

## Businessowners Protector Policy

### POLICY DECLARATIONS

COPY  
REGIONAL OFFICE

POLICY NUMBER

POLICY PERIOD

BSP716685

12/26/2011 TO 12/26/2012  
12:01 A.M. Standard Time at Your Mailing Address.

*Brian Stoff*

PRESIDENT

NAMED INSURED

CUSTOMER SINCE:

12/26/2011

YOUR AGENT

000781

503-381-5570

AUTHORIZED REPRESENTATIVE

OPH OF LAS VEGAS INC  
OPH OF LAS VEGAS #5  
4170 S FORT APACHE RD  
LAS VEGAS NV 89147-8801

SANDIN INSURANCE GROUP  
46 DA VINCI ST.  
LAKE OSWEGO OR 97035

THE NAMED INSURED IS:

CORPORATION

BUSINESS DESCRIPTION:

RESTAURANTS CASUAL W/O LOUNGE

BILLING ACCOUNT: 121953462

PREMISES DESCRIPTION(S)

PREM. NO. 001 BLDG. NO. 001  
4170 S FORT APACHE RD  
LAS VEGAS NV 89147-8801

PREM. NO. 002 BLDG. NO. 001  
4833 W CHARLESTON BLVD  
LAS VEGAS NV 89146-1410

MORTGAGEE.

MORTGAGEE.

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 Declarations Page or Continuation Certificate, when attached, completes the above numbered policy.

### BASIC PROPERTY COVERAGE

Limits of Insurance

Deductible \$ 2,500

Buildings

PREM. NO. 001

BLDG. NO. 001

REPLACEMENT COST

\$ 691,000

002

001

REPLACEMENT COST

\$ 691,000

Business Personal Property

PREM. NO. 001

BLDG. NO. 001

REPLACEMENT COST

\$ 350,000

002

001

REPLACEMENT COST

\$ 350,000

This policy includes Business Income Coverages. See paragraph A.5.f in Section I - Property of the BUSINESS COVERAGE FORM.

### BASIC LIABILITY AND MEDICAL PAYMENTS

General Aggregate Limit (Other than Products-Completed Operations)

\$ 2,000,000

Products Completed Operations Aggregate Limit

\$ 2,000,000

Liability and Medical Expenses Limit

\$ 1,000,000

Medical Expenses (per Person)

\$ 5,000

Damage to Premises Rented to You Limit

\$ 100,000

Except for Damage to Premises Rented To You, each paid claim for the above coverages reduces the amount of the insurance we provide during the applicable period. Please refer to paragraph D.4. in Sect. II - Liability of the BUSINESSOWNERS COVERAGE FORM.

### OPTIONAL/MISCELLANEOUS COVERAGES

MONEY/SECURITIES (SPECIAL FORM)

INSIDE

\$ 10,000

OUTSIDE

2,000

EMPLOYEE DISHONESTY

10,000

LOC: 001 BLDG: 001

GLASS DEDUCTIBLE: WAIVED

\*

LOC: 002 BLDG: 001

GLASS DEDUCTIBLE: WAIVED

\*

HIRED AUTO LIABILITY

\*\*

EQUIPMENT BREAKDOWN ENDORSEMENT

\*\*\*

NON-OWNED AUTO LIABILITY

\*\*

\* INCLUDED IN BASIC PROPERTY

\*\* INCLUDED IN BASIC LIABILITY

THESE FORMS APPLY:

\*\*\* SEE M2071

PAY PLAN DIRECT BILL

INVOICE TO FOLLOW

TOTAL PREMIUM \$ 18,478.00

TERRORISM COVERAGE IS PROVIDED IN THIS POLICY (REFER TO M2071 FOR APPLICABLE FORMS) AT A PREMIUM OF \$68.00

Renews or Replaces Policy No.:

M2080B (7-11)

PROCESSED: 12/29/2011 BY: DONNAO

APP00002

Confidential

**OREGON MUTUAL INSURANCE COMPANY**P.O. Box 808, McMinnville, Oregon 97128  
POLICY DECLARATIONS

M2060B (7-11)

REGIONAL OFFICE

**Businessowners Protector Policy**POLICY NUMBER  
BSP716685POLICY PERIOD  
12/26/2011 TO 12/26/2012  
12:01 A.M. Standard Time at Your Mailing Address.

PRESIDENT

NAMED INSURED

CUSTOMER SINCE: 12/28/2011

YOUR AGENT

000781 503-38109570 REPRESENTATIVE

OPH OF LAS VEGAS INC  
OPH OF LAS VEGAS #5  
4170 S FORT APACHE RD  
LAS VEGAS NV 89147-8801SANDIN INSURANCE GROUP  
46 DA VINCI ST.  
LAKE OSWEGO OR 97035

THE NAMED INSURED IS: CORPORATION

BUSINESS DESCRIPTION: RESTAURANTS CASUAL W/O LOUNGE BILLING ACCOUNT: 121953462

PREMISES DESCRIPTION(s)

PREM. NO. 001 BLDG. NO. 001  
4170 S FORT APACHE RD  
LAS VEGAS NV 89147-8801PREM. NO. 002 BLDG. NO. 001  
4833 W CHARLESTON BLVD  
LAS VEGAS NV 89146-1410

MORTGAGEE.

MORTGAGEE.

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 Declarations Page or Continuation Certificate, when attached, completes the above numbered policy.

**BASIC PROPERTY COVERAGE**

Limits of Insurance

|                            |    |           |           |    |
|----------------------------|----|-----------|-----------|----|
| Deductible                 | \$ |           |           |    |
| Buildings                  |    | PREM. NO. | BLDG. NO. | \$ |
| Business Personal Property |    | PREM. NO. | BLDG. NO. | \$ |

This policy includes Business Income Coverages. See paragraph A.5.f in Section I - Property of the BUSINESS COVERAGE FORM.

**BASIC LIABILITY AND MEDICAL PAYMENTS**

|  |    |
|--|----|
| General Aggregate Limit (Other than Products-Completed Operations) | \$ |
| Products Completed Operations Aggregate Limit                      | \$ |
| Liability and Medical Expenses Limit                               | \$ |
| Medical Expenses (per Person)                                      | \$ |
| Damage to Premises Rented to You Limit                             | \$ |

Except for Damage to Premises Rented To You, each paid claim for the above coverages reduces the amount of the insurance we provide during the applicable period. Please refer to paragraph D.4. in Sect. II - Liability of the BUSINESSOWNERS COVERAGE FORM.

**OPTIONAL/MISCELLANEOUS COVERAGES**

|                             |    |     |
|-----------------------------|----|-----|
| SPECIAL CLUSTER ENDORSEMENT | \$ | *** |
| TERRORISM COVERAGE          |    | *** |

THESE FORMS APPLY. \*\*\* SEE M2071

PAY PLAN DIRECT BILL  
INVOICE TO FOLLOW

TOTAL PREMIUM \$ INCLUDED

Renews or Replaces Policy No.:

M2060B (7-11)

PROCESSED: 12/29/2011 BY: DONNAO

APP00003

110321 PNN

**OREGON MUTUAL INSURANCE COMPANY**REGIONAL OFFICE Copy**Forms and Endorsements**

POLICY NUMBER: BSP716685

EFFECTIVE DATE: 12/26/2011

NAMED INSURED: OPH OF LAS VEGAS INC

**NOTE:**

ALL FORMS ON THIS PAGE APPLY TO ALL STATES UNLESS SUPERSEDED BY A STATE SPECIFIC FORM.

**FORMS**

| NUMBER | REVISION | TITLE   |
|--------|----------|---|
| BP0417 | 0702     | EMPLOYMENT RELATED PRACTICES EXCLUSION                      |
| BP1007 | 0702     | YEAR 2000 EXCLUSION - LIABILITY                             |
| M2442B | 0106     | AGGREGATE LIMIT OF INSURANCE PER LOCATION                   |
| M2477B | 0106     | EQUIPMENT BREAKDOWN ENDORSEMENT                             |
| M2071  | 0298     | OREGON MUTUAL FORMS AND ENDORSEMENTS                        |
| M2620B | 0711     | FUNGUS, WET ROT, DRY ROT AND BACTERIA EXCLUSION             |
| M2624B | 0208     | SPECIAL CLUSTER ENDORSEMENT                                 |
| BP0430 | 0702     | PROTECTIVE SAFEGUARDS                                       |
| BP0441 | 0702     | BUSINESS INCOME CHANGES-INCREASED PERIOD OF RESTORATION     |
| BP0483 | 0702     | REMOVAL OF INSURANCE-TO-VALUE PROVISION                     |
| BP0493 | 0702     | TOTAL POLLUTION EXCL W/ HEAT EQUIP AND HOSTILE FIRE EXCEPT  |
| BP0577 | 1102     | FUNGI OR BACTERIA EXCLUSION                                 |
| M2734B | 0106     | HIRED AUTO AND NON-OWNED AUTO LIABILITY                     |
| BP0003 | 0702     | BUSINESSOWNERS COVERAGE FORM                                |
| BP0188 | 0510     | NEVADA CHANGES FORM   |
| BP0501 | 0702     | CALCULATION OF PREMIUM                                      |
| 1L0917 | 1185     | RESIDENT AGENT COUNTERSIGNATURE ENDORSEMENT                 |
| BP0526 | 0108     | EXCL OF CERT NBCR TERRORISM;CAP ON COVERED CERT ACTS LOSSES |
| M2732B | 0409     | AMENDATORY ENDORSEMENT                                      |



## OREGON MUTUAL INSURANCE COMPANY

M3125 (1-08)

**POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM  
INSURANCE COVERAGE****A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown below.

**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events.

**C. Cap On Insurer Participation In Payment Of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

Information required to complete this schedule, if not shown below, will be shown in the Declarations.

**Coverage****Terrorism Premium**



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

## **EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM**

The following exclusion is added to Paragraph B.  
**Exclusions in Section II – Liability:**

This insurance does not apply to

1. "Bodily injury" or "personal and advertising injury" to
  - a. 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
  - b. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (1), (2) or (3) above is directed.
2. This exclusion applies:
  - a. Whether the insured may be liable as an employer or in any other capacity; and
  - b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION – YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS – WITH EXCEPTION FOR BODILY INJURY ON YOUR PREMISES

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS COVERAGE FORM

The following exclusion is added to Paragraph B.,  
**Exclusions in Section II – Liability:**

#### 1. Exclusions

This insurance does not apply to "bodily injury",  
"property damage" or "personal and advertising  
injury" arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction or  
inadequacy of:

(1) Any of the following, whether belonging  
to any insured or to others:

- (a) Computer hardware, including  
microprocessors or other Electronic  
Data Processing Equipment as may  
be described elsewhere in the  
policy;
- (b) Computer application software or  
other Electronic Media and Records  
as may be described elsewhere in  
the policy;
- (c) Computer operating systems and  
related software;

(d) Computer networks;

(e) Microprocessors (computer chips)  
not part of any computer system; or

(f) Any other computerized or  
electronic equipment or  
components; or

(2) Any other products, and any services,  
data or functions that directly or  
indirectly use or rely upon, in any  
manner, any of the items listed in  
Paragraph 1.a.(1) of this endorsement

due to the inability to correctly recognize,  
process, distinguish, interpret or accept the  
year 2000 and beyond.

b. Any advice, consultation, design, evaluation,  
inspection, installation, maintenance, repair,  
replacement or supervision provided or done  
by you or for you to determine, rectify or test  
for, any potential or actual problems  
described in Paragraph 1.a. of this  
endorsement.

However, this exclusion does not apply to  
"bodily injury" occurring on any premises owned  
by or rented to you.



OREGON MUTUAL INSURANCE COMPANY  
BUSINESSOWNERS  
AGGREGATE LIMIT OF INSURANCE PER LOCATION

M2442B (1-06)

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

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

**Section II - Liability** is amended as follows:

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under paragraph **A.1. - Business Liability**, and for all medical expenses caused by accidents under paragraph **A.2. - Medical Expenses**, which can be attributed only to operations at a "location" insured on this policy:
1. A separate General Aggregate Limit applies to injury or damage, other than injury or damage under the "products-completed operations hazard". This Location General Aggregate Limit applies to each insured "location", and that limit is equal to the amount of the Aggregate Limit applicable in Paragraph **D.4.b. - Aggregate Limits**.
  2. The General Aggregate Limit is the most we will pay for the sum of all damages under paragraph **A.1. - Business Liability**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under paragraph **A.2. - Medical Expenses** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under paragraph **A.1. - Business Liability** for damages or under paragraph **A.2. - Medical Expenses** shall reduce the Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in paragraph **D.4.b. - Aggregate Limits** nor shall they reduce any other Location General Aggregate Limit for any other insured "location".
  4. The limits shown in the Declarations for Liability and Medical Expenses, Damage to Premises Rented To You, and Medical Expenses (per Person) continue to apply, subject to the applicable Location General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under paragraph **A.1- Business Liability**, and for all medical expenses caused by accidents under paragraph **A.2. - Medical Expenses**, which cannot be attributed only to operations at a single "location" shown in the Schedule above:
1. Any payments made under paragraph **A.1. - Business Liability** for damages or under paragraph **A.2. - Medical Expenses** shall reduce the amount available under the Aggregate Limit subject to paragraph **D.4.b. - Aggregate Limits** or the Products-Completed Operations Aggregate Limit in paragraph **D.4.a - Aggregate Limits**, whichever is applicable; and
  2. Such payments shall not reduce any Location General Aggregate Limit.
- C. Any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit in paragraph **D.4.a - Aggregate Limits**, and not reduce the Aggregate Limit subject to paragraph **D.4.b. - Aggregate Limits**, nor the Location General Aggregate Limit.
- D. For the purposes of this endorsement, paragraph **F. - Liability And Medical Expenses Definitions** is amended by the addition of the following definition:
- "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- E. The provisions of Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.



**OREGON MUTUAL INSURANCE COMPANY  
BUSINESSOWNERS  
EQUIPMENT BREAKDOWN ENDORSEMENT**

M2477B (1-06)

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

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM**

The following is added to **Section I –Property**, paragraph **A.5. Additional Coverages**:

**Equipment Breakdown**

- (1) We will pay for loss caused by or resulting from an "accident" to "covered equipment".
- (2) Unless otherwise shown in a Schedule, the following coverages also apply to loss caused by or resulting from an "accident" to "covered equipment". These coverages do not provide additional amounts of insurance.
  - (a) **Expediting Expenses**

With respect to your damaged Covered Property, we will pay up to \$25,000 unless otherwise shown in a Schedule, the reasonable extra cost to:

    - (i) make temporary repairs; and
    - (ii) expedite permanent repairs or permanent replacement.
  - (b) **Hazardous Substances**

We will pay for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance". This includes the additional costs to clean up or dispose of such property.

Additional costs mean those beyond what would have been required had no "hazardous substance" been involved.

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain, necessary Extra Expense you incur and loss under Spoilage coverage, is \$25,000 unless otherwise shown in a Schedule.
  - (c) **Spoilage**
    - (i) We will pay for your loss of "perishable goods" due to spoilage.
    - (ii) We will also pay for your loss of "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.
    - (iii) We will also pay any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

- (iv) If you are unable to replace the "perishable goods" before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "accident", less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with the Loss Payment condition.

The most we will pay for loss or damage under this coverage is \$25,000 unless otherwise shown in a Schedule.

(d) **Computer Equipment**

We will pay for loss or damage caused by or resulting from an "accident" to "computer equipment"

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur, is \$25,000 unless otherwise shown in a Schedule. Computers used primarily to control or operate "covered equipment" are not subject to this limit.

(e) **Data Restoration**

We will pay for your cost to research, replace and restore data, including programs and operating systems, that is lost or corrupted due to an "accident". The most we will pay for loss or damage under this coverage, is \$25,000 unless otherwise shown in a Schedule.

(f) **CFC Refrigerants**

We will pay for the additional cost to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. This means the additional cost to do the least expensive of the following:

- (i) Repair the damaged property and replace any lost CFC refrigerant;
- (ii) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (iii) Replace the system with one using a non-CFC refrigerant.

Additional costs mean those beyond what would have been required had no CFC refrigerant been involved.

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain, necessary Extra Expense you incur and loss under Spoilage coverage, is \$25,000 unless otherwise shown in a Schedule.

(g) Service Interruption

The insurance provided for Business Income, Extra Expense and Spoilage is extended to apply to loss caused by or resulting from an "accident" to equipment that is owned by a utility, landlord, or other supplier with whom you have a contract to provide you with any of the following services: electrical power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam.

(3) CONDITIONS

(a) Suspension

When any "covered equipment" is found to be in, or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment". We can do this by mailing or delivering a written notice of suspension to your address as shown in the Declarations, or at the address where the equipment is located. Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment". If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

(b) Jurisdictional Inspections

If any property that is "covered equipment" under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf.

(c) Environmental, Safety and Efficiency Improvements

If "covered equipment" requires replacement due to an "accident", we will pay your additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced.

However, we will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which Actual Cash Value applies.

(d) Coinsurance

If indicated in a Schedule, specified coverages may be subject to coinsurance. We will not pay for the full amount of your loss if the applicable

limit is less than the product of the specified coinsurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, we will determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. We will then subtract the applicable Deductible. The resulting amount, or the applicable limit, is the most we will pay. We will not pay for the remainder of the loss.

**EXAMPLE 1** (Underinsurance)

When:

The value of "perishable goods" at the location of loss at the time of the "accident" is \$200,000.

The Spoilage Limit is \$100,000 @ 80% Coinsurance.

The actual loss under Spoilage Coverage resulting from the "accident" is \$40,000.

The Spoilage Deductible is \$5,000.

Step 1:  $\$200,000 \times 80\% = \$160,000$

Step 2:  $\$100,000 / \$160,000 = .625$

Step 3:  $\$40,000 \times .625 = \$25,000$

Step 4:  $\$25,000 - \$5,000 = \$20,000$

The total Spoilage loss recovery, after deductible, would be \$20,000. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

**EXAMPLE 2** (Adequate insurance)

When:

The value of "perishable goods" at the location of loss at the time of the "accident" is \$100,000.

The Spoilage Limit is \$100,000 @ 80% Coinsurance.

The actual loss under Spoilage Coverage resulting from the "accident" is \$40,000.

The Spoilage Deductible is \$5,000.

Step 1:  $\$100,000 \times 80\% = \$80,000$

Step 2:  $\$100,000 / \$80,000 = 1.25$

Coinsurance does not apply.

Step 3:  $\$40,000 - \$5,000 = \$35,000$

The total Spoilage loss recovery, after deductible, would be \$35,000.

(4) DEDUCTIBLE

The deductible in the Declarations applies unless a separate Equipment Breakdown deductible is shown in an Equipment Breakdown Schedule. If a separate Equipment Breakdown deductible is shown in the Equipment Breakdown Schedule, the following applies.

Only as regards Equipment Breakdown Coverage, provision D. DEDUCTIBLES is deleted and replaced with the following:

If deductibles vary by type of "covered equipment" and more than one type of equipment is involved in any "one accident", the highest deductibles will apply.

(a) Direct and Indirect Coverages

Unless otherwise shown in the Schedule, the Direct Coverages Deductibles apply to all loss or damage covered by this endorsement, with the exception of those coverages subject to the Indirect Coverages Deductibles as noted below.

Unless more specifically indicated in the Schedule, the Indirect Coverages Deductibles apply to Business Income and Extra Expense.

(b) Application of Deductibles

(i) Dollar Deductibles

We will not pay for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the applicable Deductible shown in the Schedule. We will then pay the amount of loss or damage in excess of the applicable Deductible, up to the Equipment Breakdown Limit, after any deduction required by the Coinsurance condition.

(ii) Time Deductible

If a time deductible is shown in the Schedule, we will not be liable for any loss occurring during the specified number of hours or days immediately following the "accident". If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

(iii) Multiple of Average Daily Value (ADV)

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the Business Income (as defined in any Business Income coverage that is part of this policy) that would have been earned had no "accident" occurred during the period of interruption of business divided by the number of working days in that period. No reduction shall be made for the Business Income not being earned, or in the number of working days, because of the "accident" or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to all locations included in the valuation of the loss.

The number indicated in the Schedule shall be multiplied by the ADV as determined above. The result shall be used as the applicable deductible.

(iv) Percentage of Loss Deductibles

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss or damage (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated minimum deductible, the minimum deductible will be the applicable deductible.

(5) DEFINITIONS

(a) "Accident" means direct physical loss as follows:

- (i) mechanical breakdown, including rupture or bursting caused by centrifugal force;
- (ii) artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires;
- (iii) explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
- (iv) loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
- (v) loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

(b) "Boilers and Vessels" means:

- (i) Any boiler, including attached steam condensate and feedwater piping; and
- (ii) Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.

This term does not appear elsewhere in this endorsement, but may appear in a Schedule.

(c) "Computer equipment" means Covered Property that is electronic computer or other data processing equipment, including peripherals used in conjunction with such equipment, and Electronic Media and Records as defined in Property Loss Conditions, Limitation - Electronic Media and Records.

(d) "Covered equipment", unless otherwise specified in a Schedule, means Covered Property built to operate under vacuum or pressure, other than weight of contents, or used for the generation, transmission or utilization of energy.

(e) "Hazardous substance" means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.

(f) "One accident" means: If an initial "accident" causes other "accidents", all will be considered "one accident". All "accidents" that are the result of the same event will be considered "one accident".

(g) "Perishable goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.

(h) "Production Machinery" means any machine or apparatus that processes or produces a product intended for eventual sale. However, "production machinery" does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston.

This term does not appear elsewhere in this endorsement, but may appear in a Schedule.

(6) EXCLUSIONS

(a) All exclusions and limitations apply except:

- (i) Exclusions B.2.a., B.2.d. and B.2.l.(6); and
- (ii) Limitations A.4.a.(1) and A.4.a.(2).

(b) The exclusions are modified as follows:

(i) The following is added to Exclusion B.1.g.:  
However, if electrical "covered equipment" requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the Limit of Insurance or, if an Equipment Breakdown Schedule applies the Equipment Breakdown Limit, and deductible.

(ii) As respects this endorsement only, the last paragraph of Exclusion B.2.l. is deleted and replaced with the following:

But if loss or damage by an "accident" results, we will pay for that resulting loss or damage.

(c) None of the following is "covered equipment":

- (i) structure, foundation, cabinet, compartment or air supported structure or building;
- (ii) insulating or refractory material;
- (iii) sewer piping, underground vessels or piping, or piping forming a part of a sprinkler system;
- (iv) water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;

(v) vehicle, aircraft, floating vessel or any equipment mounted on such vehicle, aircraft or floating vessel. However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power supplier will not be considered a vehicle, aircraft or floating vessel;

(vi) dragline, excavation equipment or construction equipment; or

(vii) equipment manufactured by you for sale.

(d) We will not pay under this endorsement for loss or damage caused by or resulting from:

(i) any defect, virus, loss of data or other situation within Electronic Media and Records. But if loss or damage from an "accident" results, we will pay for that resulting loss or damage, or

(ii) any of the following tests:

a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or  
an insulation breakdown test of any type of electrical equipment.

(e) With respect to Service Interruption coverage and, if shown as covered, Spoilage coverage, we will also not pay for loss or damage caused by or resulting from: fire; lightning; windstorm or hail; explosion (except for steam or centrifugal explosion); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing or collapse.

(f) With respect to Service Interruption coverage and Business Income and Extra Expense coverages, we will also not pay for delay in resuming operations due to the need to reconstruct or reinput data or programs on Electronic Media and Records.

The most we will pay for loss or damage under this endorsement is the Limit of Insurance shown in the Declarations or, if an Equipment Breakdown Schedule applies, the Equipment Breakdown Limit shown in the Schedule. Coverage provided under this endorsement does not provide an additional amount of insurance.



OREGON MUTUAL INSURANCE COMPANY  
BUSINESSOWNERS SECTION I  
FUNGUS, WET ROT, DRY ROT AND BACTERIA EXCLUSION

M2620B (7-11)

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

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM**

**SECTION I – PROPERTY** is amended as follows:

1. Paragraph **A.5.I.(5)** of the Increased Cost Of Construction Additional Coverage is replaced by the following:

- (5) Under this Additional Coverage, we will not pay for:
  - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
  - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

2. The following is added to paragraph **B.1. – EXCLUSIONS**

**B.1.I. "Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.i. apply whether or not the loss event results in widespread damage or affects a substantial area.

3. Exclusion B.2.I.(2) is replaced by the following.  
B.2.I.(2) Rust, or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
4. The following is added to paragraph **A.5.(e) – Additional Coverage - Water Damage, Other Liquids, Powder or Molten Material Damage**.  
This Additional Coverage does not increase the Limit of Insurance.
5. The following **ADDITIONAL COVERAGE** is added to paragraph **A.5**.
  - a. **Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**
    1. The coverage described in m.2. and m.6. only applies when the "fungus", wet or dry rot or bacteria is the result of a "specified cause of loss" other than fire or lightning that occurs during the policy period, and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
    2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
      - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
      - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
      - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.



3. The coverage described under m.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under The Additional Coverage – Water Damage, Other Liquids, Powder or Molten Material Damage.

6. Additional Coverages – Business Income and Extra Expense

- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a suspension of "operations", but such suspension is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered suspension of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

6. The following **DEFINITION** is added.

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.



OREGON MUTUAL INSURANCE COMPANY  
BUSINESSOWNERS SPECIAL CLUSTER ENDORSEMENT

M2624B (2-08)

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

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM**

**LIABILITY COVERAGE SUMMARY**

This is a summary of the liability coverages provided by this endorsement. These coverages are subject to the provisions applicable to **Section II – Liability** and **Section III – Common Policy Conditions** of the Businessowners policy and the applicable provisions of the **Amendatory Endorsement**. Exclusion - Year 2000 Computer-Related and Other Electronic Problems also applies to these coverages. Refer to the following page for coverage details.

1. Employment Related Practices Liability Insurance..... 2

**PROPERTY COVERAGE SUMMARY**

This is a summary of the property coverages provided by this endorsement. These coverages are subject to the provisions applicable to **Section I – Property** and **Section III – Common Policy Conditions** of the Businessowners policy and the provisions of the **Amendatory Endorsement**. If there is coverage for the same loss or damage in either the Businessowners Coverage Form or other endorsements attached to the policy the limits provided in this endorsement will be paid in excess of those other limits.

No Business Income and/or Extra Expense coverage is provided by this endorsement except for the coverages provided under Item 4. - Electronic Data Processing Media Extra Expense.

Exclusion of Certain Computer-Related Losses also applies to these coverages.

Refer to the following pages for coverage details.

|  |    |
|--|----|
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## LIABILITY COVERAGE

### 1. Employment Related Practices Liability Insurance

- A. The Employment Related Practices Exclusion (BP 0417) attached to this policy, applies to this policy with respect to:
1. losses that are below the \$250 deductible stated in paragraph E, and
  2. losses that exceed the \$5,000 limit shown in paragraph D.
- B. If endorsement M2375B, Businessowners Liability (Section II) Exclusion applies to this policy, this coverage, Employment Related Practices Liability Insurance, is not applicable.
- C. The Businessowners Liability coverage provided by this policy includes **Bodily Injury or Personal Injury** to:
1. A person arising out of any:
    - a. Refusal to employ that person;
    - b. Termination of that person's employment; or
    - c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
  2. The spouse, child, parent, brother or sister of that person as a consequence of bodily injury or personal injury to that person at whom any of the employment-related practices described in paragraphs a., b. or c. above is directed.
- D. The most we will pay for losses, including defense costs, occurring in any annual policy period under this coverage is \$5,000 regardless of the number of:
1. Insureds;
  2. Claims made or suits brought; or
  3. Persons or organizations making claims or bringing suits.
- E. Our obligation under this coverage to pay damages or defense costs on your behalf applies only to amounts in excess of \$250.

- c. Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
- d. Other reasonable expenses that you incur to re-establish your records of accounts receivable; that result from direct physical loss or damage by any Covered Causes of Loss to your records of accounts receivable.

### 2. **Property Not Covered**

Covered property does not include contraband, or property in the course of illegal transportation or trade.

### 3. **Covered Causes of Loss**

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS to your records of accounts receivable except those causes of loss listed in the Exclusions.

### 4. **Additional Coverage - Collapse**

We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage; breakage of building glass.
  - (1) Falling objects does not include loss or damage to:
    - (a) Property in the open; or
    - (b) Property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - (2) Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

- b. Hidden decay;
- c. Hidden insect or vermin damage;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof

## PROPERTY COVERAGES

### 1. Accounts Receivable

#### A. **COVERAGE**

1. We will pay:
  - a. All amounts due from your customers that you are unable to collect;
  - b. Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;

- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

#### 5. Coverage Extension

##### Removal

If you give us written notice within 10 days of removal of your records of accounts receivable because of imminent danger of loss or damage, we will pay for loss or damage while they are:

- a. At a safe place away from the described premises;
- b. Being taken to and returned from that place.

This Coverage Extension is included within the Limit of Insurance applicable to the premises from which the Covered Property is removed.

#### B. EXCLUSIONS

1. Paragraph B. - Exclusions of **Section I - Property** does not apply to this coverage, except for:
  - a. Paragraph B.1.c., **Governmental Action**;
  - b. Paragraph B.1.d., **Nuclear Hazard**;
  - c. Paragraph B.1.f., **War and Military Action**;
2. We will not pay for loss or damage caused by or resulting from any of the following:
  - a. Dishonest acts by you, anyone else with an interest in the property, or your or their employees or authorized representatives, or anyone entrusted with the property, whether or not acting alone or in collusion with other persons or occurring during the hours of employment.

But this exclusion does not apply to a carrier for hire

- b. Alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- c. Bookkeeping, accounting or billing errors or omissions.
- d. Electrical or magnetic injury, disturbance or erasure of electronic recordings.

But we will pay for direct loss or damage caused by lightning.

- e. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
  - f. Unauthorized instructions to transfer property to any person or to any place.
3. We will not pay for loss or damage that required any audit of records or any inventory computation to prove its factual existence.
  4. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.
    - a. Weather conditions. But this exclusion only applies if weather conditions initiate or set in motion a cause or event excluded in paragraph 1.a., 1.b. or 1.c. above to produce the loss or damage.
    - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
    - c. Faulty, inadequate or defective:
      - (1) Planning, zoning, development, surveying, siting;
      - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
      - (3) Materials used in repair, construction, renovation or remodeling; or
      - (4) Maintenance of part or all of any property on or off the described premises.

#### C. LIMIT OF INSURANCE

The most we will pay for loss or damage for accounts receivable at the described premises in any one occurrence is \$25,000.

For accounts receivable not at the described premises, the most we will pay is \$7,500.

#### D. ADDITIONAL CONDITIONS

The following is added to paragraph E.6.d. - **Loss Payment Condition**:

1. If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage, the following method will be used:
  - (a) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and

- (b) Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.

2. The following will be deducted from the total amount of accounts receivable, however that amount is established:

- (a) The amount of the accounts for which there is no loss or damage;
- (b) The amount of the accounts that you are able to re-establish or collect;
- (c) An amount to allow for probable bad debts that you are normally unable to collect; and
- (d) All unearned interest and service charges.

**E. Deductible**

No Deductible applies to this coverage.

**2. Arson Reward**

The Company will pay an additional amount of \$2,500 as a reward for information leading to an arson conviction for damage to covered property. No deductible applies to this additional coverage.

**3. Brands and Labels**

The following is added to paragraph E.6. - **Loss Payment Conditions** of the policy:

If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of loss, we may take all or any part of the property at an agreed or appraised value. If so, you may, at your own expense:

- A. Stamp "salvage" on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
- B. Remove the brands or labels, if doing so will not physically damage the merchandise. You must reliably the merchandise or its containers to comply with the law.

No Deductible applies to this coverage.

**4. Electronic Data Processing Media Extra Expense**

We will pay your necessary extra expense to continue normal operations following loss or damage to your electronic data processing media from a Covered Cause of Loss. The most we will pay under this Extension is \$10,000 in any one occurrence.

The deductible applicable to the **Section I - Property** of the policy applies to this coverage.

**5. ERISA Extension**

The following is added under Section 1-Property, G.3. Optional Coverages

j. In Compliance with certain provisions of the Employee Retirement Income Security Act (ERISA);

1. Employee also includes any natural person who is:

- (a) A trustee, an officer, employee, administrator or a manager, except an administrator or a manager who is an independent contractor, of any "employee benefit plan(s)" (herein after called Plan) insured under this insurance;

- (b) Your director or trustee while that person is handling funds or other property of any Plan insured under this insurance.

2. If any Plan is insured jointly with any other entity under this policy, you or the Plan Administrator must select a Limit of Insurance for this Additional Coverage that is sufficient to provide an amount of insurance for each Plan that is at least equal to that required if each Plan were separately insured.

3. If the Insured first named in the Declarations that apply to this policy is an entity other than a Plan, any payment we make to the Insured for loss sustained by any Plan will be held by that Insured for the use and benefit of the Plan(s) sustaining the loss.

4. If two or more Plans are insured under this insurance, any payment we make for loss:

- (a) Sustained by two or more plans, or
- (b) Of commingled funds or other property of two or more Plans;

that arises out of one occurrence, is to be shared by each Plan sustaining loss in the proportion that the amount of insurance required for each such Plan under ERISA provisions bears to the total of those amounts.

5. The Deductible provision contained in this policy does not apply to loss sustained by any Plan subject to ERISA which is insured under this Optional Coverage

6. "Employee benefit plan(s) means any welfare or pension benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (ERISA).

6. **Errors And Omissions In Describing A Premises Or Location**

The following is added to paragraph E.6. - **Loss Payment Conditions** of the policy:

- h. The Insured will not be penalized because of any unintentional error or omission the Insured may make in listing or describing a premises or location to be covered under this policy.

No Deductible applies to this coverage.

7. **Fine Arts**

- A. We will pay for loss or damage to your "fine arts" at the described premises if loss or damage is caused by or results from Covered Cause of Loss. Your "fine arts" under this additional coverage will be valued at their market value at the time of loss.
- B. The most we will pay for "fine arts" at any premises described in the Declarations is \$10,000.
- C. The occurrence deductible applicable to personal property applies to this additional coverage. If the policy does not provide personal property coverage at the location involved in a loss, the deductible applicable to the building will apply. If the occurrence deductible varies by location, the highest occurrence deductible applicable to any location shall apply.
- D. "Fine arts" means paintings, etchings, pictures, tapestries, art glass windows, valuable rugs, statuary, marbles, bronzes, antique furniture, rare books, antique silver, manuscripts, porcelains, rare glass, bric-a-brac, and similar property of rarity, historical value or artistic merit.

8. **Fire Department Service Charge and Replacement of Fire Extinguishing Materials**

Paragraph A.5.c. - **Fire Department Service Charge** is replaced by the following:

- A. When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$10,000 for your liability for fire department service charges:
  - 1. Assumed by contract or agreement prior to loss; or
  - 2. Required by local ordinance.
- B. The Company will pay the cost of foam solutions, dry chemicals, halon or other fire extinguishing materials to recharge Fire Extinguishers which have been lost, expended, damaged, or destroyed when caused by or resulting from a Covered Cause of Loss at the premises described in the Declarations or adjacent to such property.
- C. No deductible applies to this coverage.

9. **Inventory And Appraisal Cost**

- A. We will pay for the cost of any inventory or appraisal required by paragraph E.2. - **Property Loss Conditions of Section I - Property** that is a result of direct physical loss or damage to covered property caused by or resulting from a Covered Cause of Loss.
- B. The most the Company will pay for this additional coverage is \$2,500.
- C. No deductible applies to this additional coverage.

10. **Mechanical Breakdown Of Computer Equipment**

- A. **Computer Equipment**  
The Company will pay for direct physical loss of or damage to covered computer equipment inside the Insured's building for:
  - 1. Mechanical breakdown or machinery breakdown;
  - 2. Short circuit, blow-out, or other electrical damage to electrical equipment, apparatus, or devices, including wiring.
- B. **Data or Media**  
The Company will pay for direct physical loss or damage to the Insured's data or media caused when the Insured's computer equipment mechanically breaks down or malfunctions while data is being run through the system. The Company will pay for direct physical loss or damage to the Insured's data or media caused by electrical or magnetic injury, disturbance, or erasure of electronic recordings provided that the damage occurs inside the Insured's building.
- C. **Coverage Restriction**  
The Company will not pay for loss or damage caused by any change in the Insured's electric power supply, such as interruption, power surge, or brown out, if the change originates more than 100 feet from the building containing the Insured's computer equipment.
- D. **LIMIT OF INSURANCE**  
The most the Company will pay for loss or damage in any one occurrence is \$10,000.
- E. The deductible applicable to **Section I - Property** of the policy applies to this coverage.

11. **Money Orders and Counterfeit Paper Currency**

Under **Section 1.-Property, 5. Additional Coverages J. Money Orders And Counterfeit Paper Currency**, the most we will pay for any loss under this **Additional Coverage** is \$25,000.

12. **Newly Acquired or Constructed Property**

The following replaces paragraph A.6.a. - **Coverage Extension of Section I - Property** of the policy:

- A. You may extend the insurance that applies to Building to apply to:

1. Your new buildings while being built on the described premises; and
2. Buildings you acquire at locations other than the described premises intended for:
  - a. Similar use as the building described in the Declarations; or
  - b. Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$1,000,000.

- B. You may extend the insurance that applies to Your Business Personal Property to apply to that property at any location you acquire other than at fairs or exhibitions.

The most we will pay for loss or damage under this Extension is \$500,000 at each building.

- C. Insurance under this Extension for each newly acquired or constructed property will end when any of the following first occurs:
1. This policy expires.
  2. 90 days expire after you acquire or begin to construct the property, or
  3. You report values to us.

We will charge you additional premium for values reported from the date construction begins, or the date you acquire the property.

- D. If you have two or more policies in force with us which provide this same coverage extension, the Limit of Insurance will be the limit which provides the highest amount of coverage to you, but in no case shall the coverage extension from more than one policy apply.
- E. The deductible applicable to **Section I - Property** of the policy applies to this coverage.

### 13. Outdoor Property

The following replaces paragraph **A.6.c. - Coverage Extension of Section I - Property** of the policy.

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas, trees, shrubs and plants (other than stock of trees, shrubs, or plants), including debris removal expense, caused by or resulting from any of the following Causes of Loss:

- A. Fire;
- B. Lightning;
- C. Explosion;
- D. Riot or Civil Commotion; or
- E. Aircraft.

The most we will pay for loss or damage under this Extension is \$10,000 but not more than \$500 for any one tree, shrub or plant.

The deductible applicable to **Section I - Property** of the policy applies to this coverage.

### 14. Outdoor Unattached Signs

- A. We will pay for direct physical loss of or damage to all outdoor unattached signs at the described premises:
1. Owned by you; or
  2. Owned by others but in your care, custody or control.
- B. Paragraph **A.3. - Covered Causes of Loss**, and Paragraph **B. -Exclusions in Section I - Property**, do not apply to this Coverage, except for:
1. Paragraph **B.1.c., Governmental Action**;
  2. Paragraph **B.1.d., Nuclear Hazard**; and
  3. Paragraph **B.1.f., War and Military Action**.
- C. We will not pay for loss or damage caused by or resulting from:
1. Wear and tear,
  2. Hidden or latent defect;
  3. Rust;
  4. Corrosion; or
  5. Mechanical breakdown.
- D. The most we will pay for loss or damage in any one occurrence is \$10,000.
- E. The deductible applicable to **Section I - Property** of the policy applies to this coverage.

### 15. Permanent Outdoor Structures for Trash Bins

- A. We will pay for direct physical loss or damage to permanent outdoor structures designed to contain trash or recycling bins at the described premises:
1. Owned by you; or
  2. Owned by others but in your care, custody or control.
- B. Paragraph **A.3. - Covered Causes of Loss**, and Paragraph **B. -Exclusions in Section I - Property**, do not apply to this Coverage, except for:
1. Paragraph **B.1.c., Governmental Action**;
  2. Paragraph **B.1.d., Nuclear Hazard**; and
  3. Paragraph **B.1.f., War and Military Action**.
- C. We will not pay for loss or damage caused by or resulting from:
1. Wear and tear,
  2. Hidden or latent defect;
  3. Rust;
  4. Corrosion; or
  5. Mechanical breakdown.
- D. The most we will pay for loss or damage in any one occurrence is \$5,000.
- E. The deductible applicable to **Section I - Property** of the policy applies to this coverage.

**16. Personal Property Off Premises**

You may extend the insurance that applies to Business Personal Property to apply to covered Business Personal Property, other than "money" and "securities", while the property is in the course of transit; temporarily at a premises you do not own, lease or operate; or, if the Named Insured is a sole proprietor, at the Named Insured's place of residence.

We will also pay for direct physical loss of or damage to display booths and related equipment and Business Personal Property owned by the Insured, or owned by others but in the Insured's care, custody or control, while being used at or transported to or from events away from the insured premises.

The most we will pay for loss or damage under this Extension is \$10,000.

The deductible applicable to the **Section - I Property** of the policy applies to this coverage.

**17. Spoilage of Perishable Stock**

**Section I - Property** of the Policy is extended to insure against direct physical loss of or damage to perishable stock.

The following provisions (A. through I. inclusive) apply to the coverage provided herein:

A. Paragraph **A.1. - Covered Property** is replaced by the following:

**1. Covered Property**

Covered Property means "perishable stock" at the described premises, if the "perishable stock" is:

- (a) Owned by you and used in your business; or
- (b) Owned by others and in your care, custody or control.

Property described by (b) above is not covered for more than the amount for which you are legally liable, plus the cost of labor, materials, or services furnished or arranged by you on that property.

B. The following is added to Paragraph **A.2. - Property Not Covered**:

- i. Property located:
  - (1) On buildings;
  - (2) In the open; or
  - (3) In vehicles.

C. Paragraph **A.3. Covered Causes Of Loss** is replaced by the following:

**3. Covered Causes of Loss**

Subject to the exclusions described in item D herein, Covered Causes of Loss means the following:

a. Breakdown or Contamination, meaning:

- (1) Change in temperature or humidity resulting from mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment, only while such apparatus or equipment is at the described premises or
- (2) Contamination by a refrigerant, only while the refrigerating apparatus or equipment is at the described premises.

Mechanical breakdown and mechanical failure do not mean power interruption, regardless of how or where the interruption is caused and whether or not the interruption is complete or partial.

b. Power Outage, meaning change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

D. Paragraph **B. Exclusions** is replaced by the following:

**B. Exclusions**

1. Of the Exclusions contained in paragraph B.1. only the following apply to Spoilage Coverage:

- b. Earth Movement;
- c. Governmental Action;
- d. Nuclear Hazard;
- f. War and Military Action; and
- g. Water.

2. The following Exclusions are added:

We will not pay for loss or damage caused by or resulting from:

- a. The disconnection of any refrigerating, cooling or humidity control system from the source of power.
- b. The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current.
- c. The inability of an electrical utility company or other power source to provide sufficient power due to:
  - (1) Lack of fuel; or
  - (2) Governmental order.



- d. The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand.
- e. Breaking of any glass that is a permanent part of any refrigerating, cooling or humidity control unit.

#### E. LIMIT OF INSURANCE

The most we will pay for loss or damage to "Perishable Stock" in any one "occurrence" is \$15,000.

#### F. CONDITIONS

##### 1. Paragraph E.8.d. - Property Loss

**Conditions**, is replaced by the following:

- d. We will determine the value of Covered Property as follows:
  - (1) For "perishable stock" you have sold but not delivered, at the selling price less discounts and expenses you otherwise would have had;
  - (2) For other "perishable stock", at actual cash value.

G. Paragraph G. - **Optional Coverages** does not apply.

H. The following is added to the DEFINITIONS:

"Perishable Stock" means property:

- 1. Maintained under controlled temperature or humidity conditions for preservation; and
- 2. Susceptible to loss or damage if the controlled temperature or humidity conditions change.

I. The deductible applicable to **Section I - Property** of the policy applies to this coverage.

#### 8. Valuable Papers and Records and Electronic Media and Records

##### A. COVERAGE

The Company will pay for direct physical loss or damage to Covered Property from any of the Covered Causes of Loss.

##### 1. Covered Property

##### a. Valuable Papers and Records

Covered Property means the following type of property that is the Insured's property or property of others in the Insured's care, custody or control;

Valuable papers and records, meaning inscribed, printed or written:

- (1) Documents;
- (2) Manuscripts; and
- (3) Records including abstracts, books, deeds, drawings, films, maps, or mortgages.

But valuable papers and records does not mean:

- (4) "Money" or "Securities";
- (5) Converted Data;
- (6) Programs or instructions used in the Insured's data processing operations, including the materials on which the data is recorded.

##### b. Electronic Media and Records

Covered Property means the following type of property that is the Insured's property or property of others in the Insured's care, custody or control;

- (1) Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells;
- (2) Data stored on such media; and
- (3) Programming records used for electronic data processing or electronically controlled equipment.

##### 2. Property Not Covered

Covered Property does not include:

- a. Property held as samples or for delivery after sale;
- b. Property in storage away from the described premises; or
- c. Contraband or property in the course of illegal transportation or trade.

##### 3. Covered Causes of Loss

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS to Covered Property except those causes of loss listed in the Exclusions.

##### 4. Additional Coverage - Collapse:

The Company will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused by one or more of the following:

- a. Fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment, sinkhole collapse, volcanic action, falling objects, weight of snow, ice or sleet, water damage, breakage of building glass, all only as insured against in this policy.
  - (1) Falling objects does not include loss or damage to:
    - (a) Property in the open; or

(b) Property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

(2) Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

- b. Hidden decay;
- c. Hidden insect or vermin damage;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;
- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

#### 5. Coverage Extension

##### Removal

If the Insured gives the Company written notice within 10 days of removal of Covered Property because of imminent danger of loss or damage, the Company will pay for loss or damage while it is:

- a. At a safe place away from the described premises; or
- b. Being taken to and returned from that place.

This Coverage Extension is included within the Limits of Insurance applicable to the premises from which the Covered Property is removed.

#### B. EXCLUSIONS

The Company will not pay for loss or damage caused by or resulting from any of the following:

- 1. Seizure or destruction of property by order of governmental authority.  
But the Company will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.
- 2. Nuclear reaction or radiation, or radioactive contamination, however caused.  
But if loss or damage by fire results, the Company will pay for that resulting loss or damage.
- 3. War, including undeclared or civil war, 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 insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### 4. Dishonest acts by:

- a. the Insured or the Insured's employees or authorized representatives;
- b. anyone else with an interest in the property, or their employees or authorized representatives; or
- c. anyone entrusted with the property, whether or not acting alone or in collusion with other persons or occurring during the hours of employment.

But this exclusion does not apply to a carrier for hire.

- 5. Alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- 6. Bookkeeping, accounting or billing errors or omissions.
- 7. Electrical or magnetic injury, disturbance or erasure of electronic recordings. But the Company will pay for direct loss or damage caused by lightning.
- 8. Voluntary parting with any property by the Insured or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- 9. Unauthorized instructions to transfer property to any person or to any place.
- 10. The Company will not pay for loss or damage that required any audit of records or any inventory computation to prove its factual existence.
- 11. The Company will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, the Company will pay for that resulting loss or damage.
  - a. Weather conditions. But this exclusion only applies if weather conditions initiate or set in motion a cause or event excluded in paragraph 1., 2., or 3., above to produce the loss or damage.

- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance of part or all of any property on or off the described premises

**C. LIMIT OF INSURANCE**

- 1. The most the Company will pay for loss or damage to Valuable Papers and Records (other than electronic media and records) at the described premises in any one occurrence is \$25,000.  
For Valuable Papers and Records (other than electronic media and records) not at the described premises, the most the Company will pay is \$7,500.
- 2. The most the Company will pay for loss or damage to Electronic Media and Records at the described premises in any one occurrence is \$10,000.  
For Electronic Media and Records not at the described premises, the most the Company will pay is \$1,000.  
If the Named Insured is a sole proprietor, the most the Company will pay for Electronic Media and Records at the Named Insured's place of residence is \$1,000.

**D. Property Loss Conditions**

The following is added to paragraph **E.6. - Loss Payment Conditions** of the policy:

- 1. The Company will determine the value of Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:
  - a. Blank materials for reproducing the records; and
  - b. Labor to transcribe or copy the records.
 This Loss Condition does not apply to Valuable Papers and Records, or data or programming records that are actually replaced or restored.

**E. Definitions Applicable To This Coverage**

- 1. "Money" means:

- a. Currency, coins and bank notes whether or not in current use; and
  - b. Travelers checks, register checks and money orders held for sale to the public.
- 2. "Securities" means negotiable and non-negotiable instruments or contracts representing either money or other property and includes:
    - a. Tokens, tickets, revenue and other stamps whether or not in current use; and
    - b. Evidences of debt issued in connection with credit or charge cards, which are not of the insured's own issue; but does not include money.

**F. Deductible**

No Deductible applies to this coverage.

**19. Vehicle Damage to Leased Property**

The following is included under paragraph, **A.1. - Covered Property of Section I - Property**: We cover against risks of direct physical loss caused by "vehicle damage" to leased property consisting of buildings, machinery and equipment, fixtures, pumps and tanks, and outdoor equipment. This leased property must pertain to the maintenance, service or occupancy of the insured premises and is covered only while on the insured premises. The most the Company will pay for loss or damage from Vehicle Damage to Leased Property is \$100,000 per occurrence.

"Vehicle damage" means direct physical loss resulting from actual physical contact of a land motor vehicle with the leased property described in this section. The deductible applicable to **Section I - Property** of the policy applies to this coverage.

**20. Water Back Up**

The Company will pay for loss to covered property caused by or resulting from water that backs up into a described location from a sewer or drain. This does not include water that backs up as a result of flooding of an ocean, river, lake, creek or similar body of water.

The most the Company will pay for loss or damage from water back up is \$5,000 per occurrence.

Paragraph **B.1.g. - Exclusions of Section I - Property** of the policy does not apply to this Extension.

The deductible applicable to **Section I - Property** of the policy applies to this coverage.

**21. Ordinance Or Law**

A. The Company will not pay under Coverage A, B, and/or C of this Ordinance Or Law coverage for:

- 1. Enforcement of any ordinance or law which requires the demolition, repair, replacement,

reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

2. The costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

B. Coverage A - Coverage for Loss to the Undamaged Portion of the Building.

1. If a Covered Cause of Loss occurs to covered building property, the Company will pay for loss to the undamaged portion of the building caused by enforcement of any ordinance or law that:
  - a. requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
  - b. regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
  - c. is in force at the time of loss.
2. If Replacement Cost Coverage applies and the property is repaired or replaced, on the same or another premises, we will not pay more for loss or damage to covered building property, including loss caused by enforcement of an ordinance or law, than the lesser of:
  - a. the amount you actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
  - b. the Limit of Insurance applicable to the covered building.
3. If Replacement Cost Coverage applies and the property is not repaired or replaced; or if Replacement Cost Coverage does not apply, the Company will not pay more for loss or damage to covered building property, including loss caused by enforcement of an ordinance or law, than the lesser of:
  - a. the actual cash value of the building at the time of loss; or
  - b. the Limit of Insurance applicable to the covered building property.

4. Coverage A does not increase the Limit of Insurance for covered building property shown in the Declarations.

5. The terms of this additional coverage apply separately to each covered building.

C. Coverage B - Demolition Cost Coverage

1. If a Covered Cause of Loss occurs to covered building property, the Company will pay the cost to demolish and clear the site of undamaged parts of the property caused by enforcement of building, zoning or land use ordinance or law.
2. The Company will not pay under this additional coverage the costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
3. The Company will not pay more under Coverage B - Demolition Cost Coverage than the lesser of the following:
  - a. the amount you actually spend to demolish and clear the site of the described premises; or
  - b. the amount shown in paragraph E., Limit of Insurance.
4. The terms of this additional coverage apply separately to each covered building.

D. Coverage C - Increased Cost of Construction Coverage

1. If a Covered Cause of Loss occurs to covered building property, the Company will pay for the increased cost to repair, rebuild or construct the property caused by enforcement of building, zoning or land use ordinance or law. If the property is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by zoning or land use ordinance or law.
2. The Company will not pay under this additional coverage for:
  - a. the increased cost of construction if the building is not repaired or replaced; or
  - b. the costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

3. The Company will not pay under Coverage C - Increased Cost of Construction Coverage:
  - a. until the property is actually repaired or replaced, at the same or another premises; and
  - b. unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. The Company may extend this period in writing during the two years.
4. If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most the Company will pay under Coverage C is the lesser of:
  - a. the increased cost of construction at the new premises; or
  - b. the amount shown in paragraph E., Limit of Insurance.
5. If the ordinance or law requires relocation to another premises, the most the Company will pay under Coverage C is the lesser of:
  - a. the increased cost of construction at the new premises; or
  - b. the amount shown in paragraph E., Limit of Insurance.
6. The terms of this additional coverage apply separately to each covered building.

E. Limit of Insurance

The most the Company will pay for coverages B & C combined is 10% of the Limit of Insurance applicable to the covered building property shown in the Declarations or \$250,000 whichever is less.

F. Definitions Applicable to This Coverage

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

- G. The deductible applicable to **Section I - Property** of the policy applies to this coverage.

POLICY NUMBER:

BUSINESSOWNERS  
BP 04 30 07 02

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PROTECTIVE SAFEGUARDS**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

**SCHEDULE\***

| Premises No.                                     | Building No. | Protective Safeguards Symbols Applicable |
|--|--------------|--|
| 001  | 001          | P8                                       |
| 002  | 001          | P8                                       |
| Describe Any "P-9": AUTOMATIC SUPPRESSION SYSTEM |              |  |

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declaration.

**A. The following is added to the Property General Conditions in Section I – Property:**

**PROTECTIVE SAFEGUARDS**

1. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.
2. The protective safeguards to which this endorsement applies are identified by the following symbols:
  - a. **"P-1" Automatic Sprinkler System**, including related supervisory services.  
Automatic Sprinkler System means:
    - (1) Any automatic fire protective or extinguishing system, including connected:
      - (a) Sprinklers and discharge nozzles;
      - (b) Ducts, pipes, valves and fittings;
      - (c) Tanks, their component parts and supports; and
      - (d) Pumps and private fire protection mains.
    - (2) When supplied from an automatic fire protective system:
      - (a) Non-automatic fire protective systems; and
      - (b) Hydrants, standpipes and outlets.

- b. **"P-2" Automatic Fire Alarm**, protecting the entire building, that is:
  - (1) Connected to a central station; or
  - (2) Reporting to a public or private fire alarm station.
- c. **"P-3" Security Service**, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.
- d. **"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.
- e. **"P-9"** The protective system described in the Schedule.

**B. The following is added to Paragraph B. Exclusions in Section I – Property:**

We will not pay for loss or damages caused by or resulting from fire if, prior to the fire, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

If part of an Automatic Sprinkler System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

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

**BUSINESS INCOME CHANGES – INCREASED PERIOD OF  
RESTORATION (NO WAITING PERIOD)**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM**

**Section I – Property** is amended as follows:

- A. Paragraph A.5.i. Civil Authority Additional Coverage** is amended by deleting the second and third paragraphs and replacing them with the following:
- This coverage will apply for a period of up to three consecutive weeks from the date of that action.
- B. Paragraph A.5.m.(5)(a) Business Income From Dependent Properties** Additional Coverage is replaced by the following:
- (5) The coverage period for Business Income under this Additional Coverage:
- (a) Begins immediately after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; or
- C. Paragraph H.8.a.(1) of the "Period of Restoration" definition is replaced by the following:**
- a. Begins:
- (1) Immediately after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; or

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

## **REMOVAL OF INSURANCE-TO-VALUE PROVISION**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM**

Paragraph **E.6.d. Loss Payment** Property Loss Condition in **Section I – Property** is amended as follows:

**A. Paragraph (1)(a)** is replaced by the following:

**(1)** At replacement cost without deduction for depreciation, subject to the following:

**(a)** We will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

**(i)** The Limit of Insurance under Section I – Property that applies to the lost or damaged property;

**(ii)** The cost to replace, on the same premises, the lost or damaged property with other property:

**i.** Of comparable material and quality; and

**ii.** Used for the same purpose; or

**(iii)** The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost is limited to the cost which would have been incurred had the building been built at the original premises.

**B. Paragraph (1)(b)** does not apply.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## TOTAL POLLUTION EXCLUSION WITH A BUILDING HEATING EQUIPMENT EXCEPTION AND A HOSTILE FIRE EXCEPTION

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS COVERAGE FORM

Exclusion **B.1.f. Pollution** in **Section II – Liability** is replaced by the following:

This insurance does not apply to

#### **f. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

This exclusion does not apply to:

- (a) "Bodily injury" if sustained within a building which is or was at any time owned or occupied by, or rented or loaned to, any insured and caused by smoke, fumes, vapor or soot from equipment used to heat that building.
- (b) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:
- (i) At any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or

- (ii) At 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 to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:
- (a) 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"; or
- (b) 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"

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

## **FUNGI OR BACTERIA EXCLUSION (LIABILITY)**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM**

The following provisions are added to **Section II – Liability**:

**A. The following exclusion is added to Paragraph B.1., Exclusions – Applicable To Business Liability Coverage:**

**q. Fungi or Bacteria**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for consumption.

**B. The following definition is added Paragraph F. Liability And Medical Expenses Definitions:**

1. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.



**OREGON MUTUAL INSURANCE COMPANY  
BUSINESSOWNERS  
HIRED AUTO AND NON-OWNED AUTO LIABILITY**

M2734B (1-06)

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

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM**

**SCHEDULE**

|                                 | Coverage | Additional Premium |
|---------------------------------|----------|--------------------|
| <b>Hired Auto Liability</b>     | INCL     | INCL               |
| <b>Non-Owned Auto Liability</b> | INCL     | INCL               |

**A. Insurance is provided only for those coverages for which a specific premium charge is shown in the Declarations or in the Schedule.**

**1. Hired Auto Liability**

The insurance provided under Paragraph **A.1. Business Liability** in Section II – Liability, applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

**2. Non-Owned Auto Liability**

The insurance provided under Paragraph **A.1. Business Liability** in Section II – Liability, applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person.

**B. For insurance provided by this endorsement only:**

**1. The exclusions, under the Paragraph B.1. Applicable To Business Liability Coverages in Section II – Liability, other than Exclusions a., b., d., f. and i. and the Nuclear Energy Liability Exclusion, are deleted and replaced by the following:**

**a. "Bodily injury" to:**

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

This exclusion does not apply to:

- (i) Liability assumed by the insured under an "insured contract"; or
- (ii) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

**b. "Property damage" to:**

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured,

**2. Paragraph C. Who Is An Insured in Section II – Liability, is replaced by the following:**

Each of the following is an insured under this endorsement to the extent set forth below:

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- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. For a "non-owned auto", any partner or "executive officer" of yours, but only while such "non-owned auto" is being used in your business; and
- d. Any other person or organization, but only for their liability because of acts or omissions of an insured under a., b. or c. above.

None of the following is an insured:

- (1) Any person engaged in the business of his or her employer for "bodily injury" to any co-"employee" of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-"employee" as a consequence of such "bodily injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury;
- (2) Any partner or "executive officer" for any "auto" owned by such partner or officer or a member of his or her household;

(3) Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;

(4) The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;

(5) Any person or organization for the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

C. The following additional definitions apply:

- 1. **"Auto Business"** means the business or occupation of selling, repairing, servicing, storing or parking "autos".
- 2. **"Hired Auto"** means any "auto" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees" or members of their households, or from any partner or "executive officer" of yours.
- 3. **"Non-Owned Auto"** means only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

## **BUSINESSOWNERS 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 Coverage Form 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.

In **Section II – Liability**, the word "insured" means any person or organization qualifying as such under **Paragraph C – Who Is An Insured**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **Paragraph H. Property Definitions** in **Section I – Property** and **Paragraph F. Liability And Medical Expenses Definitions** in **Section II – Liability**.

### **SECTION I – PROPERTY**

#### **A. Coverage**

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

##### **1. Covered Property**

Covered Property includes Buildings as described under **Paragraph a.** below, Business Personal Property as described under **Paragraph b.** below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under **Paragraph 2. Property Not Covered**.

- a.** Buildings, meaning the buildings and structures at the premises described in the Declarations, including:
  - (1)** Completed additions;
  - (2)** Fixtures, including outdoor fixtures;
  - (3)** Permanently installed:
    - (a)** Machinery; and
    - (b)** Equipment;
  - (4)** Your personal property in apartments, rooms or common areas furnished by you as landlord;
  - (5)** Personal property owned by you that is used to maintain or service the buildings or structures or the premises, including:
    - (a)** Fire extinguishing equipment;
    - (b)** Outdoor furniture;
    - (c)** Floor coverings; and
    - (d)** Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

##### **(6) If not covered by other insurance:**

- (a)** Additions under construction, alterations and repairs to the buildings or structures;
  - (b)** Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures.
- b.** Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises, including:
- (1)** Property you own that is used in your business;
  - (2)** Property of others that is in your care, custody or control, except as otherwise provided in Loss Payment Property Loss Condition **Paragraph E.6.d.(3)(b)**;
  - (3)** Tenant's improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
    - (a)** Made a part of the building or structure you occupy but do not own; and
    - (b)** You acquired or made at your expense but cannot legally remove; and
  - (4)** Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under **Paragraph 1.b.(2)**.
  - (5)** Exterior building glass, if you are a tenant and no Limit of Insurance is shown in the Declarations for Building property. The glass must be owned by you or in your care, custody or control.

##### **2. Property Not Covered**

Covered Property does not include:

- a.** Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;
- b.** "Money" or "securities" except as provided in the:
  - (1)** Money and Securities Optional Coverage; or
  - (2)** Employee Dishonesty Optional Coverage;
- c.** Contraband, or property in the course of illegal transportation or trade;

- d. Land (including land on which the property is located), water, growing crops or lawns;
  - e. Outdoor fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants, all except as provided in the:
    - (1) Outdoor Property Coverage Extension; or
    - (2) Outdoor Signs Optional Coverage;
  - f. Watercraft (including motors, equipment and accessories) while afloat.
  - g. Accounts, bills, food stamps, other evidences of debt, accounts receivable or "valuable papers and records"; except as otherwise provided in this policy.
  - h. "Computer(s)" which are permanently installed or designed to be permanently installed in any aircraft, watercraft, motortruck or other vehicle subject to motor vehicle registration. This paragraph does not apply to "computer(s)" while held as "stock".
- 3. Covered Causes Of Loss**
- Risks of direct physical loss unless the loss is:
- a. Excluded in Paragraph B. Exclusions in Section I; or
  - b. Limited in Paragraph 4. Limitations in Section I.
- 4. Limitations**
- a. We will not pay for loss of or damage to:
    - (1) Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
    - (2) Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
    - (3) Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property. This limitation does not apply to the Optional Coverage for Money and Securities.
    - (4) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
  - (5) The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (a) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
  - b. We will not pay for loss of or damage to fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken, unless caused by the "specified causes of loss" or building glass breakage. This restriction does not apply to:
    - (1) Glass that is part of the exterior or interior of a building or structure;
    - (2) Containers of property held for sale; or
    - (3) Photographic or scientific instrument lenses.
  - c. For loss or damage by theft, the following types of property are covered only up to the limits shown:
    - (1) \$2,500 for furs, fur garments and garments trimmed with fur.
    - (2) \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
    - (3) \$2,500 for patterns, dies, molds and forms.
- 5. Additional Coverages**
- a. Debris Removal**
- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
  - (2) Debris Removal does not apply to costs to:
    - (a) Extract "pollutants" from land or water; or
    - (b) Remove, restore or replace polluted land or water.
  - (3) Subject to the exceptions in Paragraph (4), the following provisions apply:

- (a) The most that we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
  - (b) Subject to Paragraph (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
  - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if Paragraphs (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

#### (5) Examples

##### Example #1

|                                |                    |
|--------------------------------|--------------------|
| Limit of Insurance             | \$ 90,000          |
| Amount of Deductible           | \$ 500             |
| Amount of Loss                 | \$ 50,000          |
| Amount of Loss Payable         | \$ 49,500          |
|                                | (\$50,000 – \$500) |
| Debris Removal Expense         | \$ 10,000          |
| Debris Removal Expense Payable | \$ 10,000          |

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

##### Example #2

|                                |           |
|--------------------------------|-----------|
| Limit of Insurance             | \$ 90,000 |
| Amount of Deductible           | \$ 500    |
| Amount of Loss                 | \$ 80,000 |
| Amount of Loss Payable         | \$ 79,500 |
| (\$80,000 – \$500)             |           |
| Debris Removal Expense         | \$ 30,000 |
| Debris Removal Expense Payable |           |
| Basic Amount                   | \$ 10,500 |
| Additional Amount              | \$ 10,000 |

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

#### b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss of or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

#### c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

**d. Collapse**

- (1) With respect to buildings:
  - (a) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
  - (b) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
  - (c) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
  - (d) A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- (2) We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this policy, if the collapse is caused by one or more of the following:
  - (a) The "specified causes of loss" or breakage of building glass, all only as insured against in this policy;
  - (b) Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
  - (c) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
  - (d) Weight of people or personal property;
  - (e) Weight of rain that collects on a roof;
  - (f) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in Paragraphs

(a) through (e), we will pay for the loss or damage even if use of defective material or methods in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in Paragraphs (1)(a) through (1)(d) do not limit the coverage otherwise provided under this Additional Coverage for the causes of loss listed in Paragraphs (2)(a), (2)(d) and (2)(e).

- (3) With respect to the following property:
  - (a) Awnings;
  - (b) Gutters and downspouts;
  - (c) Yard fixtures;
  - (d) Outdoor swimming pools;
  - (e) Piers, wharves and docks;
  - (f) Beach or diving platforms or appurtenances;
  - (g) Retaining walls; and
  - (h) Walks, roadways and other paved surfaces;

if the collapse is caused by a cause of loss listed in Paragraphs (2)(b) through (2)(f), we will pay for loss or damage to that property only if such loss or damage is a direct result of the collapse of a building insured under this policy and the property is Covered Property under this policy.

- (4) If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
  - (a) The collapse was caused by a cause of loss listed in Paragraphs (2)(a) through (2)(f) of this Additional Coverage;
  - (b) The personal property which collapses is inside a building; and
  - (c) The property which collapses is not of a kind listed in Paragraph (3) above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph (4) does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.



- (5) This Additional Coverage, Collapse, will not increase the Limits Of Insurance provided in this policy.
- e. **Water Damage, Other Liquids, Powder Or Molten Material Damage**  
 If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. We will not pay the cost to repair any defect that caused the loss or damage; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- (1) Results in discharge of any substance from an automatic fire protection system; or
  - (2) Is directly caused by freezing.
- f. **Business Income**
- (1) **Business Income**
- (a) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located. With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:
- (i) The portion of the building which you rent, lease or occupy; and
  - (ii) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.
- (b) We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage. We will only pay for ordinary payroll

expenses for 60 days following the date of direct physical loss or damage, unless a greater number of days is shown in the Declarations.

- (c) Business Income means the:
- (i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and
  - (ii) Continuing normal operating expenses incurred, including payroll.
- (d) Ordinary payroll expenses:
- (i) Mean payroll expenses for all your employees except:
    - i. Officers;
    - ii. Executives;
    - iii. Department Managers;
    - iv. Employees under contract; and
    - v. Additional Exemptions shown in the Declarations as:
      - Job Classifications; or
      - Employees.
  - (ii) Include:
    - i. Payroll;
    - ii. Employee benefits, if directly related to payroll;
    - iii. FICA payments you pay;
    - iv. Union dues you pay; and
    - v. Workers' compensation premiums.
- (2) **Extended Business Income**
- (a) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:
- (i) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and
  - (ii) Ends on the earlier of:
    - i. The date you could restore your "operations", with

reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or

- ii. 30 consecutive days after the date determined in Paragraph (a)(i) above, unless a greater number of consecutive days is shown in the Declarations.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

- (b) Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.
- (3) With respect to the coverage provided in this Additional Coverage, suspension means:
  - (a) The partial slowdown or complete cessation of your business activities; and
  - (b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.
- (4) This Additional Coverage is not subject to the Limits of Insurance of **Section I – Property**.

**g. Extra Expense**

- (1) We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
- (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

- (2) Extra Expense means expense incurred:

- (a) To avoid or minimize the suspension of business and to continue "operations":
  - (i) At the described premises; or
  - (ii) At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations.
- (b) To minimize the suspension of business if you cannot continue "operations".
- (c) To:
  - (i) Repair or replace any property; or
  - (ii) Research, replace or restore the lost information on damaged "valuable papers and records" to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage f. Business Income.

- (3) With respect to the coverage provided in this Additional Coverage, suspension means:
  - (a) The partial slowdown or complete cessation of your business activities; and
  - (b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.
- (4) We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage. This Additional Coverage is not subject to the Limits of Insurance of **Section I – Property**.

**h. Pollutant Clean Up And Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The

expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (1) The date of direct physical loss or damage; or
- (2) The end of the policy period.

The most we will pay for each location under this Additional Coverage is \$10,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

**i. Civil Authority**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for Business Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.

The coverage for necessary Extra Expense will begin immediately after the time of that action and ends:

- (1) 3 consecutive weeks after the time of that action; or
- (2) When your Business Income coverage ends;

whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance of **Section I – Property**.

**j. Money Orders And Counterfeit Paper Currency**

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

- (1) Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- (2) "Counterfeit" paper currency that is acquired during the regular course of business.

The most we will pay for any loss under this Additional Coverage is \$1,000.

**k. Forgery Or Alteration**

- (1) We will pay for loss resulting directly from forgery or alteration of, any check,

draft, promissory note, bill of exchange or similar written promise of payment in "money", that you or your agent has issued, or that was issued by someone who impersonates you or your agent.

- (2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.

- (3) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$2,500, unless a higher Limit of Insurance is shown in the Declarations.

**l. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings insured on a replacement cost basis.

- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in Paragraphs (3) through (9) of this Additional Coverage.

- (3) The ordinance or law referred to in Paragraph (2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:

- (a) You were required to comply with before the loss, even when the building was undamaged; and
- (b) You failed to comply with.

- (5) Under this Additional Coverage, we will not pay any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

- (6) The most we will pay under this Additional Coverage, for each described

building insured under **Section I – Property**, is \$10,000. If a damaged building(s) is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for each damaged building, is \$10,000.

The amount payable under this Additional Coverage is additional insurance.

- (7) With respect to this Additional Coverage:
  - (a) We will not pay for the Increased Cost of Construction:
    - (i) Until the property is actually repaired or replaced, at the same or another premises; and
    - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
  - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the same premises.
  - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment Property Loss Condition in **Section I – Property** do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in Paragraph (6) of this Additional Coverage, is not subject to such limitation.

**m. Business Income From Dependent Properties**

- (1) We will pay for the actual loss of Business Income you sustain due to physical loss or damage at the premises of a dependent property caused by or resulting from any Covered Cause of Loss.

The most we will pay under this Additional Coverage is \$5,000 unless a higher Limit of Insurance is indicated in the Declarations.

- (2) We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:
  - (a) Source of materials; or
  - (b) Outlet for your products.
- (3) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.
- (4) Dependent property means property owned by others whom you depend on to:
  - (a) Deliver materials or services to you, or to others for your account. But services does not mean water, communication or power supply services;
  - (b) Accept your products or services;
  - (c) Manufacture your products for delivery to your customers under contract for sale; or
  - (d) Attract customers to your business.
 The dependent property must be located in the coverage territory of this policy.
- (5) The coverage period for Business Income under this Additional Coverage:
  - (a) Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the dependent property; and
  - (b) Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.
- (6) The Business Income coverage period, as stated in Paragraph (5), does not include any increased period required due to the enforcement of any ordinance or law that:
  - (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
  - (b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize,

or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not reduce the Business Income coverage period.

- (7) The definition of Business Income contained in the Business Income Additional Coverage also applies to this Business Income From Dependent Properties Additional Coverage.

**n. Glass Expenses**

- (1) We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- (2) We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

**o. Fire Extinguisher Systems Recharge Expense**

- (1) We will pay:
  - (a) The cost of recharging or replacing, whichever is less, your fire extinguishers and fire extinguishing systems (including hydrostatic testing if needed) if they are discharged on or within 100 feet of the described premises; and
  - (b) For loss or damage to Covered Property if such loss or damage is the result of an accidental discharge of chemicals from a fire extinguisher or a fire extinguishing system.
- (2) No coverage will apply if the fire extinguishing system is discharged during installation or testing.
- (3) The most we will pay under this Additional Coverage is \$5,000 in any one occurrence.

**6. Coverage Extensions**

In addition to the Limits of Insurance of **Section I – Property**, you may extend the insurance provided by this policy as provided below.

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, unless a higher Limit of Insurance is shown in the Declarations.

**a. Newly Acquired Or Constructed Property**

**(1) Buildings**

If this policy covers Buildings, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and

- (b) Buildings you acquire at premises other than the one described, intended for:

- (i) Similar use as the building described in the Declarations; or
- (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

**(2) Business Personal Property**

- (a) If this policy covers Business Personal Property, you may extend that insurance to apply to:
  - (i) Business Personal Property, including such property that you newly acquire, at any location you acquire.
  - (ii) Business Personal Property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
  - (iii) Business Personal Property that you newly acquire, located at the described premises.

This Extension does not apply to personal property that you temporarily acquire in the course of installing or performing work on such property or your wholesale activities.

The most we will pay for loss or damage under this Extension is \$100,000 at each premises.

**(3) Period Of Coverage**

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

**b. Personal Property Off Premises**

You may extend the insurance that applies to Business Personal Property to apply to covered Business Personal Property, other than "money" and "securities", "valuable papers and records" or accounts receivable,

while it is in the course of transit or at a premises you do not own, lease or operate. The most we will pay for loss or damage under this Extension is \$5,000.

**c. Outdoor Property**

You may extend the insurance provided by this policy to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants, including debris removal expense, caused by or resulting from any of the following causes of loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$2,500, but not more than \$500 for any one tree, shrub or plant.

**d. Personal Effects**

You may extend the insurance that applies to Business Personal Property to apply to personal effects owned by you, your officers, your partners or "members", your "managers" or your employees. This extension does not apply to:

- (1) Tools or equipment used in your business; or
- (2) Loss or damage by theft.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises.

**e. Valuable Papers And Records**

(1) You may extend the insurance that applies to Business Personal Property to apply to direct physical loss or damage to "valuable papers and records" that you own, or that are in your care, custody or control caused by or resulting from a Covered Cause of Loss. This Coverage Extension includes the cost to research, replace or restore the lost information on "valuable papers and records" for which duplicates do not exist.

(2) This Coverage Extension does not apply to:

- (a) Property held as samples or for delivery after sale;
- (b) Property in storage away from the premises shown in the Declarations.

(3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described

premises is \$10,000, unless a higher Limit of Insurance for "valuable papers and records" is shown in the Declarations.

For "valuable papers and records" not at the described premises, the most we will pay is \$5,000.

(4) Paragraph B. Exclusions in Section I – Property does not apply to this Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;
- (b) Paragraph B.1.d., Nuclear Hazard;
- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.f., Dishonesty;
- (e) Paragraph B.2.g., False Pretense; and
- (f) Paragraph B.3

**f. Accounts Receivable**

(1) You may extend the insurance that applies to Business Personal Property to apply to accounts receivable. We will pay:

- (a) All amounts due from your customers that you are unable to collect;
- (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (c) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
- (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable;

that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

(2) The most we will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises is \$10,000, unless a higher Limit of Insurance for accounts receivable is shown in the Declarations.

For accounts receivable not at the described premises, the most we will pay is \$5,000.

(3) Paragraph B. Exclusions in Section I – Property does not apply to this Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;
- (b) Paragraph B.1.d., Nuclear Hazard;

- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.f., Dishonesty;
- (e) Paragraph B.2.g., False Pretense;
- (f) Paragraph B.3.; and
- (g) Paragraph B.5. Accounts Receivable Exclusion.

## B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

### a. Ordinance Or Law

- (1) The enforcement of any ordinance or law:
  - (a) Regulating the construction, use or repair of any property; or
  - (b) Requiring the tearing down of any property, including the cost of removing its debris.
- (2) This exclusion, Ordinance Or Law, applies whether the loss results from:
  - (a) An ordinance or law that is enforced even if the property has not been damaged; or
  - (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property.

### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in Paragraphs (1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for the loss or damage caused by that fire, building glass breakage or volcanic action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss of or damage to Covered Property.

### c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

### d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

### e. Power Failure

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to loss or damage to "computer(s)" and "electronic media and records".

### f. War And 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.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not, or
  - (c) Doors, windows or other openings.

But if Water, as described in Paragraphs (1) through (4), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

**h. Certain Computer-Related Losses**

- (1) The failure, malfunction or inadequacy of:
  - (a) Any of the following, whether belonging to any insured or to others:
    - (i) "Computer" hardware, including microprocessors or other electronic data processing equipment as may be described elsewhere in this policy;
    - (ii) "Computer" application software or other "electronic media and records" as may be described elsewhere in this policy;
    - (iii) "Computer" operating systems and related software;
    - (iv) "Computer" networks;
    - (v) Microprocessors ("computer" chips) not part of any "computer" system; or
    - (vi) Any other computerized or electronic equipment or components; or
  - (b) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph (a) above;

due to the inability to correctly recognize, distinguish, interpret or accept one or more dates or times. An

example is the inability of computer software to recognize the year 2000.

- (2) Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph (1) above.

However, if excluded loss or damage, as described in Paragraph (1) above results in a "Specified Cause of Loss" under **Section I – Property**, we will pay only for the loss or damage caused by such "Specified Cause of Loss".

We will not pay for repair, replacement or modification of any items in Paragraphs (1)(a) or (1)(b) to correct any deficiencies or change any features.

- 2. We will not pay for loss or damage caused by or resulting from any of the following:

**a. Electrical Apparatus**

Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by fire.

We will pay for loss or damage to "computer(s)" due to artificially generated electrical current if such loss or damage is caused by or results from:

- (1) An occurrence that took place within 100 feet of the described premises; or
- (2) Interruption of electric power supply, power surge, blackout or brownout if the cause of such occurrence took place within 100 feet of the described premises.

**b. Consequential Losses**

Delay, loss of use or loss of market.

**c. Smoke, Vapor, Gas**

Smoke, vapor or gas from agricultural smudging or industrial operations.

**d. Steam Apparatus**

Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or



passages through which the gases of combustion pass.

**e. Frozen Plumbing**

Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or
- (2) You drain the equipment and shut off the supply if the heat is not maintained.

**f. Dishonesty**

Dishonest or criminal acts by you, anyone else with an interest in the property, or any of your or their partners, "members", officers, "managers", employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others;
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.

With respect to accounts receivable and "valuable papers and records", this exclusion does not apply to carriers for hire.

This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

**g. False Pretense**

Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

**h. Exposed Property**

Rain, snow, ice or sleet to personal property in the open.

**i. Collapse**

Collapse, except as provided in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**j. Pollution**

We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of

loss", we will pay for the loss or damage caused by that "specified cause of loss".

**k. Neglect**

Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

**l. Other Types Of Loss**

- (1) Wear and tear;
- (2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force.  
This exclusion does not apply with respect to the breakdown of "computer(s)".
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

But if an excluded cause of loss that is listed in Paragraphs (1) through (7) above results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

**m. Errors Or Omissions**

Errors or omissions in:

- (1) Programming, processing or storing data, as described under "electronic media and records" or in any "computer" operations; or
- (2) Processing or copying "valuable papers and records".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

**n. Installation, Testing, Repair**

Errors or deficiency in design, installation, testing, maintenance, modification or repair of your "computer" system including "electronic media and records".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

**o. Electrical Disturbance**

Electrical or magnetic injury, disturbance or erasure of "electronic media and records", except as provided for under the Coverage Extensions of **Section I – Property**.

However, we will pay for direct loss or damage caused by lightning.

3. We will not pay for loss or damage caused by or resulting from any of the following Paragraphs **a.** through **c.** But if an excluded cause of loss that is listed in Paragraphs **a.** through **c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**a. Weather Conditions**

Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph **B.1.** above to produce the loss or damage.

**b. Acts Or Decisions**

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

**c. Negligent Work**

Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance;
- of part or all of any property on or off the described premises.

**4. Business Income And Extra Expense Exclusions**

**a. We will not pay for:**

- (1) Any Extra Expense, or increase of Business Income loss, caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by

the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration".

**(2) Any other consequential loss.**

**b. With respect to this exclusion, suspension means:**

- (1) The partial slowdown or complete cessation of your business activities; and
- (2) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

**5. Accounts Receivable Exclusion**

The following additional exclusion applies to the Accounts Receivable Coverage Extension:

We will not pay for:

- a. Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.**

This exclusion applies only to the extent of the wrongful giving, taking or withholding.
- b. Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.**
- c. Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.**

**C. Limits Of Insurance**

1. The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance of **Section I – Property** shown in the Declarations.
2. The most we will pay for loss of or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.
3. The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance of **Section I – Property**.
4. **Building Limit – Automatic Increase**
  - a. The Limit of Insurance for Buildings will automatically increase by the annual percentage shown in the Declarations.**
  - b. The amount of increase will be:**
    - (1) The Building limit that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building limit, times
    - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times

- (3) The number of days since the beginning of the current policy year of the effective date of the most recent policy change amending the Building limit, divided by 365.

**Example:**

If: The applicable Building limit is \$100,000. The annual percentage increase is 8%. The number of days since the beginning of the policy year (or last policy change) is 146.  
The amount of increase is  
 $\$100,000 \times .08 \times 146 \div 365 = \$3,200$ .

**6. Business Personal Property Limit – Seasonal Increase**

- a. The Limit of Insurance for Business Personal Property will automatically increase by 25% to provide for seasonal variations.
- b. This increase will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:
  - (1) The 12 months immediately preceding the date the loss or damage occurs; or
  - (2) The period of time you have been in business as of the date the loss or damage occurs.

**D. Deductibles**

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance of **Section I – Property**.
2. Regardless of the amount of the Deductible, the most we will deduct from any loss or damage for Glass and under all of the following Optional Coverages in any one occurrence is the Optional Coverage/Glass Deductible shown in the Declarations:
  - a. Money and Securities;
  - b. Employee Dishonesty; and
  - c. Outdoor Signs.

But this Optional Coverage/Glass Deductible will not increase the Deductible shown in the Declarations. This Deductible will be used to satisfy the requirements of the Deductible in the Declarations.
3. No deductible applies to the following Additional Coverages:
  - a. Fire Department Service Charge;
  - b. Business Income;
  - c. Extra Expense;
  - d. Civil Authority; and

- e. Fire Extinguisher Systems Recharge Expense.

**E. Property Loss Conditions**

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the 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 there is an appraisal, we will still retain our right to deny the claim.

**3. Duties In The Event Of Loss Or Damage**

- a. You must see that the following are done in the event of loss or damage to Covered Property:
  - (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limits of Insurance of **Section I – Property**. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
  - (9) Resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.
- 4. Legal Action Against Us**  
No one may bring a legal action against us under this insurance unless:
- a. There has been full compliance with all of the terms of this insurance; and
  - b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

**5. Electronic Media And Records Limitation**

We will not pay for any loss of Business Income caused by direct physical loss of or damage to "electronic media and records" after the longer of:

- a. 60 consecutive days from the date of direct physical loss or damage; or
- b. The period, beginning with the date of direct physical loss or damage, necessary to repair, rebuild or replace with reasonable speed and similar quality, other property at the described premises due to loss or damage caused by the same occurrence

**Example #1**

A Covered Cause of Loss damages a "computer" on June 1. It takes until September 1 to replace the "computer", and until October 1 to restore the data that was lost when the damage occurred. We will only pay for the Business Income loss sustained during the period June 1 – September 1. Loss during the period September 2 – October 1 is not covered.

**Example #2**

A Covered Cause of Loss results in the loss of data processing programming records on August 1. The records are replaced on October 15. We will only pay for the Business Income loss sustained during the period August 1 –

September 29 (60 consecutive days). Loss during the period September 30 – October 15 is not covered.

**6. Loss Payment**

In the event of loss or damage covered by this policy:

- a. At our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to Paragraph d.(1)(e) below.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. Except as provided in Paragraphs (2) through (8) below, we will determine the value of Covered Property as follows:
  - (1) At replacement cost without deduction for depreciation, subject to the following:
    - (a) If, at the time of loss, the Limit of Insurance on the lost or damaged property is 80% or more of the full replacement cost of the property immediately before the loss, we will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:
      - (i) The Limit of Insurance under **Section I – Property** that applies to the lost or damaged property;
      - (ii) The cost to replace, on the same premises, the lost or damaged property with other property:
        - i. Of comparable material and quality; and
        - ii. Used for the same purpose; or
      - (iii) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.
    - If a building is rebuilt at a new premises, the cost is limited to the cost which would have been incurred had the building been built at the original premises.

- (b) If, at the time of loss, the Limit of Insurance applicable to the lost or damaged property is less than 80% of the full replacement cost of the property immediately before the loss, we will pay the greater of the following amounts, but not more than the Limit of Insurance that applies to the property:
  - (i) The actual cash value of the lost or damaged property; or
  - (ii) A proportion of the cost to repair or replace the lost or damaged property, after application of the deductible and without deduction for depreciation. This proportion will equal the ratio of the applicable Limit of Insurance to 80% of the cost of repair or replacement.
- (c) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.
- (d) We will not pay on a replacement cost basis for any loss or damage:
  - (i) Until the lost or damaged property is actually repaired or replaced; and
  - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

However, if the cost to repair or replace the damaged building property is \$2,500 or less, we will settle the loss according to the provisions of Paragraphs d.(1)(a) and d.(1)(b) above whether or not the actual repair or replacement is complete.
- (e) The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- (2) If the "Actual Cash Value – Buildings" option applies, as shown in the Declarations, Paragraph (1) above does not apply to Buildings. Instead, we will determine the value of Buildings at actual cash value.
- (3) The following property at actual cash value:
  - (a) Used or second-hand merchandise held in storage or for sale;
  - (b) Property of others. However, if an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance;
  - (c) Household contents, except personal property in apartments or rooms furnished by you as landlord;
  - (d) Manuscripts;
  - (e) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac.
- (4) Glass at the cost of replacement with safety glazing material if required by law.
- (5) Tenants' Improvements and Betterments at:
  - (a) Replacement cost if you make repairs promptly.
  - (b) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (ii) Divide the amount determined in (i) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - (c) Nothing if others pay for repairs or replacement.

- (6) Loss or damage to "valuable papers and records" will be valued at the cost of restoration or replacement, including the cost of data entry, re-programming, computer consultation services and the media on which the data or programs reside. To the extent that the contents of the "valuable papers and records" are not restored, the "valuable papers and records" will be valued at the cost of replacement with blank materials of substantially identical type.
- (7) Applicable only to the Optional Coverages:
  - (a) "Money" at its face value; and
  - (b) "Securities" at their value at the close of business on the day the loss is discovered.
- (8) Applicable only to Accounts Receivable:
  - (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage:
    - (i) We will determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
    - (ii) We will adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.
  - (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
    - (i) The amount of the accounts for which there is no loss or damage;
    - (ii) The amount of the accounts that you are able to re-establish or collect;
    - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
    - (iv) All unearned interest and service charges.
- e. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, provided you have complied with all of the terms of this policy, and
  - (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.
- 7. **Recovered Property**  
If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limits of Insurance of **Section 1 – Property**.
- 8. **Resumption Of Operations**  
We will reduce the amount of your:
  - a. Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
  - b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- 9. **Vacancy**
  - a. **Description Of Terms**
    - (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in Paragraphs (a) and (b) below.
      - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
      - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
        - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or

- (ii) Used by the building owner to conduct customary operations.
- (2) Buildings under construction or renovation are not considered vacant.

**b. Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in Paragraphs (1)(a) through (1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

**F. Property General Conditions**

**1. Control Of Property**

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Form at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

**2. Mortgageholders**

- a. The term "mortgageholder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this policy at our request if you have failed to do so;
  - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this policy will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**3. No Benefit To Bailee**

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

**4. Policy Period, Coverage Territory**

Under **Section I – Property**:

- a. We cover loss or damage commencing:
  - (1) During the policy period shown in the Declarations; and
  - (2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.
- b. The coverage territory is:
  - (1) The United States of America (including its territories and possessions);
  - (2) Puerto Rico; and
  - (3) Canada.

**G. Optional Coverages**

If shown as applicable in the Declarations, the following Optional Coverages also apply. These coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

## 1. Outdoor Signs

- a. We will pay for direct physical loss of or damage to all outdoor signs at the described premises:
  - (1) Owned by you; or
  - (2) Owned by others but in your care, custody or control.
- b. Paragraph A.3., Covered Causes Of Loss, and Paragraph B., Exclusions in Section I – Property, do not apply to this Optional Coverage, except for:
  - (1) Paragraph B.1.c., Governmental Action;
  - (2) Paragraph B.1.d., Nuclear Hazard; and
  - (3) Paragraph B.1.f., War And Military Action.
- c. We will not pay for loss or damage caused by or resulting from:
  - (1) Wear and tear;
  - (2) Hidden or latent defect;
  - (3) Rust;
  - (4) Corrosion; or
  - (5) Mechanical breakdown.
- d. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Outdoor Signs shown in the Declarations.
- e. The provisions of this Optional Coverage supersede all other references to outdoor signs in this policy.

## 2. Money And Securities

- a. We will pay for loss of "money" and "securities" used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:
  - (1) Theft, meaning any act of stealing;
  - (2) Disappearance; or
  - (3) Destruction.
- b. In addition to the Limitations and Exclusions applicable to Section I – Property, we will not pay for loss:
  - (1) Resulting from accounting or arithmetical errors or omissions;
  - (2) Due to the giving or surrendering of property in any exchange or purchase; or
  - (3) Of property contained in any "money"-operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.
- c. The most we will pay for loss in any one occurrence is:

- (1) The limit shown in the Declarations for Inside the Premises for "money" and "securities" while:
    - (a) In or on the described premises; or
    - (b) Within a bank or savings institution; and
  - (2) The limit shown in the Declarations for Outside the Premises for "money" and "securities" while anywhere else.
- d. All loss:
    - (1) Caused by one or more persons; or
    - (2) Involving a single act or series of related acts;is considered one occurrence.
  - e. You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.

## 3. Employee Dishonesty

- a. We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
  - (1) Cause you to sustain loss or damage, and also
  - (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
    - (a) Any employee; or
    - (b) Any other person or organization.
- b. We will not pay for loss or damage:
  - (1) Resulting from any dishonest or criminal act that you or any of your partners or "members" commit whether acting alone or in collusion with other persons.
  - (2) Resulting from any dishonest act committed by any of your employees (except as provided in Paragraph a.), "managers" or directors:
    - (a) Whether acting alone or in collusion with other persons; or
    - (b) While performing services for you or otherwise.
  - (3) The only proof of which as to its existence or amount is:
    - (a) An inventory computation; or
    - (b) A profit and loss computation.
- c. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations.



- d. All loss or damage:
  - (1) Caused by one or more persons; or
  - (2) Involving a single act or series of acts; is considered one occurrence.
- e. If any loss is covered:
  - (1) Partly by this insurance; and
  - (2) Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.

We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
- f. This Optional Coverage is cancelled as to any employee immediately upon discovery by:
  - (1) You; or
  - (2) Any of your partners, "members", "managers", officers or directors not in collusion with the employee;

of any dishonest act committed by that employee before or after being hired by you.
- g. We will pay only for covered loss or damage sustained during the policy period and discovered no later than one year from the end of the policy period.
- h. If you (or any predecessor in interest) sustained loss or damage during the policy period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Optional Coverage, provided:
  - (1) This Optional Coverage became effective at the time of cancellation or termination of the prior insurance; and
  - (2) The loss or damage would have been covered by this Optional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
- i. The insurance under Paragraph h. above is part of, not in addition to, the Limit of Insurance applying to this Optional Coverage and is limited to the lesser of the amount recoverable under:
  - (1) This Optional Coverage as of its effective date; or
  - (2) The prior insurance had it remained in effect.

#### 4. Mechanical Breakdown

- a. We will pay for direct damage to Covered Property caused by an Accident to an Object. The Object must be:
  - (1) Owned by you or in your care, custody or control; and
  - (2) At the described premises.
- b. Accident means a sudden and accidental breakdown of the Object or a part of the Object. At the time the breakdown occurs, it must manifest itself by physical damage to the Object that necessitates repair or replacement.
- c. None of the following is an Accident:
  - (1) Depletion, deterioration, corrosion or erosion;
  - (2) Wear and tear;
  - (3) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
  - (4) Breakdown of any vacuum tube, gas tube or brush;
  - (5) Breakdown of any "computer", including "computer(s)" used to operate production type machinery or equipment;
  - (6) Breakdown of any structure or foundation supporting the Object or any of its parts;
  - (7) The functioning of any safety or protective device; or
  - (8) The explosion of gases or fuel within the furnace of any Object or within the flues or passages through which the gases of combustion pass.
- d. Object means any of the following equipment:
  - (1) Boiler and Pressure Vessels:
    - (a) Steam heating boilers and condensate return tanks used with them;
    - (b) Hot water heating boilers and expansion tanks used with them;
    - (c) Hot water supply boilers;
    - (d) Other fired or unfired vessels used for maintenance or service of the described premises but not used for processing or manufacturing;
    - (e) Steam boiler piping, valves, fittings, traps and separators, but only if they:
      - (i) Are on your premises or between parts of your premises;
      - (ii) Contain steam or condensate of steam; and
      - (iii) Are not part of any other vessel or apparatus;

- (f) Feed water piping between any steam boiler and a feed pump or injector.
- (2) Air Conditioning Units – Any air conditioning unit that has a capacity of 60,000 Btu or more, including:
  - (a) Inductors, convectors and coils that make use of a refrigerant and form part of a cooling, humidity control or space heating system;
  - (b) Interconnecting piping, valves and fittings containing only a refrigerant, water, brine or other solution;
  - (c) Vessels heated directly or indirectly that:
    - (i) Form part of an absorption type system; and
    - (ii) Function as a generator, regenerator or concentrator;
  - (d) Compressors, pumps, fans and blowers used solely with the system together with their driving electric motors; and
  - (e) Control equipment used solely with the system.
- e. Object does not mean:
  - (1) As Boiler and Pressure Vessels:
    - (a) Equipment that is not under internal vacuum or internal pressure other than weight of contents;
    - (b) Boiler settings;
    - (c) Insulating or refractory material; or
    - (d) Electrical, reciprocating or rotating apparatus within or forming a part of the boiler or vessel.
  - (2) As Air Conditioning Units, any:
    - (a) Vessel, cooling tower, reservoir or other source of cooling water for a condenser or compressor, or any water piping leading to or from that source; or
    - (b) Wiring or piping leading to or from the unit.
- f. We will not pay for an Accident to any Object while being tested.
- g. **Suspension**  
Whenever an Object is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an Accident to that Object. This can be done by delivering or mailing a written notice of suspension to:
  - (1) Your last known address; or
  - (2) The address where the Object is located.

If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

#### H. Property Definitions

1. "Computer" means:
  - a. Programmable electronic equipment that is used to store, retrieve and process data; and
  - b. Associated peripheral equipment that provides communication, including input and output functions such as printing and auxiliary functions such as data transmission.

"Computer" does not include those used to operate production type machinery or equipment.
2. "Counterfeit" means an imitation of an actual valid original which is intended to deceive and to be taken as the original.
3. "Electronic media and records" means the following, if owned by you or licensed to you and used in your business:
  - a. Media, meaning disks, tapes, film, drums, cells or other media which are used with electronically controlled equipment.
  - b. Data, meaning information or facts stored on media described in Paragraph a. above. Data includes "valuable papers and records" converted to data.
  - c. "Computer" program, meaning a set of related electronic instructions which direct the operations and functions of a "computer" or a device connected to it, which enable the "computer" or device to receive, process, restore, retrieve or send data.
  - d. Software, including systems and applications software.
4. "Manager" means a person serving in a directorial capacity for a limited liability company.
5. "Member" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".
6. "Money" means:
  - a. Currency, coins and bank notes in current use and having a face value; and
  - b. Travelers checks, register checks and money orders held for sale to the public.
7. "Operations" means your business activities occurring at the described premises.
8. "Period of restoration"
  - a. Means the period of time that:
    - (1) Begins:
      - (a) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or

- (b) Immediately after the time of direct physical loss or damage for Extra Expense Coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and
  - (2) Ends on the earlier of:
    - (a) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (b) The date when business is resumed at a new permanent location.
- b. Does not include any increased period required due to the enforcement of any ordinance or law that:
  - (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
  - (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

- 9. "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.
- 10. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
  - a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;
 but does not include "money".
- 11. "Specified Causes of Loss" means the following:
  - Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.

- b. Falling objects does not include loss of or damage to:
  - (1) Personal property in the open; or
  - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.
- 12. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.
- 13. "Valuable papers and records" means:
  - a. Inscribed, printed or written:
    - (1) Documents;
    - (2) Manuscripts; and
    - (3) Records;
 including abstracts, books, deeds, drawings, films, maps or mortgages; and
  - b. "Electronic media and records".
 But "valuable papers and records" does not mean "money" or "securities".

## SECTION II – LIABILITY

### A. Coverages

#### 1. Business Liability

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury", to which this insurance does not apply. We may at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in Paragraph D – Liability And Medical Expenses Limits Of Insurance in **Section II – Liability**; and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph f. Coverage Extension – Supplementary Payments.

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (b) The "bodily injury" or "property damage" occurs during the policy period; and
- (c) Prior to the policy period, no insured listed under Paragraph C.1. Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" 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 before the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during 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 Paragraph C.1. Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of "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 Paragraph C.1. Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" 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.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

f. **Coverage Extension – Supplementary Payments**

- (1) In addition to the Limit of Insurance of **Section II – Liability** we will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- (a) All expenses we incur.

- (b) Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

- (c) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.

- (d) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.

- (e) All costs taxed against the insured in the "suit".

- (f) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

- (g) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

- (2) If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (a) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (b) This insurance applies to such liability assumed by the insured;
- (c) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (d) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- (e) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (f) The indemnitee:
  - (i) Agrees in writing to:
    - i. Cooperate with us in the investigation, settlement or defense of the "suit";
    - ii. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - iii. Notify any other insurer whose coverage is available to the indemnitee; and
    - iv. Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (ii) Provides us with written authorization to:
    - i. Obtain records and other information related to the "suit"; and
    - ii. Conduct and control the defense of the indemnitee in such "suit".
- (3) So long as the conditions in Paragraph 2. are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary

Payments. Notwithstanding the provisions of Paragraph 8.1.b.(2) Exclusions in **Section II – Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (a) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (b) The conditions set forth above, or the terms of the agreement described in Paragraph 2.f. above are no longer met.

## 2. Medical Expenses

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations; provided that:
    - (a) The accident takes place in the "coverage territory" and during the policy period;
    - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
    - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the Limits of Insurance of **Section II – Liability**. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

## B. Exclusions

### 1. Applicable To Business Liability Coverage

This insurance does not apply to:

#### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to

"bodily injury" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) 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. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

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

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

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily Injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

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.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) 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 if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection

with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) 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 if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) 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"; or

(b) 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.

#### g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading"

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the following equipment:
  - (a) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (b) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

**i. 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.

**j. Professional Services**

"Bodily injury", "property damage", "personal and advertising injury" caused by the rendering or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;

- (3) Supervisory, inspection or engineering services;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Body piercing services; and
- (9) Services in the practice of pharmacy.

**k. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire or explosion) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Paragraph D. Liability And Medical Expenses Limit Of Insurance in **Section II – Liability**.



Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products – completed operations hazard".

**l. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**m. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products – completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**o. Recall Of Products, Work Or Impaired Property**

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:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

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.

**p. Personal And Advertising Injury**

"Personal and advertising injury":

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) Arising out of a criminal act committed by or at the direction of any insured;
- (5) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
- (6) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- (7) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (8) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
- (9) Committed by an insured whose business is:
  - (a) Advertising, broadcasting, publishing or telecasting;
  - (b) Designing or determining content of web-sites for others; or
  - (c) An Internet search, access, content or service provider.However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under Paragraph F. Liability And Medical Expenses Definitions.  
For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting.
- (10) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time. -
- (11) With respect to any loss, cost or expense arising out of any

- (a) Request, demand or order 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"; or
  - (b) 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".
- (12) Arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control.
- (13) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.  
However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.
- (14) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

Exclusions c., d., e., f., g., h., i., k., l., m., n. and o. in **Section II – Liability** do not apply to damage by fire or explosion to premises while rented to you, or temporarily occupied by you with permission of the owner. A separate **Damage To Premises Rented To You** Limit of Insurance applies to this coverage as described in Paragraph D. **Liability And Medical Expenses** Limits of Insurance in **Section II – Liability**.

## 2. **Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

- a. To any insured, except "volunteer workers".
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products – completed operations hazard".
- g. Excluded under Business Liability Coverage.

- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

## 3. **Applicable To Both Business Liability Coverage And Medical Expenses Coverage – Nuclear Energy Liability Exclusion**

This insurance does not apply:

- a. Under Business 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 the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, 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 Medical Expenses 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 Business Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of the "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.
- d. As used in this exclusion:
- (1) "By-product material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (2) "Hazardous properties" include radioactive, toxic or explosive properties;
  - (3) "Nuclear facility" means:
    - (a) Any "nuclear reactor";
    - (b) Any equipment or device designed or used for:
      - (i) Separating the isotopes of uranium or plutonium;
      - (ii) Processing or utilizing "spent fuel"; or
      - (iii) 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;

  - (4) "Nuclear material" means "source material", "special nuclear material" or "by-product material";
  - (5) "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;
  - (6) "Property damage" includes all forms of radioactive contamination of property.
  - (7) "Source material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (8) "Special nuclear material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (9) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
  - (10) "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 Paragraphs (a) and (b) of the definition of "nuclear facility".
- C. Who Is An Insured**
1. If you are designated in the Declarations as:
    - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
    - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
    - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
    - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  2. Each of the following is also an insured:
    - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability

company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury";

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (a) or (b); or

(d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

(a) Owned, occupied or used by;

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.

3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### **D. Liability And Medical Expenses Limits Of Insurance**

1. The Limits of Insurance of **Section II – Liability** shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The most we will pay for the sum of all damages because of all:

a. "Bodily injury", "property damage" and medical expenses arising out of any one "occurrence"; and

b. "Personal and advertising injury" sustained by any one person or organization;

is the Liability and Medical Expenses limit shown in the Declarations. But the most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses limit shown in the Declarations.

3. The most we will pay under Business Liability Coverage for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire or explosion is the Damage To Premises Rented To You limit shown in the Declarations.

#### **4. Aggregate Limits**

The most we will pay for:

a. All "bodily injury" or "property damage" that is included in the "products-completed operations hazard" is twice the Liability and Medical Expenses limit; and

- b. All:
- (1) "Bodily injury" or "property damage" except damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard";
  - (2) Plus medical expenses;
  - (3) Plus all "personal and advertising injury" caused by offenses committed;
- is twice the Liability and Medical Expenses limit.

This Aggregate Limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with the permission of the owner, arising out of fire or explosion.

The Limits of Insurance of **Section II – Liability** apply 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 Limits of Insurance.

#### **E. Liability And Medical Expenses General Conditions**

##### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **3. Financial Responsibility Laws**

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

#### **4. Legal Action Against Us**

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### **5. Separation Of Insureds**

Except with respect to the Limits of Insurance of **Section II – Liability**, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### F. Liability And Medical Expenses Definitions

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
    - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;  
if such property can be restored to use by:
    - (1) The repair, replacement, adjustment or removal of "your product" or "your work"; or
    - (2) Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.  
Paragraph f. does not include that part of any contract or agreement:
    - (1) 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, road beds, tunnel, underpass or crossing;
    - (2) 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; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection or engineering services.
- 10. "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"
- 11. "Loading or unloading" means the handling of property:
  - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
- 12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in Paragraphs a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraphs a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
 

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

  - (1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 15. "Pollutants" mean 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.

**16. "Products – completed operations hazard":**

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at the job site has been put to its intended use by any other person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

**17. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**

- a. An arbitration proceeding in which such damages 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 are claimed and to which the insured submits with our consent.

- 19. "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.**

- 20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.**

**21. "Your product":**

- a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

- b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**22. "Your work":**

- a. Means:



- (1) Work or operations performed by you or on your behalf; and
  - (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
  - (2) The providing of or failure to provide warnings or instructions.

### **SECTION III – COMMON POLICY CONDITIONS (APPLICABLE TO SECTION I – PROPERTY AND SECTION II – LIABILITY)**

#### **A. Cancellation**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance 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. 5 days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy:
    - (1) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:
      - (a) Seasonal unoccupancy; or
      - (b) Buildings in the course of construction, renovation or addition. Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.
    - (2) After damage by a covered cause of loss, permanent repairs to the building:
      - (a) Have not started; and
      - (b) Have not been contracted for, within 30 days of initial payment of loss.
    - (3) The building has:
      - (a) An outstanding order to vacate;
      - (b) An outstanding demolition order; or
      - (c) Been declared unsafe by governmental authority.
    - (4) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.
  - (5) Failure to:
    - (a) Furnish necessary heat, water, sewer service or electricity for 30

consecutive days or more, except during a period of seasonal unoccupancy; or

- (b) Pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.
- b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.
  - c. 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. Concealment, Misrepresentation Or Fraud**

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

1. This policy;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this policy.

#### **D. 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.

#### **E. Inspections And Surveys**

1. We have to 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 and 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 service 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.

**F. Insurance Under Two Or More Coverages**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**G. Liberalization**

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

**H. Other Insurance**

1. If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance of **Section I – Property**.
2. Business Liability Coverage is excess over:
  - a. Any other insurance that insures for direct physical loss or damage; or
  - b. Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.
3. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so; but we will be entitled to the insured's rights against all those other insurers.

**I. Premiums**

1. The first Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

2. 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.
3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:
  - a. Paid to us prior to the anniversary date; and
  - b. Determined in accordance with Paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that are not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

**J. Premium Audit**

1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**K. Transfer Of Rights Of Recovery Against Others To Us**

1. Applicable to Businessowners Property Coverage:

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may

waive your rights against another party in writing:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - (1) Someone insured by this insurance;
  - (2) A business firm:
    - (a) Owned or controlled by you; or
    - (b) That owns or controls you; or
  - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers. This will not restrict your insurance.

**2. Applicable to Businessowners Liability Coverage.**

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**L. 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEVADA CHANGES

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS COVERAGE FORM

**A. Section II – Liability** is amended as follows:

The term spouse is replaced by the following:

Spouse or individual who is in a domestic partnership recognized under Nevada law.

**B. Section III – Common Policy Conditions** is amended as follows:

1. Paragraph **A.2.a. Cancellation** is deleted.

2. Paragraph **A.3.** is deleted.

3. The following are added to Paragraph **A. Cancellation**:

**7. Midterm Cancellation**

If this policy has been in effect for 70 days or more, or if this policy is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

- a. Nonpayment of premium;
- b. Conviction of the insured of a crime arising out of acts increasing the hazard insured against;
- c. Discovery of fraud or material misrepresentation in obtaining the policy or in presenting a claim thereunder;
- d. Discovery of an act or omission or a violation of any condition of the policy which occurred after the first effective date of the current policy, and substantially and materially increases the hazard insured against;
- e. A material change in the nature or extent of the risk, occurring after the first effective date of the current policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
- f. A determination by the commissioner that continuation of our present volume of premiums would jeopardize our solvency or be hazardous to the interests of our policyholders, creditors or the public;
- g. A determination by the commissioner that the continuation of the policy would

violate, or place us in violation of, any provision of the code.

**8. Anniversary Cancellation**

If this policy is written for a term longer than one year, we may cancel for any reason at an anniversary, by mailing or delivering written notice of cancellation to the first Named Insured at the last mailing address known to us at least 60 days before the anniversary date.

9. If this policy has been issued to a condominium association, we will also mail or deliver the written notice of cancellation to each unit-owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued.

4. Paragraph **C. Concealment, Misrepresentation Or Fraud** is replaced by the following:

**C. Concealment, Misrepresentation Or Fraud**

We will not pay for any loss or damage in any case of:

1. Concealment or misrepresentation of a material fact; or
  2. Fraud;
- committed by an insured at any time and relating to a claim under this policy.

5. The following paragraphs are added:

**M. Nonrenewal**

1. If we elect not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations a notice of intention not to renew at least 60 days before the agreed expiration date.

If this policy has been issued to a condominium association, we will also mail or deliver the written notice of nonrenewal to each unit-owner and each holder of a security interest to whom we issued a certificate or memorandum of insurance.

2. We need not provide this notice if:
  - a. You have accepted replacement coverage;
  - b. You have requested or agreed to nonrenewal; or
  - c. This policy is expressly designated as nonrenewable.

**N. Notices**

1. Notice of cancellation or nonrenewal will be mailed, first class or certified, or delivered to the first Named Insured at the last mailing address known to us and will state:
  - a. The specific reason for cancellation or nonrenewal; and
  - b. The effective date of nonrenewal.
2. We will also provide a copy of the notice of cancellation, for both policies in effect less than 70 days and policies in effect 70 days or more, to the agent who wrote the policy.

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

## **CALCULATION OF PREMIUM**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

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.

## RESIDENT AGENT COUNTERSIGNATURE ENDORSEMENT

**Policy Number:** BSP716685

**Company:** OREGON MUTUAL INSURANCE

**Named Insured:** DPH OF LAS VEGAS

**State**  
NEVADA

**Premium**  
INCLUDED

The signature shown on this endorsement complies with the countersignature laws and regulations of the State shown.

Date of Countersignature

\_\_\_\_\_  
(month, day and year)

\_\_\_\_\_  
Licensed Resident Agent

POLICY NUMBER:

**BUSINESSOWNERS****BP 05 26 01 08****THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF CERTIFIED ACTS OF TERRORISM INVOLVING NUCLEAR, BIOLOGICAL, CHEMICAL OR RADIOLOGICAL TERRORISM; CAP ON COVERED CERTIFIED ACTS LOSSES**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

**SCHEDULE**

|   |
|---|
| The <b>Exception Covering Certain Fire Losses</b> (Paragraph B.2.) applies to property located in the following state(s): |
|   |

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** The following definition is added with respect to the provisions of this endorsement:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

- B. Section I – Property** is amended as follows:

1. The following exclusion is added:
  - a. **Limited Exclusion Of Certified Acts Of Terrorism**

We will not pay for loss or damage caused directly or indirectly by a "certified act of terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to such act:

- (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 material; or
- (4) Pathogenic or poisonous biological or chemical material is released, and it appears that one purpose of the terrorism was to release such material.



When this terrorism exclusion applies in accordance with the terms of Paragraph B.1.a.(1) or B.1.a.(2), the terrorism exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.

**2. Exception Covering Certain Fire Losses**

The following exception to the Exclusion in Paragraph B.1. applies only if indicated and as indicated in the Schedule of this endorsement. If a "certified act of terrorism" excluded under Paragraph B.1. results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under business income and/or extra expense coverage or endorsements that apply to those coverages.

**3. Application Of Exclusions**

The terms and limitations of any terrorism exclusion, or the non-applicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Form, such as losses excluded by the War And Military Action Exclusion.

**C. Section II – Liability** is amended as follows:

**1. The following exclusion is added:**

This insurance does not apply to:

**TERRORISM**

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism". However, this exclusion applies only when one or more of the following are attributed to such act:

- a. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or

- b. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

- c. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

**2. The following definition is added:**

- a. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under this coverage form or any applicable endorsement, and includes but is not limited to "bodily injury", "property damage" or "personal and advertising injury" as may be defined in this coverage form or any applicable endorsement.

3. In the event of any incident of a "certified act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this coverage form or endorsement.

**D. Section I – Property and Section II – Liability** are amended as follows:

**CAP ON CERTIFIED TERRORISM LOSSES**

The following limitation applies to coverage for any one or more "certified acts of terrorism" that are not excluded by the terms of the exclusion in Paragraphs B.1. and C.1. and to any loss or damage that is covered and to which the exception in Paragraph B.2. applies.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.



OREGON MUTUAL INSURANCE COMPANY  
BUSINESSOWNERS  
AMENDATORY ENDORSEMENT

M2732B (4-09)

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

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM**

**A. Section I – Property is amended as follows:**

1. Paragraph **A.1.b.(2) Covered Property** is amended as follows:

(2) Property of others that is in your care, custody or control, except employees' tools, and as provided in Loss Payment Property Loss Condition Paragraph **E.6.d.(3)(b)**;

2. Paragraph **A.2.e. Property Not Covered** is replaced by the following:

e. Radio or television antennas (including satellite dishes) and their lead-in wiring, masts, or towers, signs (other than signs attached to buildings), trees, shrubs or plants, property not covered herein, except as provided in the :

(1) Outdoor property Coverage Extension; or

(2) Outdoor Signs Optional Coverage

3. The following is added to Paragraph **A.2. Property Not Covered**:

i. Fine arts, paintings, etchings, pictures, tapestries, art glass windows, valuable rugs, statuary, marbles, bronzes, antique furniture, rare books, antique silver, manuscripts, porcelains, rare glass, bric-a-brac, and similar property of rarity, historical value or artistic merit.

4. The following is added to Paragraph **A.4. Limitations**:

d. **Limit of Insurance:** \$3,000 is the most we will pay for loss or damage to memorabilia, souvenirs, collectors' items and similar articles whose age or history contribute to their value.

5. Paragraph **A.6.c. Coverage Extensions - Outdoor Property** is replaced by the following:

You may extend the insurance provided by this policy to apply to your radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants, including debris removal expenses, caused by or resulting from any of the following causes of loss:

- (1) Fire;  
(2) Lightning;

(3) Explosion;

(4) Riot or Civil Commotion; or

(5) Aircraft.

**Limit of Insurance:** The most we will pay for loss or damage under this Extension is \$2,500, but not more than \$500 for any one tree, shrub or plant.

6. The following is added to Paragraph **B.2.f Exclusions – Dishonesty**:

We will not pay for loss or damage caused by or resulting from any dishonest or criminal act committed by the spouse of anyone listed in this paragraph.

7. Paragraph **C.2. Limits of Insurance** is replaced by the following:

2. **Limit of Insurance:** The most we will pay for loss or damage to outdoor signs attached to buildings is the Limit of Insurance shown in the Declarations for the Building to which the sign is attached

8. Paragraph **C.4. Building Limit – Automatic Increase** is replaced by the following:

a. The Limit of Insurance for Buildings will automatically increase by an annual percentage rate of 5%.

b. The amount of increase will be:

(1) The Building limit that applied on the most recent of: the policy effective date or any other policy change amending the Building limit, times

(2) The percentage rate of 5%, expressed as a decimal (example: 5% is .05), times

(3) The lesser of the number of days since the effective date of the current policy or the effective date of the most recent policy change amending the Building limit, divided by 365.

**Example:**

If: The applicable Building limit is \$100,000.  
The annual percentage increase is 5%.  
The number of days since the beginning of the policy year (or last policy change) is 146.

The amount of increase is

$\$100,000 \times .05 \times 146 \div 365 = \$2,000.$

9. The following is added to Paragraph **G. Limits of Insurance**:

6. **Limit of Insurance:** The most we will pay for the sum of the losses covered under Paragraph **A.5.f. Business Income** and Paragraph **A.5.g. Extra Expense** is the least of the actual loss sustained or \$5,000,000.

10. Paragraph **D.2. Deductibles** is replaced by the following:

2. Regardless of the amount of the Deductible, the most we will deduct from any loss or damage for Glass and under all of the following Optional Coverages in any one occurrence is \$500. Those Optional Coverages are:

- a. Money and Securities;
- b. Employee Dishonesty; and
- c. Outdoor Signs.

But this Optional Coverage/Glass Deductible will not increase the Deductible Shown in the Declarations. This Deductible will be used to satisfy the requirements of the Deductible in the Declarations

The following is added to Paragraph **D. Deductibles**:

4. The most we will deduct for loss or damage to all signs at all locations on a policy is \$5,000 per "occurrence".

11. Paragraph **E.6.d.(1)(d) Loss Payment** is replaced by the following:

(d) We will not pay on a replacement cost basis for any loss or damage:

- (i) Until the lost or damaged property is actually repaired or replaced; and
- (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

However, if the cost to repair or replace the damaged building property is \$2,500 or less, we will settle the loss according to the provisions of Paragraph **A.8.** of this endorsement whether or not the actual repair or replacement is complete.

12. Paragraph **E.6.d.(3)(e) Loss Payment** does not apply.

13. Paragraph **G.1.a. Outdoor Signs** is replaced by the following:

- a. We will pay for direct physical loss of or damage to all unattached outdoor signs at the described premises:
  - (1) Owned by you; or

- (2) Owned by others but in your care, custody or control.

14. Paragraph **G.4. Mechanical Breakdown** does not apply

B. **Section II – Liability** is amended as follows:

1. Paragraph **B.1.g.(5) Exclusions Applicable to Business Liability Coverage - Aircraft, Auto Or Watercraft** is replaced by the following:

This insurance does not apply to:

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or

(b) The operation of any of the following equipment:

- (i) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (ii) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

2. The following are added to Paragraph **B.1. Exclusions Applicable to Business Liability Coverage**:

This insurance does not apply to:

q. **Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

r. **Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured

**s. Distribution Of Material In Violation Of Statutes**

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**t. Silica, Lead or Asbestos**

- (1) "Bodily injury", "property damage", or "personal and advertising injury" that is caused in whole or in part by, arises out of, or relates in any way to, "silica", "lead" or "asbestos". This exclusion applies to any and all claims, against each and every insured, regardless of the nature of the claim, or the legal or factual theory underlying the claim.

This exclusion applies but is not limited to:

- a. Any claim or suit by or on behalf of any governmental authority or any other allegedly responsible party because of:
  - (1) Assessing the presence, absence or amount or effects of "silica", "lead" or "asbestos";
  - (2) Identifying, sampling or testing for, detecting, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, abating, disposing of or mitigating "silica", "lead" or "asbestos";
  - (3) Responding to "silica", "lead" or "asbestos" in any way other than as described in a.(1) and a.(2) above;
- b. Any request, demand, order or statutory or regulatory requirement that any insured or any other person or entity should be, or should be responsible for:

- (1) Assessing the presence, absence or amount or effects of "silica", "lead" or "asbestos";
- (2) Identifying, sampling or testing for, detecting, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, abating, disposing of or mitigating "silica", "lead" or "asbestos";
- (3) Responding to "silica", "lead" or "asbestos" in any way other than as described in b.(1) or b.(2) above;

- c. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with any of the subsections above; or
- d. Any obligation to share damages with or repay someone else in connection with any of the subsections above

- (2) This exclusion does not apply to "bodily injury":

- a. Resulting from the ingestion of goods intended for human consumption;
- b. Resulting from sudden asphyxiation caused by the collapse of any storage pile or container; or
- c. Sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from (1) equipment that is used to heat, cool or dehumidify the building, or (2) equipment that is used to heat water for personal use by the building's occupants or their guests.

- (3) This exclusion does not apply to "bodily injury" or "property damage" resulting from:

- a. Heat, smoke or fumes from a "hostile fire"; or
- b. Explosion caused by an ignition of a concentration of suspended dust.

- (4) For the purpose of this exclusion the following definitions are added:

**a. Silica**

The term "silica" includes, but is not limited to, the mineral silicon dioxide and any type or form of it

including, but not limited to, silica-containing products, goods, fibers or materials, silica dust, fine particulate dust of siliceous or silicic minerals, and any gasses, vapors, scents or by-products produced or released by silica, silica dust or silica-containing products, goods, fibers or materials. Siliceous or silicic minerals include, but are not limited to, sand, quartz, slate, granite and flint.

**b. Lead**

The term "lead" includes, but is not limited to, the element lead, lead compounds or lead contained in any materials.

**c. Asbestos**

The term "asbestos" includes, but is not limited to, the mineral asbestos and any type or form of it including, but not limited to, asbestos-containing products, goods, fibers or materials, asbestos dust, fine particulate dust of asbestos miners, and any gasses vapors, scents or by-products produced or released by asbestos, asbestos dust or asbestos-containing products, goods, fibers or materials.

**u. Racing Activities**

"Bodily injury" or "property damage" arising out of the use of "autos" in, or while in practice for, or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.

**v. Copyright, Trademark, Service Mark or Trade Name**

Any claim resulting from infringement of copyright, trademark, service mark or trade name (other than titles or slogans) by use of such marks or names with goods, products or services sold, offered for sale or advertised.

3. Paragraph C.3. Who is An Insured does not apply.

4. Paragraph D.4. Aggregate Limits is replaced by the following:

**Limit of Insurance:** The most we will pay for:

- a. All "bodily injury" or "property damage" that is included in the "products-completed operations hazard" is the amount shown in the Declarations as the Products-Completed Operations Aggregate Limit; and

**b. All:**

- (1) "Bodily injury" or "property damage" except damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard";
  - (2) Plus medical expenses;
  - (3) Plus all "personal and advertising injury" caused by offenses committed;
- is the amount shown in the Declarations as the General Aggregate Limit.

This Aggregate Limit does not apply to property damage" to premises while rented to you or temporarily occupied by you with the permission of the owner, arising out of fire or explosion.

The Limits of Insurance of **Section II – Liability** apply 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 Limits of Insurance.

5. Paragraph E.3. Financial Responsibility Laws does not apply.

6. Paragraph F.2. Liability And Medical Expenses Definitions is replaced by the following:

**2. "Auto" means:**

- a. A land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.

But however, "auto" does not include "mobile equipment".

7. The following is added to paragraph F.12. Liability And Medical Expenses Definitions:

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

C. The following is added to the **SECTION III – COMMON POLICY CONDITIONS (APPLICABLE TO SECTION I – PROPERTY AND SECTION II – LIABILITY)**

**M. Prenotification**

As a part of our underwriting procedure, an investigative consumer report may be prepared whereby information is obtained through personal interviews with your neighbors, friends, or others with whom you are acquainted. This inquiry includes information as to your character, general reputation, personal characteristics and mode of living. If an investigation is made, you can be assured that it will be handled in the strictest confidence.

If you wish information on the nature and scope of the customer report which may be requested, please send your written request to: Oregon Mutual Insurance Company, P.O. Box 808, McMinnville, Oregon 97128.

If a claim is filed on the insured property, information on the claim may be given to the Property Insurance Loss Register (PILR) for use by insurance companies in investigating the legitimacy of that claim as well as other claims for loss on the property. Information which will be given to the PILR may include name, age and sex, current and previous addresses, loss location, insurance policy information, cause of loss, type of property, and identification of others who have an interest in the property or who are involved in the claimed loss.

Such information may be collected by an insurer or an adjuster by questioning you, your spouse or others who have an interest in the property, those who are involved in the claimed loss, and fire department personnel. Information on you will be given by PILR to insurance companies which subscribe to its services for use in investigating other claimed losses.

**N. Mutual Policy Conditions**

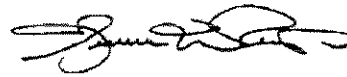
This policy is issued by a mutual Company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, of which the following shall apply to and form a part of this policy:

By virtue of purchasing this policy the Insured is a member of the Oregon Mutual Insurance Company and is hereby notified that the annual meetings of the Company are held at or near the immediate vicinity of the home office in the city of McMinnville, Oregon 97128, on the first Tuesday in March of each year, at 10:00 AM for the purpose of transacting the general business of the Company and for the election of directors. This notice shall be deemed full notice of the annual meeting. This policy is Nonassessable. The holder of this policy is not subject to any contingent liability, nor liable to assessment.

IN WITNESS WHEREOF the Company has caused this policy to be signed by its president and secretary but this policy shall not be valid unless completed by the attachment hereto of a declarations page and countersigned on the Declaration Page by a duly authorized representative of the Company.



Brian Steffel  
President



Steven L. Patterson  
Secretary



OREGON MUTUAL INSURANCE COMPANY  
COMMERCIAL POLICY CHANGE

M2282  
(9-94)

REGIONAL OFFICE COPY

|                                       |                                |                                |  |                           |
|---------------------------------------|--------------------------------|--------------------------------|--|---------------------------|
| POLICY NO.<br>DSP716G85               | CHANGE EFF. DATE<br>06/19/2012 | POLICY EXP. DATE<br>12/26/2012 | POLICY CHANGE NO.<br>001               | DATE ISSUED<br>06/22/2012 |
| NAMED INSURED<br>OPH OF LAS VEGAS INC |                                |                                | AGENT<br>000781 SANDIN INSURANCE GROUP |                           |

Your policy is changed as indicated below, for: AN ADDITIONAL PREMIUM OF \$ 1934.00

ADDED LOCATION 3: 31800 LAS VEGAS BLVD S PRIMM, NV 89019

CLASS CODE 09011, SALES 1,000,000, BUSINESS PERSONAL PROPERTY

250,000, SPECIAL CLUSTER, HSB, TERROR, GLASS WAIVER DEDUCTIBLE

APPLIED, ADDED WAIVER OF TRANSFER OF RIGHTS (BPO497)

ADDED ADDITIONAL INSURED (M27155) AFFINITY GAMING LLC

ADDED PRIMARY AND NON CONTRIBUTORY (M28528)

M2282

PROCESSED: 06/22/2012 BY: SHAWNAP

APP00084

9/27/11 FRM

## RESIDENT AGENT COUNTERSIGNATURE ENDORSEMENT

**Policy Number:** BSP716685

**Company:** OREGON MUTUAL INSURANCE

**Named Insured:** OPH OF LAS VEGAS

**State**  
NEVADA

**Premium**  
INCLUDED

The signature shown on this endorsement complies with the countersignature laws and regulations of the State shown.

Date of Countersignature

\_\_\_\_\_  
(month, day and year)

\_\_\_\_\_  
Licensed Resident Agent



POLICY NUMBER:

BUSINESSOWNERS  
BP 04 97 07 02**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

**SCHEDULE\*****Name Of Person Or Organization:**

AFFINITY GAMING LLC

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

**Paragraph K. Transfer Of Rights Of Recovery Against  
Others To Us in Section III – Common Policy  
Conditions is amended by the addition of the following:****We waive any right of recovery we may have against the  
person or organization shown in the Schedule above  
because of payments we make for injury or damage****arising out of your ongoing operations or "your work"  
done under a contract with that person or organization  
and included in the "products-completed operations  
hazard". This waiver applies only to the person or  
organization shown in the Schedule above.**



**OREGON MUTUAL INSURANCE COMPANY**  
**BUSINESSOWNERS POLICY CERTIFICATE OF INSURANCE**

ISSUE DATE: 06/22/2012

INSURED

AGENT 000781

OPH OF LAS VEGAS INC  
SEE M2366  
4170 S FORT APACHE RD  
LAS VEGAS NV 89147-8801

SANDIN INSURANCE GROUP  
19 CHURCHILL DOWNS  
LAKE OSWEGO OR 97035

This certificate is issued as a matter of information only and confers no rights on the certificateholder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

**COVERAGES**

This is to certify that the policies listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies. The limits shown may have been reduced by paid claims.

| Type of Insurance                              | Policy Number | Effective Date | Expiration Date | Limits of Insurance                     |                   |
|--|---------------|----------------|-----------------|---|-------------------|
| Businessowners Liability<br>(Occurrence Basis) | BSP716685     | 12/26/2011     | 12/26/2012      | General Aggregate                       | \$ 2,000,000      |
|  |               |                |                 | Products/Completed Operations Aggregate | \$ 2,000,000      |
|  |               |                |                 | Business Liability                      | \$ 1,000,000      |
|  |               |                |                 | Personal & Advertising Injury           | \$ INCLUDED       |
|  |               |                |                 | Medical Expense - Per Person            | \$ 5,000          |
|  |               |                |                 | Fire Legal Liability - Any 1 Fire       | \$ 100,000        |
| Nonowned Auto<br>Hired Auto Liability          | BSP716685     | 12/26/2011     | 12/26/2012      |   | \$ INCLUDED<br>\$ |
| Businessowners Property                        | BSP716685     | 12/26/2011     | 12/26/2012      | Deductible: \$                          | 2,500             |
| BUS. PERS. PROP.                               |               |                |                 |   | \$ 250,000        |
| Other  |               |                |                 |   |                   |

**Description of Operations/Locations/Special Items**

RESTAURANTS CASUAL W/O LOUNGE  
LOCATION: 003 BUILDING: 001  
31900 LAS VEGAS BLVD S JEAN NV 89019-7002  
ADDITIONAL INSURED FORM M2715B ATTACHED & PRIMARY AND  
NON-CONTRIBUTORY ENDORSEMENT M2852B(11-11) ATTACHED APPLY

**CERTIFICATEHOLDER**

AFFINITY GAMING LLC  
SEE M2061B  
3755 BREAKTHROUGH WAY STE 300  
LAS VEGAS NV 89135

**CANCELLATION**

Should any of the above described policies be cancelled before the expiration date thereof, the company will ENDEAVOR TO MAIL 10 DAYS written notice to the certificateholder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

AUTHORIZED REPRESENTATIVE



OREGON MUTUAL INSURANCE COMPANY  
BUSINESSOWNERS  
ADDITIONAL INSURED - MANAGERS OR LESSORS  
OF PREMISES

M2715B (1-06)

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

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

**SCHEDULE\***

|   |  |
|---|--|
| <b>Designation Of Premises (Part Leased To You):</b>        | 31900 LAS VEGAS BLVD S<br>JEAN NV 89019 7002 |
| <b>Name Of Person Or Organization (Additional Insured):</b> | AFFINITY GAMING LLC<br>SEE M2061B            |
| <b>Additional Premium:</b>                                  | INCLUDED                                     |

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

**A. The following is added to Paragraph C. Who Is An Insured in Section II – Liability:**

3. The person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule.

**B. The following exclusions are added to Section II – Liability:**

This insurance does not apply to:

1. Any "occurrence" that takes place after you cease to be a tenant in the premises described in the Schedule.
2. Structural alterations, new construction or demolition operations performed by or for the person or organization designated in the Schedule.

BSP716685 OPH OF LAS VEGAS

EFFECTIVE: 06/19/2012

PROCESSED: 06/22/2012

M2366

(8-94)



**OREGON MUTUAL INSURANCE COMPANY**  
**AMENDED DECLARATION**

**Item 1. Named Insured**

The Named Insured shall read as follows:

OPH OF LAS VEGAS INC  
OPH OF LAS VEGAS #5  
SKAEF LLC

The Named Insured is:

CORPORATION

OTHER ORGANIZATION



OREGON MUTUAL INSURANCE COMPANY  
PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT

M2852B (11-11)

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

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM**

**SCHEDULE**

Name of Additional Insured Person(s) or Organization(s):

AFFINITY GAMING LLC  
ITS SUBSIDIARIES AND  
AFFILIATES

Under **SECTION III – COMMON POLICY CONDITIONS, H. Other Insurance**, paragraph 4. has been added:

4. This policy is primary and we will not seek contribution for covered loss or damage from any other insurance covering the same loss or damage for any entity:
- a. Named as an additional insured by attachment of an endorsement to this policy, and

- b. Required by an "insured contract" as defined in **SECTION II – LIABILITY COVERAGES, F. Liability And Medical Expenses Definitions**, paragraph 9., and
- c. Shown in the Schedule above.



OREGON MUTUAL INSURANCE COMPANY  
SCHEDULE OF MORTGAGEE(s), LIENHOLDERS OR  
ADDITIONAL INSURED

M2061B  
(4-97)

Prem.  
No.  
003

Bldg.  
No.  
001

Name and Address

AFFINITY GAMING LLC  
ITS SUBSIDIARIES AND  
AFFILIATES  
3755 BREAKTHROUGH WAY STE 300  
LAS VEGAS NV 89135

001  
AI /PNC

**OREGON MUTUAL INSURANCE COMPANY**  
**SCHEDULE OF PREMISES DESCRIPTION**

M2062B

(8-94)

| <u>Prem. No.</u> | <u>Bldg. No.</u> | <u>Location Address</u>                           | <u>Limits of Insurance</u>               |
|------------------|------------------|---|--|
| 001              |                  | 4170 S FORT APACHE RD<br>LAS VEGAS NV 89147-8801  |  |
|                  | 001              | REPLACEMENT COST                                  | \$ 691,000<br>BUILDING                   |
|                  | 001              | REPLACEMENT COST                                  | \$ 350,000<br>BUSINESS PERSONAL PROPERTY |
| 002              |                  | 4833 W CHARLESTON BLVD<br>LAS VEGAS NV 89146-1410 |  |
|                  | 001              | REPLACEMENT COST                                  | \$ 691,000<br>BUILDING                   |
|                  | 001              | REPLACEMENT COST                                  | \$ 350,000<br>BUSINESS PERSONAL PROPERTY |
| 003              |                  | 31900 LAS VEGAS BLVD S<br>JEAN NV 89019-7002      |  |
|                  | 001              | REPLACEMENT COST                                  | \$ 250,000<br>BUSINESS PERSONAL PROPERTY |

OREGON MUTUAL INSURANCE - BUSINESSOWNERS POLICY PREMIUM SUMMARY

|   |                      |                 |                        |
|---|----------------------|-----------------|------------------------|
| NAMED INSURED                                 | OPH OF LAS VEGAS INC |                 |                        |
| AGENT CODE                                    | 0781                 | AGENT NAME      | SANDIN INSURANCE GROUP |
| POLICY #                                      | BSP716685            |                 |                        |
| EFFECTIVE DATE                                | 06/19/2012           | EXPIRATION DATE | 12/26/2012             |
|   |                      |                 | PRO RATE FACTOR 0.5190 |
| ONLY COVERAGES WITH PREMIUM CHANGES ARE SHOWN |                      |                 |                        |

ONLY COVERAGES WITH PREMIUM CHANGES ARE SHOWN

| <u>COVERAGE</u>                                | <u>LCC</u> | <u>BLDG</u> | <u>LIMIT</u> | <u>ANNUAL<br/>PREMIUM</u> |
|--|------------|-------------|--------------|---------------------------|
| AGGREGATE LIMIT                                |            |             |              | 409.00                    |
| WAIVER OF TRANSFER OF RIGHTS OF RECOVERY       |            |             |              | 51.00                     |
| BUILDING                                       | 1          | 1           | 691,000      | 4,450.00                  |
| BUSINESS PERSONAL PROPERTY EXCLUDING LIABILITY | 1          | 1           | 350,000      | 2,588.00                  |
| LIABILITY RATED ON SALES/PAYROLL               | 1          | 1           |              | 814.00                    |
| BUILDING                                       | 2          | 1           | 691,000      | 5,563.00                  |
| BUSINESS PERSONAL PROPERTY EXCLUDING LIABILITY | 2          | 1           | 350,000      | 3,234.00                  |
| LIABILITY RATED ON SALES/PAYROLL               | 2          | 1           |              | 906.00                    |
| EQUIPMENT BREAKDOWN COVERAGE                   | 2          | 1           | 1,041,000    | 400.00                    |
| BUSINESS PERSONAL PROPERTY EXCLUDING LIABILITY | 3          | 1           | 250,000      | 2,402.00                  |
| LIABILITY RATED ON SALES/PAYROLL               | 3          | 1           |              | 905.00                    |
| CLUSTER ENDORSEMENT - SPECIAL                  | 3          | 1           |              | 19.00                     |
| EQUIPMENT BREAKDOWN COVERAGE                   | 3          | 1           | 250,000      | 132.00                    |
| TERRORISM COVERAGE                             | 3          | 1           | 250,000      | 10.00                     |
| ADDITIONAL INSURED - MANAGER OR LESSOR         | 3          | 1           | 1,000,000    | 19.00                     |
| GLASS DEDUCTIBLE WAIVER                        | 3          | 1           |              | 15.00                     |

This summary is intended solely for the company and its agents. The coverage titles and limits displayed on this summary do not fully describe all terms and conditions due to space limitations. A thorough review of the actual policy is required. This document is not part of the policy. If a coverage is listed and no limit is shown on this summary, a limit is either not applicable or a review of the policy (or endorsement) is necessary.



OREGON MUTUAL INSURANCE - BUSINESSOWNERS POLICY PREMIUM DETAIL

POLICY # BSP716685

EFFECTIVE DATE 06/19/2012

POLICY WIDE COVERAGE DETAIL

AGGREGATE LIMIT

7698(AR) X 0.0200(CH) =

154.00

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

69.0000(A) X 1.0000(D) X 1.0000(E) X 0.9000(F) X 0.8190(G) =

51.00

OREGON MUTUAL INSURANCE - BUSINESSOWNERS POLICY PREMIUM DETAIL

POLICY # BSP716685 EFFECTIVE DATE 06/19/2012

LOCATION DETAIL

|            |        |                     |                               |                      |       |  |  |                |
|------------|--------|---------------------|-------------------------------|----------------------|-------|--|--|----------------|
| LOCATION   | 001    | BUILDING            | 001                           |                      |       |  |  |                |
| CLASS CODE | 009011 | CLASS DESCRIPTION   | RESTAURANTS CASUAL W/O LOUNGE |                      |       |  |  |                |
| STATE      | NV     | TERRITORY           | 001                           | CONST TYPE           | FRAME |  |  |                |
| PROT CLASS | 2      | PROPERTY DEDUCTIBLE | 2500                          | LIABILITY DEDUCTIBLE | N/A   |  |  | ANNUAL PREMIUM |
| YEAR BUILT | 2005   |                     |                               |                      |       |  |  |                |

BUILDING LIMIT 691,000  
 $3.1660(W) \times (691000(X) / 1000) \times 3.9790(Y) \times 1.0000(Z) \times 0.8500(AE) \times 1.0000(AF) \times 1.0000(AG) \times 1.0000(AH) \times 1.0000(AI) \times 0.8000(U) \times 1.0000(D) \times 1.0000(E) \times 0.9000(F) \times 0.8190(G) =$  4,363.00

BUSINESS PERSONAL PROPERTY EXCLUDING LIABILITY LIMIT 350,000  
 $((8.9480(W) \times 350000.(X)) / 1000) \times 0.5050(CK) \times 3.2000(Y) \times 1.0000(Z) \times 0.8500(AE) \times 1.0000(AG) \times 1.0000(AH) \times 1.0000(AI) \times 0.8000(U) \times 1.0000(D) \times 1.0000(E) \times 0.9000(F) \times 0.8190(G) \times =$  2,537.00

LIABILITY RATED ON SALES/PAYROLL LIMIT 1,000  
 $((1.3670(W) \times 900000.(AY)) / 1000) \times 1.0000(Y) \times 1.0000(AF) \times 1.1010(AZ) \times 1.0000(D) \times 0.8000(U) \times 1.0000(E) \times 0.9000(F) \times 0.8190(G) =$  814.00

OREGON MUTUAL INSURANCE - BUSINESSOWNERS POLICY PREMIUM DETAIL

POLICY # BSP716685 EFFECTIVE DATE 06/19/2012

LOCATION DETAIL

|            |        |                     |                               |                      |       |  |  |                |
|------------|--------|---------------------|-------------------------------|----------------------|-------|--|--|----------------|
| LOCATION   | 002    | BUILDING            | 001                           |                      |       |  |  |                |
| CLASS CODE | 008011 | CLASS DESCRIPTION   | RESTAURANTS CASUAL W/O LOUNGE |                      |       |  |  |                |
| STATE      | NV     | TERRITORY           | 001                           | CONST TYPE           | FRAME |  |  |                |
| PROT CLASS | 1      | PROPERTY DEDUCTIBLE | 2500                          | LIABILITY DEDUCTIBLE | N/A   |  |  | ANNUAL PREMIUM |
| YEAR BUILT | 1988   |                     |                               |                      |       |  |  |                |

AGGREGATE LIMIT

9513(AR) X 0.0200(CH) = 190.00

BUILDING

LIMIT 691,000

3.1660(W) X (691000(X) / 1000) X 3.9790(Y) X 1.0000(Z) X 0.8500(AE) X 1.0000(AF\*) X  
1.0000(AG) X 1.0000(AH) X 1.0000(AI) X 1.0000(U) X 1.0000(D) X 1.0000(E) X 0.9000(F) X  
0.8190(G) = 5,454.00

BUSINESS PERSONAL PROPERTY EXCLUDING LIABILITY

LIMIT 350,000

((8.9480(W) X 350000.(X)) / 1000) X 0.5050(CK) X 3.2000(Y) X 1.0000(Z) X 0.8500(AE) X  
1.0000(AG) X 1.0000(AH) X 1.0000(AI) X 1.0000(U) X 1.0000(D) X 1.0000(E) X 0.9000(F) X  
0.8190(G) X = 3,171.00

LIABILITY RATED ON SALES/PAYROLL

LIMIT 1,000

((1.3670(W) X 800000.(AY)) / 1000) X 1.0000(Y) X 1.0000(AF) X 1.1010(AZ) X 1.0000(D) X  
1.0000(U) X 1.0000(E) X 0.9000(F) X 0.8190(G) = 908.00

EQUIPMENT BREAKDOWN COVERAGE

7349.00(ES) X 5.44% = 400.00

OREGON MUTUAL INSURANCE - BUSINESSOWNERS POLICY PREMIUM DETAIL

|  |           |                     |                               |                          |
|--|-----------|---------------------|-------------------------------|--------------------------|
| POLICY #   | BSP716685 | EFFECTIVE DATE      | 06/19/2012                    |                          |
| <u>LOCATION DETAIL</u>   |           |                     |                               |                          |
| LOCATION   | 003       | BUILDING            | 001                           |                          |
| CLASS CODE   | 009011    | CLASS DESCRIPTION   | RESTAURANTS CASUAL W/D LOUNGE |                          |
| STATE  | NV        | TERRITORY           | 001                           | CONST TYPE FRAME         |
| PRDT CLASS   | 10        | PROPERTY DEDUCTIBLE | 2500                          | LIABILITY DEDUCTIBLE N/A |
| YEAR BUILT   | 2000      |                     |                               |                          |
| <u>AGGREGATE LIMIT</u>   |           |                     |                               | ANNUAL PREMIUM           |
| 3242(AR) X 0.0200(CH) =  |           |                     |                               | 65.00                    |
| <u>BUSINESS PERSONAL PROPERTY EXCLUDING LIABILITY</u>  |           |                     |                               |                          |
|  |           | LIMIT               | 250,000                       |                          |
| ((8.9480(W) X 250000.(X)) / 1000) X 0.5050(CK) X 3.2000(Y) X 1.3000(Z) X 0.8500(AE) X 1.0000(AG) X 1.0000(AH) X 1.0000(AI) X 0.8000(U) X 1.0000(D) X 1.0000(E) X 0.9000(F) X 0.8190(G) X = |           |                     |                               | 2,355.00                 |
| <u>LIABILITY RATED ON SALES/PAYROLL</u>  |           |                     |                               |                          |
|  |           | LIMIT               | 1,000                         |                          |
| ((1.3670(W) X 1000000.(AY)) / 1000) X 1.0000(Y) X 1.0000(AF) X 1.1010(AZ) X 1.0000(D) X 0.8000(U) X 1.0000(E) X 0.9000(F) X 0.8190(G) =  |           |                     |                               | 905.00                   |
| <u>CLUSTER ENDORSEMENT - SPECIAL</u>   |           |                     |                               |                          |
| 32.0000(BC) X 0.8000(U) X 1.0000(D) X 1.0000(E) X 0.9000(F) X 0.8190(G) =  |           |                     |                               | 19.00                    |
| <u>EQUIPMENT BREAKDOWN COVERAGE</u>  |           |                     |                               |                          |
| 2421.00(BS) X 5.44% =  |           |                     |                               | 132.00                   |
| <u>TERRORISM COVERAGE</u>  |           |                     |                               |                          |
| 0.0380(W) X 250000(X) / 1000 X 1.3000(Z) X 0.8500(AE) X 1.0000(AH) =   |           |                     |                               | 10.00                    |
| <u>ADDITIONAL INSURED - MANAGER OR LESSOR</u>  |           |                     |                               |                          |
|  |           | LIMIT               | 1,000,000                     |                          |
| 33.0000(A) X 1.0000(D) X 1.0000(E) X 0.9000(F) X 0.8190(G) X 0.8000(U) =   |           |                     |                               | 19.00                    |
| <u>GLASS DEDUCTIBLE WAIVER</u>   |           |                     |                               |                          |
|  |           |                     |                               | 15.00                    |

## Key

- |   |   |
|---|---|
| (A) Coverage Base Premium   | (AW) Number of Pumps  |
| (B) Number of Employees in excess of 5  | (AX) Fuel Pump Minimum Charge   |
| (C) Excess Employee Rate  | (AY) Exposure   |
| (D) Loss Free Credit  | (AZ) Increase Liability Limits Relativity                             |
| (E) Persistency Credit  | (BA) Building Base Rate for Coverage & Territory                      |
| (F) IRPM Mod  | (BB) BPP Base Rate for Coverage & Territory                           |
| (G) Fixed Expense Credit  | (BC) Rate for Cluster Endorsement Charge                              |
| (H) Number of Locations in excess of 1  | (BD) Earthquake Rate for Building                                     |
| (I) Total of All Building and BPP Premiums  | (BE) Number of Additional Locations                                   |
| (J) Liability Limit Factor<br>(excluding BPP Theft Charge)  | (BF) Earthquake Rate for Business Personal<br>Property                |
| (K) Number of Locations where charge applies  | (BG) Sprinkler Leakage Rate from Commercial<br>Property               |
| (L) Average Rate, depends on number of bodies   | (BH) Rate for Garage keepers from Commercial<br>Auto Manual           |
| (M) Number of Bodies  | (BI) Rate from Personal Lines Inland Marine                           |
| (N) Adjustment for Coverage Minimum Premium   | (BJ) Art Dealer and Gallery Loading Factor                            |
| (O) Amount of Delivery Payroll  | (BK) Art Dealer and Gallery Loading – Breakage<br>Factor              |
| (P) Amount of Sales   | (BL) Food Contamination Increased Limit Rate                          |
| (Q) Base Premium for 1st Veterinarian   | (BM) Power and Water Supply Rate                                      |
| (R) Base Premium for Excess Veterinarians   | (BN) Communications Supply Rate                                       |
| (S) Number of Veterinarians in Excess of 1  | (BO) Overhead Power/Communications Rate                               |
| (T) Total Veterinarian Prof. Liability Premium  | (BP) Base Premium for First Location                                  |
| (U) Age of Building Factor  | (BQ) Base Premium for Locations in excess of 1st                      |
| (V) Increment for Druggists Professional  | (BR) Liability Premium  |
| (W) Base Rate for Coverage & Territory  | (BS) Property Portion of Premium                                      |
| (X) Amount of Insurance   | (BT) Number of Pools / Spas   |
| (Y) Class Relativity  | (BU) Amount to meet Minimum Premium                                   |
| (Z) Protection Class Relativity   | (BV) Food Advertising Increased Limit Rate                            |
| (AA) Liquor Liability Rate  | (BW) Additional Food Contamination Limit                              |
| (AB) Liquor Receipts  | (BX) Additional Advertising Expense Limit                             |
| (AC) Building Premium   | (BY) Earthquake Rate from Commercial Property<br>Contents             |
| (AD) Number of Locations  | (CA) Earthquake Amount of Insurance for Building                      |
| (AE) Property Deductible Relativity   | (CB) Earthquake Amount of Insurance for Business<br>Personal Property |
| (AF) PD Liability Deductible Relativity<br>* indicates relativity does not apply for class  | (CC) Earthquake Premium   |
| (AG) Construction Relativity  | (CD) Personal Earthquake Premium                                      |
| (AH) Sprinkler Credit   | (CE) Coverage Charge  |
| (AI) Occupancy Credit   | (CF) Building and Contents Total Premium                              |
| (AP) Special Perils Rate for Class<br>* indicates for rate group 2<br>** indicates for rate group 4<br>*** indicates for rate group 3 | (CG) Property and Liability Total Premium                             |
| (AQ) Special Perils Amt. of Ins. Relativity   | (CH) Coverage Rate  |
| (AR) Sum of Building and BPP premium  | (CI) Coverage Factor  |
| (AS) Liability Increased Limits Base Rate   | (CJ) Business Liability Exclusion                                     |
| (AT) Liability Increased Limits relativity  | (CK) Amount of Insurance Relativity                                   |
| (AU) Number of Acres  | (CL) Extended Business Income Period Factor                           |
| (AV) Flat Charge for Coverage   |   |



**OREGON MUTUAL INSURANCE COMPANY**

1255 N Cherry St, PMB 554, Tulare, CA 93274  
800-868-2141 x 2812 • FAX 800-863-4886  
jerry.masonhelmer@ommutual.com

**Fresno Claim Office**

August 20, 2012

Sent USPS Certified Mail, Return Receipt

OPH of Las Vegas, Inc  
4170 S. Fort Apache Road  
Las Vegas, NV 89147-8801  
Attn: Stephan Freudenberger

|                |                        |
|----------------|------------------------|
| Insured:       | OPH of Las Vegas, Inc. |
| Claim #:       | 151999                 |
| Date of Loss:  | 08/17/2012             |
| Policy Number: | BSP716685              |
| Policy Number: | OMO914045              |

Dear Mr. Freudenberger:

This correspondence is to advise you that on the date of the fire at 4833 W. Charleston Blvd, Las Vegas, NV, policy numbers BSP716685 and OMO914045 were not in effect. Coverage had expired on August 16 at 12:01 AM due to non-payment of premium owed by OPH of Las Vegas, Inc.

As the above captioned policies were no longer in force on August 17 when fire broke out at the West Charleston restaurant, Oregon Mutual Insurance has no obligation to indemnify OPH of Las Vegas for any financial loss arising from this occurrence.

Should you dispute the above denial of coverage, you have the right to seek review of this claim by the Nevada Department of Insurance at the following address:

Nevada Department of Insurance  
Las Vegas Office  
2501 East Sahara Avenue, Suite 302  
Las Vegas, Nevada 89104  
(702) 486-4009 or (702) 486-4007 -- Facsimile

Please feel free to call me if you wish to discuss this matter.

Sincerely,

Jerry Masonhelmer

APP00099

Oregon Mutual Insurance Co  
Fresno Service Office  
Cc: Sandlin Insurance Group  
46 Da Vinci Street  
Lake Oswego, OR 97035

**OREGON MUTUAL INSURANCE GROUP**

Oregon Mutual &amp; Western Protectors Insurance Companies

Billing Inquiries: 800-409-3814  
For TDD Assistance, see back of this notice.Your Agent: SANDIN INSURANCE GROUP  
Phone Number: (503) 381-5570

HOME OFFICE COPY 0781

OPH OF LAS VEGAS INC  
OPH OF LAS VEGAS #5  
4170 S FORT APACHE RD  
LAS VEGAS, NV 89147**YOUR ACCOUNT NUMBER**

121953462

**Due Date** 08/15/12**Minimum Due** 2,822.00**NOTICE OF CANCELLATION**

We did not receive the required premium payment on your account by the date it was due.

We appreciate your business and hope we can continue to serve your insurance needs. If we receive at least the minimum due on this account by 08/15/12, we will continue your coverage without interruption. If we do not receive the minimum due by 08/15/12, each policy listed below will be cancelled effective the time and date shown opposite that policy number.

| Policy type             | Policy number              | Effective time and date of cancellation                                 |
|-------------------------|----------------------------|---|
| Businessowner<br>Policy | BSP716685<br>Oregon Mutual | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |
| Package<br>Policy       | OM0914045<br>Oregon Mutual | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |

If you have any questions, please contact your agent SANDIN INSURANCE GROUP immediately at (503) 381-5570.

The minimum due must be received in our office by the due date to avoid cancellation. Any changes pending on your account will be shown on your next bill. Do not make any adjustments to the minimum due.

M0022 (3-04)

Detach and return this stub with your payment.

**OREGON MUTUAL GROUP****Notice of Cancellation**

Agent: SANDIN INSURANCE GROUP

Indicate address changes or other policies to be added to account below.  
Contact your agent for all other policy changes. Thank you.**YOUR ACCOUNT NUMBER**

121953462

Please write account number on check and make payable to:

OREGON MUTUAL INSURANCE

Amount Enclosed: \$

OPH OF LAS VEGAS INC  
OPH OF LAS VEGAS #5  
4170 S FORT APACHE RD  
LAS VEGAS, NV 89147

Return to:

OREGON MUTUAL GROUP  
PO BOX 3208  
PORTLAND, OR 97208-3208

|                        |          |
|------------------------|----------|
| <b>Due Date</b>        | 08/15/12 |
| <b>Minimum Due</b>     | 2,822.00 |
| <b>Current Balance</b> | 9,081.75 |

08181208151212175346230009081750002822004

APP00101



08/02/2012 03:52 PM

CGSTBCMO-01 CGSTBCMO

RPT DATE 07/31/12

OREGON MUTUAL GROUP  
200 BOX 808 MONTICELLO, OR 97126  
C O N T R I B U T O R S L I S T I N G  
LISTING OF PROVISIONAL CANCEL NOTICES  
AS OF 07/31/12

PAGE 2  
TIME 22:11:00

| ACCOUNT POLICY NUMBER | PAYEE NAME AND ADDRESS  | MINIMUM PAYMENT | PAYMENT NOTICE IN FULL TYPE | EFFECTIVE DATE OF CANCELLATION | LAST DAY OF GRACE PERIOD | AGENT NUMBER | PAY PLAN |
|-----------------------|---|-----------------|-----------------------------|--------------------------------|--------------------------|--------------|----------|
| 121924492             | 85776685 DRH OF LAS VEGAS INC<br>4170 S FORT APACHE RD<br>LAS VEGAS, NV 89147 | 3,822.00        | 9,081.75 NBRP               | 08/16/12                       | 08/16/12                 | 94 0781      | OC9      |
| 080814045             | DRH OF LAS VEGAS INC<br>4170 S FORT APACHE RD<br>LAS VEGAS, NV 89147          |                 |                             | 08/16/12                       | 08/16/12                 |              |          |

5/28/12  
WMS  
Sore  
DATE 5/28/12

**CBS9760MC-01 CBS750KO**

**RUN DATE 07/31/12**

OREGON MUTUAL GROUP  
P.O. BOX 808 MCMINNVILLE, OR 97128  
CONSOLIDATED BILLING  
LISTING OF PROVISIONAL CANCEL NOTICES  
AS OF 07/31/12

**PAGE 17**

2.1.3

TIME 22:11:00

| <b>ACCOUNT POLICY<br/>NUMBER</b> | <b>PAYEE NAME AND ADDRESS</b> |
|----------------------------------|-------------------------------|
|                                  |                               |

| MINIMUM<br>PAYMENT | PAYMENT<br>IN FULL | NOTICE<br>TYPE |
|--------------------|--------------------|----------------|
|--------------------|--------------------|----------------|

| EFFECTIVE<br>DATE OF | LAST DAY<br>OF GRACE | AGENT<br>NUMBER | PAY<br>PLAN |
|----------------------|----------------------|-----------------|-------------|
| CANCELLATION         | PERIOD               |                 |             |

| AGENT  | PAY  |
|--------|------|
| NUMBER | PLAN |

**DAILY CONTROL TOTALS**  
**(NUMBER OF NOTICES PRODUCED BY TYPE)**

| DOLLAR<br>TOTAL | ACTUAL<br>COUNT |
|-----------------|-----------------|
|-----------------|-----------------|

### NON-SUFFICIENT FUNDS

**\$575.08**

10

**EFT NON-SUFFICIENT FUNDS**

**746.69**

---

07

### NON-PAYMENT OF PREMIUM

**168.75**

72

**FINAL CANCELLATION NOTICE**

18

**COMBINED DAILY TOTAL \$20,480.52**

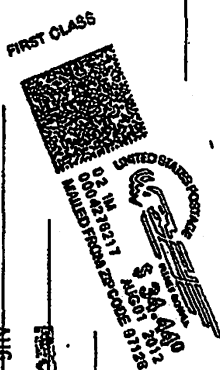
**82**

**TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE**

POSTMASTER: PER (NAME OF RECEIVING EMPLOYEE)

82

OK



**சென்னை**

~~AUG 07 2012~~

**ORIGINALLY**  
**DESIGNED BY**



## CIVIL COVER SHEET A-12-672158-C

Clark County, Nevada

XXVII

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone):

1. O.P.H. of Las Vegas Inc. / 4833 West Charleston Boulevard / Las Vegas, Nevada 89146 / (702) 870-1500

Attorney (name/address/phone):

Margaret A. McLetchie / 616 S. Eighth St. / Las Vegas, NV 89101 / (702) 471-6565

Defendant(s) (name/address/phone):

1. Oregon Mutual Insurance Company / P.O. BOX 808 / McMinnville, Oregon 97128 / (800) 888-2912 Ext. 2818
2. Dave Sandin / 46 Da Vinci Street / Lake Oswego, Oregon 97035 / (503) 381-8583
3. Sandin & Co. / 46 Da Vinci Street / Lake Oswego, Oregon 97035 / (503) 381-5570

Attorney (name/address/phone):

Clarke B. Holland / 5858 Horton Street / Suite 370 / Emeryville, California 94608 / (510) 841-7777

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

| Real Property   | Torts  |  |
|---|--|--|
| <input type="checkbox"/> <b>Landlord/Tenant</b><br><input type="checkbox"/> Unlawful Detainer<br><input type="checkbox"/> <b>Title to Property</b><br><input type="checkbox"/> Foreclosure<br><input type="checkbox"/> Liens<br><input type="checkbox"/> Quiet Title<br><input type="checkbox"/> Specific Performance<br><input type="checkbox"/> <b>Condemnation/Eminent Domain</b><br><input type="checkbox"/> <b>Other Real Property</b><br><input type="checkbox"/> Partition<br><input type="checkbox"/> Planning/Zoning | <b>Negligence</b><br><input type="checkbox"/> Negligence – Auto<br><input type="checkbox"/> Negligence – Medical/Dental<br><input type="checkbox"/> Negligence – Premises Liability (Slip/Fall)<br><input type="checkbox"/> Negligence – Other | <input type="checkbox"/> <b>Product Liability</b><br><input type="checkbox"/> Product Liability/Motor Vehicle<br><input type="checkbox"/> Other Torts/Product Liability<br><input type="checkbox"/> <b>Intentional Misconduct</b><br><input type="checkbox"/> Torts/Defamation (Libel/Slander)<br><input type="checkbox"/> Interfere with Contract Rights<br><input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination)<br><input type="checkbox"/> <b>Other Torts</b><br><input type="checkbox"/> Anti-trust<br><input type="checkbox"/> Fraud/Misrepresentation<br><input type="checkbox"/> Insurance<br><input type="checkbox"/> Legal Tort<br><input type="checkbox"/> Unfair Competition |

**Probate****Other Civil Filing Types**

|   |   |   |
|---|---|---|
| <b>Estimated Estate Value:</b> _____<br><input type="checkbox"/> <b>Summary Administration</b><br><input type="checkbox"/> <b>General Administration</b><br><input type="checkbox"/> <b>Special Administration</b><br><input type="checkbox"/> <b>Set Aside Estates</b><br><input type="checkbox"/> <b>Trust/Conservatorships</b><br><input type="checkbox"/> Individual Trustee<br><input type="checkbox"/> Corporate Trustee<br><input type="checkbox"/> <b>Other Probate</b> | <input type="checkbox"/> <b>Construction Defect</b><br><input type="checkbox"/> Chapter 40<br><input type="checkbox"/> General<br><input checked="" type="checkbox"/> <b>Breach of Contract</b><br><input type="checkbox"/> Building & Construction<br><input checked="" type="checkbox"/> Insurance Carrier<br><input type="checkbox"/> Commercial Instrument<br><input type="checkbox"/> Other Contracts/Acct/Judgment<br><input type="checkbox"/> Collection of Actions<br><input type="checkbox"/> Employment Contract<br><input type="checkbox"/> Guarantee<br><input type="checkbox"/> Sale Contract<br><input type="checkbox"/> Uniform Commercial Code<br><input type="checkbox"/> <b>Civil Petition for Judicial Review</b><br><input type="checkbox"/> Foreclosure Mediation<br><input type="checkbox"/> Other Administrative Law<br><input type="checkbox"/> Department of Motor Vehicles<br><input type="checkbox"/> Worker's Compensation Appeal | <input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box)<br><input type="checkbox"/> Transfer from Justice Court<br><input type="checkbox"/> Justice Court Civil Appeal<br><input type="checkbox"/> <b>Civil Writ</b><br><input type="checkbox"/> Other Special Proceeding<br><input type="checkbox"/> <b>Other Civil Filing</b><br><input type="checkbox"/> Compromise of Minor's Claim<br><input type="checkbox"/> Conversion of Property<br><input type="checkbox"/> Damage to Property<br><input type="checkbox"/> Employment Security<br><input type="checkbox"/> Enforcement of Judgment<br><input type="checkbox"/> Foreign Judgment – Civil<br><input type="checkbox"/> Other Personal Property<br><input type="checkbox"/> Recovery of Property<br><input type="checkbox"/> Stockholder Suit<br><input type="checkbox"/> Other Civil Matters |
|---|---|---|

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

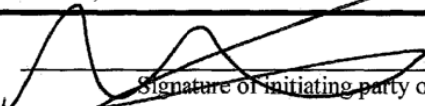
☐ NRS Chapters 78-88  
☐ Commodities (NRS 90)  
☐ Securities (NRS 90)

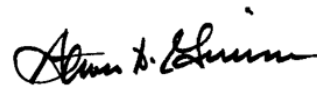
☐ Investments (NRS 104 Art. 8)  
☐ Deceptive Trade Practices (NRS 598)  
☐ Trademarks (NRS 600A)

☐ Enhanced Case Mgmt/Business  
☐ Other Business Court Matters

11/19/2012

Date

  
Signature of initiating party or representative



CLERK OF THE COURT

COMJD  
MARGARET A. MCLETCHE  
Nevada State Bar No. 10931  
ROBERT L. LANGFORD  
Nevada State Bar No. 003988  
**LANGFORD MCLETCHE LLC**  
616 S. Eighth Street  
Las Vegas, NV 89101  
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Attorneys for Plaintiff  
O.P.H. of Las Vegas Inc.

**DISTRICT COURT**

**CLARK COUNTY NEVADA**

O.P.H. of Las Vegas Inc.,

Plaintiff

vs.

Oregon Mutual Insurance Company, Dave  
Sandin, and Sandin & Co.,

Defendants.

Case No.: A - 1 2 - 6 7 2 1 5 8 - C

Dept. No.: XXVII

**COMPLAINT**

**JURY TRIAL DEMAND**

**Arbitration Exemption Claimed:  
Damages in Excess of \$50,000**

This is a civil action for damages. Plaintiff O.P.H. of Las Vegas Inc.  
("PLAINTIFF") hereby alleges and complains as follows:

**Jurisdiction**

1. Jurisdiction in this case is proper pursuant to Nev. Rev. Stat.  
§ 14.065.

///

///

Parties

2. Plaintiff O.P.H. of Las Vegas Inc. ("OPH INC." or "PLAINTIFF") owns the Original Pancake House Restaurant which was previously located and operated at 4833 West Charleston Boulevard.

3. Defendant OREGON MUTUAL INSURANCE COMPANY ("OREGON MUTUAL") is, and at all relevant times was, an insurance company headquartered in McMinnville, Oregon that does business in Nevada.

4. Defendant SANDIN & CO., also known as SANDIN INSURANCE GROUP ("SANDIN INSURANCE"), is, and at all relevant times was, an insurance group with headquarters at 46 Da Vinci Street, Lake Oswego, Oregon that does business in Nevada.

5. Defendant DAVE SANDIN is an insurance agent who is affiliated with Defendant SANDIN INSURANCE and, on information and belief, Defendant OREGON MUTUAL.

6. Defendant OREGON MUTUAL appointed Defendant SANDIN INSURANCE as one of its agents for Casualty and Property Insurance in Nevada, effective May 17, 2010.

7. Defendant OREGON MUTUAL's agency appointment on file with the State of Nevada does not include Defendant DAVE SANDIN.

8. On information and belief, Defendant OREGON MUTUAL was aware that Defendant DAVE SANDIN acted as an agent for and sold OREGON MUTUAL insurance in the State of Nevada.

9. DOE DEFENDANTS I-X are natural persons who work for or are

1 affiliated with Defendants OREGON MUTUAL, SANDIN INSURANCE, and/or DAVE  
2 SANDIN. ROE BUSINESS ENTITIES I-X directed, assisted in, or ratified the wrongful  
3 actions of the named Defendants and/or are, without limitation, predecessor entities,  
4 successor entities, parent or subsidiary corporations, or other kinds of business  
5 organizations, which are related to, connected to, control or operate DEFENDANTS. DOE  
6 DEFENDANTS and ROE BUSINESS ENTITIES are co-owners, agents, servants,  
7 employees, employers, joint venturers, managers, and/or partners of the named Defendants  
8 and the DOE DEFENDANTS and ROE BUSINESS ENTITIES, and/or each other.

10  
11 10. The real names of the DOE DEFENDANTS and ROE BUSINESS  
12 ENTITIES are unknown to PLAINTIFF at this time. PLAINTIFF will seek leave to amend  
13 this Complaint and substitute the true names of the DOE DEFENDANTS and ROE  
14 BUSINESS ENTITIES as soon as their true identities are revealed.

15 **Factual Allegations Generally Applicable to All Claims**

16 **Relationship between the Sandin Defendants and Plaintiff**

17  
18 11. Defendant DAVE SANDIN of Defendant SANDIN INSURANCE  
19 (collectively, the "SANDIN DEFENDANTS") has sold a number of business insurance  
20 policies over the past ten years to PLAINTIFF and/or agents, employees, or directors of  
21 PLAINTIFF and/or entities acting on behalf of PLAINTIFF and/or related entities.

22  
23 12. PLAINTIFF had a long-standing relationship of trust and reliance  
24 with the SANDIN DEFENDANTS.

25 13. Throughout the course of dealing with the SANDIN  
26 DEFENDANTS, PLAINTIFF relied on Defendant DAVE SANDIN to warn when  
27 premium payments were late.  
28

1 14. Throughout the course of dealing with the SANDIN  
2 DEFENDANTS, PLAINTIFF relied on Defendant DAVE SANDIN to recommend suitable  
3 insurance for its business needs.

4  
5 15. PLAINTIFF in good faith believed that Defendant DAVE SANDIN  
6 was duly qualified and licensed to sell insurance in Nevada, and that Defendant SANDIN  
7 INSURANCE had provided it with a properly licensed agent.

8 **The Contract**

9  
10 16. In or around December of 2011, Defendant DAVE SANDIN  
11 recommended Oregon Mutual insurance to PLAINTIFF and represented that Defendant  
12 OREGON MUTUAL was an insurance company that met PLAINTIFF's needs.  
13 PLAINTIFF relied on Defendant DAVE SANDIN's recommendations and representations.

14  
15 17. With Defendant DAVE SANDIN acting as the agent, in December  
16 of 2011 Defendant OREGON MUTUAL issued a Businessowner Protector Policy to  
17 PLAINTIFF, and PLAINTIFF and Defendant OREGON MUTUAL thereby entered an  
18 insurance contract which protected OPH INC. and the Original Pancake House restaurant  
19 located at 4170 South Fort Apache Road, Las Vegas, Nevada (the "CONTRACT").

20  
21 18. Consistent with Nevada law, the CONTRACT provides that  
22 Defendant OREGON MUTUAL, the insurer, must provide a copy of any cancellation  
23 notice to the agent as well as to the insured, PLAINTIFF.

24  
25 19. The CONTRACT's policy period was December 26, 2011 through  
26 December 26, 2012.

27 ///

28 ///



1 **Licensing**

2 20. Defendant DAVE SANDIN was not licensed to sell insurance in  
3 Nevada in December of 2011.

4 21. On information and belief, Defendant DAVE SANDIN sold  
5 insurance to PLAINTIFF without the required license with the knowledge and consent of  
6 Defendant SANDIN INSURANCE.

7 22. On information and belief, Defendant OREGON MUTUAL was  
8 aware that Defendant DAVE SANDIN acted as the agent for the CONTRACT and sold  
9 OREGON MUTUAL insurance to PLAINTIFF.

10 23. On information and belief, Defendant OREGON MUTUAL was  
11 aware that Defendant DAVE SANDIN was not licensed to sell insurance in Nevada in  
12 December of 2011.

13 **Defendants' failures to provide notice of cancellation**

14 24. PLAINTIFF mistakenly failed to pay one month's premium due on  
15 July 26, 2012.

16 25. Defendant OREGON MUTUAL claims that it sent a cancellation  
17 notice to PLAINTIFF on August 1, 2012 with an effective cancellation date of August 16,  
18 2012.

19 26. PLAINTIFF did not in fact receive any August 1, 2012 cancellation  
20 notice or any other notice of cancellation until after August 16, 2012, the date OREGON  
21 MUTUAL cancelled the insurance.

22 27. Defendant OREGON MUTUAL did not send a cancellation notice to  
23 Defendant DAVE SANDIN.

1           28.           Defendant DAVE SANDIN did not receive a cancellation notice.

2           29.           The SANDIN DEFENDANTS did not advise PLAINTIFF that its  
3 payment was late, or that Defendant OREGON MUTUAL intended to cancel the  
4 CONTRACT.  
5

6           30.           Sometime overnight between August 10, 2012 and August 11, 2012,  
7 a break-in occurred at the Original Pancake House located and operated at 4833 West  
8 Charleston Boulevard. The break-in was reported by Linda Snyder, PLAINTIFF's office  
9 manager, to Defendant DAVE SANDIN of Defendant SANDIN INSURANCE on August  
10 13, 2012.  
11

12           31.           Defendant OREGON MUTUAL takes the position that the  
13 CONTRACT was properly cancelled effective at 12:01 a.m. on August 16, 2012.  
14

15           32.           Had PLAINTIFF been warned before August 16, 2012 that its  
16 payment was late and its insurance was scheduled to be cancelled, PLAINTIFF would have  
17 remedied the deficiency.  
18

19           33.           Ms. Snyder called and emailed Defendant DAVE SANDIN again on  
20 August 16, 2012, the day the cancellation went into effect at 12:01 a.m., to request a claim  
21 number for the break-in. Defendant DAVE SANDIN called Ms. Snyder with a claim  
22 number later that same day and spoke with Ms. Snyder.  
23

24           34.           At no time during his contact with Ms. Snyder regarding the break-in  
25 did Defendant DAVE SANDIN mention any late payment or cancellation of PLAINTIFF's  
26 policy.  
27

28           35.           Had PLAINTIFF been warned that Defendant OREGON MUTUAL  
intended to or had in fact cancelled its policy, PLAINTIFF would have immediately made

1 payment, sought to have the policy reinstated, and/or obtained new insurance.

2 **The Loss**

3 36. Early on the morning of August 17, 2012 there was a fire at the  
4 Original Pancake House Restaurant located and operated at 4833 West Charleston  
5 Boulevard. The Original Pancake House Restaurant suffered extensive damage as a result  
6 and PLAINTIFF lost income and suffered other harm that the CONTRACT protected  
7 against (the "LOSS").  
8

9 37. On behalf of PLAINTIFF, Ms. Snyder reported the fire to Defendant  
10 DAVE SANDIN on the morning of August 17, 2012.  
11

12 38. Jerry Masonheimer, an insurance adjustor with Defendant OREGON  
13 MUTUAL called Stephan Freudenberger, President of OPH INC., mid-day on August 17,  
14 2012 to discuss the break-in and fire. Mr. Masonheimer did not mention to Mr.  
15 Freudenberger that the CONTRACT had been cancelled. Mr. Masonheimer then spoke  
16 with Ms. Snyder. Mr. Masonheimer told Ms. Snyder the fire damage claim was likely to be  
17 consolidated with the claim for the break-in since he believed they were related.  
18

19 39. Throughout their communications with Ms. Snyder and Mr.  
20 Freudenberger regarding the fire, agents and/or representatives of Defendant SANDIN  
21 INSURANCE, including Defendant DAVE SANDIN, never mentioned the missing  
22 payment or the cancellation of the CONTRACT.  
23

24 40. Throughout their communications with Ms. Snyder and Mr.  
25 Freudenberger regarding the fire, agents and/or representatives of Defendant OREGON  
26 MUTUAL, including Mr. Masonheimer, never mentioned the missing payment or the  
27 cancellation of the CONTRACT.  
28

1 41. Defendant OREGON MUTUAL has denied coverage for the LOSS.

2 42. PLAINTIFF has suffered extensive damages including (but not  
3 limited to) lost income, which have been exacerbated by Defendant OREGON MUTUAL's  
4 bad faith refusal to honor the CONTRACT.  
5

6 **FIRST CAUSE OF ACTION**

7 **Breach of Contract**  
8 **(Against Defendant Oregon Mutual)**

9 43. PLAINTIFF repleads, realleges and incorporates by reference each  
10 and every allegation set forth above in paragraphs 1 through 42 as if fully set forth herein.

11 44. Defendant OREGON MUTUAL breached the CONTRACT by  
12 cancelling the insurance policy without giving notice to either PLAINTIFF or the SANDIN  
13 DEFENDANTS, as required by law, and by failing to honor coverage of the LOSS incurred  
14 by PLAINTIFF.  
15

16 45. As a direct and proximate result of the breach by Defendant  
17 OREGON MUTUAL, PLAINTIFF was deprived of the benefit of the CONTRACT and  
18 has been substantially and significantly damaged.  
19

20 **SECOND CAUSE OF ACTION**

21 **Breach of the Covenant of Good Faith & Fair Dealing / Bad Faith**  
22 **(Against Defendant Oregon Mutual)**

23 46. PLAINTIFF repleads, realleges and incorporates by reference each  
24 and every allegation set forth above in paragraphs 1 through 45 as if fully set forth herein.

25 47. Every contract in Nevada contains an implied covenant of good faith  
26 and fair dealing and insurance companies are required to operate in good faith with respect  
27 to claims by their insureds.  
28

1           48.           Defendant OREGON MUTUAL denied PLAINTIFF's claim for the  
2 LOSS, had no reasonable basis for doing so, and was aware that there was no reasonable  
3 basis for doing so.

4  
5           49.           Defendant OREGON MUTUAL also acted in bad faith by failing to  
6 provide proper cancellation notices as required by the CONTRACT.

7           50.           As a direct and proximate result of these bad faith breaches of the  
8 implied covenant of good faith and fair dealing, PLAINTIFF has been substantially and  
9 significantly damaged.  
10

11                           **THIRD CAUSE OF ACTION**

12                           **Fraud in the Inducement**  
13                           **(Against All Defendants)**

14           51.           PLAINTIFF repleads, realleges, and incorporates by reference each  
15 and every allegation set forth above in paragraphs 1 through 50 as if fully set forth herein.

16           52.           Prior to PLAINTIFF's decision to enter into the CONTRACT,  
17 Defendant DAVE SANDIN, misrepresented material facts, including but not limited to  
18 whether he was licensed in Nevada and that Oregon Mutual Insurance would meet  
19 Plaintiff's needs.  
20

21           53.           On information and belief, Defendant DAVE SANDIN knew or  
22 believed these representations to be false, or had insufficient bases for making the  
23 representations.  
24

25           54.           Defendant SANDIN INSURANCE knew of Defendant DAVE  
26 SANDIN's misrepresentations and allowed him to illegally sell insurance as an employee  
27 of Defendant SANDIN INSURANCE.  
28

1           55.       Prior to PLAINTIFF's decision to enter into the CONTRACT,  
2 Defendant OREGON MUTUAL misrepresented material facts, including that it would  
3 provide notice to both PLAINTIFF and to Defendant SANDIN INSURANCE before  
4 cancelling the CONTRACT.  
5

6           56.       On information and belief, Defendant OREGON MUTUAL also  
7 misrepresented the fact that Defendant DAVE SANDIN was unlicensed and unqualified to  
8 sell insurance in Nevada by allowing him to act as an Oregon Mutual agent.  
9

10          57.       On information and belief, Defendant OREGON MUTUAL knew or  
11 believed these representations to be false, or had insufficient bases for making the  
12 representations.  
13

14          58.       These misrepresentations were made with the purpose of inducing  
15 PLAINTIFF to enter into the CONTRACT, and obtaining payments from PLAINTIFF.  
16

17          59.       PLAINTIFF justifiably relied on the misrepresentations made by  
18 DEFENDANTS, and chose to buy an OREGON MUTUAL policy from the SANDIN  
19 DEFENDANTS for its business insurance needs.  
20

21          60.       As a direct and proximate result of PLAINTIFF's justifiable reliance  
22 on DEFENDANTS' misrepresentations, PLAINTIFF paid premiums to Defendant  
23 OREGON MUTUAL and depended on Defendant OREGON MUTUAL to compensate for  
24 losses, which it failed to do. As a result, PLAINTIFF was significantly and substantially  
25 damaged.  
26

27 ///

28 ///

///

**FOURTH CAUSE OF ACTION**

**Fraud  
(Against the Sandin Defendants)**

61. PLAINTIFF repleads, realleges, and incorporates by reference each and every allegation set forth above in paragraphs 1 through 60 as if fully set forth herein.

62. Prior to PLAINTIFF's decision to enter into the CONTRACT, Defendant DAVE SANDIN misrepresented whether he was licensed in Nevada and an appointed agent for Defendant OREGON MUTUAL by acting as such.

63. Prior to PLAINTIFF's decision to enter into the CONTRACT, Defendant SANDIN INSURANCE, by and through its agent Defendant DAVE SANDIN, misrepresented that Defendant OREGON MUTUAL was a reliable and appropriate insurance company for PLAINTIFF's needs, and that Defendant OREGON MUTUAL would provide notice to PLAINTIFF and to Defendant DAVE SANDIN before cancelling the CONTRACT.

64. On information and belief, Defendants DAVE SANDIN and SANDIN INSURANCE knew or believed these representations to be false, or had insufficient bases for making them.

65. These misrepresentations were made intending for PLAINTIFF to rely on them and were material.

66. PLAINTIFF justifiably relied on the material misrepresentations made by the SANDIN DEFENDANTS.

67. As a direct and proximate result of the material misrepresentations made by the SANDIN DEFENDANTS, PLAINTIFF has been significantly and