

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASPEN SPECIALTY INSURANCE
COMPANY,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; and THE HONORABLE
GLORIA STURMAN, DISTRICT JUDGE,
DEPT. 26,

Respondents,

ST. PAUL FIRE & MARINE
INSURANCE COMPANY; NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA; and ROOF DECK
ENTERTAINMENT, LLC d/b/a
MARQUEE NIGHTCLUB

Real Parties in Interest.

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District Court Case No. A-17-758902-C

**APPENDIX OF EXHIBITS TO
PETITION UNDER NRAP 21 FOR
WRIT OF MANDAMUS OR, IN THE
ALTERNATIVE,
PETITION FOR WRIT OF
PROHIBITION**

Volume II of XIX

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| DOC NO. | DOCUMENT | VOL. | BATES NO. |
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| 1 | [04/25/2018] St. Paul Fire & Marine Insurance Company's First Amended Complaint [filed under seal] | I | AA00001-AA00027 |
| 2 | [08/29/2019] St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment Against Aspen Specialty Insurance Company | I | AA00028-AA00051 |
| 3 | [08/29/2019] Exhibits and Declaration of Marc J. Derewetzky in Support of St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment Against Aspen Specialty Insurance Company | I, II | AA00052-AA00208 |
| 4 | [08/29/2019] Request for Judicial Notice in Support of St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment Against Aspen Specialty Insurance Company | II | AA00209-AA00285 |
| 5 | [09/13/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment | II, III | AA00286-AA00312 |
| 6 | [09/13/2019] Declaration of Nicholas B. Salerno in Support of Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment | III | AA00313-AA00315 |
| 7 | [09/13/2019] Declaration of Bill Bonbrest in Support of Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment | III | AA00316-AA00318 |
| 8 | [09/13/2019] Request for Judicial Notice in Support of Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment | III | AA00319-AA00322 |
| 9 | [09/13/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Appendix of Exhibits in Support of Motion for Summary Judgment | III | AA00323-AA00411 |
| 10 | [09/13/2019] National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment | III | AA00412-AA00439 |

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| 11 | [09/13/2019] Declaration of Nicholas B. Salerno in Support of National Union Fire Insurance Company of Pittsburgh, PA's Motion for Summary Judgment | III | AA00440-AA00442 |
| 12 | [09/13/2019] Declaration of Richard C. Perkins in Support of National Union Fire Insurance Company of Pittsburgh, PA's Motion for Summary Judgment | III, IV | AA00443-AA00507 |
| 13 | [09/13/2019] National Union Fire Insurance Company of Pittsburgh PA's Appendix of Exhibits in Support of Motion for Summary Judgment | IV, V, VI, VII | AA00508-AA00937 |
| 14 | [09/13/2019] Request for Judicial Notice in Support of National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment | VII | AA00938-AA00941 |
| 15 | [09/19/2019] Aspen Specialty Insurance Company's Opposition to St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment and Countermotion for Summary Judgment | VII, VIII | AA00942-AA01153 |
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| 17 | [09/27/2019] Declaration of William Reeves in Support of St. Paul Fire & Marine Insurance Company's Opposition to Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment | VIII | AA01174-AA01176 |
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| 20 | [09/27/2019] Declaration of Marc J. Derewetzky in Support of St. Paul Fire & Marine Insurance Company's Opposition to AIG's Motion for Summary Judgment | IX | AA01222-AA01228 |

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| 21 | [09/27/2019] St. Paul Fire & Marine Insurance Company's Response to National Union Fire Insurance Company of Pittsburgh PA's Statement of Undisputed Facts in Support of Motion for Summary Judgment | IX | AA01229-AA01234 |
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| 24 | [10/07/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Opposition to St. Paul Fire & Marine Insurance Company's Countermotion for Summary Judgment | XI | AA01531-AA01549 |
| 25 | [10/07/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Objection to Facts Not Supported by Admissible Evidence Filed in Support of St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment and Countermotion Re: Duty to Indemnify | XI | AA01550-AA01557 |
| 26 | [10/07/2019] Aspen Specialty Insurance Company's Reply in Support of Its Countermotion for Summary Judgment | XI | AA01578-AA01592 |
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| 30 | [10/10/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Reply in Support of Motion for Summary Judgment | XII | AA01657-AA01667 |
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| 33 | [05/14/2020] Findings of Fact, Conclusions of Law and Order Granting Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment | XII | AA01735-AA01751 |
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| 38 | [07/02/2020] St. Paul Fire & Marine Insurance Company's Renewed Opposition to Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment | XV | AA02125-AA02164 |
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| 40 | [10/09/2020] Order Denying Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment | XV | AA02183-AA02194 |
| 41 | Aspen Specialty Insurance Company's Reservation of Rights Letters dated August 5, 2014 | XVI | AA02195-AA02207 |
| 42 | Aspen Specialty Insurance Company Policy of Insurance issued to The Restaurant Group et al, Policy Number CRA8XYD11 | XVI | AA02208-AA02325 |
| 43 | St. Paul Fire and Marine Insurance Company Policy of Insurance issued to Premier Hotel Insurance Group (P2), Policy Number QK 06503290 | XVII | AA02326-AA02387 |
| 44 | National Union Fire Insurance Company of Pittsburgh, PA Policy of Insurance issued to The Restaurant Group et al, Policy Number BE 25414413 | XVIII | AA02388-AA02448 |
| 45 | Zurich American Insurance Company Policy of Insurance issued to Nevada Property I LLC, Policy Number PRA 9829242-01 | XVIII, XIX | AA02449-AA02608 |

son 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.

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;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

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 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.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "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.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" 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" or "property damage" 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 Section III – Limits Of Insurance; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – 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 prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – 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 that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – 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".

2.Exclusions

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 Para-

graph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and 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 produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (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 against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that 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 26 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:

(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 law in the state where it is licensed or principally garaged; or

(b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile 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 stunt-ing activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (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.

j. 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 contractors or subcontractors working directly or indirectly on your behalf are 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) 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 Section III – Limits Of Insurance.

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".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. 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.

m. 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.

n. 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.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. 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.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" 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.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; 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 under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b.** This insurance applies 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.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" 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".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at

the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" 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.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) 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 the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

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

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (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.

p. Distribution Of Material In Violation Of Statutes

"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.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- 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 applicable limit of insurance. 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.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

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. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. 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 the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable 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 court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable 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 the applicable limit of insurance.

These payments will not reduce the limits 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:

(1) Agrees in writing to:

- (a)** Cooperate with us in the investigation, settlement or defense of the "suit";
- (b)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c)** Notify any other insurer whose coverage is available to the indemnitee; and
- (d)** Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a)** Obtain records and other information related to the "suit"; and
- (b)** Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions 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 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage 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 we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – 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 con-

duct 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.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

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), 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" or "volunteer worker" as a consequence of Paragraph **(1)(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 **(1)(a)** or **(b)** above; 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 Coverage Part.

- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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.

SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance 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 General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage **C**;
- b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

- c. Damages under Coverage **B**.

- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage"

included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part 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.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

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 which 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. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- 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 Coverage Part 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 Coverage Part 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.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". 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.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part 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 and retrospective 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.
- c. 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.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, 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.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – 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. A land motor vehicle, trailer or semitrailer 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 law in the state where it is licensed or principally garaged.
- However, "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 the repair, replacement, adjustment or removal of "your product" or "your work" or 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, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and 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 (2) above and supervisory, inspection, architectural or engineering activities.
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, maintained primarily to provide mobility to 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 Paragraph 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 Paragraph 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.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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 a job site has been put to its intended use by any per-

son 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.

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;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

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 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.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "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.

EXHIBIT 5

EXHIBIT 5

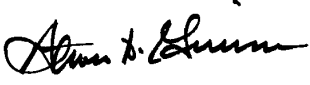
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DISTRICT COURT

CLARK COUNTY, NEVADA



CLERK OF THE COURT

DAVID MORADI, Individually,)

Plaintiff,)

vs.)

CASE NO.: A-14-698824-C

DEPT. NO.: XX

NEVADA PROPERTY 1, LLC, d/b/a)

"The Cosmopolitan of Las)

Vegas"; ROOF DECK)

ENTERTAINMENT, LLC, d/b/a)

"Marquee Nightclub"; and DOES)

I through X, inclusive; ROE)

CORPORATION I through X,)

inclusive,)

Defendants.)

REPORTER'S TRANSCRIPT OF JURY TRIAL, PM SESSION

BEFORE THE HONORABLE JUDGE ERIC JOHNSON

DEPARTMENT XX

FRIDAY, MARCH 24, 2017

2:18 P.M.

Reported by: Amber M. McClane, NV CCR No. 914

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1 **LAS VEGAS, NEVADA; FRIDAY, MARCH 24, 2017**

2 **2:18 P.M.**

3 *** * * * ***

4 **P R O C E E D I N G S**

5 *** * * * ***

6 **THE COURT:** I think we finished up this
7 morning with plaintiff's brief relating to evidence to
8 vote improper bias or animus. Am I correct? Is there
9 anything we -- I think we covered everything on that
10 one.

11 Then is there something still outstanding as
12 it relates to Dr. Duke?

13 **MR. AICKLEN:** There is, Your Honor. I
14 apologize. I thought we were done when I left this
15 afternoon. I thought we were going to do it now. So I
16 wasn't here when the issue came up.

17 **THE COURT:** Okay.

18 **MR. AICKLEN:** Josh Aicklen, for the
19 defendants, Your Honor.

20 My understanding of what was discussed, the
21 plaintiff didn't argue their personal attacks or to
22 discredit him based on him being my -- my wife's
23 physician. To tell you the truth, I brought that out
24 before the depo. If I had never brought it up, they
25 would have never known because of HIPAA.

 But my wife in 2016 had a herniated disc,

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1 cervical spine. I asked Dr. John Herr who's the best
2 neurosurgeon in town, just like Ms. Cohen asked who's
3 the best neurosurgeon in town for the plaintiff, they
4 told me Derek Duke. I took my wife there. When I had
5 problems with it, a doctor told me I needed a
6 laminectomy, I went to him.

7 As far as allegations by plaintiff's counsel
8 that I spoke to Dr. Duke about Mr. Moradi, that's
9 absolutely false. And if needs be, if you want to
10 swear me in on that issue --

11 **THE COURT:** Hold on. All right. Are you
12 plan -- is anybody planning on bringing up his --

13 **MR. AICKLEN:** It was in the briefing.

14 **THE COURT:** -- his wife or him being --

15 **MR. RAVIPUDI:** With the understanding --

16 **THE COURT:** -- patients of Dr. Duke?

17 **MR. RAVIPUDI:** What the understanding is that
18 the scope of his testimony, as discussed before we took
19 the lunch break, that will not be the topic of
20 anything.

21 **THE COURT:** Okay. All right. I mean,
22 that's --

23 **MR. DIAL:** Your Honor, the scope that I
24 discussed this morning was what I was going to cover in
25 opening. I specifically said there might be other

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1 areas that Mr. Aicklen would want to discuss because
2 he's --

3 **THE COURT:** I am.

4 **MR. DIAL:** -- he's putting him on, not me.

5 **THE COURT:** Let me just say, I'm good with
6 what we discussed this morning, which was that he went
7 to see Dr. Duke, Dr. Duke looked at the scan --

8 **MR. AICKLEN:** CT scan.

9 **THE COURT:** -- said it was a normal-looking
10 scan, said that he might have a minor concussion, and
11 he should avoid stimulation for the next couple weeks.

12 **MR. RAVIPUDI:** Yeah. Whatever's contained in
13 his letter of diagnoses.

14 **THE COURT:** Letter of diagnosis. Are we
15 going --

16 **MR. AICKLEN:** Can I address that?

17 **THE COURT:** -- somewhere beyond that --

18 **MR. AICKLEN:** I would like to if I could,
19 Your Honor.

20 **THE COURT:** Okay. I mean, I'll let you do
21 that. I'm just saying --

22 **MR. AICKLEN:** I appreciate it.

23 **THE COURT:** -- I'm hoping that was going to
24 be where we were going to stop.

25 **MR. AICKLEN:** So that's where we're at now,

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1 but I'd like to go beyond that, if we could.

2 Your Honor, if I can approach, I want to show
3 you plaintiff's February 25th, 2015, designation, their
4 first initial 16.1.

5 **THE COURT:** Okay.

6 **MR. AICKLEN:** Just to show it to you real
7 quick.

8 **THE COURT:** I mean, this is yours, but, I
9 mean, do you know what he's showing me or --

10 **MR. PADDA:** If we can see what he's showing.

11 **MR. RAVIPUDI:** I haven't seen -- I don't
12 know.

13 **MR. AICKLEN:** It's your initial dated
14 February 25th.

15 **THE COURT:** Well, I know it's there. But, I
16 mean, rather than us have them hunt for it, show what
17 you're going to show me real quick so they know what
18 we're talking about.

19 **MR. AICKLEN:** Can we get the ELMO?

20 **THE COURT:** Yeah, you can use the ELMO. I
21 think we can.

22 **MR. AICKLEN:** I know it picked up on my blank
23 legal pad.

24 **THE COURT:** All right.

25 **MR. AICKLEN:** There we go. This is

1 plaintiff's initial 16.1, Your Honor. This -- their
2 argument is that this witness should have been
3 designated by us, a report, testimony, history, and
4 everything. That is not correct. This witness is --
5 was a treating physician who plaintiff chose.

6 Now, under the federal rules, I could reach
7 out and talk to this doctor. But under the state
8 rules, I cannot. I couldn't have gone to Dr. Duke as a
9 treating physician and said, "Hey, I need you to do a
10 report. I need you to get me a rate sheet," and all
11 those things. I could not have designated him.

12 But I want you to know what the plaintiffs
13 designated him as. Dr. Derek A. Duke -- this is in
14 their initial disclosure -- is also listed, Your Honor,
15 within their 16(a) -- (3) (1) (a).

16 It says, "This witness and/or these witnesses
17 shall testify as to the authenticity and genuineness of
18 all records and billings; plaintiff's injuries and
19 causation therefor; the reasonableness and necessity of
20 all past, present, and future medical treatment
21 rendered to plaintiff, and causation therefor; the
22 reasonableness, necessity, customary nature of said
23 treatment, and relating billings and causation
24 therefor."

25 This is their description of how they're

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1 going to use Dr. Duke.

2 Under 16.1 I have the right to rely upon that
3 in my -- whether I call him direct if they drop him as
4 a witness or in my cross-examination of him. I could
5 not ethically, under the state law, have reached out to
6 Dr. Duke to demand a report -- or to request a report
7 and a rate sheet and a case list that you normally do
8 with a 16.1 expert.

9 So -- but under 16.1, I want to show you
10 their pretrial designation as well.

11 Here is plaintiff's pretrial disclosure
12 pursuant to NRCP 16.1(a) (3) dated 1/6/2017. And it
13 just lists the witness. Right? You just have to
14 list -- this isn't an expert disclosure or 16.1. This
15 is these are who the witnesses are. We've already
16 described what they're going to testify to. Dr. Derek
17 A. Duke is in there.

18 So I have the right -- and also if you look
19 at our disclosure, Dr. Duke is in there. And it also,
20 in our disclosure, says that defendant reserves the
21 right to question any expert witness called by the
22 plaintiff.

23 So I would argue to you, Your Honor, that
24 Dr. Duke, even though he is a one-time treating
25 physician, if you think about an IME, even though he's

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1 not an IME doctor, so that order issue isn't there.
2 But if you think about an IME, the IME doctor only
3 sees -- generally only sees the plaintiff one time as
4 well. And every day we have very qualified Hallmark
5 experts coming in after one examination of the
6 plaintiff.

7 So I say that under our rules and 16.1, I
8 have a right to rely upon their designation of Duke as
9 an expert and to call him as such.

10 **THE COURT:** Okay. So what are you going to
11 want to call him to testify to?

12 **MR. AICKLEN:** The -- what you earlier
13 mentioned, okay, the factual.

14 Ms. Padda referred plaintiff to you. Did you
15 get a CT scan?

16 Yes.

17 Did you review it?

18 Yes.

19 Did you review a cervical CT?

20 Yes.

21 Did you talk to him?

22 Yes.

23 What did you tell him?

24 I told him he probably had a concussion; he
25 should take it easy for a couple weeks.

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1 Now, when I took his deposition -- so this
2 isn't going to come as a surprise to them -- I paid him
3 as an expert. He'd been designated as a causation
4 expert by the plaintiffs. And I asked him all the
5 expert questions.

6 "Did you find that he had a traumatic brain
7 injury?

8 "No, I did not. I found that he had
9 postconcussive syndrome.

10 "What's the difference between a TBI and
11 postconcussive?

12 "Well, postconcussive" --

13 **THE COURT:** I mean, did he find that during
14 his examination?

15 **MR. AICKLEN:** Yes, he did. He found it was
16 postconcussive syndrome.

17 **THE COURT:** Okay. All right. Go ahead.
18 What else? So we have everything -- okay. What
19 else -- where else are you going to go with him?

20 **MR. AICKLEN:** I would say that that's it.

21 **THE COURT:** Okay.

22 **MR. AICKLEN:** Did you examine him? Did you
23 tell him he had a postconcussive syndrome? Did you
24 find any traumatic brain injury?

25 No, sir, I did not.

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1 Why?

2 Here's why.

3 And the points that enforce it.

4 **THE COURT:** All right. What's the
5 plaintiff's position in reference to that?

6 **MR. RAVIPUDI:** So, again, if that is
7 literally the scope of the testimony, then that's the
8 scope of the testimony. I think that's -- just to put
9 it in front, this is Exhibit A to Dr. Duke's
10 deposition, which is part of the record. And I think
11 there's a stipulated admissibility as to this document.
12 And just to show it -- and then on Exhibit -- oops. I
13 hope I didn't do anything. There we go. Okay. Let me
14 try to zoom in now that I see how this works.

15 But here's the diagnoses. And, you know,
16 postconcussive syndrome with symptoms of decreased
17 concentration, photophobia, severe headache, and lack
18 of concentration. And he goes on to describe what his
19 findings are, in this document.

20 He specifically testifies in his deposition
21 he has no recollection of examining Mr. Moradi, has no
22 recollection of actually what was told to him, but this
23 is his -- I guess, his past recollection recorded.

24 And so he should be limited to that.

25 Questions were asked of Dr. Duke: Well, what do you

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1 think of neuroradiologist Dr. Keith Lewis?

2 Oh, I have lots of opinions about Dr. Lewis.

3 You know, that's --

4 **THE COURT:** You're not going there, are you?

5 **MR. AICKLEN:** No. I don't care about
6 Dr. Lewis.

7 **MR. RAVIPUDI:** Okay. Dr. Duke had not
8 reviewed any MRIs that were performed after the --
9 after his treatment of him on April 11. He doesn't
10 know what other doctors Mr. Moradi saw.

11 He specifically says in here that if he's got
12 any issues, he should continue to treat with the
13 neurologist. And that neurologist that he treated with
14 was not Dr. Duke.

15 So it really -- his scope of his exam is
16 limited to that. And if that's what's going to happen,
17 then --

18 **THE COURT:** Okay.

19 **MR. RAVIPUDI:** -- I've got no qualms.

20 **THE COURT:** I just feel like we're arguing
21 about nothing. I'm going to be frank. So, you know --
22 you know, Dr. Duke met him. He didn't find whatever
23 you said he didn't -- you asked him, did you find -- I
24 forget what.

25 **MR. AICKLEN:** Traumatic brain injury.

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1 **THE COURT:** -- traumatic brain injury. He
2 said, no. He'll say, "No, I didn't find it." You
3 don't have a problem if he says -- says that?

4 **MR. RAVIPUDI:** If he says that and that's
5 what his records are, that's fine.

6 **THE COURT:** I mean, that's --

7 **MR. RAVIPUDI:** Then if he says -- if the
8 question is asked, "Does he have a traumatic brain
9 injury?" he shouldn't be able to answer that question.
10 He should just say, "I didn't diagnose him" --

11 **THE COURT:** Well, you can ask him, "Did you
12 diagnose it?" And then he'd say --

13 **MR. RAVIPUDI:** -- whatever he says, yeah.

14 **THE COURT:** And that's fair. Whether he has
15 one -- he -- at least when he left there, he didn't
16 diagnose one.

17 **MR. RAVIPUDI:** That's it.

18 **THE COURT:** That's fair.

19 **MR. AICKLEN:** And I'm certainly -- just to
20 assuage the Court, I'm certainly not going to ask him
21 about developments with Mr. Moradi beyond his
22 treatment. He didn't look at any records or anything
23 like that.

24 **MR. RAVIPUDI:** That was the scope of our
25 motion.

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1 **THE COURT:** All right. I think we're --

2 **MR. RAVIPUDI:** Okay.

3 **THE COURT:** -- on the same page. You can ask
4 Dr. Duke about his one-day experience with Mr. Moradi
5 and his CT scan and what his conclusions were at the
6 end of the examination. You know, if there's something
7 far beyond what's in that letter -- I'm assuming that
8 you're -- you know, then raise it with me before you do
9 it. But that's -- that's -- that's fine, and everybody
10 seems to be on the same page. That's fine.

11 **MR. AICKLEN:** Thank you, Your Honor.

12 **MR. RAVIPUDI:** Thank you, Your Honor.

13 **THE COURT:** Okay. All right.

14 All right. Let me clarify. I've dealt with
15 the motion for reconsideration for summary judgment and
16 the joint and several liability materials. I go back,
17 and I see where defense is coming from with my original
18 minute order relating to Rockwell v. Sun Harbor Budget
19 Suites and minute order relating to whether the Marquee
20 security people were employees of The Cosmopolitan.

21 And I've gone back, looked at Rockwell v. Sun
22 Harbor, and I've gone back and read through the
23 available legislative history on 651.015.

24 While I don't find that the Marquee security
25 people were employees of The Cosmopolitan, I do find

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1 that The Cosmopolitan has a nondelegable duty and can
2 be vicariously held responsible for the conduct of the
3 Marquee security officers based upon Rockwell in which
4 Rockwell ultimately says that if someone such -- has a
5 responsibility for security, hires an independent
6 contractor to do it, that they still are responsible in
7 Nevada.

8 And I appreciate I've got other cases that
9 were given to me, but my reading of Rockwell is Nevada
10 adopts the rule which provides that, if you have an
11 obligation for security and you contract that away to
12 somebody else who then hires the security, you still
13 have a nondelegable duty, which effectively makes them
14 in the nature of employees, whether or not they really
15 are employees.

16 I've looked at 651.051, and, you know, it's
17 very clear the crux of that statute was looking at the
18 essentially criminal acts of third parties coming onto
19 the premises of casinos. I note that in testimony to
20 the Senate committee considering it, Harvey Whittemore
21 expressed that judicial interpretation could find that
22 the references to control and supervision would
23 encompass independent contractors.

24 It's going to be my ruling here that,
25 effectively, the concepts of control and supervision

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1 extend in this instance because I think that The
2 Cosmopolitan has a responsibility for security and it
3 can't escape that responsibility by essentially
4 subcontracting it and subleasing it off as it did in
5 this case.

6 I haven't had time to look at plaintiff's
7 joint venture theory, so I'm not making any
8 determination upon that. But I'm going to tell you
9 that at this point in time, I find that The
10 Cosmopolitan has a nondelegable duty in reference to
11 the security that -- in that, effectively, you know,
12 Marquee employees, if they did engage in intention or
13 negligent conduct, that can be vicariously held to The
14 Cosmopolitan.

15 Consequently, I'm going to deny the motion
16 for reconsideration of summary judgment, and I'm going
17 to find that for -- at this point in time, I'm going to
18 deny -- well, I don't know. Brief for determination of
19 several liability, I'm going to find that the Marquee
20 and Cosmopolitan -- I guess it should be Rooftop
21 Entertainment -- or Roof Deck Entertainment can be
22 jointly and severally liable.

23 So that's my rulings on that. Everybody is
24 going to disagree one way or another. Unless you
25 really feel you need something --

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1 **MR. ROBERTS:** Very --

2 **THE COURT:** -- on the record --

3 **MR. ROBERTS:** Very briefly --

4 **THE COURT:** -- I've made my decision, so...

5 **MR. ROBERTS:** I understand. This is just to
6 preserve the record. I don't know if we thoroughly
7 addressed it in the brief and find some of the
8 supplemental authority that we submitted.

9 And I just wanted to state, one, we don't
10 believe the record shows that Nevada Property was the
11 person in control of the premises who had the
12 nondelegable duty to hire security. In fact, Nevada
13 Restaurant is the one that hired Roof Deck, not just to
14 provide security but to operate the entire club; and,
15 therefore, it's not a parallel situation.

16 In addition, I would note that even in the
17 Rockwell case, in discussing the last cause of action,
18 the court analyzed the security guard as a third party
19 as to the landlord and said that there had to be
20 foreseeability in order to hold the landlord liable
21 under that final cause of action.

22 If the Court had truly meant that this was a
23 vicarious liability which could be imposed without any
24 foreseeability or fault on behalf of the landlord, it
25 would have been completely unnecessary to reach the

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1 issue of analysis of liability for a third party, as
2 the Rockwell court did in that case.

3 And if you look at that, they cite
4 Restatement 344. Restatement 344 is the concept which
5 the Rockwell court drew upon for their finding on the
6 third cause of action, which is also clear from the
7 comments that foreseeability of this event is a
8 condition to holding the landlord responsible for the
9 actions of the third-party security guard.

10 Thank you, Your Honor.

11 **THE COURT:** Okay.

12 **MR. AICKLEN:** Your Honor, on the issue of
13 joint and several liability?

14 **THE COURT:** Okay.

15 **MR. AICKLEN:** There are only negligence
16 actions against Cosmopolitan, and there are negligence
17 and also intentional acts allegations against Marquee.

18 So in the negligence actions, I think the
19 record is pretty clear and I think -- you know, I don't
20 want a preruling, but we are going to have a
21 comparative fault instruction under 41.141.

22 **THE COURT:** And, you know, I'm not -- I'm
23 not -- I'm just saying at this point in time, in terms
24 of what you asked me, I'm not prepared to say there is
25 a joint and several liability. You may very well --

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1 **MR. AICKLEN:** Wait. There is or is not?

2 **THE COURT:** You can be held jointly and
3 severally liable.

4 **MR. AICKLEN:** At this moment.

5 **THE COURT:** At this time, yes.

6 Now, as the case develops and I get the jury
7 instructions, I'll take a look at the comparative
8 negligence issue.

9 **MR. AICKLEN:** Okay.

10 **THE COURT:** But you're wanting something
11 today because you said you needed it for opening
12 statements on Monday. So I'm giving you my initial --
13 my initial position in all this right now.

14 **MR. AICKLEN:** All right. Your Honor, then I
15 would ask, though, that the issue of joint and several
16 liability not be addressed -- that's a legal issue --
17 it not be addressed in opening statement.

18 **THE COURT:** I don't -- I assume you're not
19 going to get into that in opening statements, but I was
20 told you needed a preliminary decision from me for your
21 opening statements; otherwise, I would have put off
22 dealing with this in more detail to begin with.

23 **MR. AICKLEN:** So the understanding is with
24 prejudice and they can't open it -- or discuss it in
25 opening because it's a legal issue, an instruction of

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1 law, then --

2 **THE COURT:** Were you planning on discussing
3 it in opening?

4 **MR. RAVIPUDI:** "Joint and several liability"
5 were not words that I thought I would be using in
6 opening statement.

7 **THE COURT:** All right. Then there's -- we'll
8 deal with the issue in more detail later.

9 **MR. AICKLEN:** All right. Thank you, Your
10 Honor. So denied without prejudice.

11 **THE COURT:** Yeah, denied without prejudice.

12 **MR. AICKLEN:** Okay. Thank you.

13 **THE COURT:** Okay. So okay. Let's look at
14 the Wynn records. I gave you my preliminary ruling
15 this morning. I am generally good with letting in
16 defendant's gaming activity, both prior to the incident
17 and after the incident, both in terms of the games
18 played and the amount of time spent playing the games.

19 I'm open as to the issue of win or loss,
20 whether or not that's really necessary to include
21 and -- but I'll let you give me some more thought in
22 that regard. I'm not inclined to get into any records,
23 you know, he open -- you know, somebody stuck a card
24 key in the door or he ate something out of the mini bar
25 or he went to a restaurant and ate anything. I'm

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2 | **THE COURT:** Thank you.

3 (Whereupon, the proceedings concluded at 3:58
4 p.m.)

5 | -o0o-

6 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
PROCEEDINGS.

9
10 Amber M. McClane
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CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

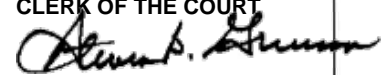
That on September 13, 2019, service of DEFENDANT NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S APPENDIX OF EXHIBITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was made to the following interested parties in the following matter:

☒ Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR9, to:

| COUNSEL OF RECORD | TELEPHONE & FAX NOS. | PARTY |
|--|--------------------------------------|---|
| Ramiro Morales, Esq. Email: rmorales@mfrlegal.com William C. Reeves, Esq. Email: wreeves@mfrlegal.com MORALES, FIERRO & REEVES 600 South Tonopah Drive, Suite 300 Las Vegas, Nevada 89106 | (702) 699-7822 (702) 699-9455 FAX | Plaintiff, ST. PAUL FIRE & MARINE INSURANCE COMPANY |
| Michael M. Edwards, Esq. Email: medwards@messner.com Nicholas L. Hamilton, Esq. Email: nhamilton@messner.com MESSNER REEVES LLP efile@messner.com 8945 W. Russell Road, Suite 300 Las Vegas, Nevada 89148 | (702) 363-5100 (702) 363-5101 FAX | Defendant ASPEN SPECIALTY INSURANCE COMPANY |
| Jennifer L. Keller, Esq. (<i>Pro Hac Vice</i>) Email: jkeller@kelleranderle.com Jeremy W. Stamelman, Esq. (<i>Pro Hac Vice</i>) Email: jstamelman@kelleranderle.com KELLER/ANDERLE LLP 18300 Von Karmen Avenue, Suite 930 Irvine, CA 92612-1057 | (949) 476-8700 (949) 476-0900 FAX | Defendants, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA and ROOF DECK ENTERTAINMENT, LLC dba MARQUEE NIGHTCLUB |

Executed on the 13th day of September, 2019.


JuRee A. Bloedel



1 RFJN

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14 Attorneys for Defendants NATIONAL UNION FIRE

15 INSURANCE COMPANY OF PITTSBURGH PA. and

16 ROOF DECK ENTERTAINMENT, LLC dba MARQUEE NIGHTCLUB

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 ST. PAUL FIRE & MARINE INSURANCE
20 COMPANY,

21 Plaintiffs,

22 vs.

23 ASPEN SPECIALTY INSURANCE
24 COMPANY; NATIONAL UNION FIRE
25 INSURANCE COMPANY OF
26 PITTSBURGH PA.; ROOF DECK
27 ENTERTAINMENT, LLC d/b/a MARQUEE
28 NIGHTCLUB; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: A-17-758902-C
DEPT.: XXVI

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH PA'S MOTION FOR
SUMMARY JUDGMENT**

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF NATIONAL UNION'S MOTION FOR SUMMARY
JUDGMENT

1 Defendant National Union Fire Insurance Company of Pittsburgh, PA, ("National Union") ,
2 by and through its counsel, hereby requests the Court to take judicial notice pursuant to Nevada
3 Revised Statutes sections 47.130 and 47.150 the following facts:

4 1. During proceedings on March 24, 2017, the court in the underlying bodily injury
5 action captioned *David Moradi v. Nevada Property 1, LLC dba The Cosmopolitan, et al.*, District
6 Court Clark County, Nevada, Case No. A-14-698824-C held as a matter of law that Nevada
7 Property 1, LLC d/b/a The Cosmopolitan of Las Vegas ("Cosmopolitan"), "had a nondelegable
8 duty and can be vicariously held responsible for the conduct of the Marquee security officers..."
9 and that Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub and Cosmopolitan
10 could be held jointly and severally liable. A true and correct copy of an excerpt of the March 24,
11 2017 trial transcript is attached to National Union's Appendix of Exhibits in Support of Motion for
12 Summary Judgment as **Exhibit 5**.

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1 Courts may take judicial notice of the contents of court files in other lawsuits, including
2 transcripts of proceedings. *See Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388, fn. 9 (9th
3 Cir. 1987); *Lyon v. Gila River Indian Community*, 626 F.3d 1059, 1075 (9th Cir. 2010); *Occhiuto v.*
4 *Occhiuto*, 97 Nev. 143, 145 (1981); *Sheriff, Clark Cnty. v. Kravetz*, 96 Nev. 919, 920 (1980)
5 (relying upon a preliminary hearing transcript as basis for judicial notice).

6
7 DATED: September 12, 2019

HEROLD & SAGER

8
9 By:



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Nevada Bar No. 7378
Nicholas B. Salerno, Esq.
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18 Attorneys for Defendant NATIONAL
19 UNION FIRE INSURANCE COMPANY
20 OF PITTSBURGH PA. and ROOF DECK
21 ENTERTAINMENT, LLC dba
22 MARQUEE NIGHTCLUB
23
24
25
26
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CERTIFICATE OF SERVICE


I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

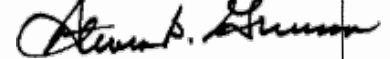
That on September 13, 2019, service of REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S MOTION FOR SUMMARY JUDGMENT was made to the following interested parties in the following matter:

☒ Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR9, to:

| COUNSEL OF RECORD | TELEPHONE & FAX NOS. | PARTY |
|--|--------------------------------------|---|
| Ramiro Morales, Esq. Email: rmorales@mfrlegal.com William C. Reeves, Esq. Email: wreeves@mfrlegal.com MORALES, FIERRO & REEVES 600 South Tonopah Drive, Suite 300 Las Vegas, Nevada 89106 | (702) 699-7822 (702) 699-9455 FAX | Plaintiff, ST. PAUL FIRE & MARINE INSURANCE COMPANY |
| Michael M. Edwards, Esq. Email: medwards@messner.com Nicholas L. Hamilton, Esq. Email: nhamilton@messner.com MESSNER REEVES LLP efile@messner.com 8945 W. Russell Road, Suite 300 Las Vegas, Nevada 89148 | (702) 363-5100 (702) 363-5101 FAX | Defendant ASPEN SPECIALTY INSURANCE COMPANY |
| Jennifer L. Keller, Esq. (<i>Pro Hac Vice</i>) Email: jkeller@kelleranderle.com Jeremy W. Stamelman, Esq. (<i>Pro Hac Vice</i>) Email: jstamelman@kelleranderle.com KELLER/ANDERLE LLP 18300 Von Karmen Avenue, Suite 930 Irvine, CA 92612-1057 | (949) 476-8700 (949) 476-0900 FAX | Defendants, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA and ROOF DECK ENTERTAINMENT, LLC dba MARQUEE NIGHTCLUB |

Executed on the 13th day of September, 2019.


JuRee A. Bloedel



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15 nhamilton@messner.com
16 Attorneys for Defendant
17 Aspen Specialty Insurance Company

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

15 ST. PAUL FIRE & MARINE INSURANCE
16 COMPANY,

17 Plaintiffs,

18 vs.

19 ASPEN SPECIALTY INSURANCE
20 COMPANY; NATIONAL UNION FIRE
21 INSURANCE COMPANY OF PITTSBURGH
22 PA; ROOF DECK ENTERTAINMENT, LLC
23 d/b/a MARQUEE NIGHTCLUB; and DOES 1-
24 25; inclusive,

24 Defendants.

CASE NO.: A-17-758902-C
DEPT. NO.: XXVI

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

25 Defendant, ASPEN SPECIALTY INSURANCE COMPANY, by and through its counsel
26 of record, the law firm MESSNER REEVES, LLP, hereby files its Opposition to Plaintiff's Motion
27 for Summary Judgment and Countermotion for Summary Judgment.
28

1 This opposition and motion is based on the pleadings and papers on file in this action,
2 attached declaration of counsel, the attached Memorandum of Points and Authorities, and any oral
3 argument that may be permitted at the time of hearing on this matter.

4 DATED this 19th day of September, 2019.

5

6

MESSNER REEVES LLP

7

8



9

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*Attorneys for Defendant Aspen Specialty
Insurance Company*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Motion seeks partial summary judgment based upon a fundamentally flawed premise which intentionally ignores the express language of the policy terms. It seeks a ruling that a \$2 million Aspen policy limit applies and seeks a ruling that it is entitled to pursue its subrogation claims against Aspen. Aspen countermoves for summary judgment seeking a ruling that its policy limit is \$1 million for the underlying action (as all parties always treated it) because, under Nevada law, the one occurrence limit applies to all claims and injuries arising out of a common cause, as here. Further Aspen has an Endorsement that unambiguously limits coverage to the maximum available under any one coverage part, which is \$1 million here, even were multiple coverage parts are implicated. Aspen also seeks summary judgment on Plaintiff's subrogation claims because they are not viable as a matter of law.

Nevada has not recognized contractual or equitable subrogation in the insurance context here. Even were Nevada to newly recognize the claims for the first time in this case, they still fail as a matter of law. Plaintiff is not entitled to contractual subrogation because, among other things, there is no contractual privity between Plaintiff and Aspen and Plaintiff is not an intended third party beneficiary under the law. Plaintiff is not entitled to equitable subrogation either because essential elements of the claim are lacking as a matter of law, *as construed under the law of the state Plaintiff asks this court to adopt* when recognizing the claim for the first time. For example, under California equitable subrogation law, Plaintiff's insured suffered no assignable cause of action here as a matter of law, an essential element for equitable subrogation claims in jurisdictions that recognize them.

Plaintiff's Motion is not otherwise supported by admissible evidence for any rulings granting it summary judgment on its subrogation claims, which is not suitable and is premature at this stage of the proceedings. Instead, the Court should make rulings on the preliminary legal issues—policy limits and whether the subrogation claims are viable or fail as a matter of law—now that Plaintiff's policy has been provided. Aspen's policy is attached as **Exhibit A1** and Plaintiff's policy is attached as **Exhibit B**.

///

1 **II. STATEMENT OF FACTS**

2 **A. Underlying Action and Post-Judgment Settlement.**

3 This action relates to a post-judgment settlement agreed to by St. Paul, National Union,
4 Zurich Insurance, and Aspen following a jury trial in the personal injury case of *Moradi v. Nevada*
5 *Property 1, LLC dba The Cosmopolitan, et al.*, District Court Clark County, Nevada, Case No. A-
6 14-698824-C (“Underlying Action”). Redacted Amended Complaint (“Amended Comp.”), ¶ 6.
7 Following the *Moradi* action, Aspen (\$1 million policy limit) and National Union (\$25 million
8 policy limit) paid their policy limits as part of a global settlement, as did Zurich (\$1 million limit as
9 primary for Cosmopolitan) and St. Paul (\$25 million limit as excess for Cosmopolitan). Due to the
10 post-judgment settlement paid in full by the insurers, Cosmopolitan did not pay money in settlement
11 of the action, nor is it alleged to have done so in the Amended Complaint either. Now, in this action,
12 St. Paul seeks to recover the money that it contributed toward that settlement from the defendants.

13 In the Underlying Action, Plaintiff David Moradi (“Moradi”) alleged that, on or about April
14 8, 2012, he was a patron at the Marquee Nightclub located within The Cosmopolitan Hotel and
15 Casino when he was attacked and beaten by Marquee employees resulting in bodily injuries.
16 Amended Comp., ¶¶ 6-7. Moradi filed a complaint against Nevada Property 1, LLC d/b/a The
17 Cosmopolitan of Las Vegas (“Cosmopolitan”) and Roof Deck Entertainment, LLC d/b/a/ Marquee
18 Nightclub (“Marquee”) on April 4, 2014 asserting causes of action for Assault and Battery,
19 Negligence, Intentional Infliction of Emotional Distress, and False Imprisonment. Amended
20 Comp., ¶¶ 8-10; **see also** Exhibit A to Amended Complaint. Moradi alleged that, as a result of his
21 injuries, he suffered past and future lost wages/income and sought general damages, special damages
22 and punitive damages. *Id.* at ¶ 9.

23 St. Paul now contends, in its Amended Complaint, that the artful alternative pleading of
24 the alternative claims for relief in the Moradi action by the plaintiff, to include negligence as well
25 as false imprisonment claims—despite both being the result of one common causal occurrence,
26 accident, cause of loss, loss or offense—purportedly doubles Aspen’s coverage of the action, which
27 it does not.

28

1 During the course of the Underlying Action, Moradi made legal arguments that
2 Cosmopolitan, as the owner of The Cosmopolitan Hotel and Casino (where the Marquee Nightclub
3 was located), faced exposure for breaching its non-delegable duty to keep patrons safe, including
4 Moradi. *Id.* at ¶ 13. The Court in the Underlying Action agreed with Moradi's position and imposed
5 vicarious liability on Cosmopolitan for Marquee's actions. *Id.* The Court also ruled that Marquee
6 and Cosmopolitan were jointly and severally liable for Moradi's damages claim. *Id.* at ¶ 14.

7 The Underlying Action went to trial and on April 28, 2017 and the jury returned a verdict
8 in Moradi's favor and awarded compensatory damages in the amount of \$160,500,000. Amended
9 Comp., ¶ 60. During the punitive damages phase of the trial, Moradi made a global settlement
10 demand to Marquee and Cosmopolitan. *Id.* at ¶ 66. National Union, St. Paul, Aspen, and Zurich
11 contributed towards the settlement demand. *Id.* at ¶¶ 67-69.

12 **B. Insurance Policies, Aspen's \$1 Million Per Occurrence Limit, & Endorsement.**

13 Marquee is an insured under National Union commercial umbrella liability policy number
14 BE 25414413, effective October 6, 2011 to October 6, 2012, issued to The Restaurant Group, et al.
15 ("National Union policy"). Amended Comp., ¶ 30; Declaration of Michael F. Muscarella
16 ("Muscarella Decl."), ¶ 2 (attached to National Union's Initial Motion to Dismiss as Exhibit "A.")
17 The National Union umbrella policy contains limits of \$25,000,000 each occurrence and
18 \$25,000,000 general aggregate. Amended Comp. ¶ 31; Muscarella Decl., ¶ 2. Cosmopolitan is
19 alleged to be an additional insured to the National Union umbrella policy with respect to the
20 Underlying Action. Amended Comp., ¶ 33. Marquee and Cosmopolitan tendered the Underlying
21 Action to National Union under the National Union policy. *Id.* at ¶ 34. National Union
22 acknowledged a potential for coverage for Cosmopolitan and Marquee under the National Union
23 umbrella policy and provided a joint defense to Cosmopolitan and Marquee in the Underlying
24 Action. *Id.* at ¶ 35.

25 Marquee is an insured under Aspen primary commercial general liability policy number
26 CRA8XYD11, effective October 6, 2011 to October 6, 2012, issued to The Restaurant Group, et
27 al. ("Aspen Policy"). Amended Comp., ¶ 15; *see also* Declaration of Marvin Robalino ("Robalino
28 Decl."), attached as **Exhibit A**; the Aspen policy is attached as **Exhibit A1**. **The Aspen primary**

1 **commercial general liability policy contains limits of \$1,000,000 each occurrence** and
2 \$2,000,000 general aggregate. *Id.* at ¶ 16; *see also* Exhibit A1 hereto (Aspen Policy). The Aspen
3 policy also contains an endorsement that modifies its commercial general liability coverage. That
4 endorsement provides the following:

5 **THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE**
6 **FOLLOWING:**

7 COMMERCIAL GENERAL LIABILITY COVERAGE PART

8 The Common Policy Conditions (IL 00 17 11/98) are amended by the addition of the
9 following:

10 **G. Other Insurance with This Company**

11 **If this policy contains two or more Coverage Parts providing coverage for the**
12 **same “occurrence,” “accident,” “cause of loss,” “loss” or offense, the maximum**
13 **limit of insurance under all Coverage Parts shall not exceed the highest limit**
14 **of insurance under any one Coverage Part.**

15 If this policy and any other policy issued to you by us apply to the same
16 “occurrence,” “accident,” “cause of loss,” “injury,” “loss” or offense, the maximum
17 limit of insurance under all of the policy shall not exceed the highest limit of
18 insurance under any one policy. This condition does not apply to any policy issued
19 by us which specifically provides that the policy is to apply as excess insurance over
20 this policy.

21 *See* Exhibit A1 (emphasis added).

22 Cosmopolitan is alleged to also be an additional insured to the Aspen primary commercial
23 generally liability policy with respect to the Underlying Action. Amended Comp., ¶ 20.
24 Cosmopolitan tendered the Underlying Action to Marquee for defense pursuant to a written
25 agreement entered into between the Marquee and Cosmopolitan. *Id.* at ¶ 25. The Marquee accepted
26 Cosmopolitan’s tender. *Id.* Aspen is alleged to have acknowledged coverage for Cosmopolitan
27 and Marquee under the Aspen primary commercial general liability policy and provided a joint
28 defense to Cosmopolitan and Marquee in the Underlying Action. *Id.* at ¶ 27.

29 Cosmopolitan is an insured under St. Paul commercial umbrella liability policy number
30 QK06503290, effective March 1, 2011 to March 1, 2013 (“St. Paul policy”). Amended Comp., ¶
31 40. Attached as **Exhibit B** hereto is a Certified copy of the St. Paul policy as produced by St. Paul

1 in this action. The St. Paul umbrella policy provided for a limit of liability of \$25,000,000 with
2 respect to the Underlying Action. *See* Exhibit B. Zurich was a primary insurer for Cosmopolitan.
3 St. Paul does not seek from Zurich in this action to pay more than the \$1 million it paid to settle
4 the *Moradi* action post-judgment.

5 **C. Prior Proceedings In This Action.**

6 After St. Paul brought suit, the defendants, including Aspen, filed motions to dismiss St.
7 Paul's initial complaint. This Court heard defendant Roof Deck Entertainment, LLC d/b/a Marquee
8 Nightclub's ("Marquee") and National Union Fire Insurance Company of Pittsburgh PA's
9 ("National Union") Motions to dismiss on February 13, 2018. The Court denied Marquee's motion
10 to dismiss as premature but granted National Union's motion to dismiss in part, but also granted
11 St. Paul leave to amend its complaint. Although Aspen filed a motion to dismiss St. Paul's initial
12 complaint as well, after the Court granted St. Paul leave to amend its complaint, Aspen withdrew
13 its motion to dismiss because it was moot in light of the Court's granting St. Paul leave to file an
14 amended complaint.

15 In St. Paul's initial complaint, St. Paul alleged the following causes of action against
16 Aspen: (1) Equitable Subrogation- Breach of the Duty to Settle, and (2) Equitable Subrogation-
17 Violations of NRS § 686A.310. *See* Plaintiff's initial Complaint. After being granted leave to
18 amend following the hearing on National Union's Motion to Dismiss, St. Paul has now alleged the
19 following causes of action against Aspen in its Amended Complaint: (1) Subrogation- Breach of
20 the Duty to Settle (First Cause of Action), (2) Subrogation- Breach of The Aspen Insurance Contract
21 (Third Cause of Action), and (3) Equitable Estoppel (Seventh Cause of Action). *See* Plaintiff's
22 Amended Complaint.

23 In response to arguments in Aspen's initial Motion to Dismiss that the \$1.5 million offer
24 was not within Aspen's \$1 million policy limit, St. Paul newly alleged in its Amended Complaint
25 that Aspen's applicable policy limit was purportedly the \$2 million aggregate limit (applicable to
26 multiple occurrences) to try and manufacture a bad faith refusal to settle within policy limits claims,
27 where it is otherwise fails as a matter of law. The parties' competing motions for summary judgment
28 asks the Court to determine this legal issues.

1 The Defendants all moved to dismiss Plaintiff's First Amended Complaint. On February
2 28, 2019, the Court issued a Minute Order denying Aspen's and National union's motions to dismiss
3 without prejudice on the basis that the motions asked the court to go beyond the pleadings to analyze
4 insurance policies (and St. Paul was refusing to disclose its policy at the time):

5 Similarly, both the National Union and Aspen Specialty Ins. Co. Motions
6 require the Court to go beyond the pleadings and ask this Court to analyze
7 insurance policies without testing through discovery whether those policies
8 are complete and that there are no missing amendments, exhibits, riders, or
9 endorsements ... Further, both National Union and Aspen argue that the
indemnity action must fail as a matter of law, but it seems that at least one
piece of evidence necessary to evaluate these legal issues is missing from the
record before the Court, i.e. the St. Paul policy.

10 See Court's February 28, 2019 Minute Order. St. Paul has now provided its policy and moved for
11 partial summary judgment.

12 **III. ARGUMENT IN OPPOSITION AND COUNTERMOTION**

13 **A. Summary Judgment and Countermotion Standard.**

14 Summary judgment must be granted when "the pleadings, depositions, answers to
15 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
16 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
17 of law." Nev. R. Civ. P. ("NRCP") 56(c). In *Wood v. Safeway, Inc.*, the Nevada Supreme Court
18 embraced the summary judgment reasoning set forth in United States Supreme Court cases such as
19 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986),
20 and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). *Wood v. Safeway, Inc.*,
21 121 Nev. 724, 121 P.3d 1026 (2005) ("We know take this opportunity to put to rest any questions
22 regarding the continued viability of the 'slightest doubt' standard. We now adopt the standard
23 employed in *Liberty, Lobby, Celotex*, and *Matsushita*.").

24 On a summary judgment motion it is the moving party's obligation to show that there is
25 "no genuine issues of material fact." NRCP 56(c). With respect to burdens of proof and persuasion
26 in the summary judgment context, Nevada follows the federal approach outlined in *Celotex*. *Cuzze*
27 *v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 602, 172 P.3d 131 (2007), citing *Celotex*, 477 U.S.
28 317. The party moving for summary judgment bears the initial burden of production to show the

1 absence of material fact. *Cuzze*, 123 Nev. at 602. If such a showing is made, the party opposing
2 summary judgment assumes the burden of production to show the existence of material fact. *Id.*

3 The manner in which each party may satisfy its burden of production depends on which
4 party will bear the burden of persuasion on the challenged claim at trial. *Id.* If the moving party
5 will bear the burden of persuasion, that party must present evidence that would entitle it to a new
6 judgment as a matter of law in the absence of contrary evidence. *Id.* A party opposing summary
7 judgment “is not entitled to build a case on the gossamer threads of whimsy, speculation, and
8 conjecture.” *Wood*, 121 Nev. at 732.

9 Here, Plaintiff seeks a legal determination of Aspen’s policy limit based on Aspen’s policy
10 and a legal determination that it’s subrogation claims are viable as a matter of law. Aspen opposes
11 such relief and countermoves for a determination that it’s policy limit was \$1 million for the Moradi
12 action and that Plaintiff’s subrogation claims, whether based in equity or contract, cannot survive
13 as a matter of law. The parties insurance policies are now before the Court, and Plaintiff has not
14 taken issue with the sufficiency of Aspen’s policy.

15 **B. Aspen’s Policy Limit For The Moradi Action Is \$1 million.**

16 Plaintiff’s three arguments under Section IV(A) all concern the construction of Aspen’s
17 policy limit for the Moradi action. Plaintiff contends there is \$1 million of coverage for the
18 negligence/bodily injury claim in the Moradi action under the Bodily Injury Coverage Part A and
19 another \$1 million of coverage stacked on top of that for the false imprisonment claim under
20 Personal Injury Coverage Part B, ignoring the Aspen’s policy’s per occurrence limit and the fact
21 there was only one occurrence.

22 While acknowledging the maximum under any one coverage part is \$1 million, Plaintiff
23 then argues that the Aspen Endorsement limiting coverage under all coverage parts to the maximum
24 under any one coverage part, somehow does not limit coverage in that manner. Plaintiff is flat out
25 wrong and points to no case that supports its novel self-serving, construction. Such an interpretation
26 would stand insurance on law on its head, increase premiums, and potentially make coverage
27 otherwise unaffordable.

28

1 St. Paul intentionally misconstrues the Aspen policy limits in an effort to manufacture a
2 bad faith failure to settle claim within policy limits. St. Paul's argument is contrary to well
3 established insurance law and the unambiguous language contained in the Aspen Policy. Realizing
4 that it had no basis for a bad faith failure to settle within policy limits claim against Aspen, St.
5 Paul concocted a novel theory in its Amended Complaint and Motion. St. Paul now contends
6 Aspen's insurance policy limit for the underlying case *doubles* from \$1 million to \$2 million
7 because there was also a false imprisonment claim (personal/advertising injury) alleged in addition
8 to other claims like negligence (bodily injury)—though all injuries arise from a common causal
9 event.

10 However, this is not how the Aspen policy operates nor how the law construes the policy's
11 coverage. Instead, the law and policy provide that the one occurrence limit applies because there
12 has been one cause of the damages, regardless of the artful pleading of the underlying plaintiff,
13 and that is the maximum available insurance. Were it otherwise, a plaintiff could double coverage
14 based on artful pleading of claims, which is not how the policy works nor is it permitted by law.

15 Rather than recognize the \$1 million dollar "occurrence" limit applies, as it did implicitly
16 in its initial Complaint, St. Paul now contends that instead, the \$2 million "aggregate" limit applies
17 so it can *then* make the leap to argue Aspen did not accept a \$1.5 million settlement offer within
18 its aggregate limits, whereas that offer was not and would not otherwise be within Aspen's policy
19 limits. Here, however, there has only been one "occurrence" under the Aspen policy CGL
20 coverage, and therefore the \$1 million dollar "occurrence" limit applies and is the maximum
21 policy limit under that coverage for the underlying claim, just as everyone treated it in settlement
22 of the underlying case.

23 An "'occurrence' means an accident, including continuous or repeated exposure to
24 substantially the same general harmful conditions." Aspen Ins. Policy, Section V (13). Policy
25 limits are determined by the cause of the damage: "**When all injuries emanate from a common**
26 **source ..., there is only a single occurrence for purposes of policy coverage. It is irrelevant**
27 **that there are multiple injuries or injuries of different magnitudes**, or that the injuries extend
28 over a period of time." *Safeco Ins. Co. of America v. Fireman's Fund Ins. Co.*, supra, 148 CA4th

1 at 633, 55 CR3d at 854. On the other hand, the “aggregate” limit states the maximum amount the
2 insurer will pay during the policy period for such things as multiple occurrences. *National Union*
3 *Fire Ins. Co. v. Lynette C.*, 27 Cal. App. 4th 1434, 1458, 33 Cal. Rptr. 2d 496 (3d Dist. 1994).
4 Thus, if there are multiple *occurrences*, then the aggregate limits may be implicated unlike here
5 where there is one “occurrence.”

6 *Century Sur. Co. v. Casino West, Inc.*, 99 F.Supp.3d 1262 (D. Nev. Mar. 27, 2015),
7 addressed the occurrence issue. There, the Policy required that Century cover “bodily injury” that
8 is caused by an “occurrence” that takes place during the Policy period, similar to here, *Id.* at 1264.
9 “Occurrence” was similarly defined as “an accident, including continuous or repeated exposure to
10 substantially the same general harmful conditions.” *Id.* “The Policy, however, has an aggregate
11 limit of \$2,000,000 if the damages at issue arise from more than a single occurrence.” *Id.* In
12 addition to the general liability insurance, Casino West also obtained an excess policy of insurance
13 from Admiral (“the Excess Policy”), with a limit of \$5,000,000, which was in effect at the time of
14 the Accident.” *Id.* “The Excess Policy applies only once the aggregate amount of all limits of the
15 insured’s “Underlying Insurance” have been exhausted “by payment of judgments, settlements,
16 costs or expenses.” *Id.*

17 “Century and Admiral filed cross-motions for summary judgment on the issue of whether
18 the victims’ deaths on April 16, 2006 arose from a single ‘occurrence’ or more than one
19 ‘occurrence’ as defined by the Policy and controlling law.” *Id.* “If the victims’ deaths arose from
20 a single ‘occurrence,’ then Century’s \$1,000,000 per occurrence limit has been met and Admiral
21 is responsible for covering the remainder of the settlement amounts.” *Id.* “On the other hand, if
22 the deaths resulted from multiple ‘occurrences,’ then Century’s aggregate limit of \$2,000,000
23 would apply and Century would be obligated to make additional payments.” *Id.* The *Century*
24 Court, applying Nevada caselaw, found there to be one common cause of injury, therefore one
25 occurrence with a primary policy limit of \$1 million, with the excess insurer obligated for the
26 remainder. *Id.* at 1266-1267.

27 *Century* recognized that Nevada has adopted the “causal” approach to determining whether
28 “a particular situation constitutes a single occurrence or multiple occurrences for the purposes of

1 insurance liability.” *Id.* at 1264, citing *Bish v. Guaranty Nat’l Ins. Co.*, 109 Nev. 133, 848 P.2d
2 1057, 1058 (1993). “Under this analysis, the inquiry is focused on whether there was one or more
3 than one cause which resulted in all of the injuries or damages.” *Id.*

4 In *Bish*, a young girl was struck by a car when the car’s driver backed over her while
5 leaving a driveway. 109 Nev. at 133. Hearing screams and realizing what she had done, the driver
6 put the car in forward gear and drove over the child again. *Id.* Each time the driver struck the
7 child, serious injuries arose. The issue was whether the “underlying circumstances constituted one
8 accident or two for the purposes of collecting under the insurance policy....” *Id.*

9 “The *Bish* court held that the separate acts of negligence that each resulted in injuries to
10 the child arose from a single occurrence.” *Century Sur. Co.*, 99 F.Supp.3d at 1264. “It stated that
11 injuries arising from multiple “causes” are nonetheless attributable to a single ‘occurrence’ when
12 those causes ‘act[] concurrently with and [are] directly attributable to’ a single first cause.” *Id.*,
13 citing *Bish*, 109 Nev. at 137. “The court also observed that ‘[t]he proximity in both time and space
14 of the events at issue, together with their direct interdependence, leads ... to the conclusion that
15 there was a single accident, and that the sole cause of the accident was [the driver’s] negligence.’”
16 *Id.* citing *Bish*, 109 Nev. at 137

17 The same is true here. There has been one cause of all the underlying plaintiff’s injuries
18 and damages—the incident at Marquee—and thus one occurrence under the Aspen policy. In fact,
19 St. Paul has not argued there were two occurrences. Instead, it misconstrues when aggregate limits
20 are implicated.

21 St. Paul makes lengthy arguments about what is and is not a coverage part under the policy,
22 which is red herring and completely misses the issue. Under Nevada law, there has been a single
23 “occurrence,” and the \$1 million dollar single occurrence limit applies—that is the maximum
24 coverage even under St. Paul’s ‘coverage part’ rationale. St. Paul argues that there is also an
25 additional one million of coverage for the personal/advertising injury despite there being one
26 occurrence, and one cause of all the injuries, but the law says otherwise.

27 Again, even under St. Paul’s ‘coverage part’ argument, \$1 million is still the maximum
28 covered due to the one occurrence limitation. The Endorsement provides that if there are more

1 than one coverage parts applying, then the maximum that applies under one coverage part is the
2 maximum it pays out, so if there has been only one occurrence, the maximum limit under the CGL
3 coverage is \$1 million:

4 If this policy contains two or more Coverage Parts providing coverage for
5 the same “occurrence,” “accident,” “cause of loss,” “loss”, or offense, the
6 maximum limit under insurance under all Coverage Parts shall not exceed
7 the highest limit of insurance under any one Coverage Part.

7 Exhibit A1, Aspen Policy, Endorsement. St. Paul concedes the maximum under each coverage
8 part was \$1 million.

9 Under the law, the policy and the Endorsement, Aspen’s policy limits was still therefore
10 \$1 million, the maximum covered *here*. This also makes commonsense—coverage is not doubled
11 for the same injuries because the claims for the *same* injuries fall under different coverage parts
12 or different parts of the same coverage—there has been one cause of the same set of injuries, one
13 occurrence, and thus the contemplated insurance was \$1 million for such injuries. Neither the
14 plaintiff nor the insured would be entitled to a double recovery simply because a plaintiff plead
15 alternate theories for the same injuries.

16 Therefore, since the Aspen limit was \$1 million, there was no offer within policy limits,
17 and there can therefore be no claims based on the alleged bad faith refusal to settle within policy
18 limits. Aspen is therefore entitled to summary judgment on Plaintiff’s claims that are based on
19 this false legal premise that Aspen had a \$2 million policy limit, including Plaintiff’s two
20 subrogation claims and its estoppel claim (whether viable or law or not, but which they are not).

21 **C. If The Aspen Policy Is Deemed Ambiguous, The Objectively Reasonable**
22 **Expectations Control—The \$1 Million Policy Limit Still Applies.**

23 Plaintiff asks the court to construe as a matter of law the policy limit for the Aspen policy.
24 While Plaintiff alleges a federal court has construed bodily injury to be ambiguous, it does not
25 appear to contend the Aspen policy is ambiguous with respect to construing the applicable policy
26 limits. Plaintiff’s Opposition to Aspen’s prior Motion to dismiss did not argue the provisions were
27 ambiguous either. To the extent the Court rules otherwise, the \$1 million would still apply.

28

1 A policy provision is ambiguous if it is capable of two or more *reasonable* constructions.
2 *Waller v. Truck Ins. Exchange, Inc.*, 11 Cal.4th 1, 18, 900 P.2d 619 (1995); *Bay Cities Paving &*
3 *Grading, Inc. v. Lawyers' Mutual Ins. Co.*, 5 Cal.4th 854, 867, 855 P.2d 1263 (1993). In
4 determining if a provision is ambiguous, a court considers not only the face of the contract but
5 also any extrinsic evidence that supports a reasonable interpretation.¹ *Pacific Gas & E. Co. v. G.W.*
6 *Thomas Drayage & Rigging. Co., Inc.* 69 Cal.2d 33, 37-38, 42 P.2d 641 (1968). "Even apparently
7 clear language may be found to be ambiguous when read in the context of the policy and the
8 circumstances of the case." *American Alternative Ins. Corp., v. Superior Court*, 135 Cal.App.4th
9 1239, 1246, 37 Cal.Rptr.3d 918 (Cal. Ct. App. 2006).

10 **If policy language is ambiguous, an interpretation in favor of coverage is reasonable**
11 **only if it is consistent with the objectively reasonable expectations of the insured.** *Bank of the*
12 *West v. Superior Court*, 2 Cal.4th 1254, 1265, 833 P.2d 545 (1992). "[I]f the terms of a promise
13 are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor
14 believed, at the time of making it, that the promisee understood it." *Id.* at 1264-1265 (emphasis
15 added). "Only if this rule does not resolve the ambiguity do we then resolve it against the insurer."
16 *Id.* at 1265.

17 Thus, if ambiguous, the court must first determine whether the coverage under the policy
18 that would result from such a construction is consistent with the insured's objectively reasonable
19 expectations. *Id.* In order to do this, the disputed policy language must be examined in context
20 with regard to its intended function in the policy. *Id.* This requires a consideration of the policy
21 as a whole, the circumstances of the case in which the claim arises, and common sense.

22 Here, everyone, including both insureds and all insurance carriers including the excess
23 carriers treated the primary coverage limits as \$1 million each for both Aspen and Zurich. That's
24 true when the Aspen-National Union policy limits of \$26 million was first offered, and it was true

25 _____
26 ¹ No admissible extrinsic evidence has been offered by Plaintiff on this issue. Discovery has not
27 been undertaken in this case unless, and until, the Court rules on the legal issues first. The parties
28 move and countermove for the policy limit construction to be made as a matter of law as
unambiguous.

1 when the post-verdict settlement offer was made, and it was true when the post-verdict settlement
2 offer was accepted by the insurers. All these facts and others belie St. Paul's most recent
3 concoction of a \$2 million Aspen limit, particularly when there was no mention of a \$2 million
4 policy limit in the initial complaint.²

5 **D. Nevada Has Not Recognized Equitable Or Contractual Subrogation As A Viable**
6 **Cause Of Action.**

7 St. Paul's Amended Complaint was drafted vaguely so as to be undiscernible which form
8 of subrogation they are actually asserting, equitable or conventional. The omission of the word
9 "equitable" from its Amended Complaint, which formerly appeared in the initial Complaint,
10 naturally suggests the Amended Complaint at best seeks to state a claim for contractual subrogation
11 only. Plaintiff's Motion, however, argues that it is entitled to both contractual and equitable
12 subrogation.

13 Plaintiff's Motion argues that it is entitled to bring contractual and equitable subrogation
14 claims against Aspen, a determination the court may make as a matter of law. Aspen also
15 countermoves for a ruling that the subrogation claims are not viable, recognized causes of action in
16 Nevada as a matter of law.³ The prior briefing on the motions to dismiss concerned this legal ruling,
17 whether the claims are even viable, which should be made prior to discovery testing such claims if
18 they are allowed to even proceed.

19 **1. St. Paul Is Not Entitled To Contractual Subrogation.**

20 St. Paul has not alleged that it had any right to subrogation against Aspen based on any
21 contract *with Aspen*. St. Paul is a stranger to the Aspen contract. In determining whether a party

22 ² To the extent the provisions of the Aspen policy limits are deemed ambiguous as opposed to ruling
23 on same as a matter of law as unambiguous, the Court *may* need to postpone a determination once
24 discovery or evidence on the issue of the parties' reasonable, objective expectations is conducted.
25 However, countermovant seeks a determination that the provisions unambiguously provide for a \$1
million policy limit under the circumstances here.

26 ³ To the extent St. Paul's Motion can be construed as arguing it is entitled to summary judgment
27 on its subrogation claims now, at this stage before discovery, it should be denied. Plaintiff has not
28 supported each (potential element of such a claim) with admissible evidence. It should also be
denied as premature given the stage of these proceedings to the extent a legal ruling other than
whether or not the claims are viable in Nevada is sought.

1 can maintain an action for breach of the implied covenant of good faith and fair dealing, the
2 prerequisite for maintaining any such action in the existence of a contractual relationship between
3 the parties.

4 This is because the covenant of good faith and fair dealing is an implied term in the
5 contract. *Fireman's Fund Ins. Co. v. Maryland Casualty Co.*, 21 Cal. App. 4th 1586, 1599 (1994).
6 Nevada also recognizes the implied covenant of good faith and fair dealing where a contract exists.
7 *A.C. Shaw Construction, Inc. v. Washoe County*, 105 Nev. 913, 914 (1989). Without a contractual
8 underpinning, there is no independent claim for breach of the implied covenant. *Fireman's Fund*
9 *Ins. Co.*, 21 Cal. App. 4th at 1599 (citing *Love v. Fire Ins. Exchange*, (1990) 221 Cal.App.3d 1136,
10 1153, 271 Cal.Rptr. 246 (1990) (implied covenant is auxiliary and supplementary to express
11 contractual obligations; it has no existence separate from the contractual obligations). Further, the
12 California Supreme Court has held that nonparties to the insurance contract are not subject to a suit
13 for breach of the implied covenant. *Id.* (citing *Gruenberg v. Aetna Ins. Co.*, Cal.3d 566, 576, 108
14 Cal.Rptr. 480, 510 P.2d 1032 (1973)).

15 In *Fireman's Fund Ins. Co. v. Maryland Casualty Co.*, the court held that where two
16 contracts existed, one between the insured and the insurance company for primary coverage, and
17 the other between the insured and another insurance company for excess coverage, that no direct
18 contractual relationship existed. 21 Cal. App. 4th at 1599. The Court then analyzed whether the
19 excess insurer could be considered a third party beneficiary to the primary insurance company's
20 policy such that that the excess carrier could maintain its action for breach of an implied covenant.
21 *Id.* The Court ruled that under California law, that the contract must be expressly made for the
22 benefit of the third person and that it is not enough that an excess insurer incidentally benefits from
23 the primary insurance company's contract with the insured. *Id.* at 1600.

24 Nevada follows the same approach, and looks to the terms of the contract as a whole in
25 determining whether an entity or individual is an intended beneficiary and in doing so has applied
26 California law. *Canfora v. Coast Hotels and Casinos, Inc.*, 121 Nev. 771, 779, 121 P.3d 599, 604-
27 605 (2005) (citing *Jones v. Aetna Casualty & Surety Co.*, 26 Cal. App. 4th 1717, 33 Cal Rptr 2d 291
28 (requiring that the an individual be more than merely an incidental beneficiary to a contract to have

1 standing to enforce a covenant in an insurance policy intended to benefit the lessor). *California*
2 *courts* recognizing that an excess insurer has a right to sue a primary insurer have concluded that
3 such right arises by *equitable* subrogation (discussed below) and not by reason of an independent
4 duty arising under breach of contract such as breach of the duty of good faith and fair dealing.
5 *Fireman's Fund Ins. Co. v. Maryland Casualty Co.*, 21 Cal. App. 4th at 1600.

6 Here, in Plaintiff's First Cause of Action for Subrogation- Breach of the Duty to Settle, St.
7 Paul alleges that Aspen breached its duty by refusing to settle the Underlying Action after receiving
8 a pre-trial settlement demand that was within applicable policy limits. Specifically, St. Paul alleges
9 that Aspen breached the duty to settle by refusing to settle the Underlying Action despite receiving
10 a reasonable \$1,500,000.00 pre-trial Offer of Judgement by Moradi, which St. Paul alleges was
11 within Aspen's policy limits. Amended Comp., ¶ 76.

12 In the second cause of action against Aspen, Subrogation- Breach of The Aspen Insurance
13 Contract, St. Paul alleges that Aspen breached its obligations under the Aspen Policy by failing to
14 provide a conflict-free defense, favoring the interests of the Marquis over Cosmopolitan's interests,
15 failing to pay any amount on Cosmopolitan's behalf toward the settlement, and by failing to pay all
16 limits under the Aspen policy to resolve Cosmopolitan's liability when it had the opportunity.
17 Amended Comp., pp. 17-18.

18 However, both causes of action require the existence of a contract between Aspen and St.
19 Paul, which the court may find here lacks as a matter of law. Here, like in *Fireman's Fund Ins. Co.*
20 *v. Maryland Casualty Co.*, separate contracts exist -- the Aspen policy, the National Union policy,
21 and the St. Paul policy which is an umbrella policy that insures the Cosmopolitan. No direct
22 contractual relationship exists between Aspen and St. Paul such that St. Paul can maintain its
23 subrogation claims.

24 Further, St. Paul is not an express beneficiary under the Aspen contract either such that it
25 can maintain an action stemming from breach of contract and breach of an implied duty of good
26 faith and fair dealing. Under Nevada law, the insurance policy must have been expressly made for
27 the benefit of St. Paul, and it is not enough that St. Paul *incidentally* benefits from the
28 Cosmopolitan's insurance policy with Aspen.

1 Contractual subrogation in the insurance context has also been rejected and held to be
2 against public policy in Nevada. *Maxwell v. Allstate Ins. Companies*, 102 Nev. 502, 505, 728 P.2d
3 812, 814-815 (Nev. 1986). Even the unpublished Nevada federal *Colony* recognizes that contractual
4 subrogation, between primary and excess insurers, would provide improper windfalls in the
5 insurance context—just as it would here for St. Paul—and that it is not generally applied by an
6 excess insurer against a primary insurer. *Colony Ins. Co. v. Colo. Casualty Ins. Co.*, 2016 WL
7 3360943, *6 (D. Nev. June 9, 2016). Contractual subrogation amongst insurers has also been
8 rejected by other courts too. *See, e.g., Fireman's Fund Ins. Co. v. Maryland Casualty Co.*, 21
9 Cal.App.4th 1586, 1599 (1994) (no direct contractual relationship between primary and excess
10 insurers and insurer is not intended third party beneficiary).

11 Contractual subrogation in this context is thus not a viable cause of action. St. Paul cannot
12 dispute there is no contractual privity here. And, in the *California Capital* case, the facts were
13 similar as here, where the Court found, and correctly so, that the insured had no assignable cause of
14 action because, among other things, the insured had not suffered any damages since, regardless of a
15 judgment in excess of insurance limits, the **post judgment settlement** and defense expenses were
16 fully paid by insurers—just as here. *California Capital Ins. Co. v. Scottsdale Indem. Ins. Co.*, 2018
17 WL 2276815, *4 (Cal. Ct. App. May 18, 2018 (unpublished)).

18 Accordingly, Aspen is entitled summary judgment on the subrogation claims to the extent
19 they are contractually based.

20 **2. St. Paul Is Not Entitled To Equitable Subrogation.**

21 To the extent the court entertains St. Paul's claims as equitable claims for subrogation, they
22 still fail however, because once again, Nevada state court has not recognized such a cause of action,
23 as even the unpublished federal *Colony* decision recognized: "[T]he question of equitable
24 subrogation's application in the current context—between insurance carriers and excess carriers—
25 has not yet been addressed by the Nevada Supreme Court." *Colony*, 2016 WL 33609413 at *4. .
26 Nevada state court has not recognized that an excess insurer can pursue a claim against another
27 insurer for equitable subrogation. This Court should not create new law here.

28

1 Equitable subrogation is an equitable remedy that has not been extended to the context here
2 by the Nevada Supreme Court. The circumstances present do not implicate equity “to accomplish
3 what is just and fair to the parties,” because, among other things, St. Paul’s \$25 million excess
4 coverage was not the obligation here of Aspen, the primary insurer with \$1 million of coverage;
5 shifting that obligation to Aspen here is not equitable, but rather a windfall for St. Paul.

6 Essentially, St. Paul is arguing that it is just for this Court to recognize equitable
7 subrogation in Nevada for the first time, but has not alleged any corresponding injustice for this
8 court to do so. This is true regardless whether Aspen’s policy limit is properly construed as \$1
9 million, but assuming that is the construction the Court does order, the subrogation claims are
10 primarily based on the alleged failure to settle within policy limits, which would not be present here.
11 Equity would not require the Court to recognize this new cause of action, and Plaintiff is not in a
12 superior equitable, position. The circumstances and equities in this case simply do not call for this
13 Court to recognize a new claim for relief in Nevada which has not previously been recognized in
14 this context.

15 Plaintiff relies on the *Colony* case, an outlier, unpublished federal case which has never
16 been cited by any other courts, for recognition of equitable subrogation in Nevada state court for
17 the first time, where it has never been recognized before. *Colony* cited California law and discussed
18 the *essential* elements of such a claim, where it is recognized in that state (but not here).
19 Specifically, in *Colony*, the United States District Court relied upon the California case of
20 *Fireman's Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal. App. 4th 1279, 1292, 77 Cal. Rptr. 2d 296,
21 303 (1998) to identify eight essential elements of an excess insurer’s cause of action for equitable
22 subrogation against a primary insurer. The eight elements identified were:
23

- 24 (1) the insured (Cosmopolitan) suffered a loss for which the defendant insurer (Aspen) is
25 liable, either as the wrongdoer whose act or omission caused the loss or because the
26 defendant is legally responsible to the insured for the loss caused by the wrongdoer;
- 27 (2) the claimed loss was one for which the insurer (Excess) was not primarily liable;
- 28 (3) the insurer (Excess) has compensated the insured in whole or in part for the same loss
for which the defendant is primarily liable;

- 1 (4) the insurer (Excess) has paid the claim of its insured (Cosmopolitan) to protect its own
2 interest and not as a volunteer;
- 3 (5) the insured (Cosmopolitan) has an existing, assignable cause of action against the
4 defendant (Aspen) that the insured (Cosmopolitan) could have asserted for its own
5 benefit had it not been compensated for its loss by the insurer (Excess);
- 6 (6) the insurer (Excess) has suffered damages caused by the act or omission upon which
7 the liability of the defendant (Aspen) depends;
- 8 (7) justice requires that the loss be entirely shifted from the insurer (Excess) to the
9 defendant (Aspen), whose equitable position is inferior to that of the insurer (Excess);
10 and
- 11 (8) the insurer's (Excess) damages are in a liquidated sum, generally the amount paid to
12 the insured (Cosmopolitan).

13 *See Colony* at *5.⁴

14 Even were this court to decide to newly recognize a cause of action in Nevada for equitable
15 subrogation amongst insurers, it would have to find that all the elements of the claim are present
16 and that equity favors the claim. However, several elements are lacking as a matter of law. *See*
17 *Fireman's Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal. App. 4th 1279, 1292 (Cal. Ct. App. 1998)
18 (listing the essential elements for an insurer's equitable subrogation cause of action).

19 Two of the essential elements include (1) that the insured (Cosmopolitan) have suffered a
20 "loss," as that is construed by states who recognize equitable subrogation amongst insurers, and (5)
21 the insured (Cosmopolitan) had an existing, assignable cause of action, again, as construed by states
22 who recognize equitable subrogation amongst insurers. Both such essential elements are lacking as
23 matter of law, under the law of California, should this Court seek to adopt that law to create a new
24 cause of action in Nevada. *See Fireman's Fund Ins. Co.*, 65 Cal. App. 4th at 1292. However, there
25 is no "loss" to Cosmopolitan here as the courts that allow equitable subrogation construe "loss."

26 In *California Capital Ins. Co. v. Scottsdale Indemnity Ins.*, 2018 WL 2276815 (Cal.Ct.App.
27 2018), California Capital Insurance Company ("California Capital") defended its insureds in a
28

⁴ Plaintiff has not submitted admissible evidence to support each and every element of this claim. Summary judgment on the claim now would be premature for reasons stated previously. The Court should merely decide at this stage whether it will allow the claims to proceed.

1 personal injury action filed against them. *Id.* at *1. It rejected the personal injury plaintiff's
2 settlement demands. *Id.* The judgment entered against the insureds far exceeded policy limits. *Id.*
3 California Capital then entered into a post-judgment settlement with the claimant and made the
4 agreed payment to satisfy the judgment against the insureds. *Id.* This is what happened in Moradi
5 as well.

6 California Capital then sued Scottsdale Indemnity Company ("Scottsdale"), alleging
7 Scottsdale's insurance policy, issued to another defendant in the underlying personal injury action,
8 also covered California Capital's insureds as additional insureds (just like St. Paul contends here).
9 *Id.* California Capital's complaint included causes of action for breach of contract and breach of
10 the covenant of good faith and fair dealing. *Id.* at *4. California Capital sought to recover all or a
11 portion of the amounts it paid to defend and indemnify its insureds in the underlying action. *Id.* at
12 *1.

13 "The trial court found California Capital could not pursue the causes of action for breach
14 of contract and breach of the covenant of good faith and fair dealing that had been assigned to it by
15 the insureds, because the insureds sustained no damage as a result of those alleged breaches." *Id.*
16 California Capital appealed challenging the rejection of the assigned contractual claims. *Id.* The
17 appellate court "conclude[d] the trial court correctly determined California Capital could not pursue
18 the assigned causes of action because the insureds suffered no actionable damages." *Id.*

19 The California appellate court held "[t]he insured's damage claim against the insurer is
20 assignable, although some damages potentially recoverable in a bad faith action, including damages
21 for emotional distress and punitive damages, are not assignable." *Id.* at *4. "The assignment merely
22 transfers the interest of the assignor." *Id.* "The assignee 'stands in the shoes' of the assignor, taking
23 his rights and remedies, subject to any defenses which the obligor has against the assignor prior to
24 notice of the assignment." *Id.* The Court then held:

25 The trial court concluded California Capital had no cause of action for breach
26 of contract or breach of the covenant of good faith and fair dealing, because
27 the insureds from whom it obtained its assignment of rights sustained no
28 damage as a result of Scottsdale's failure to defend and indemnify them, or
to settle the claim within Scottsdale's policy limits. The [] **defendants'**
defense costs and the post-judgment settlement were fully paid by

1 **California Capital. Therefore, an essential element of California**
2 **Capital's causes of action was missing.** Case law supports the trial court's
3 conclusion.

4 *Id.* The Court then went through California caselaw supporting upholding of the ruling on appeal.
5 *Id.* at *5-6. The Court then held:

6 Here, California Capital had no direct cause of action for breach of contract
7 or breach of the covenant of good faith and fair dealing against Scottsdale.
8 California Capital was not a party to the Scottsdale insurance policy issued
9 to Joe's Trucking. California Capital pursued its causes of action for breach
10 of contract and breach of the covenant of good faith and fair dealing as
11 assignee of the Wend defendants' claims against Scottsdale under the
12 Scottsdale policy issued to Joe's Trucking. It was undisputed that California
13 Capital paid all of the costs of the Wend defendants' defense and satisfied the
14 judgment against them through a postjudgment settlement. Consequently,
15 because their causes of action for breach of contract and breach of the
16 covenant of good faith and fair dealing lacked the essential element of
17 damages, the Wend defendants had no viable claim under those theories to
18 assign to California Capital.

19 *Id.* at *6. Similar here, the insured, Cosmopolitan, suffered no loss and had no assignable cause of
20 action to assign to St. Paul. Because Cosmopolitan did not have a loss or assignable cause of action,
21 as those essential elements of a California equitable subrogation claim require, there are essential
22 elements of a claim for equitable subrogation lacking as a matter of law here. Aspen is therefore
23 entitled to summary judgment on the claim as a matter of law even were the Court to newly
24 recognize the claim in Nevada.

25 Similarly, in *National Union v. Tokio Marine*, the California court of appeals upheld
26 dismissal of an equitable subrogation claim because the insured suffered no loss. 233 Cal. App.4th
27 1348, 1362 (Cal.Ct.App. 2015). National Union pled a cause of action against Tokio Marine for
28 equitable subrogation of Costco's bad faith claim, based on its status as an additional insured under
29 the Insurance Policy. *National Union*, 233 Cal.App. 4th at 1360.

30 National Union alleged that Tokio Marine breached the duty of good faith and fair dealing
31 it owed to Costco by, among other things, refusing Costco's tenders of defense and indemnity,
32 failing to conduct its own investigation of the claimant's claims against Costco, and failing and
33 refusing to give Costco's interests as much consideration as the other insureds and/or their own. *Id.*

1 at 1360-1361. National Union sought to recover \$187,000 in settlement monies Costco paid towards
2 the settlement, approximately \$4.3 million that National Union paid to settle the case, and National
3 Union's fees. *Id.* at 1361

4 The trial court dismissed the equitable subrogation claim agreeing that "National Union
5 did not present any 'allegation that Costco suffered identifiable damages due to the bad faith conduct
6 upon which [National Union] has paid money and for which equitable subrogation is now sought.'" *Id.*
7 *Id.* National Union challenged the ruling on appeal. *Id.* The Court, on appeal when reviewing a
8 dismissal, treated it as admitting all facts true, considered all matters judicially noticed, determined
9 whether the facts constitute a claim for relief, and whether a defect could be cured by amendment.
10 *Id.* The Court still upheld dismissal of the equitable subrogation claim because there was no loss to
11 Costco, the insured, under the law construing equitable subrogation:

12 the settlement payment made by National Union was not a loss suffered by
13 Costco, and Costco's payments toward the settlement were not reimbursed
14 by National Union. Thus, neither of the payments claimed in this cause of
15 action meet the specific requirements for pleading a bad faith subrogation
16 claim.

17 *Id.* at 1362.

18 In addition to the other elements, for an equitable subrogation claim to be recognized,
19 "justice [must] require[] that the loss be entirely shifted from the insurer to the defendant, whose
20 equitable position is deemed inferior to that of the insurer." *Fireman's Fund*, 65 Cal. App. 4th at
21 1292. Here, Plaintiff was not in a superior position of equity. Justice does not require the shifting
22 of St. Paul's \$25 million excess obligation to a \$1 million primary insurer like Aspen.

23 Plaintiff has not demonstrated or established evidence supporting each and every essential
24 element of a claim for equitable subrogation, were it recognizable by Nevada courts. But, essential
25 elements such as an assignable claim and a loss to the insured are lacking as a matter of law, under
26 the law of California under which Plaintiff seeks this court to newly adopt, and summary judgment
27 for Aspen is therefore warranted even if this Court recognizes it as a new claim under Nevada law.

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1 **F. The Impermissible Content In Plaintiff Counsel's Declaration And Exhibits Not**
2 **Properly Authenticated By Plaintiff Should Not Be Considered.**

3 “Factual contentions involved in any pretrial or post-trial motion must be initially presented
4 and heard upon affidavits, unsworn declarations under penalty of perjury, depositions, answers to
5 interrogatories, and admissions on file.” EDCR 2.21(a). “Affidavits/declarations must contain only
6 factual, evidentiary matter, conform with the requirements of N.R.C.P. 56[], and avoid mere general
7 conclusions or argument.” EDCR 2.21(c); *see* NRCP 56(c)(2), (4) (must present in form of
8 admissible evidence; affidavits on personal knowledge, set out admissible facts, and show affiant
9 competent to testify on the matters); NRS 52.015 (“The requirement of authentication or
10 identification as a condition precedent to admissibility is satisfied by evidence or other showing
11 sufficient to support a finding that the matter in question is what its proponent claims.”); NRS 52.025
12 (testimony must be witness with personal knowledge). “Affidavits/declarations substantially
13 defective in these respects may be stricken, wholly or in part.” EDCR 2.21(c).

14 Plaintiff offers the Declaration of its counsel. Plaintiff's counsel in the coverage action
15 does not, and has not demonstrated, he has personal knowledge of the documents, events, or
16 occurrences in the underlying action he purports to authenticate or testify about. For example, he
17 purports to authenticate letters to and from Aspen to which he was not a recipient and lacks personal
18 knowledge. *See e.g.*, Plaintiff's Exhibits 15-17. This is but one example. He also makes self-serving
19 descriptions of documents or events in the underlying action for which he lacks personal knowledge
20 and that go beyond the permissible content in declarations. Consequently, the Court cannot rely on
21 Plaintiff's counsel's statements in his Declaration to the extent they concern impermissible matters
22 or evidence not properly authenticated by witnesses with knowledge.

23 **G. The Court Cannot Take Judicial Notice Of The Contents Of Records From Other**
24 **Cases; Rather, It Can Do So Only To Notice The Fact Of Such Filing Once A**
25 **Proper Showing Is Made.**

26 A court may take judicial notice of facts that are “[g]enerally known within the territorial
27 jurisdiction of the trial court,” as well as those that are “[c]apable of accurate and ready
28 determination ... [and] not subject to reasonable dispute.” *See In re Americo Deriv. Litig.*, 127 Nev.

1 196, 222, 252 P.3d 681, n. 9 (2011), *citing* NRS 47.130(2). The Court recognized that several courts
2 have concluded that “[a] court may take judicial notice of a document filed in another court ‘**not for**
3 **the truth of the matters asserted in the other litigation, but rather to establish the fact of such**
4 **litigation and related filings.**’” *Id.*, *citing* *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969
5 F.2d 1384, 1388 (2d Cir.1992) (*quoting* *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d
6 Cir.1991)); *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir.2001); *Southern Cross Overseas*
7 *v. Wah Kwong Shipping*, 181 F.3d 410, 426 (3d Cir.1999).

8 “[G]enerally, [Nevada] will not take judicial notice of facts in a different case, even if
9 connected in some way, unless the party seeking such notice demonstrates a valid reason for doing
10 so. *Id.*, *citing* *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (holding that this
11 court will generally not take judicial notice of records in other matters); *Carson Ready Mix v. First*
12 *Nat'l Bk.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (providing that this court will not consider
13 evidence not appearing in the record on appeal); *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d
14 568, 569 (1981) (recognizing general rule); *see also* *Giannopoulos v. Chachas*, 50 Nev. 269, 257 P.
15 618 (1927) (declining to take judicial notice because the motion was not supported by the required
16 showing). *Giannopoulos*, 50 Nev. at 216.

17 While the Court may, if the required showing is made unlike here, take judicial notice of
18 the filing of records in another case in certain circumstances, it does not establish the contents of
19 such records as fact in this case. *See In re Americo Deriv. Litig.*, 127 Nev. at 222, n.9.

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1 **IV. CONCLUSION**

2 For the foregoing reasons and arguments, Plaintiff's Motion for Partial Summary Judgment
3 should be DENIED in its entirety, and Aspen's Countermotion for Summary Judgment should be
4 GRANTED in full, and summary judgment entered in favor of Aspen on all claims against it
5 accordingly.

6 DATED this 19 day of September, 2019

7
8 **MESSNER REEVES LLP**

9
10 
11 MICHAEL M. EDWARDS
12 Nevada Bar No. 6281
13 RYAN A. LOOSVELT
14 Nevada Bar No. 8550
15 NICHOLAS L. HAMILTON
16 Nevada Bar No. 10893
17 8945 W. Russell Road, Suite 300
18 Las Vegas, Nevada 89148
19 Telephone: (702) 363-5100
20 Facsimile: (702) 363-5101
21 *Attorneys for Defendant Aspen Specialty*
22 *Insurance Company*
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PROOF OF SERVICE

St. Paul Fire & Marine Insurance Company v. Aspen Specialty Insurance Company
Case No.: A-17-758902-C

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Messner Reeves LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. I am readily familiar with Messner Reeves LLP's practice for collection and processing of documents for delivery by way of the service indicated below.

On this 19 day of September, 2019, I served the following document(s):

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

on the interested party(ies) in this action as follows:

Ramiro Morales
William C. Reeves
MORALES, FIERRO & REEVES
600 S. Tonopah Drive, Suite 300
Las Vegas, NV 89106
Tel: (702) 699-7822
Fax: (702) 699-9455
rmorales@mfrlegal.com
wreeves@mfrlegal.com
Attorneys for Plaintiff, St. Paul Fire & Marine Insurance Company

By Electronic Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, States of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

I declare under penalty of perjury under the laws of the States of Nevada that the foregoing is true and correct.


An employee of Messner Reeves LLP

EXHIBIT A

1 I, Marvin Robalino, do hereby declare under penalty of perjury as follows:

2 1. I am a Vice President at Aspen Specialty Insurance Company. I am authorized
3 to make this declaration on its behalf. I am over the age of 18, competent to testify to the matters
4 herein, and file this declaration in support of Aspen's Opposition to Plaintiff's motion for Partial
5 Summary Judgment and Countermotion for Summary Judgment.

6 2. Attached as Exhibit 1 is a true and correct copy of Aspen Specialty Insurance
7 Company policy number CRASXYD11, effective October 6, 2011 to October 6, 2012, issued to
8 The Restaurant Group, et. Al., with premium information redacted.

9 I swear and declare, under the penalty of perjury under the laws of the State of Nevada,
10 that the foregoing is true and correct.

11 Dated this 19 day of September, 2019

Marvin Robalino
Aspen Insurance
Vice President – Casualty Claims

12
13
14 EXECUTED this 19 day of September, 2019
15
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EXHIBIT A1

ASPEN SPECIALTY INSURANCE COMPANY**POLICY NUMBER:**CRA8XYD11**RENEWAL OF:** NEW**ASPEN****COMMON POLICY DECLARATIONS**

| | |
|---|--|
| ASPEN SPECIALTY INSURANCE COMPANY c/o Aspen Specialty Insurance Management, Inc. 590 Madison Avenue, 7th Floor New York, NY 10022 | AMWINS INSURANCE BROKERAGE OF CA 601 S. FIGUEROA STREET LOS ANGELES, CA 90017 |
|---|--|

NAMED INSURED: THE RESTAURANT GROUP ETAL

MAILING ADDRESS: 888 7TH AVENUE, 34TH FLOOR
NEW YORK, NY 10106POLICY PERIOD: FROM 10/06/2011 TO 10/06/2012 AT 12:01 A.M. STANDARD
TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

BUSINESS DESCRIPTION

**IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS
POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS
INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

| | PREMIUM |
|--|---|
| COMMERCIAL GENERAL LIABILITY COVERAGE PART | \$ [REDACTED] |
| COMMERCIAL PROPERTY COVERAGE PART | \$ [REDACTED] |
| LIQUOR LIABILITY COVERAGE PART | \$ [REDACTED] |
| TERRORISM PREMIUM | \$ [REDACTED] |
| TOTAL ADVANCE PREMIUM DUE AND PAYABLE AT INCEPTION | \$ [REDACTED] |
| Minimum retained audit prem: \$100% | Minimum retained premium: \$ [REDACTED] |

FORMS APPLICABLE TO ALL COVERAGE PARTS:

AS PER SCHEDULE OF APPLICABLE FORMS

NEW YORK: The insurer(s) named herein is (are) not licensed by the state of New York, not subject to its supervision, and in the event of the insolvency of the insurer(s), not protected by the New York State Security Funds. The policy may not be subject to all the regulations of the insurance department pertaining to policy forms.

Surplus Lines Broker Name: AMWINS INSURANCE BROKERAGE OF CA

Surplus Lines Broker Address: 601 S. FIGUEROA STREET
LOS ANGELES, CA 90017

Surplus Lines Broker License No.: EX-1053628-R

Authorized Representative

Includes copyrighted material of ISO, Inc., with its permission.

Page 1 of 1

ASPL074 DEC 0511

AA00973

ASPEN SPECIALTY INSURANCE COMPANY**POLICY NUMBER:** CRA8XYD11**RENEWAL OF:** NEW**COMMERCIAL GENERAL LIABILITY DECLARATIONS**

| | |
|---|--|
| ASPEN SPECIALTY INSURANCE COMPANY c/o Aspen Specialty Insurance Management, Inc. 590 Madison Avenue, 7th Floor New York, NY 10022 | AMWINS INSURANCE BROKERAGE OF CA 601 S. FIGUEROA STREET LOS ANGELES, CA 90017 |
| NAMED INSURED: THE RESTAURANT GROUP ETAL MAILING ADDRESS: 888 7TH AVENUE, 34TH FLOOR NEW YORK, NY 10106 POLICY PERIOD: FROM 10/06/2011 TO 10/06/2012 AT 12:01 A.M. TIME AT YOUR MAILING ADDRESS SHOWN ABOVE. | |

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.

| LIMITS OF INSURANCE | | |
|---|--------------|--------------------------------|
| EACH OCCURRENCE LIMIT | \$ 1,000,000 | |
| DAMAGE TO PREMISES | | |
| RENTED TO YOU LIMIT | \$ 100,000 | Any one premises |
| MEDICAL EXPENSE LIMIT | \$ N/A | Any one person |
| PERSONAL & ADVERTISING INJURY LIMIT | \$ 1,000,000 | Any one person or organization |
| GENERAL AGGREGATE LIMIT | | \$ 2,000,000 |
| PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT | | \$ 2,000,000 |

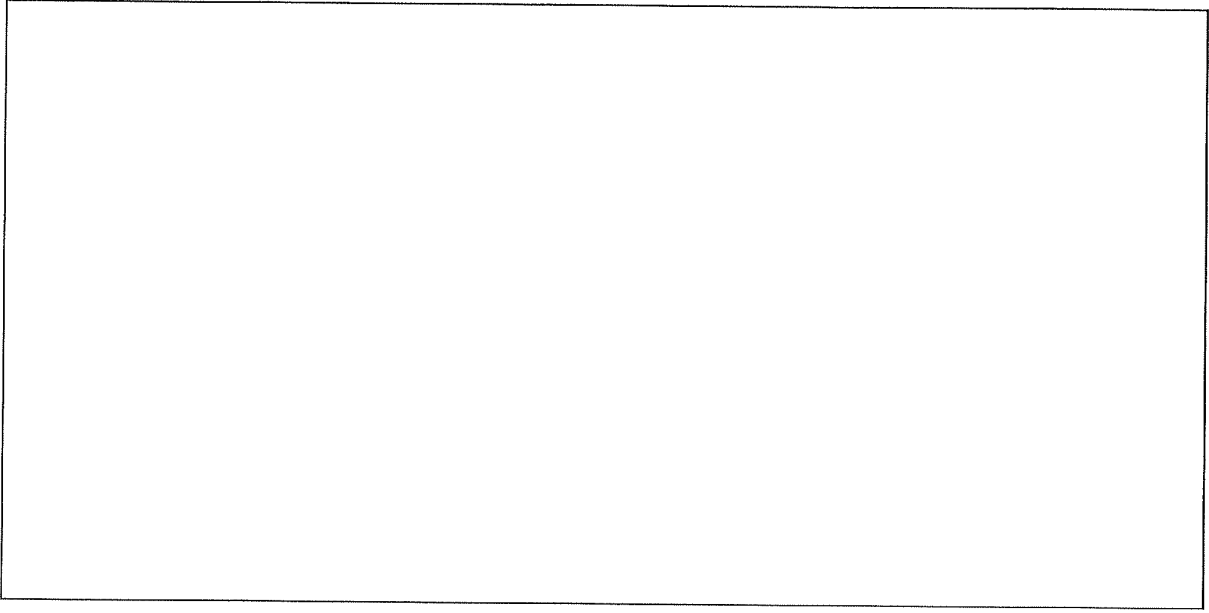
| | |
|--|------------------|
| DESCRIPTION OF BUSINESS | |
| FORM OF BUSINESS: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> TRUST <input type="checkbox"/> LIMITED LIABILITY COMPANY <input checked="" type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) <input type="checkbox"/> OTHER | |
| BUSINESS DESCRIPTION: | |
| ALL PREMISES YOU OWN, RENT OR OCCUPY | |
| LOCATION NUMBER | |
| | SEE FORM #CG2144 |

| CLASSIFICATION AND PREMIUM | | | | | | | |
|--|-------------------------------|--|--|------------------------------------|---------------------|----------------------------------|---------------------|
| LOCATION NUMBER | CLASSIFICATION | BASE | EXPOSURE | RATE/1000 | | ADVANCE PREMIUM | |
| | | | | Prem/ Ops | Prod Comp Ops | Prem/ Ops | Prod Comp Ops |
| | COMPOSITE RATE ALL OPERATIONS | GROSS SALES | \$175,000,000 | \$3.00 | INCL. | \$ [REDACTED] | INCL. |
| ADVANCE PREMIUM DUE AND PAYABLE AT INCEPTION (SUBJECT TO AUDIT) \$ [REDACTED] MINIMUM RETAINED AUDIT PREMIUM \$ [REDACTED] MINIMUM RETAINED PREMIUM \$ [REDACTED] | | | | | | | |
| AUDIT PERIOD (IF APPLICABLE) | | <input checked="" type="checkbox"/> ANNUALLY | <input type="checkbox"/> SEMI- ANNUALLY | <input type="checkbox"/> QUARTERLY | | <input type="checkbox"/> MONTHLY | |

| ENDORSEMENTS |
|--|
| ENDORSEMENTS ATTACHED TO THIS POLICY: <u>SEE SCHEDULE OF APPLICABLE FORMS</u> |

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Jaime E. DeCantillon
Authorized Representative





| | | | |
|---|--|---|--|
| ASPEN SPECIALTY INSURANCE COMPANY c/o Aspen Specialty Insurance Management, Inc. 590 Madison Avenue, 7th Floor New York, NY 10022 | | AMWINS INSURANCE BROKERAGE OF CA 601 S. FIGUEROA STREET LOS ANGELES, CA 90017 | |
| NAMED INSURED: THE RESTAURANT GROUP ETAL | | | |
| MAILING ADDRESS: 888 7TH AVENUE, 34TH FLOOR NEW YORK, NY 10106 | | | |
| POLICY PERIOD: FROM 10/06/2011 TO 10/06/2012 | | AT 12:01 A.M. TIME AT | |
| YOUR MAILING ADDRESS SHOWN ABOVE. | | | |

| LIMITS OF INSURANCE | |
|-------------------------|--------------|
| EACH COMMON CAUSE LIMIT | \$ 1,000,000 |
| AGGREGATE LIMIT | \$ 2,000,000 |

| | | |
|--|---|--|
| FORM OF BUSINESS: | | |
| <input type="checkbox"/> INDIVIDUAL | <input type="checkbox"/> PARTNERSHIP | <input type="checkbox"/> JOINT VENTURE |
| <input type="checkbox"/> LIMITED LIABILITY COMPANY | <input checked="" type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) | |
| <input type="checkbox"/> OTHER | | |
| BUSINESS DESCRIPTION: | | |

| LOCATION NUMBER | ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY |
|-----------------|---|
| | SEE FORM # CG2144 |

NEW YORK: The insurer(s) named herein is (are) not licensed by the state of New York, not subject to its supervision, and in the event of the insolvency of the insurer(s), not protected by the New York State Security Funds. The policy may not be subject to all the regulations of the insurance department pertaining to policy forms.

Surplus Lines Broker Name: AMWINS INSURANCE BROKERAGE OF CA
 Surplus Lines Broker Address: 601 S. FIGUEROA STREET
 LOS ANGELES, CA 90017

Surplus Lines Broker License No.: EX-1053628-R

Surplus Lines State Taxes were filed: New York

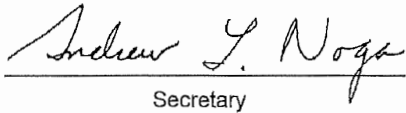
| CLASSIFICATION AND PREMIUM | | | | |
|--|-----------------------------------|--|------------------------------------|----------------------------------|
| CLASSIFICATION | CODE NO. | PREMIUM BASE | RATE | ADVANCE PREMIUM |
| COMPOSITE RATE ALL OPERATIONS | FLAT | \$ FLAT | \$ FLAT | \$ INCL. |
| ADVANCE PREMIUM DUE AND PAYABLE AT INCEPTION (SUBJECT TO AUDIT) \$ ██████ MINIMUM RETAINED AUDIT PREMIUM \$ ██████ MINIMUM RETAINED PREMIUM \$ ██████ (IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS) | | | | |
| AUDIT PERIOD (IF APPLICABLE) | <input type="checkbox"/> ANNUALLY | <input type="checkbox"/> SEMI-ANNUALLY | <input type="checkbox"/> QUARTERLY | <input type="checkbox"/> MONTHLY |

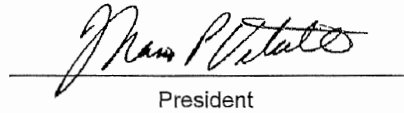
| ENDORSEMENTS |
|---------------------------------------|
| ENDORSEMENTS ATTACHED TO THIS POLICY: |
| SEE SCHEDULE OF APPLICABLE FORMS |
| |
| |
| |

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Jaime E. DeCantillon
 Authorized Representative

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Secretary and countersigned where required by law on the Declarations page by it's duly Authorized representative.


Secretary


President

COMMON POLICY CONDITIONS

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

A. Cancellation

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

B. Changes

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

C. Examination Of Your Books And Records

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

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate 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.

E. Premiums

The first Named Insured shown in the Declarations:

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

F. Transfer Of Your Rights And Duties Under This Policy

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

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

The following is added:

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

SCHEDULE OF APPLICABLE FORMS

COMMERCIAL GENERAL LIABILITY

NAMED INSURED: THE RESTAURANT GROUP ETAL

POLICY NUMBER: CRA8XYD11

FORMS AND ENDORSEMENTS MADE PART OF THIS POLICY AT TIME OF ISSUE:

FORM NUMBER AND TITLE:

| | |
|------------------|--|
| ASPL074 DEC 0511 | Common Policy Declarations |
| ASPL075 DEC 0511 | Commercial General Liability Declarations |
| ASPL007 DEC 0511 | Liquor Liability Declarations |
| ASPL020 0511 | Signature Page |
| IL 00 17 11 98 | Common Policy Conditions |
| IL 00 03 07 02 | Calculation of Premium |
| ASPL006 0104 | Schedule of Applicable Forms |
| CG 00 01 12 07 | Commercial General Liability Coverage Form Occurrence |
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| ASPL001 0104 | Asbestos Exclusion Endorsement |
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| ASPL050 0604 | Electromagnetic Fields (EMF's) Exclusion |
| ASPL057 1004 | Garagekeepers Coverage |
| ASPL071 0305 | Bodily Injury Property Damage Personal and Advertising Injury Liability Deductible Per Occurrence |
| ASPL098 0406 | Discrimination Exclusion |
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| ASPL001 0204 | Common Policy Conditions Amendment Minimum Retained Premium |
| ASPL002 0110 | General Service of Suit Endorsement |
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| CG 00 62 12 02 | War Liability Exclusion |
| CG 00 68 05 09 | Recording and Distribution of Material or Information in Violation of Law Exclusion |
| CG 04 35 02 02 | Employee Benefits Liability Coverage |
| CG 20 11 01 96 | Additional Insured - Managers Or Lessors Of Premises |
| CG 20 18 11 85 | Additional Insured - Mortgagee Assignee Or Receiver |
| CG 20 28 07 04 | Additional Insured - Lessor Of Leased Equipment |
| CG 21 16 07 98 | Exclusion - Designated Professional Services |
| CG 21 35 10 01 | Exclusion - Coverage C - Medical Payments |
| CG 21 44 07 98 | Limitation Of Coverage To Designated Premises Or Project |
| CG 21 47 07 98 | Employment - Related Practices Exclusion |
| CG 21 54 01 96 | Exclusion - Designated Operations Covered By A Consolidated Wrap-Up Insurance Program |
| CG 21 65 12 04 | Total Pollution Exclusion With A Building Heating Equipment Exception And A Hostile Fire Exception |
| CG 21 67 04 02 | Fungi Or Bacteria Exclusion |
| CG 21 75 12 02 | Exclusion Of Certified Acts Of Terrorism And Other Acts Of Terrorism |
| CG 22 43 07 98 | Exclusion - Engineers Architects or Surveyors Professional Liability |
| CG 24 07 01 96 | Products/Completed Operations Hazard Redefined |
| CG 25 04 03 97 | Designated Locations General Aggregate Limit |
| IL 00 21 07 02 | Nuclear Energy Liability Exclusion Endorsement |
| IL 12 01 11 85 | Policy Changes |
| IL 12 01 11 85 | Policy Changes |
| ASPL139 0811 | Policyholder's Guide to Reporting a Casualty Claim |

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" 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" or "property damage" 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 Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – 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 prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – 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 that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – 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".

2.Exclusions

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 Para-

graph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and 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 produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (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 against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that 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 26 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:
 - (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 law in the state where it is licensed or principally garaged; or
 - (b) the operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile 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 stunt-ing activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (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.

j. 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 contractors or subcontractors working directly or indirectly on your behalf are 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) 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 Section III – Limits Of Insurance.

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".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. 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.

m. 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.

n. 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.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. 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.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" 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.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; 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 under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies 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.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" 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".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at

the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" 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.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) 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 the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

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

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (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.

p. Distribution Of Material In Violation Of Statutes

"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.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- 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 applicable limit of insurance. 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.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

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. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. 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 the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable 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 court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable 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 the applicable limit of insurance.

These payments will not reduce the limits 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:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions 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 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage 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 we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – 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 con-

duct 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.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
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), 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" or "volunteer worker" as a consequence of Paragraph (1)(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 (1)(a) or (b) above; 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 Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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.

SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance 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 General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage"

included in the "products-completed operations hazard".

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage Cbecause of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part 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.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

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 which 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. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- 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 Coverage Part 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 Coverage Part 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.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

- (1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.
- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". 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.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.
- c. Method Of Sharing**
- If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
- If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part 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 and retrospective 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.
- c. 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.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, 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.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – 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. A land motor vehicle, trailer or semitrailer 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 law in the state where it is licensed or principally garaged.
- However, "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 the repair, replacement, adjustment or removal of "your product" or "your work" or 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, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and 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 (2) above and supervisory, inspection, architectural or engineering activities.
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, maintained primarily to provide mobility to 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 Paragraph 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 Paragraph 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.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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 a job site has been put to its intended use by any per-

son 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.

- 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;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

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 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.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "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.

LIQUOR LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

SECTION I – LIQUOR LIABILITY COVERAGE

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. 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 "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to "injury" only if:

- (1) The "injury" occurs during the policy period in the "coverage territory"; and

- (2) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.

- d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:

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

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Injury" 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. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

c. 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".

d. Liquor License Not In Effect

"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

e. Your Product

"Injury" arising out of "your product". This exclusion does not apply to "injury" for which the insured or the insured's indemnitees 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.

f. Other Insurance

Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

g. War

"Injury", however caused, arising, directly or indirectly, out of:

- (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.

SUPPLEMENTARY PAYMENTS

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
3. 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.
4. All costs taxed against the insured in the "suit".
5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
6. 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 the applicable limit of insurance.
7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds.
- 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 "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" is an insured for:

(1) "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 that co-"employee" is either in the course of his or her employment or 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 **(1)(a)** above; or
- (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 **(1)(a)** or **(b)** above.

(2) "Property damage" to property:

- (a)** Owned or occupied by, or
- (b)** Rented or loaned to that "employee", any of your other "employees", by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).
- b.** 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.
- c.** 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 Coverage Part.

- 3.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a.** Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- b.** Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

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.

SECTION III – LIMITS OF INSURANCE

- 1.** The Limits of Insurance 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 Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.

- 3.** Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

The Limits of Insurance of this Coverage Part 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.

SECTION IV – LIQUOR LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Injury, Claim Or Suit

- a.** You must see to it that we are notified as soon as practicable of an "injury" which may result in a claim. To the extent possible, notice should include:

- (1)** How, when and where the "injury" took place;
- (2)** The names and addresses of any injured persons and witnesses; and
- (3)** The nature and location of any "injury".

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 which may be liable to the insured because of "injury" 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. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- 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 Coverage Part 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 Coverage Part 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.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part 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 and retrospective 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.

c. 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.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, 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.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "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" occurs in the course of travel or transportation between any places included in **a.** above; or
 - c. All other parts of the world if the "injury" arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above; or
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in **a.** above or in a settlement we agree to.

3. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
4. "Executive Officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
5. "Injury" means all damages, including damages because of "bodily injury" and "property damage", and including damages for care, loss of services or loss of support.
6. "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".
7. "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.
8. "Suit" means a civil proceeding in which damages because of "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.
9. "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.
10. "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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASBESTOS EXCLUSION ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

1. The following Exclusion is added to SECTION I – COVERAGES, COVERAGE A. – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. – EXCLUSIONS and SECTION I – COVERAGES, COVERAGE B. – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. – EXCLUSIONS:
 1. Any liability for "bodily injury", "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
 2. Any obligation of the "insured" to indemnify any party because of damages arising out of "bodily injury", "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
 3. Any obligation to defend any "suit" or claim against the "insured" alleging bodily injury, "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, resulting from or contributed to, by the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL LEAD EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to 2., Exclusions of the GENERAL LIABILITY COVERAGE FORM:

This Policy Does Not Apply To:

1. "Bodily Injury", "Property Damage", "Personal Injury", or "Advertising Injury" arising out of, resulting from, caused by or contributed to by the presence, ingestion, inhalation, or absorption of or exposure to lead, lead compounds, or lead contained in any materials;
2. Any cost or expense to abate, mitigate, remove, or dispose of lead, lead compounds or materials containing lead;
3. Any supervision, instruction, recommendations, warnings or advice given or which should have been given in connection with parts 1. or 2. above; or
4. Any obligation to share damages with or repay anyone else who must pay damages in connection with parts 1., 2., or 3. above.

POLICY NUMBER: CRA8XYD11

INSURED NAME: THE RESTAURANT GROUP ETAL

ADDITIONAL NAMED INSURED ENDORSEMENT

THE NAMED INSURED IS HEREBY AMENDED TO INCLUDE THE FOLLOWING:

- 1) Madison Entertainment Associates, LLC.
- 2) Asia Las Vegas, LLC.
- 3) Buddha Entertainment, LLC.
- 4) Buddha Beach, LLC.
- 5) Stripview Entertainment, LLC.
- 6) Roof Deck Entertainment, LLC.
- 7) 5 Chinese Brothers, LLC.
- 8) Tao Licensing, LLC.
- 9) RMNJ, LLC.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

SILICA EXCLUSION ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. - EXCLUSIONS and SECTION I - COVERAGES, COVERAGE B. - PERSONAL AND ADVERTISING INJURY LIABILITY, 2. - EXCLUSIONS:

1. Any liability for "bodily injury", "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to silica, silicate, any silica material or any by-product, residue or compound containing silica or silicate; or
2. Any obligation of the "insured" to indemnify any party because of damages arising out of "bodily injury", "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to silica or silicate, any silica material or any by-product, residue or compound containing silica or silicate; or
3. Any obligation to defend any "suit" or claim against the "insured" alleging bodily injury, "property damage", "personal injury", "advertising injury", occupational disease, disability, shock, mental anguish or mental injury, resulting from or contributed to, by the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to silica, silicate, any silica material or any by-product, residue or compound containing silica or silicate.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY – AMENDMENTS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to any claim for damages resulting:

1. from the sole negligence of the indemnitee; or
2. from the ownership, maintenance or use of any aircraft;

arising out of any liability assumed under any "insured contract."

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

HIRED AUTO AND NON-OWNED AUTO LIABILITY

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

| Coverage | Limits of Insurance | Additional Premium |
|--------------------------|----------------------------|---------------------------|
| Hired Auto Liability | \$ 1,000,000 | \$INCL. |
| Non-Owned Auto Liability | \$ 1,000,000 | \$INCL. |

- A.** Insurance is provided only for those coverages for which a specific premium charge is shown in the Declarations or in this Schedule.

1. HIRED AUTO LIABILITY

The insurance provided under the Commercial General Liability Form, **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE 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 the Commercial General Liability Form, **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person other than you.

- B.** For insurance provided by this endorsement only:

- 1.** The exclusions, under the Commercial General Liability Form, **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2. Exclusions, e. and j. are deleted and replaced by the following:

- e. "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 injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
 - (2) "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.
- j. "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. SECTION II – WHO IS AN INSURED in the Commercial General Liability Form, is replaced by the following:

Each of the following is an insured under this endorsement to the extent set forth below:

- 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 or borrow. This does not include any "auto" you lease, hire 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 any "auto" you do not own, lease, hire or borrow which is used in connection with your business. However, if you are a partnership, a "non-owned auto" does not include any "auto" owned by any partner.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS AMENDMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AMENDMENT – COMMON POLICY CONDITIONS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The Common Policy Conditions (IL 00 17 11/98) are amended by the addition of the following:

G. Other Insurance with This Company

If this policy contains two or more Coverage Parts providing coverage for the same "occurrence," "accident," "cause of loss," "loss" or offense, the maximum limit of insurance under all Coverage Parts shall not exceed the highest limit of insurance under any one Coverage Part.

If this policy and any other policy issued to you by us apply to the same "occurrence," "accident," "cause of loss," "injury," "loss" or offense, the maximum limit of insurance under all of the policies shall not exceed the highest limit of insurance under any one policy. This condition does not apply to any policy issued by us which specifically provides that the policy is to apply as excess insurance over this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ELECTROMAGNETIC FIELDS (EMF'S) EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to SECTION I – COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. – EXCLUSIONS:

Any liability for bodily injury or property damage, or any other loss, cost (including defense costs) or expense arising out of exposure to an electromagnetic field in any form, including but not limited to liability for the installation, operations, repair, sale or manufacture or distribution of any kind of equipment or products producing or in any way involving the effects of an electromagnetic field.

2. The following Definition is added to SECTION V – DEFINITIONS:

“Electromagnetic Field” means electric and magnetic fields generated by varying electrical current through any medium including but not limited to wires whether or not intended for the purpose of conducting electricity.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

GARAGEKEEPERS COVERAGE

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

| | |
|---|--|
| Endorsement Effective: Named Insured: THE RESTAURANT GROUP ETAL | Countersigned By: (Authorized Representative) |
|---|--|

SCHEDULE

| Location No. | Coverages | Limits of Insurance for Each Location | |
|-------------------------------------|------------------|---------------------------------------|--|
| <input type="checkbox"/> | Comprehensive | \$ | PER LOCATION FOR ALL CUSTOMER'S AUTO MINUS A |
| | SIR \$25,000 | \$ | DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO FOR LOSS" CAUSED BY THEFT OR MISCHIEF OR VANDALISM |
| ONE | SUBJECT TO \$ | | DEDUCTIBLE FOR ALL SUCH "LOSS" IN ANY ONE EVENT |
| <input checked="" type="checkbox"/> | Comprehensive | \$100,000 | MINUS \$25,000 |
| | | | DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO" FOR "LOSS" CAUSED BY THEFT OR MISCHIEF VANDALISM; OR |
| | Specified Causes | \$ | MINUS \$ |
| | Of Loss | \$ | MINUS \$ |
| | | | DEDUCTIBLE FOR ALL PERILS SUBJECT TO MAXIMUM DEDUCTIBLE FOR ALL SUCH "LOSS" IN ANY ONE |
| | Collision | \$ | MINUS \$ |
| | | | DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO" |
| <input type="checkbox"/> | Comprehensive | \$ | MINUS \$ |
| | | | DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO" FOR "LOSS" CAUSED BY THEFT OR MISCHIEF VANDALISM; OR |
| | Specified Causes | \$ | MINUS \$ |
| | Of Loss | \$ | MINUS \$ |
| | | | DEDUCTIBLE FOR ALL PERILS SUBJECT TO MAXIMUM DEDUCTIBLE FOR ALL SUCH "LOSS" IN ANY ONE |
| | Collision | \$ | MINUS \$ |
| | | | DEDUCTIBLE FOR EACH "CUSTOMER'S AUTO" |

LOCATIONS WHERE YOU CONDUCT "GARAGE OPERATIONS"

| Location No. | Address State Your Main Business Location as Location No. 1 |
|--------------------------|--|
| <input type="checkbox"/> | All locations where insured provides Valet Parking Services. Limit is subject to a policy aggregate limit of \$100,000 |
| <input type="checkbox"/> | |
| <input type="checkbox"/> | |

| Premium For All Locations | |
|----------------------------------|----|
| Comprehensive | \$ |
| Specified Causes of Loss | \$ |
| Collision | \$ |

DIRECT COVERAGE OPTIONS

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

☒ **EXCESS INSURANCE**

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

☐ **PRIMARY INSURANCE**

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

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. This endorsement provides only those coverages:

1. Where the Limit of Insurance and a premium are shown for that coverage in the Schedule:
and
2. For the location shown in the Schedule.

B. Coverage

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

a. Comprehensive Coverage

From any cause except:

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

b. **Specified Causes Of Loss Coverage**

Cause by:

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

c. **Collision Coverage**

Caused by:

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

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

3. **Who Is An Insured**

The following are "insureds" for "loss" to "customer's autos".

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

4. **Coverage Extensions**

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

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

C. **Exclusions**

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

a. **Contractual Obligations**

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

b. **Theft**

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

c. **Defective Parts**

Defective parts or materials.

d. **Faulty Work**

Faulty "work you performed".

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

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

D. Limit Of Insurance And Deductible

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

E. Additional Definitions

As used in this endorsement:

1. "Customer's auto" means a customer's land motor vehicle or trailer or semi trailer. This definition also includes any customer's auto while left with you for service, repair, storage or safekeeping. Customers include your employees, and members of their households who pay for services performed.
2. "Loss" means direct and accidental loss or damage and includes any resulting loss of use.

3. "Garage operations" means the ownership, maintenance or use of locations for the purpose or a business of selling, servicing, repairing, parking or storing "customer's autos" and that portion of the roads or other accesses that adjoin these locations. "Garage operations" also includes all operations necessary or incidental to the performance of garage operations.
4. "Work you performed" includes:
 - a. Work that someone performed on your behalf; and
 - b. The providing of or failure to provide warnings or instructions.

All other definitions, terms and conditions of this policy remain unchanged.

This endorsement is a part of your policy and takes effect on the effective date of your policy, unless otherwise stated.

Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY LIABILITY
DEDUCTIBLE ENDORSEMENT**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

| Coverage | Amount and Basis of Deductible |
|---|--|
| Bodily Injury Liability | \$25,000 per occurrence INCLUDING LOSS ADJUSTMENT EXPENSE |
| Property Damage Liability | \$25,000 per occurrence INCLUDING LOSS ADJUSTMENT EXPENSE |
| Personal Advertising Injury Liability (Personal Injury and Advertising Injury) | \$25,000 per occurrence INCLUDING LOSS ADJUSTMENT EXPENSE |

APPLICATION OF ENDORSEMENT

Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury," property damage," "personal advertising injury," ("personal injury" and "advertising injury") however caused:

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability (Personal Injury and Advertising Injury) Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the Limits of Insurance applicable to Each Occurrence or offense for such coverages will be reduced by the amount of such deductible. Aggregate Limits for such coverages shall not be reduced by the application of such deductible amount.
2. The deductible amounts apply to damages and all legal and loss adjustment expenses.
3. The deductible amounts stated in the Schedule above apply, respectively:
 - a. Under the Bodily Injury Liability Coverage to all damages because of the "bodily injury" sustained by one person;
 - b. Under Property Damage Liability Coverage to all damages because of the "property damage" sustained by one person, any organization or association; or
 - c. Under Personal and Advertising Injury Liability (Personal Injury and Advertising Injury) Coverages to all damages sustained by one person as a result of one "occurrence" or offense.
4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," offense, claim or "suit", apply irrespective of the application of the deductible amount.
5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - DISCRIMINATION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following Exclusion is added to SECTION I – COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. – EXCLUSIONS and SECTION I – COVERAGES, COVERAGE B. – PERSONAL AND ADVERTISING INJURY LIABILITY, 2. – EXCLUSIONS:

This policy does not apply to:

Discrimination

Bodily injury, personal injury, or advertising injury liability that arises from discrimination based upon, but not limited to, race, creed, color, sex, age, disability, national origin, handicap, illness, religion or sexual preference.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - CROSS SUITS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCT/COMPLETED OPERATIONS LIABILITY COVERAGE PART

This policy does not afford coverage to claims for damages arising out of bodily injury, personal and advertising injury, or property damage as defined, initiated, alleged or caused to be brought about by a Named Insured covered by this policy against any other Named Insured covered by this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMON POLICY CONDITIONS AMENDMENT MINIMUM RETAINED PREMIUM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMON POLICY CONDITIONS

Condition A – CANCELLATION, paragraph 5, is deleted and replaced by the following:

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, earned premium will be computed according to the customary short rate table and procedure, subject to a Minimum Retained Premium of \$[REDACTED]. The cancellation will be effective even if we have not made or offered a refund.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL SERVICE OF SUIT ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

ALL COVERAGE PARTS IN THIS POLICY

Pursuant to any statute of any state or district of the United States of America which makes provision therefore, the insurer hereby designates the Commissioner, Superintendent or Director of Insurance or other officer specified for that purpose in the statute, and his or her successors in office, and duly authorized deputies in the state where this policy is issued, as the insurer's true and lawful attorney for service of legal process in action, suit or proceeding brought in the state where this policy is issued by or on behalf of an insured or beneficiary against the insurer arising out of the insurance issued under this policy.

The Company's registered forwarding address for purposes of receiving service from the Commissioner, Superintendent or Director of Insurance or other officer in each state shall be: Aspen Specialty Insurance Management, Inc., c/o General Counsel, 175 Capital Blvd., Rocky Hill, CT 06067; (860) 760-7758; Questions can be directed to: Compliance@aspenspecialty.com. In addition, please note state-specific instructions as follows:

In Arizona, service must be made on the Commissioner of Insurance, but a copy of any service of legal process should also be delivered or forwarded (for informational purposes only) to: Mr. John Rohwer, John Rohwer & Company, P.O. Box 2229, Phoenix, AZ 85002 or Gail Flock c/o CT Corporation System, 2394 East Camelback Road, Phoenix, AZ 85016.

In California, any service of legal process may also be delivered or forwarded to: Jere Keprios c/o CT Corporation, 818 West Seventh Street, Los Angeles, CA 90017.

In Colorado, any service of legal process may also be delivered or forwarded to: Christen Vinnola c/o The Corporation Company, 1675 Broadway, Suite 1200, Denver, CO 80202.

In Georgia, service must be made on the Commissioner of Insurance, but a copy of such service should also be delivered or forwarded (for informational purposes only) to: Dale W. Morris c/o CT Corporation System, 1201 Peachtree Street, NE, Atlanta, GA 30361.

In Hawaii, any service of legal process may also be delivered or forwarded to: Ronald V. Grant c/o CT Corporation Company, Inc. 900 Fort Street Mall, Suite 1800 Honolulu, HI 96813.

In Louisiana, any service of legal process may also be delivered or forwarded to: Lisa Uttech c/o CT Corporation Regional System, 5615 Corporate Blvd Suite 400B, Baton Rouge, LA 70808.

In Maine, service must be made on the Commissioner of Insurance, but a copy of such filing should also be delivered or forwarded (for informational purposes only) to: Peter B. Webster c/o CT Corporation System, 81 West Main Street, Yarmouth, ME 04096.

In Michigan, service of legal process may only be made on the Insurance Commissioner, but a copy of such filing should also be sent (for reference only) to: General Counsel, Aspen Insurance U.K. Limited c/o Aspen Specialty Insurance Management, Inc., 175 Capital Blvd., Rocky Hill, CT 06067.

In North Carolina, service of legal process may only be made on the Insurance Commissioner, but a copy of any service of legal process should also be delivered or forwarded (for reference only) to: Ron M. Strickland c/o CT Corporation System 150 Fayetteville Street Box 1011, Raleigh, NC 27601.

In Tennessee, any service of legal process may only be made on the Insurance Commissioner, but a copy of such filing should also be delivered or forwarded (for reference only) to: Mark Williams c/o CT Corporation System 800 S. Gay Street, Suite 2021, Knoxville, TN 37929.

In Texas, any service of legal process may only be made on the Insurance Commissioner, but a copy of such filing should also be delivered or forwarded (for reference only) to: Shirley Dillon c/o CT Corporation System, 350 North St. Paul Street, Dallas, TX 75201.

In Wyoming, any service of legal process should be made on the Insurance Commissioner, but a copy of such filing should also be delivered or forwarded (for reference only) to: Tammy Bellefeuille c/o CT Corporation System 1720 Carey Avenue, Cheyenne, WY 82001.

The foregoing designation of attorney for service of legal process upon the Company shall not constitute a waiver of the Company's rights to remove, remand, dismiss or transfer any suit or proceeding from any court, or to commence any suit or other proceeding in any court of competent jurisdiction.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIQUOR LIABILITY COVERAGE FORM CONDITIONS AMENDMENT
MINIMUM RETAINED AUDIT PREMIUM**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

LIQUOR LIABILITY COVERAGE FORM

SECTION IV, LIQUOR LIABILITY CONDITIONS, Paragraph 5, **Premium Audit**, subparagraph b, is deleted and replaced by the following:

- b.** Premium shown in this Coverage Part as Advance Premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit premiums are due and payable upon notice to the First Named Insured. Premium Audit adjustments will be made to determine additional premiums only. You agree that there will be no downward adjustment of the Minimum Retained Audit Premium resulting from the Premium Audit provision of this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAR LIABILITY EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion **i.** under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:
- 2. Exclusions**
- This insurance does not apply to:
- i. War**
- "Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:
- (1) War, including undeclared or civil war; or
 - (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.
- B. The following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:
- 2. Exclusions**
- This insurance does not apply to:
- WAR**
- "Personal and advertising injury", however caused, arising, directly or indirectly, out of:
- a. War, including undeclared or civil war; or
 - b. 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
 - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- C. Exclusion **h.** under Paragraph 2., **Exclusions of Section I – Coverage C – Medical Payments** does not apply. Medical payments due to war are now subject to Exclusion **g.** of Paragraph 2., **Exclusions of Section I – Coverage C – Medical Payments** since "bodily injury" arising out of war is now excluded under Coverage A.

RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion q. of Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" 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;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

- B. Exclusion p. of Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

p. Recording And Distribution Of Material Or Information In Violation Of Law

"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;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE BENEFITS LIABILITY COVERAGETHIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE.
PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

| Coverage | | Limit Of Insurance | | Deductible | | Premium |
|----------------------------|------------|--------------------|---------------|------------|---------------|---------------|
| Employee Benefits Programs | | \$1,000,000 | each employee | \$25,000 | each employee | \$ [REDACTED] |
| | | \$1,000,000 | aggregat  | | | |
| Retroactive Date: | 10/06/2011 | | | | | |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. The following is added to Section I – Coverages:**COVERAGE – EMPLOYEE BENEFITS LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, 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 to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in Paragraph E. (Section III – Limits Of Insurance); and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to damages only if:

- (1) The act, error or omission, is negligently committed in the "administration" of your "employee benefit program";
- (2) The act, error or omission, did not take place before the Retroactive Date, if any, shown in the Schedule nor after the end of the policy period; and
- (3) A "claim" for damages, because of an act, error or omission, is first made against any insured, in accordance with Paragraph c. below, during the policy period or an Extended Reporting Period we provide under Paragraph G. of this endorsement.

c. A "claim" seeking damages will be deemed to have been made at the earlier of the following times:

- (1) When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or

- (2) When we make settlement in accordance with Paragraph 1.a, above.

A "claim" received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the claim.

- d. All "claims" for damages made by an "employee" because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such "employee's" dependents and beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any insured.

2. Exclusions

This insurance does not apply to:

a. **Dishonest, Fraudulent, Criminal Or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

b. **Bodily Injury, Property Damage, Or Personal And Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

c. **Failure To Perform A Contract**

Damages arising out of failure of performance of contract by any insurer.

d. **Insufficiency Of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

e. **Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation**

Any "claim" based upon:

- (1) Failure of any investment to perform;
- (2) Errors in providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

f. **Workers' Compensation And Similar Laws**

Any "claim" arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

g. **ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

h. **Available Benefits**

Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

i. **Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

j. **Employment-Related Practices**

Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

B. For the purposes of the coverage provided by this endorsement:

1. All references to Supplementary Payments – Coverages A and B are replaced by Supplementary Payments – Coverages A, B and Employee Benefits Liability.

2. Paragraphs 1.b. and 2. of the Supplementary Payments provision do not apply.

C. For the purposes of the coverage provided by this endorsement, Paragraphs 2. and 4. of Section II – Who Is An Insured are replaced by the following:

2. Each of the following is also an insured:

- a. Each of your "employees" who is or was authorized to administer your "employee benefit program".
- b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
- c. 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 Endorsement.

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
 - b. Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.
- D. For the purposes of the coverage provided by this endorsement, Paragraph 3. of **Section II – Who Is An Insured** does not apply.
- E. For the purposes of the coverage provided by this endorsement, **Section III – Limits Of Insurance** is replaced by the following:

1. Limits Of Insurance

- a. The Limits of Insurance shown in the Schedule and the rules below fix the most we will pay regardless of the number of:
 - (1) Insureds;
 - (2) "Claims" made or "suits" brought;
 - (3) Persons or organizations making "claims" or bringing "suits";
 - (4) Acts, errors or omissions; or
 - (5) Benefits included in your "employee benefit program".
- b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
 - (1) An act, error or omission; or
 - (2) A series of related acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

The Limits of Insurance of this endorsement 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 of the policy to which this endorsement is attached, 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.

2. Deductible

- a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Schedule as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- b. The deductible amount stated in the Schedule applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- c. The terms of this insurance, including those with respect to:
 - (1) Our right and duty to defend any "suits" seeking those damages; and
 - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim"
 apply irrespective of the application of the deductible amount.
- d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

F. For the purposes of the coverage provided by this endorsement, Conditions **2.** and **4.** of **Section IV—Conditions** are replaced by the following:

2. Duties In The Event Of An Act, Error Or Omission, Or "Claim" Or "Suit"

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim". To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and
- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

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 which may be liable to the insured because of an act, error or omission 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 without our consent.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

(1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Schedule of this insurance and that applies to an act, error or omission on other than a claims-made basis, if:

(a) No Retroactive Date is shown in the Schedule of this insurance; or

(b) The other insurance has a policy period which continues after the Retroactive Date shown in the Schedule of this insurance.

(2) When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". 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.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of the total amount that all such other insurance would pay for the loss in absence of this insurance; and the total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Schedule of this endorsement.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of insurance of all insurers.

- G.** For the purposes of the coverage provided by this endorsement, the following Extended Reporting Period provisions are added, or, if this endorsement is attached to a claims-made Coverage Part, replaces any similar Section in that Coverage Part:

EXTENDED REPORTING PERIOD

- 1.** You will have the right to purchase an Extended Reporting Period, as described below, if:

a. This endorsement is canceled or not renewed; or

b. We renew or replace this endorsement with insurance that:

(1) Has a Retroactive Date later than the date shown in the Schedule of this endorsement; or

(2) Does not apply to an act, error or omission on a claims-made basis.

- 2.** The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to "claims" for acts, errors or omissions that were first committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Schedule. Once in effect, the Extended Reporting Period may not be canceled.

- 3.** An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a.** The "employee benefit programs" insured;

b. Previous types and amounts of insurance;

c. Limits of insurance available under this endorsement for future payment of damages; and

d. Other related factors.

The additional premium will not exceed 100% of the annual premium for this endorsement.

The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period starts.

- 4.** If the Extended Reporting Period is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period.

The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in the Schedule of this endorsement under Limits of Insurance.

Paragraph **E.1.b.** of this endorsement will be amended accordingly. The Each Employee Limit shown in the Schedule will then continue to apply as set forth in Paragraph **E.1.c.**

- H.** For the purposes of the coverage provided by this endorsement, the following definitions are added to the **Definitions** Section:

- 1.** "Administration" means:

a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

b. Handling records in connection with the "employee benefit program"; or

c. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include handling payroll deductions.

2. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
3. "Claim" means any demand, or "suit", made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.
4. "Employee benefit program" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
 - a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
 - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
 - c. Unemployment insurance, social security benefits, workers' compensation and disability benefits;
 - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and
 - e. Any other similar benefits designated in the Schedule or added thereto by endorsement.
- I. For the purposes of the coverage provided by this endorsement, Definitions 5, and 18, in the **Definitions** Section are replaced by the following:
 5. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
 18. "Suit" means a civil proceeding in which damages because of an act, error or omission 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.

POLICY NUMBER: CRA8XYD11

COMMERCIAL GENERAL LIABILITY
CG 20 11 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

1. Designation of Premises (Part Leased to You): As required by written contract
signed by both parties prior to a loss
2. Name of Person or Organization (Additional Insured):

3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule 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 and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.

POLICY NUMBER: CRA8XYD11

COMMERCIAL GENERAL LIABILITY

CG 20 18 11 85

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED –
MORTGAGEE, ASSIGNEE, OR RECEIVER**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization: As required by written contract signed by
both parties prior to a loss

Designation of Premises:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

1. WHO IS AN INSURED (Section II) is amended to include as an insured the person(s) or organization(s) shown in the Schedule but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you and shown in the Schedule.
2. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

COMMERCIAL GENERAL LIABILITY
CG 20 28 07 04

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

COMMERCIAL GENERAL LIABILITY COVERAGE PART

| |
|--|
| Name Of Additional Insured Person(s) Or Organization(s) As required by written contract signed by both parties prior to a loss |
| Information required to complete this Schedule, if not shown above, will be shown in the Declarations. |

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

POLICY NUMBER: CRA8XYD11

COMMERCIAL GENERAL LIABILITY
CG 21 16 07 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED PROFESSIONAL SERVICES

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

| Description Of Professional Services: |
|--|
| 1. ALL PROFESSIONAL SERVICES |
| 2. |
| 3. |

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service.

POLICY NUMBER: CRA8XYD11

COMMERCIAL GENERAL LIABILITY
CG 21 35 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – COVERAGE C – MEDICAL PAYMENTS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description And Location Of Premises Or Classification:

ALL LOCATIONS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any premises or classification shown in the Schedule:

1. Section I – Coverage C – Medical Payments does not apply and none of the references to it in the Coverage Part apply; and

2. The following is added to Section I – Supplementary Payments:

- h. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

POLICY NUMBER: CRA8XYD11

COMMERCIAL GENERAL LIABILITY
CG 21 44 07 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises: 1) Lavo NY - 39 EAST 58TH STREET, NEW YORK, NY 10022

2) TAO Las Vegas - 3355 LAS VEGAS BLVD SOUTH, LAS VEGAS, NV 89109
(INSIDE THE VENETIAN RESORT HOTEL)

3) Lavo Las Vegas - 3325 LAS VEGAS BLVD SOUTH, LAS VEGAS, NV 89109
(LOCATED AT THE PALAZZO RESORT HOTEL)

4) Marquee Las Vegas - 3708 LAS VEGAS BLVD SOUTH, LAS VEGAS, NV 89109
(INSIDE THE COSMOPOLITAN OF LAS VEGAS)

Project:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily 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" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

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

B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising 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 "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

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

POLICY NUMBER: CRA8XYD11

COMMERCIAL GENERAL LIABILITY
CG 21 54 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

ALL PROJECTS AND LOCATIONS FOR WHICH A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM HAS BEEN PROVIDED

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL POLLUTION EXCLUSION WITH A BUILDING HEATING, COOLING AND DEHUMIDIFYING
EQUIPMENT EXCEPTION AND A HOSTILE FIRE EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion **f.** under Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage 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 produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests; or
- (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

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

2. Exclusions

This insurance does not apply to:

Fungi or Bacteria

- a. "Bodily injury" or "property damage" 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.
- b. 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 exclusion is added to Paragraph 2., Exclusions of **Section I – Coverage B – Personal And Advertising Injury Liability**:

2. Exclusions

This insurance does not apply to:

Fungi or Bacteria

- a. "Personal and advertising injury" which would not have taken place, 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.
- b. Any loss, cost or expense 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.

- C. The following definition is added to the **Definitions** Section:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. 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" or an "other act of terrorism". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. 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

4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs 1. and 2. describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.
2. "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 of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":
 - a. The act resulted in aggregate losses in excess of \$5 million; and

- b. 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 acting on behalf of any foreign person or foreign interest, 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.
- 3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
- C. In the event of any incident of a "certified act of terrorism" or an "other 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 Part.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

Professional services include:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
2. Supervisory, inspection, architectural or engineering activities.

POLICY NUMBER: CRA8XYD11

COMMERCIAL GENERAL LIABILITY
CG 24 07 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Description of Premises and Operations:

SEE FORM# CG2144

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf,

Paragraph **a.** of the definition of "Products-completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a.** Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):
SEE FORM# CG2144

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to operations at a single designated "location" shown in the Schedule above:
1. A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C** 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 **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which cannot be attributed only to operations at a single designated "location" shown in the Schedule above:
1. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Location General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, 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, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.
- D.** For the purposes of this endorsement, the **Definitions** Section 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 (**SECTION III**) not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

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

1. The insurance does not apply:

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

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

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

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

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

2. As used in this endorsement:

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

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

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

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

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

"Nuclear facility" means:

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

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

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

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy Change
Number 001

| | | |
|---|--|--|
| POLICY NUMBER: CRA8XYD11 | POLICY CHANGES EFFECTIVE: 10/06/2011 | COMPANY: Aspen Specialty Insurance Company |
| NAMED INSURED: THE RESTAURANT GROUP ETAL | | AUTHORIZED REPRESENTATIVE |
| COVERAGE PARTS AFFECTED: COMMERCIAL GENERAL LIABILITY COVERAGE PART | | |

CHANGES:

Stop Loss Aggregate Endorsement - \$250,000 for sales up to \$175M/\$400k
for sales excess of \$175M

TBD

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy Change
Number 002

| | | |
|---|--|--|
| POLICY NUMBER: CRA8XYD11 | POLICY CHANGES EFFECTIVE: 10/06/2011 | COMPANY: Aspen Specialty Insurance Company |
| NAMED INSURED: THE RESTAURANT GROUP ETAL | | AUTHORIZED REPRESENTATIVE |
| COVERAGE PARTS AFFECTED: COMMERCIAL GENERAL LIABILITY COVERAGE PART | | |

CHANGES:

90 Day Notice of cancellation (except for non-payment of premium)

TBD