

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.

Electronically Filed
Nov 17 2021 01:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
*Related to Nevada Supreme Court
Case No. 81344*

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 XIV of XIX

Michael M. Edwards, Esq., NBN 6281
Derek Noack, Esq., NBN 15074
Stephanie D. Bedker, Esq., NBN 14169
MESSNER REEVES LLP
8945 W. Russell Road, Suite 300
Las Vegas, Nevada 89148
Telephone: (702) 363-5100
Facsimile: (702) 363-5101

*Attorneys for Petitioner
Aspen Specialty Insurance Company*

DOC NO.	DOCUMENT	VOL.	BATES NO.
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

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
16	[09/27/2019] St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment filed by Roof Deck Entertainment, LLC d/b/a Marquee Nightclub and Countermotion Re: Duty to Indemnify	VIII	AA01154-AA01173
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
18	[09/27/2019] St. Paul Fire & Marine Insurance Company's Response to Statement of Facts Offered by Roof Deck Entertainment, LLC d/b/a Marquee Nightclub in Support of Its Motion for Summary Judgment	VIII	AA01177-AA01185
19	[09/27/2019] St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment filed by AIG and Request for Discovery per NRCP 56(d)	VIII, IX	AA01186-AA01221
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

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
22	[09/27/2019] <u>Consolidated</u> Appendix of Exhibits in Support of St. Paul Fire & Marine Insurance Company's Opposition to Motions for Summary Judgment filed by AIG and Roof Deck Entertainment, LLC d/b/a Marquee Nightlife	IX, X	AA01235-AA01490
23	[10/02/2019] St. Paul Fire & Marine Insurance Company's Reply Supporting Its Motion for Partial Summary Judgment as to Aspen Specialty Insurance Company and Opposition to Aspen's Countermotion for Summary Judgment	X, XI	AA01491-AA01530
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
27	[10/08/2019] Recorder's Transcript of Pending Motions	XI	AA01593-AA01616
28	[10/10/2019] National Union Fire Insurance Company of Pittsburgh PA's Reply in Support of Its Motion for Summary Judgment	XI	AA01617-AA01633
29	[10/10/2019] National Union Fire Insurance Company of Pittsburgh PA's Objections to Facts Not Supported by Admissible Evidence Filed in Support of St. Paul's Opposition to Motion for Summary Judgment and Request for Discovery Per NRCp 56(d)	XI, XII	AA01634-AA01656

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
31	[10/10/2019] St. Paul Fire & Marine Insurance Company's Reply to Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Opposition to St. Paul Fire & Marine Insurance Company's Countermotion	XII	AA01668-AA01679
32	[10/15/2019] Recorder's Transcript of Pending Motions	XII	AA01680-AA01734
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
34	[05/14/2019] Findings of Fact, Conclusions of Law and Order Granting National Union Fire Insurance Company of Pittsburg PA's Motion for Summary Judgment	XII	AA01752-AA01770
35	[05/14/2020] Order Denying St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment and Order Granting in Part Aspen Specialty Insurance Company's Counter-Motion for Summary Judgment	XII	AA01771-AA01779
36	[06/11/2020] Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment	XIII	AA01780-AA01808
37	[06/11/2020] Appendix to Exhibits to Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment	XIII, XIV, XV	AA01809-AA02124
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
39	[07/31/2020] Aspen Specialty Insurance Company's Reply to St. Paul Fire & Marine Insurance Company's Opposition to Aspen Specialty Insurance Company's Renewed Motion for Summary Judgment	XV	AA02165-AA02182

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

1 MR. MORALES: Okay. So it is not part of the personal injury
2 coverage.

3 MR. LOOSVELT: Your Honor, the denial of the summary
4 judgment on the other claims are without prejudice to be brought later.

5 MR. MORALES: Your Honor, this is the third time we've
6 dealt with this.

7 MR. LOOSVELT: The subrogation claims.

8 MR. MORALES: Those are fact questions.

9 THE COURT: Yeah, I mean that seems very factual to me.
10 The other insurance starts on page 9 of the policy, in addition to the
11 endorsement that's on page -- it's page 50, if you look at the page
12 numbers.

13 MR. MORALES: Okay. So the --

14 THE COURT: Other insurance there. And then there's other
15 insurance endorsement and that's -- the other insurance is in the
16 commercial general policy. They have a specific other insurance clause
17 in there. Then they have the other insurance endorsement. We have the
18 term occurrence defined. I mean I read the definitions. I looked through
19 them and tried to find where the words were defined.

20 MR. MORALES: Yeah, I just wanted to --

21 THE COURT: Some of them were defined and some of them
22 weren't.

23 MR. MORALES: Right. I get that. And so, just if we're
24 relying on that endorsement, that's fine. I just want the record clear
25 because --

1 THE COURT: The endorsement as well as the language of
2 the specific coverages and how they define --
3 MR. MORALES: Okay.
4 THE COURT: -- what they cover, and the definitions of their
5 coverages.
6 MR. MORALES: Okay.
7 THE COURT: And page 49, limits of insurance, I read that, to
8 see how they were defining limits of insurance. I read the other
9 insurance. I mean, I read it.
10 MR. MORALES: I understand.
11 THE COURT: I read the policy.
12 MR. MORALES: I'm just trying to make sure we have a clear
13 record. The limits of insurance has paragraph 4 and 5, which has a
14 separate limit for personal injury and advertising.
15 THE COURT: Right.
16 MR. MORALES: I just wanted to make sure the record --
17 THE COURT: Right. And I read -- and I had to read that in
18 connection with the other insurance clause, and then go back and read
19 the definitions and look up the definitions, some of which -- some of
20 those other terms they use in that other insurance endorsement are
21 defined in the policy and some of them aren't --
22 MR. MORALES: Yes.
23 THE COURT: -- which is a little bit challenging.
24 MR. MORALES: I understand, Your Honor.
25 THE COURT: So -- but that's -- it appeared to me to be a

1 pretty clear --

2 MR. MORALES: So you don't think it's ambiguous. You
3 think it's clear.

4 THE COURT: I thought it was.

5 MR. MORALES: It is a single limit regardless of coverage
6 parts, regardless of whether or not --

7 THE COURT: Correct.

8 MR. MORALES: -- you have both an advertising injury, a
9 personal injury offense, and a bodily injury occurrence.

10 THE COURT: I think it all rises out of the -- because if you
11 read occurrence, it all arises out of the same occurrence, the way they
12 define occurrence in the policy. So to me -- and that's why I said -- I
13 mean if we were going to get down in the weeds as to what's an
14 occurrence, you know --

15 MR. MORALES: I don't think --

16 THE COURT: -- I didn't really see that.

17 MR. MORALES: Yeah.

18 THE COURT: To me it looked like it all arose out of the same
19 incident. He might have had coverage under potentially two different
20 parts, but it didn't increase the insurance coverage. It's one limit.

21 MR. MORALES: Thank you, Your Honor.

22 MR. LOOSVELT: Thank you, Your Honor.

23 THE COURT: Okay. All right. So that's a partial summary
24 judgment. Did you want a 54(b) certificate on that, or are you just going
25 to -- do you want to take it up in the interim?

1 MR. MORALES: I'll need to discuss it with my client, if I can.

2 THE COURT: Okay. Because it's going to be the same issue
3 next week. We'll take -- there's a little bit of difference, but I just didn't
4 know, given the fact that we were making these interim rulings if these
5 were going to be appealable. If we would need that kind of language in
6 there. You might want to discuss.

7 MR. MORALES: Yes, we'll discuss it with -- I mean, certainly
8 on the subrogation issue there are fact questions.

9 THE COURT: Yeah, those -- that's absolutely -- to me we've
10 talked about that time and time again. For another day.

11 MR. MORALES: So as far as findings of fact and conclusions
12 of law, do I prepare it on the --

13 THE COURT: You know, I'm going to deny the initial motion,
14 grant the counter-motion only as to coverage limits. I'm not getting into
15 the other issues that you argued.

16 MR. LOOSVELT: Fine. We'll prepare it and run it by him.

17 THE COURT: And, as I said, if they want a 54(b), then you
18 guys can work on some language for that, and then we'll just take those
19 slides if you kindly brought them for us --

20 MR. MORALES: Oh, can --

21 THE COURT: -- and we'll give them to the --

22 MR. MORALES: -- may I approach, Your Honor?

23 THE COURT: -- Clerk. She'll make that part -- so it's clear in
24 the record that they've got that. That's why I asked. If it goes up, they'll
25 need that. So I just want to make sure we've got a clear record for him.

1 Okay. Thank you.

2 MR. MORALES: Thank you, Your Honor.

3 THE COURT: Okay. So I think that was everything.

4 [Proceedings concluded at 10:32 a.m.]

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23

24

25

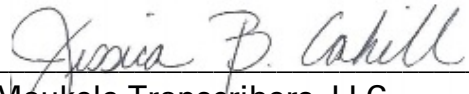
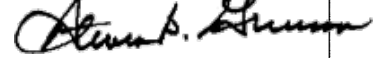

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT D

{03614133 / 1}



1 **NEOJ**
2 Michael K. Wall (2098)
3 HUTCHISON & STEFFEN, PLLC
4 10080 West Alta Drive, Suite 200
5 Las Vegas, Nevada 89145
6 Tel. (702) 385-2500
7 mwall@hutchlegal.com

8 *Attorneys for Plaintiff*
9 *St. Paul Fire & Marine Ins. Co.*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 ST. PAUL FIRE & MARINE INSURANCE)
13 COMPANY,)

14 Plaintiff,)

15 v.)

16 ASPEN SPECIALITY INSURANCE)
17 COMPANY; NATIONAL UNION FIRE)
18 INSURANCE COMPANY OF PITTSBURGH)
19 PA.; ROOF DECK ENTERTAINMENT, LLC)
20 d/b/a MARQUEE NIGHTCLUB; and DOES 1)
21 through 25, inclusive,)

22 Defendants.)

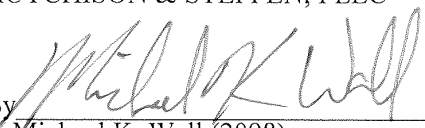
Case No: A-17-758902-C
Dept. No: XXVI

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING
NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH PA'S MOTION FOR
SUMMARY JUDGMENT**

23 Please take notice the on the 14th day of May, 2020, the Court entered Findings of Fact,
24 Conclusions of Law and Order Granting National Union Fire Insurance Company of Pittsburgh
25 PA's Motion for Summary Judgment in the above-entitled action. A copy of said Order is
26 attached hereto.

27 DATED this 27 day of May, 2020.

HUTCHISON & STEFFEN, PLLC

By 
Michael K. Wall (2098)
10080 W. Alta Drive, Suite 200
Las Vegas, NV 89145
mwall@hutchlegal.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 21st day of May, 2020, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S MOTION FOR SUMMARY JUDGMENT** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☐ to be sent **via facsimile**; and/or

☒ to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

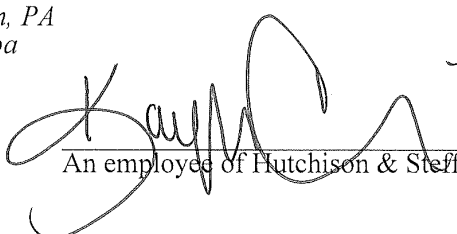
☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Michael M. Edwards, Esq. (6281)
Nicholas L. Hamilton, Esq. (10893)
MESSNER REEVES LLP
8945 W. Russell Road, Suite 300
Las Vegas, NV 89148
medwards@messner.com
nhamilton@messner.com
efile@messner.com
T: 702-363-5100
F: 702-363-5101
Attorneys for Defendant Aspen Specialty Company

Andrew D. Herold, Esq. (7378)
Nicholas B. Salerno, Esq. (6118)
HEROLD & SAGER
3960 Howard Hughes Parkway, Suite 500
Las Vegas, NV 89169
aherold@heroldsagerlaw.com
nsalerno@heroldsagerlaw.com
T: 702-990-3624
F: 702-990-3835
Attorneys for Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub

Jennifer L. Keller, Esq. (Pro Hac Vice)
Jeremy Stamelman, Esq. (Pro Hac Vice)
KELLER/ANDERLE LLP
18300 Von Karman Ave., Suite 930
Irvine CA 92612
jkeller@kelleranderle.com
jstamelman@kellweanderle.com
T: 949-476-8700
F: 949-476-0900
Attorneys for Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub


An employee of Hutchison & Steffen, PLLC



1 **FFCO**

ANDREW D. HEROLD, ESQ.

2 Nevada Bar No. 7378

3 NICHOLAS B. SALERNO, ESQ.

Nevada Bar No. 6118

4 **HEROLD & SAGER**

3960 Howard Hughes Parkway, Suite 500

5 Las Vegas, NV 89169

Telephone: (702) 990-3624

6 Facsimile: (702) 990-3835

7 aherold@heroldsagerlaw.com

nsalerno@heroldsagerlaw.com

8 JENNIFER LYNN KELLER, ESQ. (Pro Hac Vice)

9 JEREMY STAMELMAN, ESQ. (Pro Hac Vice)

KELLER/ANDERLE LLP

10 18300 Von Karman Ave., Suite 930

Irvine, CA 92612

11 Telephone: (949) 476-8700

12 Facsimile: (949) 476-0900

jkeller@kelleranderle.com

13 jstamelman@kelleranderle.com

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
INSURANCE COMPANY OF
25 PITTSBURGH PA.; ROOF DECK
ENTERTAINMENT, LLC d/b/a MARQUEE
26 NIGHTCLUB; and DOES 1 through 25,
inclusive,

27 Defendants.
28

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

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH PA'S
MOTION FOR SUMMARY JUDGMENT**

1 Defendant National Union Fire Insurance Company of Pittsburgh PA's ("National Union")
2 Motion for Summary Judgment ("MSJ") came on for hearing on October 15, 2019 in Department
3 XXVI of this Court, the Honorable Gloria Sturman presiding. Nicholas B. Salerno of Herold &
4 Sager and Jennifer L. Keller of Keller/Anderle LLP appeared for Defendant National Union,
5 William Reeves and Marc J. Derewetzky of Morales Fierro & Reeves appeared for Plaintiff St. Paul
6 Fire & Marine Insurance Company ("St. Paul"), and Ryan A. Loosvelt of Messner Reeves LLP
7 appeared for Defendant Aspen Specialty Insurance Company ("Aspen").

8 The Court, having reviewed and considered the pleadings and papers on file,¹ having heard
9 and considered argument of counsel, and good cause appearing, hereby GRANTS National Union's
10 Motion for Summary Judgment.

11 On October 15, 2019, the Court issued a minute order granting National Union's Motion for
12 Summary Judgment. However, the Court's decision set out herein is not based solely on the
13 contents of the minute order but includes the entire record on file herein. The Court hereby issues
14 the following Findings of Facts, Conclusions of Law and Order.

15 I.

16 FINDINGS OF FACT

17 A. The Underlying Action

18 1. This action arises out of an underlying bodily injury action captioned *David Moradi*
19 *v. Nevada Property 1, LLC dba The Cosmopolitan, et al.*, District Court Clark County, Nevada,
20 Case No. A-14-698824-C ("Underlying Action"). (FAC ¶ 6.)

21
22 ¹ The pleadings and papers reviewed and considered by the Court include, among other things, National
23 Union's Motion for Summary Judgment, National Union's Request for Judicial Notice in Support of Motion
24 for Summary Judgment, National Union's Appendix of Exhibits in Support of Motion for Summary
25 Judgment, Declaration of Nicholas B. Salerno in Support of Motion for Summary Judgment, Declaration of
26 Richard C. Perkins in Support of Motion for Summary Judgment, St. Paul's Opposition to Motion for
27 Summary Judgment and Request for Discovery Per NRCP 56(d), St. Paul's Response to Statement of
28 Undisputed Facts, St. Paul's Consolidated Appendix of Exhibits in Support of Opposition to Motions for
Summary Judgment, Declaration of Marc J. Derewetzky in Support of Opposition to Motion for Summary
Judgment, Declaration of William Reeves in Support of Opposition to Motion for Summary Judgment,
National Union's Reply in Support of Motion for Summary Judgment, and National Union's Objections to
Facts Not Supported by Admissible Evidence Filed in Support of Opposition to Motion for Summary
Judgment and Request for Discovery Per NRCP 56(d).

1 2. Plaintiff David Moradi (“Moradi”) alleged that, on or about April 8, 2012, he went
2 to the Marquee Nightclub located within The Cosmopolitan Hotel and Casino to socialize with
3 friends, when he was beaten by Marquee employees. (FAC ¶¶ 6-7.)

4 3. Moradi filed a complaint against Nevada Property 1, LLC d/b/a The Cosmopolitan
5 of Las Vegas (“Cosmopolitan”) and Roof Deck Entertainment, LLC d/b/a Marquee Nightclub
6 (“Marquee”) on April 4, 2014, asserting causes of action for Assault and Battery, Negligence,
7 Intentional Infliction of Emotional Distress, and False Imprisonment. (FAC ¶¶ 8-10, Exhibit A.)

8 4. Moradi alleged that, as a result of his injuries, he suffered past and future lost
9 wages/income and sought general damages, special damages and punitive damages. (*Id.* ¶ 9, Exhibit
10 A.)

11 5. Aspen, who issued a primary insurance policy to Marquee, agreed to provide a joint
12 defense to both Cosmopolitan and Marquee. National Union, who issued an excess policy to
13 Marquee, subsequently appointed separate counsel to jointly represent both Cosmopolitan and
14 Marquee. (St. Paul Appendix, Exs. C, D, L, M.)

15 6. During the course of the Underlying Action, Moradi alleged that Cosmopolitan, as
16 the owner of The Cosmopolitan Hotel and Casino (where the Marquee Nightclub was located),
17 faced exposure for the conduct of Marquee by breaching its non-delegable duty to keep patrons
18 safe, including Moradi. (FAC ¶ 13.)

19 7. The Court held in the Underlying Action that that Cosmopolitan, as owner of the
20 property, “had a nondelegable duty and can be vicariously held responsible for the conduct of the
21 Marquee security officers.” and that Marquee and Cosmopolitan can be jointly and severally liable
22 as a matter of law. (*See* Request for Judicial Notice in Support of Motion for Summary Judgment,
23 Ex. 5.)

24 8. After a five-week trial, the jury in the Underlying Action issued a special verdict on
25 April 26, 2017 finding that Moradi established his claims for assault, battery, false imprisonment
26 and negligence against Marquee and Cosmopolitan and awarded compensatory damages in the
27 amount of \$160,500,000. Because the jury found for Moradi on his intentional-tort claims, the

28 ///

1 judgment would have been joint and several against Marquee and Cosmopolitan. *See* NRS
2 41.141(5)(b). (FAC, Ex. C.)

3 9. After the verdict and during the punitive damages phase of the trial, Moradi made a
4 global settlement demand to Marquee and Cosmopolitan. (FAC ¶ 66.)

5 10. Aspen and National Union as the primary and excess insurers of Marquee, and
6 Zurich American Insurance Company and St. Paul as the primary and excess insurers of
7 Cosmopolitan, accepted the settlement demand and resolved the Underlying Action with the
8 confidential contributions set forth in the FAC filed by St. Paul under seal. (FAC ¶¶ 67-70.)

9 11. The settlement was funded entirely by the insurance carriers for Cosmopolitan and
10 Marquee. No defendant in the underlying case contributed any money out-of-pocket towards the
11 settlement. National Union on behalf of Marquee and St. Paul on behalf of Cosmopolitan
12 contributed the same amount towards the settlement of the Underlying Action. (FAC ¶ 67-70.)

13 12. National Union contends its contribution towards the settlement of the Underlying
14 Action on behalf of Marquee resulted in the exhaustion of the National Union Excess Policy. (MSJ
15 p. 10, Undisputed Fact No. (“UF”) 17.)

16 13. The combined defense of Cosmopolitan and Marquee was funded entirely by Aspen
17 and National Union. (FAC ¶¶ 27-28, 35-36.)

18 **B. Insurance Policies**

19 **1. The Cosmopolitan Insurance Tower**

20 **a. Cosmopolitan’s Primary Policy with Zurich American Insurance**
21 **Company**

22 14. Zurich American Insurance Company (“Zurich”) issued commercial general liability
23 policy number PRA 9829242-01, effective November 1, 2011 to November 1, 2012 to Nevada
24 Property 1 LLC (the “Zurich Primary Policy”). (FAC ¶ 69; National Union’s Appendix of Exhibits
25 in Support of MSJ (“NU Appx.”), Ex. 2, W005478.)

26 15. Cosmopolitan is a named insured under the Zurich Primary Policy. (FAC ¶ 69.)
27 Marquee is not an insured under the Zurich Primary Policy. (*Id.*)

28 ///

1 16. The Zurich Primary Policy contains limits of \$1,000,000 each occurrence and
2 \$2,000,000 general aggregate. (FAC ¶ 69; NU Appx., Ex. 2, W005508.)

3 17. The Zurich Primary Policy provides that Zurich will pay “those sums that the insured
4 becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to
5 which this insurance applies.” (NU Appx., Ex. 2, W005497 – W005498.)

6 18. The Zurich Primary Policy provides that it applies to “bodily injury” and “property
7 damage” only if caused by an “occurrence” that occurs during the policy period. (*Id.*)

8 **b. Cosmopolitan’s Excess Policy with St. Paul**

9 19. St. Paul issued commercial umbrella liability policy number QK06503290, effective
10 March 1, 2011 to March 1, 2013, to Premier Hotel Insurance Group (the “St. Paul Excess Policy”).
11 (FAC ¶ 40; MSJ p. 11, UF 20.)

12 20. Cosmopolitan is a named insured under the St. Paul Excess Policy. (FAC ¶ 40.)
13 Marquee is not an insured under the St. Paul Excess Policy. (FAC ¶ 41.)

14 21. The St. Paul Excess Policy contains liability limits of \$25,000,000 with each
15 occurrence and \$25,000,000 general aggregate. (MSJ p. 11, UF 22.)

16 22. The St. Paul Excess Policy provides that it will pay on behalf of: (1) the insured all
17 sums in excess of the “Retained Limit” that the insured becomes legally obligated to pay as
18 damages by reason of liability imposed by law; or (2) the named insured all sums in excess of the
19 “Retained Limit” that the named insured becomes legally obligated to pay as damages assumed by
20 the named insured under an “Insured Contract.” (MSJ p. 11, UF 23.)

21 23. The St. Paul Excess Policy contains an Other Insurance provision, which provides:

22 If Other Insurance applies to damages that are also covered by this policy,
23 this policy will apply excess of and shall not contribute with, that Other
24 Insurance, whether it is primary, excess, contingent or any other basis.
25 However, this provision will not apply if the Other Insurance is specifically
26 written to be excess of this policy.

27 (MSJ p. 11, UF 24.)

28 ///

///

1 2. **The Marquee Insurance Tower**

2 a. **Marquee's Primary Policy with Aspen Specialty Insurance Company**

3 24. Aspen issued a commercial general liability policy number CRA8XYD11, effective
4 October 6, 2011 to October 6, 2012 to The Restaurant Group et. al. (the "Aspen Primary Policy").
5 (FAC ¶ 15; NU Appx., Ex. 4, ASPEN000032.)

6 25. Marquee is a named insured under the Aspen Primary Policy. (FAC ¶ 15.)

7 26. Cosmopolitan qualified as an additional insured to the Aspen Primary Policy with
8 respect to the Underlying Action. (FAC ¶ 24.)

9 27. The Aspen Policy contains limits of \$1,000,000 each occurrence and \$2,000,000
10 general aggregate. (FAC ¶¶ 17, 23; NU Appx., Ex. 4, ASPEN000033.)

11 28. The Aspen Policy provides that Aspen will pay "those sums that the insured
12 becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to
13 which this insurance applies." (NU Appx., Ex. 4, ASPEN000042.)

14 29. The Aspen Policy provides that it applies to "bodily injury" and "property damage"
15 only if caused by an "occurrence" that occurs during the policy period. (*Id.*)

16 b. **Marquee's Excess Policy with National Union**

17 30. National Union issued commercial umbrella liability policy number BE 25414413,
18 effective October 6, 2011 to October 6, 2012, to The Restaurant Group, et al. (the "National Union
19 Excess Policy") (MSJ p. 10, UF 11.)

20 31. Marquee is a named insured under the National Union Excess Policy. (FAC ¶ 30.)

21 32. Cosmopolitan qualified as an additional insured to the National Union Excess Policy
22 with respect to the Underlying Action. (FAC ¶ 33; MSJ p. 11, UF 18.)

23 33. The National Union Excess Policy contains limits of \$25,000,000 each occurrence
24 and \$25,000,000 general aggregate. (MSJ p. 10, UF 13.)

25 34. The National Union Excess Policy provides that National Union will pay on behalf
26 of the insured "those sums in excess of the Retained Limit that the Insured becomes legally
27 obligated to pay as damages by reason of liability imposed by law because of Bodily Injury,
28 Property Damage, or Personal and Advertising Injury to which this insurance applies or because of

1 Bodily Injury or Property Damage to which this insurance applies assumed by the Insured under an
2 Insured Contract.” (MSJ p. 10, UF 14.)

3 35. The National Union Excess Policy defines Retained Limit, in pertinent part, as the
4 total applicable limits of Scheduled Underlying Insurance and any applicable Other Insurance
5 providing coverage to the Insured. (NU Appx., Ex. 1, p. 30.)

6 36. The policy defines Scheduled Underlying Insurance as the policy or policies of
7 insurance and limits of insurance shown in the Schedule of Underlying Insurance forming a part of
8 the National Union Excess Policy. (*Id.*)

9 37. Other Insurance is defined in the National Union Excess Policy as a valid and
10 collectible policy of insurance providing coverage for damages covered in whole or in part by this
11 policy. (NU Appx., Ex. 1, p. 29.)

12 38. The National Union Excess Policy contains an Other Insurance provision, which
13 provides:

14 If other valid and collectible insurance applies to damages that are also
15 covered by this policy, this policy will apply excess of the Other Insurance.
16 However, this provision will not apply if the Other Insurance is specifically
written to be excess of this policy.

17 (MSJ p. 10, UF 15.)

18 39. The National Union Excess Policy provides that the “Limits of Insurance” as set
19 forth in the declarations is the most that National Union will pay regardless of the number of
20 insureds, claims or suits brought, persons or organizations making claims or bringing suits, or
21 coverages provided under the policy. (MSJ p. 10, UF 16.)

22 40. National Union received notice of the Underlying Action against Marquee and
23 Cosmopolitan and provided coverage to Cosmopolitan and Marquee in the Underlying Action
24 under a reservation of rights. (FAC ¶ 35.)

25 41. Cosmopolitan and Marquee were insured under separate towers of insurance.
26 Cosmopolitan was insured under one of the towers of insurance where it was a named insured under
27 the Zurich Primary Policy and the St. Paul Excess Policy, and under the other tower of insurance

28 ///

1 where Cosmopolitan qualified as an additional insured under the Aspen Primary Policy and the
2 National Union Excess Policy that were issued to Marquee as the named insured.

3 **C. St. Paul's Claims Against National Union**

4 42. St. Paul's FAC asserts the following four causes of action against National Union:

- 5 1) Second Cause of Action for Subrogation – Breach of the Duty to Settle;
6 2) Fourth Cause of Action for Subrogation – Breach of the AIG Insurance
7 Contract;²
8 3) Seventh Cause of Action for Equitable Estoppel; and
9 4) Eighth Cause of Action for Equitable Contribution.

10 43. In the Second Cause of Action of the FAC for Subrogation – Breach of the Duty to
11 Settle, St. Paul asserts that National Union breached a duty owed to Cosmopolitan to settle by
12 refusing to settle the Underlying Action in response to pre-trial settlement demands within its
13 applicable policy limits and by failing to initiate and/or attempt settlement prior to or during trial for
14 an amount within the applicable policy limits. (FAC ¶¶ 88-89.) St. Paul further asserts that it is
15 subrogated under its policy and principles of equity to the rights Cosmopolitan possesses directly
16 against its insurers Aspen and National Union for breach of the duty to settle and seeks
17 reimbursement for the amount St. Paul paid towards the settlement of the Underlying Action. (*Id.* at
18 ¶¶ 93-95.)

19 44. In the Fourth Cause of Action of the FAC for Subrogation – Breach of the AIG
20 Insurance Contract, St. Paul makes similar allegations to those raised in the cause of action for
21 breach of the duty to settle. St. Paul asserts that National Union breached its obligations to
22 Cosmopolitan by failing to provide a conflict-free defense, favoring the interests of Marquee over
23 Cosmopolitan, failing to pay all available limits under the National Union Excess Policy to resolve
24 Cosmopolitan's liability, and failing to pay any amount on Cosmopolitan's behalf towards the
25 settlement of the Underlying Action. (FAC ¶ 105.) St. Paul asserts that, unlike National Union, St.

26

27

28

² St. Paul's FAC refers to the National Union Excess Policy as the AIG Insurance Contract.

Paul did not breach its obligations to Cosmopolitan under the St. Paul Excess Policy in connection to the Underlying Action because Cosmopolitan's coverage under the St. Paul Excess Policy did not apply until the Aspen Primary Policy and National Union Excess Policy exhausted. St. Paul claims it was damaged because it was required to contribute to the settlement of the Underlying Action as a result of National Union's breach of its obligations to Cosmopolitan. (*Id.* ¶¶ 108, 111.) St. Paul alleges that pursuant to the express terms of the St. Paul Excess Policy and principles of subrogation, it is entitled to step into Cosmopolitan's shoes and pursue its rights of recovery against National Union for such breach. (*Id.* ¶ 110.)

45. In the Seventh Cause of Action of the FAC for Equitable Estoppel, St. Paul asserts that both National Union and Aspen asserted throughout the Underlying Action “through both words and actions” that their coverage to Cosmopolitan was primary to Cosmopolitan’s direct coverage under Cosmopolitan’s own policies, including the St. Paul Excess Policy. (FAC ¶ 132.) St. Paul alleges that it and Cosmopolitan’s other direct carriers did not participate in the defense or settlement negotiations on behalf of Cosmopolitan based on these representations. (*Id.* ¶ 134.) St. Paul alleges that equity requires that National Union be precluded from claiming that St. Paul and National Union were excess carriers and that St. Paul had the same obligation to resolve the Underlying Action.

46. In the Eighth Cause of Action of the FAC for Equitable Contribution, St. Paul asserts that in contributing to the settlement of the Underlying Action, it incurred amounts in excess of its equitable share and that National Union failed to contribute its fair and equitable share towards the settlement of the Underlying Action on behalf of Cosmopolitan (St. Paul's insured). (FAC ¶¶ 138-139.) St. Paul asserts that National Union is obligated under principles of equity to reimburse St. Paul for the amounts St. Paul contributed towards settlement of the Underlying Action that Aspen and National Union should have otherwise paid. (*Id.* ¶ 141.)

II.

NATIONAL UNION'S MOTION FOR SUMMARY JUDGMENT

47. On September 13, 2019, National Union's filed Defendant National Union Fire Insurance Company of Pittsburgh PA's MSJ. National Union's MSJ asserts that the Second and

1 Fourth Causes of Action for subrogation fail as a matter of law because the St. Paul Excess Policy is
2 not excess to the National Union Excess Policy, rather St. Paul and National Union are both excess
3 insurers at the same level of coverage in separate towers of coverage with equal obligations to their
4 insured(s).

5 48. National Union's MSJ further asserts as a separate and independent ground to grant
6 summary judgment that the Fourth Cause of Action for Subrogation – Breach of the AIG Insurance
7 Contract fails as a matter of law because St. Paul has no legal basis or standing to step into the
8 shoes of Cosmopolitan to pursue subrogation for breach of contract against National Union when
9 Cosmopolitan was fully defended and indemnified by the insurers in the Underlying Action and,
10 thus, has suffered no damages under the insurance contract. Additionally, National Union argues
11 that the damages sought by St. Paul are extra-contractual damages that are not available under a
12 breach of contract cause of action.

13 49. National Union's MSJ further asserts as a separate and independent ground to grant
14 summary judgment that the Eighth Cause of Action for Equitable Contribution fails as a matter of
15 law because National Union exhausted its policy limit in settlement of the Underlying Action and a
16 claim for contribution does not apply to seek extra-contractual damages that fall outside of policy
17 limits.

18 50. National Union's MSJ further asserts that the Seventh Cause of Action for Equitable
19 Estoppel fails as a matter of law because such a claim is dependent on the legal viability of the
20 other causes of action against National Union, which all fail for the reasons each cause of action
21 against National Union fails as a matter of law.

22 III.

23 CONCLUSIONS OF LAW

24 A. Standard of Review

25 1. "The court shall grant summary judgment if the movant shows that there is no
26 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
27 NRCP 56(a). While the pleadings and other proof must be construed in a light most favorable to the
28 non-moving party, that party bears the burden "to do more than simply show that there is some

1 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in
2 the moving party’s favor. *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586
3 (1986); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005). The non-moving
4 party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
5 genuine issue for trial or have summary judgment entered against him.” *Bulbman Inc. v. Nevada*
6 *Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992); *Wood*, 121 Nev. at 732, 121 P.3d at 1031-32.
7 The non-moving party “is not entitled to build a case on the gossamer threads of whimsy,
8 speculation, and conjecture.” *Bulbman*, 108 Nev. at 110, 825 P.2d 591 (quoting *Collins v. Union*
9 *Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

10 **B. St. Paul’s Second Cause of Action For Subrogation – Breach of The Duty To Settle**

11 2. In the Second Cause of Action of the FAC for Subrogation – Breach of the Duty to
12 Settle (“Second Cause of Action”), St. Paul asserts a right of subrogation against National Union on
13 the premise the St. Paul Excess Policy is excess to the National Union Excess Policy. (*see, e.g.*,
14 FAC ¶ 44.)

15 3. As a threshold matter, the Second Cause of Action fails as a matter of law because
16 the Nevada Supreme Court has never recognized an equitable subrogation claim between insurers,
17 and this Court is unwilling to do so in the first instance.

18 4. The Second Cause of Action also fails as a matter of law for the separate and
19 independent reason that no jurisdiction, let alone Nevada, recognizes an equitable subrogation claim
20 between excess carriers in separate towers of coverage. And this Court is unwilling to be the first to
21 do so.

22 5. General insurance principles and the subject policies outlined above demonstrate that
23 Cosmopolitan and Marquee are named insureds in separate towers of coverage. Cosmopolitan is a
24 named insured under a separate tower of insurance that includes the Zurich Primary Policy and the
25 St. Paul Excess Policy. Marquee is a named insured under a separate tower of insurance that
26 includes the Aspen Primary Policy and the National Union Excess Policy. Cosmopolitan qualified
27 as an additional insured under the Aspen Primary Policy and the National Union Excess Policy
28 issued to Marquee as the named insured.

1 6. It is well-established that “[p]rimary coverage is insurance coverage whereby, under
2 the terms of the policy, liability attaches immediately upon the happening of the occurrence that
3 gives rise to liability,” and that “[e]xcess or secondary coverage is coverage whereby, under the
4 terms of the policy, liability attaches only after a predetermined amount of primary coverage has
5 been exhausted.” *Travelers Cas. & Sur. Co. v. Am. Equity Ins. Co.*, 113 Cal. Rptr. 2d 613, 618 (Cal.
6 Ct. App. 2001) (citing *Olympic Ins. Co. v. Employers Surplus Lines Ins. Co.*, 178 Cal. Rptr. 908
7 (Cal. Ct. App. 1981); *Carmel Dev. Co. v. RLI Ins. Co.*, 24 Cal. Rptr. 3d 588, 595 (2005)
8 (“[U]mbrella coverage is generally regarded as true excess over and above any type of primary
9 coverage, excess provisions arising in any manner, or escape clauses.” (internal quotation marks
10 omitted)).

11 7. St. Paul issued an umbrella policy to Cosmopolitan while National Union issued an
12 umbrella policy to Marquee. Thus, St. Paul’s and National Union’s respective umbrella policies
13 remain in separate towers of coverage and, as such, St. Paul and National Union are co-excess
14 insurers that provided coverage to Cosmopolitan at equal levels of coverage under two separate and
15 distinct coverage towers.

16 8. The St. Paul Excess Policy is a general excess policy over scheduled underlying
17 insurance and applicable other insurance providing coverage to the insured, Cosmopolitan. The
18 scheduled underlying insurance to the St. Paul Excess Policy is the Zurich Primary Policy.

19 9. The National Union Excess Policy is also a general excess policy over scheduled
20 underlying insurance and applicable other insurance providing coverage to the insured
21 Cosmopolitan. The scheduled underlying insurance to the National Union Excess Policy is the
22 Aspen Primary Policy.

23 10. Based on the aforementioned discussions herein, the St. Paul Excess Policy and the
24 National Union Excess Policy contain nearly identical “other insurance” provisions. When two
25 policies contain such language, neither policy shall be excess to the other. *See Everest Nat. Ins. Co.*
26 *v. Evanston Ins. Co.*, No. 2:09-cv-2077-RLH-PAL, 2011 WL 534007 at *3 (D. Nev. Feb. 8, 2011)
27 (ruling that judgment and defense costs were to be shared equally between insurers that contained
28 the same amounts of limits and both contained Other Insurance clauses providing they were excess

1 to other available insurance); *CSE Ins. Group v. Northbrook Property & Cas. Co.*, 29 Cal. Rptr. 2d
2 120, 121-23 (Cal. Ct. App. 1994); *Century Surety Co. v. United Pac. Ins. Co.*, 135 Cal. Rptr. 2d
3 879, 884-85 (Cal. Ct. App. 2003).

4 11. The St. Paul Excess Policy is not excess to the National Union Excess Policy with
5 regard to any coverage provided to Cosmopolitan. Both St. Paul and National Union had
6 independent obligations to Cosmopolitan, both discharged those obligations by settlement of the
7 Underlying Action, both had the same limits of insurance, and neither is in an equitably superior
8 position to the other.

9 12. Accordingly, St. Paul's Second Cause of Action For Subrogation – Breach of the
10 Duty to Settle fails as a matter of law.

11 **B. St. Paul's Fourth Cause of Action For Subrogation – Breach of The AIG Insurance**
12 **Contract**

13 13. Although St. Paul is not a party to the National Union Excess Policy, in the Fourth
14 Cause of Action for Subrogation – Breach of the AIG Insurance Contract ("Fourth Cause of
15 Action"), St. Paul is pursuing a claim against National Union for an alleged breach of National
16 Union's insurance contract as an alleged subrogee of Cosmopolitan.

17 14. However, for the same reasons proffered above in concluding that the Second Cause
18 of Action fails as a matter of law, the Fourth Cause of Action must also fail as a matter of law.
19 Specifically, the Nevada Supreme Court has never recognized the viability of an equitable
20 subrogation claim between insurers, and this Court is unwilling to do so in the first instance.

21 15. And even if equitable subrogation claims among carriers were viable in Nevada, for
22 the reasons explained above, the St. Paul Excess Policy is not excess to the National Union Excess
23 Policy with regard to any coverage provided to Cosmopolitan. As such, St. Paul cannot pursue any
24 claims against National Union based on an equitable subrogation theory of recovery.

25 16. The Fourth Cause of Action also fails as a matter of law because Nevada courts have
26 expressly rejected contractual subrogation claims between insurers. In the insurance context,
27 contractual subrogation generally is not applied by an excess insurer against a primary insurer, but
28 between an insurer and a third-party tortfeasor. *See Colony Ins. Co. v. Colorado Cas. Ins. Co.*, No.

1 2:12-cv-01727-RFB-NJK, 2016 WL 3360943 at *6 (D. Nev. June 9, 2016). As noted by the *Colony*
2 court, the Nevada Supreme Court has held that contractual subrogation in the context of insurers
3 and insureds may contravene public policy and contractual subrogation may provide for windfalls
4 in the insurance context. *Id.* (citing *Maxwell v. Allstate Ins. Cos.*, 102 Nev. 502, 506, 728 P.2d 812,
5 815 (1986)). As such, St. Paul cannot pursue claims against National Union based on a contractual
6 subrogation theory of recovery.

7 17. The Second Cause of Action also fails as a matter of law for the separate and
8 independent reason that Cosmopolitan has suffered no contractual damages.

9 18. General principles of subrogation allow an insurer to step into the shoes of its
10 insured, but the insurer has no greater rights than the insured and is subject to all of the same
11 defenses that can be asserted against the insured. *State Farm General Ins. Co. v. Wells Fargo Bank,*
12 *N.A.*, 49 Cal. Rptr. 3d 785, 790-91 (Cal. Ct. App. 2006).

13 19. A breach of contract claim requires (1) the existence of a valid contract, (2) a breach
14 by the defendant, and (3) damage as a result of the breach. *See Contreras v. American Family Mut.*
15 *Ins. Co.*, 135 F. Supp. 3d 1208, 1224 (D. Nev. 2015) (citing *Richardson v. Jones*, 1 Nev. 405, 409
16 (1865)).

17 20. A claim for breach of contract is not actionable without damage. *Nalder ex rel.*
18 *Nalder v. United Auto. Ins. Co.*, No. 70504, 2019 WL 5260073, 449 P.3d 1268 (Nev. 2019)
19 (unpublished) (“It is beyond cavil that a party must suffer actual loss before it is entitled to
20 damages.” (quoting *Riofrio Anda v. Ralston Purina Co.*, 959 F.2d 1149, 1153 (1st Cir. 1992));
21 *California Capital Ins. Co. v. Scottsdale Indem. Ins. Co.*, 2018 WL 2276815, at *4 (Cal.Ct.App.
22 May 18, 2018) (unpublished); *Bramalea California, Inc. v. Reliable Interiors, Inc.*, 14 Cal. Rptr. 3d
23 302, 306 (Cal. Ct. App. 2004). In the insurance context, damages for breach of an insurance policy
24 are based on the failure to provide benefits owed under the policy. *Morris v. Paul Revere Life Ins.*
25 *Co.*, 135 Cal. Rptr. 2d 718, 726 (Cal. Ct. App. 2003); *Avila v. Century Nat’l Ins. Co.*, No. 2:09-cv-
26 00682-RCJ-GWF, 2010 WL 11579031 (D. Nev. Feb. 10, 2010). If the insured does not suffer
27 “actual loss” from the insurer’s breach of a duty under the policy, there can be no claim for
28 ///

1 damages. *Nalder ex rel. Nalder v. United Auto. Ins. Co.*, No. 70504, 2019 WL 5260073, 449 P.3d
2 1268 (Nev. 2019) (unpublished).

3 21. Here, St. Paul alleges that National Union breached its obligations to Cosmopolitan
4 under the National Union Excess Policy and seeks extra-contractual damages for such breach.
5 However, it is undisputed that Cosmopolitan's defense and indemnity in the Underlying Action
6 were fully paid for by insurers. The damages sought by St. Paul are not contract damages suffered
7 by Cosmopolitan due to any failure to provide policy benefits, but are instead an attempt to recoup
8 extra-contractual damages to reimburse St. Paul for the money it was required to pay under its
9 policy in discharge of its separate obligation to Cosmopolitan.

10 22. It is undisputed that Cosmopolitan was indemnified by National Union when it
11 exhausted its policy limit by participating in the settlement of the Underlying Action.
12 Cosmopolitan's defense in the Underlying Action was funded entirely by insurers. Accordingly,
13 Cosmopolitan suffered no contract damages as a matter of law and, as such, has no viable claim for
14 breach of contract against National Union. As Cosmopolitan has no viable claim for breach of
15 contract against National Union, neither does St. Paul under subrogation principles as it holds no
16 greater rights than Cosmopolitan.

17 23. The facts of this case are similar to *California Capital*, in which an insurer sued
18 another insurer to recover amounts it paid in settlement (and defense) of its named insureds in an
19 underlying bodily injury action. Like St. Paul, California Capital asserted causes of action against a
20 co-carrier for breach of contract and breach of the covenant of good faith and fair dealing, among
21 others, alleging its named insureds were additional insureds under the defendant insurer's policy
22 and that its named insureds had expressly assigned all of their rights under the defendant insurer's
23 policy to California Capital. 2018 WL 2276815, at *2-4. California Capital alleged the defendant
24 insurer breached its policy by refusing to provide the additional insureds the benefits due under the
25 policy and also alleged defendant insurer breached its obligations of good faith by failing to defend
26 and indemnify the insureds when it knew they were entitled to overage under the policy,
27 withholding payments under the policy when defendant insurer knew plaintiff's claim was valid,
28 failing to properly investigate the insureds' request for policy benefits, and failing to provide a

1 reasonable explanation of the factual basis for denial of the insureds' claim for benefits under the
2 policy. *Id.* at *4. The trial court held that California Capital had no cause of action for breach of
3 contract or breach of the covenant of good faith and fair dealing because the insureds had sustained
4 no damage as a result of defendant insurer's alleged failure to defend and indemnify them or its
5 failure to settle the claim within its policy limit. *Id.* Given the insureds' defense and post-judgment
6 settlement had been fully paid by California Capital, the trial court found the essential element of
7 contract damages was absent from the breach of contract cause of action such that the insureds had
8 no viable claims to assign to California Capital. *Id.* The trial court further found that California
9 Capital had no direct cause of action against the defendant insurer because it was not a party to
10 defendant insurer's policy. *Id.* at *6. The trial court in *California Capital* found that both insurers
11 provided primary coverage for the loss. *Id.* at *8. The Court of Appeal affirmed the foregoing
12 findings by the trial court and held that California Capital could not pursue assigned claims for
13 breach of contract or breach of the covenant of good faith and fair dealing against the defendant
14 insurer. *Id.* at *1, *30.

15 24. Like the plaintiff insurer in *California Capital*, St. Paul is not a party to the National
16 Union Excess Policy and has no direct cause of action against National Union for breach of contract
17 or breach of the covenant of good faith and fair dealing. Both St. Paul and National Union had
18 independent obligations to Cosmopolitan, and both insurers discharged those obligations by
19 settlement of the Underlying Action. As such, neither insurer is in an equitably superior position as
20 to the other. Further, given the cost of Cosmopolitan's defense and the post-verdict settlement was
21 fully funded by insurers in the Underlying Action, Cosmopolitan has no contract damages for
22 policy benefits against National Union. Therefore, Cosmopolitan has no viable breach-of-contract
23 claim for St. Paul to step into its shoes to pursue against National Union. Accordingly, St. Paul's
24 Fourth Cause of Action For Subrogation – Breach of The AIG Insurance Contract fails as a matter
25 of law.

26 **C. St. Paul's Eighth Cause of Action for Equitable Contribution**

27 25. The National Union Excess Policy provides that the "Limits of Insurance" as set
28 forth in the declarations is the most that National Union will pay regardless of the number of

1 insureds, claims or suits brought, persons or organizations making claims or bringing suits, or
2 coverages provided under the policy.

3 26. The National Union Excess Policy further provides the most National Union will pay
4 for damages on behalf of any person or organization to whom the named insured is obligated to
5 provide insurance is the lesser of the limits shown in the declarations or the minimum limits of
6 insurance the named insured agrees to procure in a written insured contract.

7 27. Here, National Union exhausted its policy limit in contributing towards the
8 settlement of the Underlying Action.

9 28. Given the National Union Excess Policy is exhausted, National Union has no further
10 obligation under the policy. *See Everest Indem. Ins. Co. v. Aventine-Tramonti Homeowners Ass'n*,
11 No. 2:09-cv-01672-RCJ-RJJ, 2012 WL 870289 at *3 (D. Nev. Mar. 14, 2012) (concluding that
12 “once the [limits are] reached, the insurer’s duties under the policy are extinguished”); *Deere & Co.*
13 *v. Allstate Ins. Co.*, 244 Cal. Rptr. 3d 100, 112 (Cal. Ct. App. 2019) (holding that “[a] ‘policy limit’
14 or ‘limit of liability’ is the maximum amount the insurer is obligated to pay in contract benefits on a
15 covered loss.” (internal quotation marks omitted)).

16 29. St. Paul seeks to step into Cosmopolitan’s shoes to pursue extra-contractual damages
17 outside National Union’s policy benefits based a claim for equitable contribution. However, a
18 claim for contribution is not available to pursue damages from a carrier that is in excess of the
19 carrier’s policy limit. Accordingly, St. Paul’s Eighth Cause of Action for Equitable Contribution
20 against National Union fails as a matter of law.

21 **D. St. Paul’s Seventh Cause of Action for Equitable Estoppel**

22 30. In the FAC, St. Paul asserts the Seventh Cause of Action for Equitable Estoppel
23 (“Seventh Cause of Action”), seeking to preclude National Union from asserting that: (1) National
24 Union’s policies were not primarily responsible for the defense and resolution of the Underlying
25 Action; and (2) St. Paul, a non-defending carrier, had the same obligation to resolve the Underlying
26 Action as Aspen and National Union. (FAC ¶ 135.)

27 ///

28 ///

1 31. Typically, equitable estoppel is raised as an affirmative defense. However, under
2 Nevada Law, equitable estoppel can be treated as an affirmative claim under the appropriate
3 circumstances.

4 32. To establish equitable estoppel, the plaintiff must prove the following: (1) the party
5 to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted
6 upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3)
7 the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must have
8 relied to his detriment on the conduct of the party to be estopped. *See Chequer, Inc. v. Painters &*
9 *Decorators Joint Comm., Inc.*, 98 Nev. 609, 614, 655 P.2d 996, 999 (1982); *In re Harrison Living*
10 *Trust*, 121 Nev. 217, 223, 112 P.3d 1058, 1061-1062 (2005).

11 33. Because the Second, Fourth, and Eighth Causes of Action fail as a matter of law,
12 including for reasons that are unaffected by National Union's assertions that St. Paul seeks to estop,
13 this Seventh Cause of Action must also fail.

14 **E. St. Paul's Request for Discovery Per NRCP 56(d)**

15 34. True and correct copies of the Nightclub Management Agreement ("NMA") and the
16 St. Paul Excess Policy at issue in this matter have been provided as part of National Union's MSJ.
17 As such, all necessary and potentially relevant exhibits to properly consider and determine National
18 Union's MSJ are included in the moving papers and the record is complete.

19 35. There remains no genuine dispute of material facts with respect to National Union's
20 MSJ that require further discovery.

21 36. Accordingly, St. Paul's Request for Discovery per NRCP 56(d) is denied.

22 **F. Certification under NRCP 54(b)**

23 37. "When an action presents more than one claim for relief—whether as a claim,
24 counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court
25 may direct entry of final judgment as to one or more, but fewer than all, claims or parties only if the
26 court expressly determines that there is no just reason for delay." NRCP 54(b).

27 ///

28 ///

38. This Court finds, pursuant to NRCP 54(b), that there is no just reason for delay of entry of final judgment granting National Union's MSJ against St. Paul's claims as discussed herein.

ORDER

Based on the pleadings, papers on file, the memorandum of points and authorities in support of National Union's Motion for Summary Judgment, and the arguments of the parties and good cause existing, National Union's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED this 14th day of May, 2019.


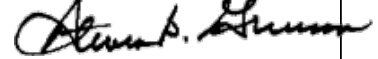

Honorable Gloria Sturman
District Judge, Department XXVI

EXHIBIT E

{03614133 / 1}

AA01927



1 **NEO**
2 MICHAEL M. EDWARDS, ESQ.
3 Nevada Bar No. 6281
4 RYAN A. LOOSVELT, ESQ.
5 Nevada Bar No. 8550
6 **MESSNER REEVES LLP**
7 8945 W. Russell Road, Suite 300
8 Las Vegas, Nevada 89148
9 Telephone: (702) 363-5100
10 Facsimile: (702) 363-5101
11 E-mail: medwards@messner.com
12 rloosvelt@messner.com
13 *Attorneys for Defendant*
14 *Aspen Specialty Insurance Company*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 ST. PAUL FIRE & MARINE INSURANCE
13 COMPANY,

14 Plaintiff,

15 vs.

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

22 Defendants.

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

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO STAY DISCOVERY
AND STAY OR VACATE TRIAL**

**(First Stipulated Request for Stay of
Discovery Deadlines)**

21 PLEASE TAKE NOTICE that on the 27th day of April, 2020, the Stipulation and Order to Stay
22 Discovery and Stay or Vacate Trial was entered on the Court's docket.

23 ///

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A copy of said Stipulation and Order is attached hereto and incorporated herein.

DATED this 27th day of April, 2020.

MESSNER REEVES, LLP

By /s/ Ryan A. Loosvelt
MICHAEL M. EDWARDS
Nevada Bar No. 6281
RYAN A. LOOSVELT
Nevada Bar No. 8550
8945 W. Russell Road, Suite 300
Las Vegas, NV 89148
Attorneys for Defendant
Aspen Specialty Insurance Company

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
LV-St. Paul Fire and Marine Insurance v. Aspen Specialty Insurance
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 April 27, 2020, I served the following document(s):

**NOTICE OF ENTRY OF STIPULATION AND ORDER TO STAY DISCOVERY AND
STAY OR VACATE TRIAL**

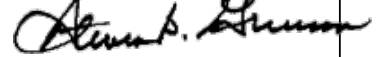
On the interested party(ies) in this action as follows:

Michael K. Wall
HUTCHINSON & STEFFIN
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
T: (702) 385-2500
mwall@hutchlegal.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, State 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 State of Nevada that the foregoing is true and correct.

/s/ Desja Wilder
An employee of Messner Reeves LLP



1 **SAO**
2 MICHAEL M. EDWARDS, ESQ.
3 Nevada Bar No. 6281
4 RYAN A. LOOSVELT, ESQ.
5 Nevada Bar No. 8550
6 **MESSNER REEVES LLP**
7 8945 W. Russell Road, Suite 300
8 Las Vegas, Nevada 89148
9 Telephone: (702) 363-5100
10 Facsimile: (702) 363-5101
11 E-mail: medwards@messner.com
12 rloosvelt@messner.com
13 *Attorneys for Defendant*
14 *Aspen Specialty Insurance Company*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

13 ST. PAUL FIRE & MARINE INSURANCE
14 COMPANY,

15 Plaintiffs,

16 vs.

17
18 ASPEN SPECIALTY INSURANCE
19 COMPANY; NATIONAL UNION FIRE
20 INSURANCE COMPANY OF PITTSBURGH
21 PA; ROOF DECK ENTERTAINMENT, LLC
22 d/b/a MARQUEE NIGHTCLUB; and DOES 1-
23 25; inclusive,

22 Defendants.

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

**STIPULATION AND ORDER TO STAY
DISCOVERY AND STAY OR VACATE
TRIAL**

**(First Stipulated Request for Stay of
Discovery Deadlines)**

24 IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff, ST. PAUL FIRE
25 & MARINE INSURANCE COMPANY ("Plaintiff" or "St. Paul"), and Defendant, ASPEN
26 SPECIALTY INSURANCE COMPANY ("Defendant" or "Aspen"), by and through the
27 undersigned attorneys of record, to stay discovery and trial pending resolution of Aspen's Renewed
28 Motion for Summary Judgment Regarding the Viability of Plaintiff's Claims. This is the first

1 stipulated request for a stay. Discovery between Plaintiff and Aspen was previously stayed until
2 two weeks after the notice of entry of the order on Plaintiff's Motion for Partial Summary Judgment
3 against Aspen and Aspen's Countermotion for Summary Judgment. The order on those Motions
4 is still pending.

5 **I. GOOD CAUSE FOR A STAY**

6 The defendants initially filed motions to dismiss Plaintiff's Complaint. The motions were
7 granted, and Plaintiff filed an Amended Complaint. The defendants again filed motions to dismiss
8 the first amended complaint, and the Court denied them without prejudice ruling among other
9 things that it wanted to make sure the full verified policies were submitted. The defendants filed
10 answers, the parties' policies were served, and motions for summary judgment were filed.

11 Plaintiff moved for partial summary judgement against Aspen to determine the policy limits
12 of the Aspen insurance policy concerning the underlying Moradi lawsuit. Aspen countermoved for
13 summary judgment on the same issue, as well as countermoving for summary judgment as to the
14 viability of Plaintiff's claims as a matter of law.

15 Defendants NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA
16 ("National Union") and ROOF DECK ENTERTAINMENT, LLC d/b/a MARQUEE
17 NIGHTCLUB ("Marquee") then also moved for summary judgment as to the viability of Plaintiff's
18 claims against them.

19 Plaintiff's Partial Motion against Aspen, and Aspen's Countermotion, were scheduled for
20 hearing and heard one week prior to the hearing on the other defendants' Motions for Summary
21 Judgment. At the hearing on Plaintiff's Partial Motion against Aspen, and Aspen's Countermotion
22 against Plaintiff, the Court determined and ruled on the policy limit issue amongst them, but
23 deferred ruling on the viability of Plaintiff's claims until it heard and ruled on the other defendants'
24 Motions for Summary Judgment being heard on week later.

25 One week after the hearing on the Plaintiff-Aspen Motions, the Court then granted National
26 Union's and Marquee's Motions for Summary Judgment as to the viability of Plaintiff's claims,
27 and invited Aspen to submit a renewed Motion as to the viability of Plaintiff's claims, now that it
28 had ruled on the other defendants' Motions.

1 Aspen and Plaintiff submitted competing orders to the judge for signature for their
2 respective motions, and National Union/Marquee and Plaintiff submitted competing orders to the
3 judge for signature for their respective motions. To date, no summary judgment orders have yet
4 been entered by the court, and expert deadlines are approaching though little to no discovery has
5 been conducted.

6 While the parties' summary judgment motions were pending and before ruling thereon, the
7 Court stayed discovery between St. Paul and Aspen until two weeks after the summary judgment
8 order was entered. The other defendants filed motions to stay with the discovery commissioner
9 because at the time of the court's status hearing, their motions for summary judgment were not on
10 file yet.

11 Expert deadlines are approaching though discovery has not been conducted in light of the
12 dispositive motions. The expert deadline per the Scheduling Order was April 1, 2020. However,
13 the Court's administrative order dated March 20, 2020 due to the Coronavirus COVID-19
14 emergency, stayed all deadlines 30 days. The new expert deadline is therefor currently May 1,
15 2020.

16 The Court will still have to rule on the viability of the claims against Aspen which could
17 obviate the need for any discovery, experts, and related discovery considerations. Aspen intends
18 to, and also stipulates hereby, to file its Renewed Motion for Summary Judgment on the viability
19 of Plaintiff's claims within two weeks of the entry of both pending orders on the defendants'
20 motions for summary judgment (i.e, two weeks from notice of entry of the latter order to be filed),
21 since the renewed motion concerns the rulings in both orders.

22 Consequently, Plaintiff and Aspen agree to stay discovery, deadlines, and trial pending
23 notice of entry of the Court's order on Aspen's Renewed Motion for Summary Judgment as to the
24 viability of Plaintiff's claims. Should there be claims remaining after such order, Plaintiff and
25 Aspen will submit a new proposed discovery schedule and deadlines to the Court.

26 The parties submit there is good cause under EDCR 2.35(a) for a stay of deadlines because
27 Aspen's Renewed Motion is potentially dispositive of the remaining claims in this action which
28 may obviate the need for any discovery.

1 **II. EDRR 2.35(b) CONSIDERATIONS**

2 **(1) A statement specifying the discovery completed;**

3 No discovery has been conducted by Aspen or the other defendants. The Court stayed
4 discovery between Plaintiff and Aspen pending the ruling on their competing summary judgment
5 motions, which is still pending but expected to be entered anytime. Aspen will be filing a Renewed
6 Motion concerning the viability of Plaintiff's claims.

7 Plaintiff served written discovery against Aspen which became the subject of the above-
8 referenced stay while pending, and thus responses have not yet been submitted given the stay.
9 Plaintiff also served two subpoena duces tecum before the stay was entered and have subsequently
10 disclosed the responsive documents.

11 No other discovery has been conducted.

12 **(2) A specific description of the discovery that remains to be completed;**

13 If Aspen's Renewed Motion for Summary Judgment on the viability of Plaintiff's claims is
14 granted in full, no discovery will be necessary as there will be no remaining claims in this action.
15 If Aspen's Renewed Motion is not granted in full, then full discovery will have to be undertaken
16 including written discovery, subpoenas, depositions, and expert disclosures.

17 **(3) The reasons why the discovery remaining was not completed within the time**
18 **limits set by the discovery order;**

19 St. Paul and Aspen filed dispositive motions and discovery was stayed pending resolution
20 of those motions. The orders on those motions are still pending.

21 **(4) A proposed schedule for completing all remaining discovery;**

	Scheduling Order	30-Day Admin. Stay	Proposed
	Deadlines	Deadlines	Deadlines
23	Expert Disclosure 04/01/2020	05/01/2020	STAYED
24	Rebuttal Disclosure 05/05/2020	06/05/2020	STAYED
25	Discovery Cutoff 08/01/2020	09/01/2020	STAYED
	Dispositive Motions 09/05/2020	10/05/2020	STAYED

26 **(5) The current trial date;**

27 **Trial Date:** **Proposed Trial Date:**

28 February 15, 2021 STAYED / VACATED

1 **IT IS SO STIPULATED.**

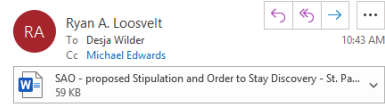
2
3 **MESSNER REEVES, LLP**

4 /s/ Ryan A. Loosvelt
5 **MICHAEL M. EDWARDS**
6 Nevada Bar No. 6281
7 **RYAN A. LOOSVELT**
8 Nevada Bar No. 8550
9 8945 W. Russell Road, Suite 300
10 Las Vegas, Nevada 89148
11 Telephone: (702) 363-5100
12 Facsimile: (702) 363-5101
13 Attorneys for Defendant Aspen Specialty
14 Insurance Company

HUTCHINSON & STEFFIN

/s/ Michael K. Wall
 MICHAEL K. WALL
 Nevada Bar No. 2098
 10080 West Alta Drive, Suite 200
 Las Vegas, NV 89145
 T: (702) 385-2500
 mwall@hutchlegal.com
 Attorneys for Plaintiff St. Paul Fire & Marine
 Insurance Company

FW: St. Paul v. Aspen (Moradi) (E9A5329)



From: Michael K. Wall <MWall@hutchlegal.com>
Sent: Wednesday, April 8, 2020 12:36 PM
To: Ryan A. Loosvelt <RLoosvelt@messner.com>
Cc: Kaylee Conradi <kconradi@hutchlegal.com>
Subject: RE: St. Paul v. Aspen (Moradi) (E9A5329)

Will do. I approve the stipulation. I will be noticing my appearance today, and you can use my e-signature on the stipulation. If you need something more, let me know.

15 **ORDER**

16 Based upon the stipulation of the parties and good cause appearing therefore,

17 **IT IS HEREBY ORDERED** that the discovery deadlines shall be STAYED pending notice
18 of entry of the Court's Order on Aspen's Renewed Motion for Summary Judgment concerning the
19 viability of Plaintiff's claims.

20 **IT IS FURTHER ORDERED** that Aspen shall file its Renewed Motion for Summary
21 Judgment concerning the viability of Plaintiff's claims with two (2) weeks after notice of entry of
22 the orders on the parties' pending motions for summary judgment. The Renewed Motion shall be
23 filed within two (2) weeks of notice of entry of the latter of the two such orders being entered and
24 noticed.
25

26 ///

27 ///

1 **IT IS FURTHER ORDERED** that if Aspen's Renewed Motion does not dispense or
2 resolve all remaining claims in this action, the parties shall submit a stipulation with new proposed
3 discovery deadlines.

4 **IT IS FURTHER ORDERED** that trial of this matter is STAYED / VACATED and will
5 be reset, if necessary, after the parties submit the stipulation with new proposed discovery deadlines,
6 if necessary, and resolution of Aspen's Renewed Motion.
7

8 **IT IS SO ORDERED.**

9 DATED this 13th day of April, 2020.

10



DISTRICT COURT JUDGE

11

12 Respectfully Submitted by:
13 MESSNER REEVES LLP

14

15 /s/ Ryan A. Loosvelt
16 MICHAEL M. EDWARDS
17 Nevada Bar No. 6281
18 RYAN A. LOOSVELT
19 Nevada Bar No. 8550
20 8945 W. Russell Road, Suite 300
21 Las Vegas, Nevada 89148
22
23
24
25
26
27
28

EXHIBIT F

{03614133 / 1}

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
16

17 
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT F1

{03614133 / 1}

ASPEN SPECIALTY INSURANCE COMPANY
POLICY NUMBER: CRA8XYD11
RENEWAL OF: NEW



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 10106			
POLICY 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

Jaime E. DeCantillon
Authorized Representative

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

Page 1 of 1

ASPG074 DEC 0511

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.

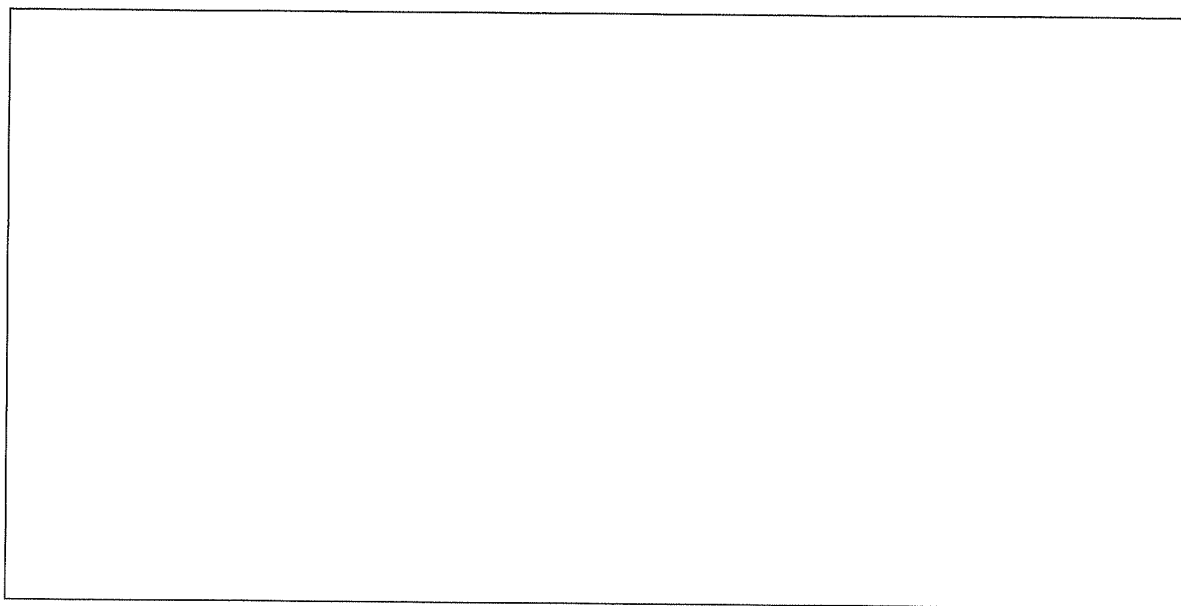
LIMITS OF INSURANCE		
EACH OCCURRENCE LIMIT	\$ 1,000,000	
DAMAGE TO PREMISES		
RENTED TO YOU LIMIT	\$ 100,000	Any one premises
MEDICAL EXPENSE LIMIT	\$ N/A	Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$ 1,000,000	Any one person or organization
GENERAL AGGREGATE LIMIT		\$ 2,000,000
PRODUCTS/COMPLETED 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. De Cantillon
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	
YOUR MAILING ADDRESS SHOWN ABOVE.	
AT 12:01 A.M. TIME AT	

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) \$ [REDACTED] MINIMUM RETAINED AUDIT PREMIUM \$ [REDACTED] MINIMUM RETAINED PREMIUM \$ [REDACTED] (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

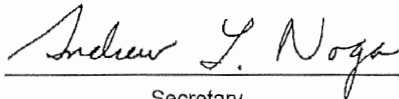
ENDORSEMENTS
ENDORSEMENTS ATTACHED TO THIS POLICY:
SEE SCHEDULE OF APPLICABLE FORMS

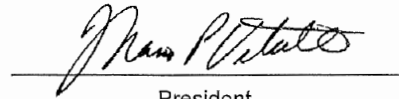
THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

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 its 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:

ASPG074 DEC 0511	Common Policy Declarations
ASPG075 DEC 0511	Commercial General Liability Declarations
ASPLL007 DEC 0511	Liquor Liability Declarations
ASPCO020 0511	Signature Page
IL 00 17 11 98	Common Policy Conditions
IL 00 03 07 02	Calculation of Premium
ASPG006 0104	Schedule of Applicable Forms
CG 00 01 12 07	Commercial General Liability Coverage Form Occurrence
CG 00 33 12 04	Liquor Liability Coverage Form
ASPG001 0104	Asbestos Exclusion Endorsement
ASPG003 0104	Total Lead Exclusion
ASPG004 0104	Additional Named Insured
ASPG007 0104	Silica Exclusion Endorsement
ASPG019 0404	Contractual Liability - Amendments
ASPG035 0504	Hired Auto and Non-Owned Auto Liability
ASPG044 0504	Amendment - Common Policy Conditions
ASPG050 0604	Electromagnetic Fields (EMF's) Exclusion
ASPG057 1004	Garagekeepers Coverage
ASPG071 0305	Bodily Injury Property Damage Personal and Advertising Injury Liability Deductible Per Occurrence
ASPG098 0406	Discrimination Exclusion
ASPG133 0807	Amendment - Cross Suits
ASPCO001 0204	Common Policy Conditions Amendment Minimum Retained Premium
ASPCO002 0110	General Service of Suit Endorsement
ASPLL002 0304	Liquor Liability Minimum Retained Audit Premium
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 85/2	Policy Changes
ASPG139 0811	Policyholder's Guide to Reporting a Casualty Claim

ASPG006 01 04

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

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 stunting 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 byyou, 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 \$
	Collision	\$	MINUS \$
<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 \$
	Collision	\$	MINUS \$

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/c 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.

ASPLL002 03/04

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	aggregate			
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

SCHEDULE

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).

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

POLICYHOLDER'S GUIDE TO REPORTING A CASUALTY CLAIM

A. As soon as you are aware of an event that will give rise to a claim being made against you (3rd Party Liability Claims), please be sure to quickly report the matter to both your agent/broker and Aspen Specialty Insurance Management, Inc. Be sure to include your policy number and the name of the insured as it is stated on the policy.

B. New claims can be reported to ASPEN SPECIALTY INSURANCE COMPANY as follows:

- 1. By Mail:**
ASPEN SPECIALTY INSURANCE COMPANY
c/o Aspen Specialty Insurance Management, Inc.
Claims Department
600 Atlantic Avenue, Suite 2100
Boston, MA 02210
Main Telephone No: 617-532-7300
- 2. By Fax:**
617-532-7342
- 3. By Dedicated Email:**
3rd Party Liability Claims: casualty.claims@aspenspecialty.com
Claim Status Requests: casualty.status@aspenspecialty.com

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 stunting 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.

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 stunting 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.

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 stunting 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.