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.

Supreme Court Case No.

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 XV of XIX

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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
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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
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20	[09/27/2019] Declaration of Marc J. Derewetzky in Support of St. Paul Fire & Marine Insurance Company's Opposition to AIG's Motion for Summary Judgment	IX	AA01222-AA01228

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30	[10/10/2019] Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Reply in Support of Motion for Summary Judgment	XII	AA01657-AA01667
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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
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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 **C**

   because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy**

   Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**
   a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
      (1) How, when and where the "occurrence" or offense took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
   b. If a claim is made or "suit" is brought against any insured, you must:
      (1) Immediately record the specifics of the claim or "suit" and the date received; and
      (2) Notify us as soon as practicable.

      You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
   c. You and any other involved insured must:
      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
      (2) Authorize us to obtain records and other information;
      (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
      (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
   d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
3. **Legal Action Against Us**

   No person or organization has a right under this Coverage Part:
   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
   b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

   A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.
4. **Other Insurance**

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

      This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.
   b. **Excess Insurance**
      (1) This insurance is excess over:
         (a) Any of the other insurance, whether primary, excess, contingent or on any other

basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

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

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

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

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

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

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

c. Method Of Sharing

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

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

5. Premium Audit

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

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

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

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

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

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

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the

purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph **a.** above; or

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in Paragraph **a.** above;

(2) The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

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

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you

and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:
    a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
    b. While it is in or on an aircraft, watercraft or "auto"; or
    c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

    but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
    a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
    b. Vehicles maintained for use solely on or next to premises you own or rent;
    c. Vehicles that travel on crawler treads;
    d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
        (1) Power cranes, shovels, loaders, diggers or drills; or
        (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
    e. Vehicles not described in Paragraph **a., b., c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
        (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
        (2) Cherry pickers and similar devices used to raise or lower workers;
    f. Vehicles not described in Paragraph **a., b., c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

    However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
        (1) Equipment designed primarily for:
            (a) Snow removal;
            (b) Road maintenance, but not construction or resurfacing; or
            (c) Street cleaning;
        (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
        (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
    a. False arrest, detention or imprisonment;
    b. Malicious prosecution;
    c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
    d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
    e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
    f. The use of another's advertising idea in your "advertisement"; or
    g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":
    a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
        (1) Products that are still in your physical possession; or
        (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
            (a) When all of the work called for in your contract has been completed.
            (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
            (c) When that part of the work done at a job site has been put to its intended use by any per-

son or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

EXHIBIT G

{03614133 / 1}

CERTIFIED POLICY

This certification is affixed to a policy which is a true and accurate copy of the document in the company's business records as of the date shown below.

No additional insurance is afforded by this copy.

St. Paul Fire and Marine Insurance Company

Name of Insuring Company(ies)

QK 06503290	03/01/11 to 03/01/13	04/24/18
Policy Number(s)	**Policy Period(s)**	**Date**

Kenneth Kupec, Second Vice President
BI Document Management

TRAVELERS

DECLARATIONS

St. Paul Fire and Marine Insurance Company

2 JERICHO PLAZA
JERICHO NY 11753

Item 1. Named Insured: PREMIER HOTEL INSURANCE GROUP (P2)
"A RISK PURCHASING GROUP"
Address: 10900 NE 4TH STREET
SUITE 1100
BELLEVUE WA 98004

Item 2. Policy Period: From: 03/01/2011 To: 03/01/2013
At 12:01 A.M. Standard Time at the address of the Named Insured shown above

Item 3. Limits Of Insurance

The Limits Of Insurance, subject to all the terms of this policy, are:

A.	$25,000,000	Each occurrence
B.	$100,000,000	General aggregate (in accordance with Section III, Limits Of Insurance)
C.	$25,000,000	Products-Completed Operations aggregate (in accordance with Section III, Limits Of Insurance)

Item 4. Self Insured Retention $0

Item 5. Premium: $TBD

Surcharge/Surtax:

Rate, if applicable:

Minimum premium, if applicable: $

Item 6. Agent: NATIONAL SPECIALTY UNDERWRITERS
10900 NE 4TH STREET
SUITE 1100
BELLEVUE WA 98004

Agency Number: 4601026

Item 7. Endorsements attached: See attached schedule.

Item 8. Policy Number: QK06503290
This Replaces Policy Number: QK06502174

Brian MacLean, President

Wendy C. Shea, Secretary

POLICY FORM LIST

TRAVELERS

Here's a list of all forms included in your policy, on the date shown below. These forms are listed in the same order as they appear in your policy.

Title	Form Number	Edition Date
Disclosure Notice Terrorism Risk Insurance Act Of 2002	D0100	03-09
Declarations (St. Paul Fire and Marine Insurance Company)	SU089	03-03
Policy Form List	40705	05-84
What To Do If You Have A Loss - Specialty Commercial Umbrella Liability Policy	SU106	05-03
Specialty Commercial Umbrella Liability Policy	SU001	10-02
Amendment of Cancellation Notice	SU007	10-02
Claims-Made Coverage And Extended Reporting Period Endorsement	SU015	06-08
Anti-Stacking Endorsement	SUP028	02-10
Pollution Exclusion Exception For Certain Equipment Including Pollutants From Swimming Pools And Garages	SUP029	02-10
Employee Benefit Liability Endorsement	SU035	06-08
Lead Exclusion	SU050	10-02
Mold or Other Fungi or Bacteria Exclusion	SU061	10-02
Pesticide, Herbicide or Fertilizer Applications Endorsement	SU070	10-02
Waiver of Rights of Recovery Endorsement	SU085	10-02
Scheduled Retained Limits	SU091	03-03
Scheduled Underlying Insurance	SU109	08-08
Scheduled Underlying Insurance - Continued	SU110	03-03
Silica Exclusion	SU157	08-04
Washington Amendatory Endorsement	SU162	09-04
Unsolicited Communication Exclusion Endorsement	SU163	10-04
Application Of Limits Of Insurance	SU221	04-11
Auto Liability Limits of Ins. End't. - Exception for Damages Not Subj to Underlying Aggregate Limit Applies Only to Auto	SU244	10-06
Auto Liability Limitation	SU257	03-07
Garagekeepers Legal Liability	SU260	04-07
Pollution Exclusion Except Building Heating Or Air Conditioning Equipment Or Water Heating Equipment	SU267	03-07
Knowledge Of Occurrence Or Claim	SU280	12-07
Crisis Management Service Expense Endorsement	SU300	12-09
Failure To Notify Insurer Of Occurrence	SUM189	04-08

Name of Insured PREMIER HOTEL INSURANCE GROUP (P2) **Policy Number** QK06503290 **Effective Date** 03/01/11 **Processing Date** 05/03/11 13:52 001

DISCLOSURE NOTICE
TERRORISM RISK INSURANCE ACT OF 2002

On December 26, 2007, the President of the United States signed into law amendments to the Terrorism Risk Insurance Act of 2002 (the "Act"), which, among other things, extend the Act and expand its scope. The Act establishes a program under which the Federal Government may partially reimburse "Insured Losses" (as defined in the Act) caused by "acts of terrorism". An "act of terrorism" is defined in Section 102(l) of the Act to mean any 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; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The federal government's share of compensation for Insured Losses is 85% of the amount of Insured Losses in excess of each insurer's statutorily established deductible, subject to the "Program Trigger", (as defined in the Act). In no event, however, will the federal government or any insurer be required to pay any portion of the amount of aggregate Insured Losses occurring in any one year that exceeds $100,000,000,000, provided that such insurer has met its deductible. If aggregate Insured Losses exceed $100,000,000,000 in any one year, your coverage may therefore be reduced.

The premium charge shown below is for coverage under this policy for Insured losses covered by the Act. This terrorism premium does not include any charges for the portion of Insured losses covered by the federal government under the Act.

If $0 is shown below for the certified acts of terrorism premium charge, this policy provides such terrorism coverage for no premium charge.

The certified acts of terrorism premium charge shown below applies to all coverage under this policy for Insured Losses covered by the Act that you purchased for a premium charge. For any insuring agreement or coverage part for which you did not purchase such terrorism coverage, this policy may include one or more terrorism exclusions that apply to certified acts of terrorism. Under the federal Terrorism Risk Insurance Program Reauthorization Act of 2007, the applicable definition of certified acts of terrorism no longer requires that the act of terrorism be committed on behalf of a foreign person or foreign interest. Therefore, each such exclusion is not limited to an act of terrorism committed on behalf of a foreign person or interest.

Name of Insured: PREMIER HOTEL INSURANCE GROUP (P2)

Policy Number: QK06503290

Effective Date: 03/01/11

Certified Acts Of Terrorism Premium Charge: INCLUDED

Processing Date: 05/03/11 13:52 001

What To Do If You Have A Loss - Specialty Commercial Umbrella Liability Policy

When an **Occurrence** happens or is committed that will likely result in damages that are covered by this policy, you or any **Insured** covered under this policy are required to report the claim to:

The Travelers Companies, Inc.
Attn: Travelers Excess Casualty Claim Division
Mail Code 9275-NB08E
385 Washington Street
St. Paul, MN 55102-1396

All other terms of your policy remain the same.

Specialty Commercial Umbrella Liability Policy

This is a Commercial Umbrella Liability Policy Form. It specifies the coverage provided, restrictions or exclusions to that coverage, and the rights and duties under this contract.

Throughout this policy the words "you" and "your" refer to the **Named Insured**. The word "**Named Insured**" and all other words or phrases that appear in bold, other than bold used for titles, have or include special meaning as described in this form. The words "we", "us" and "our" refer to the Company indicated in the Declarations as providing this insurance.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations we agree with you as follows:

Insuring Agreements

I. Coverage

A. We will pay on behalf of:

1. the **Insured** all sums in excess of the **Retained Limit** that the **Insured** becomes legally obligated to pay as damages by reason of liability imposed by law; or
2. the **Named Insured** all sums in excess of the **Retained Limit** that the **Named Insured** becomes legally obligated to pay as damages assumed by the **Named Insured** under an **Insured Contract;**

because of:

1. **Bodily Injury** or **Property Damage** that occurs during the **Policy Period** and is caused by an **Occurrence;** or
2. **Personal Injury** or **Advertising Injury** that is caused by an **Occurrence** committed during the **Policy Period;**

if such **Occurrence** takes place anywhere in the world, except for any country or jurisdiction which is subject to any trade sanction, embargo or similar regulation imposed by the United States of America that prohibits the transaction of business with or within such country or jurisdiction.

If we are prevented by law or statute from paying such sums on behalf of any **Insured**, then we will, where permitted by law or statute, indemnify that **Insured** for such sums in excess of the **Retained Limit**. In any event, the amount we will pay for damages is limited as described in Section III. Limits of Insurance.

There is no coverage under this policy for **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** unless a **Retained Limit** applies.

B. **Retained Limit** means the greater of the following:

1. the total of the applicable limits of all **Scheduled Underlying Insurance**, and the applicable limits of any **Other Insurance**, for **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** covered by such **Scheduled Underlying Insurance** or **Other Insurance;**
2. the total of the applicable limits of all **Scheduled Retained Limits** for **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** covered by such **Scheduled Retained Limits;** or
3. if applicable, the amount stated in the Declarations as a **Self Insured Retention** because of any **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** not covered by either any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit**, and caused by any one **Occurrence.**

C. If coverage for the **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** does not exist under any:

1. **Scheduled Underlying Insurance**; or
2. **Scheduled Retained Limit**;

because of a specific exclusion or other specific coverage limitation, then paragraph I. Coverage B.3 above does not apply, unless such coverage is specifically provided by endorsement to this policy.

D. This insurance applies to **Bodily Injury** and **Property Damage** only if no **Named Insured** knew, prior to the **Policy Period**, that the **Bodily Injury** or **Property Damage** had occurred, in whole or in part. If a **Named Insured** knew, prior to the **Policy Period**, that the **Bodily Injury** or **Property Damage** had occurred, then any continuation, change or resumption of such **Bodily Injury** or **Property Damage** during or after the **Policy Period** will be considered to have been known by a **Named Insured** prior to the **Policy Period** if such continuation, change or resumption would otherwise be covered by this policy because of a continuous, multiple or other coverage trigger required under the law that applies.

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 **Named Insured** includes any continuation, change or resumption of that **Bodily Injury** or **Property Damage** after the end of the **Policy Period** if that would be the result because of a continuous, multiple or other coverage trigger required under the law that applies.

Bodily Injury or **Property Damage** will be considered to have been known to have occurred at the earliest time when any **Named Insured**:

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 means that the **Bodily Injury** or **Property Damage** has occurred or has begun to occur.

E. Solely for the purpose of liability assumed by the **Named Insured** under an **Insured Contract**, reasonable attorney's fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be damages because of **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury**, provided:

1. liability to such party for such attorney's fees and necessary litigation expense has also been assumed by the **Named Insured** in the same **Insured Contract**; and
2. such attorney's fees and litigation expenses are for defense of such party against a **Suit** seeking damages covered by this policy.

F. If any **Scheduled Underlying Insurance** has a limit of insurance greater than the amount shown in the Schedule of Underlying Insurance, this policy will apply in excess of that greater amount. If any **Scheduled Underlying Insurance** has a limit of insurance, prior to any reduction or exhaustion by payment of one or more **Claims** or **Suits** seeking damages that would be covered under this policy, that is less than the amount shown in the Schedule of Underlying Insurance, this policy will apply in excess of the amount shown in that schedule.

If any **Scheduled Retained Limit** has a limit of insurance greater than the amount shown in the Schedule of Retained Limits, this policy will apply in excess of that greater amount. If any **Scheduled Retained Limit** has a limit of insurance, prior to any reduction or exhaustion by payment of one or more **Claims** or **Suits** seeking damages that would be covered under this policy, that is less than the amount shown in the Schedule of Retained Limits, this policy will apply in excess of the amount shown in that schedule.

G. If the total of the applicable limits of any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit** are reduced or exhausted by payment of one or more **Claims** or **Suits** seeking damages that would be covered by this policy, we will:

1. in the event of reduction of the limits of the **Scheduled Underlying Insurance** or the **Scheduled Retained Limit**, pay in excess of such reduced limits; or
2. in the event of exhaustion of the limits of the **Scheduled Underlying Insurance** or the **Scheduled Retained Limit**, continue in force as underlying insurance upon such exhaustion;

and subject to any specific exclusions or other specific coverage limitations of that **Scheduled Underlying Insurance** or **Scheduled Retained Limit**.

H. The applicable limits of any **Scheduled Underlying Insurance** or **Scheduled Retained Limit** shall not, for the purpose of determining when this policy applies, be reduced or exhausted by any payment with respect to **Claims** or **Suits** seeking damages which are not covered by this policy.

II. Defense

A. We shall have the right and duty to assume control of the defense of any **Claim** or **Suit** seeking damages covered by this policy, and we shall have the right to investigate and settle such **Claim** or **Suit**, when the **Retained Limit** has been exhausted by payment of judgments or settlements that would be covered by this policy. These rights and duties apply even if the **Claim** or **Suit** is groundless, false or fraudulent.

B. Prior to the exhaustion of the **Retained Limit** we shall have the right, but not the duty, to participate in the investigation, settlement or defense of any **Claim** or **Suit** seeking damages that would be covered by this policy. This right includes the opportunity to participate in the defense of any **Claim** or **Suit** that may result in damages covered by this policy. If we exercise this right, we will do so at our own expense.

C. We have no duty to defend, investigate or settle any **Claim** or **Suit** seeking damages not covered by this policy.

D. We will not defend any **Claim** or **Suit** after the applicable limits of insurance under this policy have been exhausted by payment of judgments or settlements.

E. All expenses we incur in the defense of any **Claim** or **Suit** are in addition to the limits of insurance under this policy.

F. When we assume the defense of any **Claim** or **Suit** we will pay the following, to the extent that they are not included in the **Scheduled Underlying Insurance, Scheduled Retained Limits** or in any **Other Insurance:**

1. premiums on bonds to release attachments for amounts not exceeding our limits of insurance, but we are not obligated to apply for or furnish any such bond;
2. premiums on appeal bonds required by law to appeal any **Claim** or **Suit** we defend, but we are not obligated to apply for or furnish any such bond;
3. all costs taxed against the **Insured** for **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury**, covered by this policy, in any **Suit** we defend;
4. pre-judgment interest awarded against the **Insured** on that part of the judgment we pay. But if we make an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer;
5. all interest that accrues after entry of 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 under this policy; and

6. the **Insured's** reasonable expenses incurred at our request.

G. When we have the duty to defend, but are prevented by law or otherwise from performing that duty, the **Insured** shall make or arrange for any necessary investigation or defense. We will reimburse the **Insured** for the reasonable and necessary expenses incurred to provide that investigation or defense, subject to the terms and conditions of this policy.

III. **Limits Of Insurance**

A. The limits of insurance stated in Item 3 of the Declarations and the rules below establish the most we will pay regardless of the number of:

1. **Insureds**;
2. **Claims** made or **Suits** brought;
3. person or organizations making **Claims** or bringing **Suits**; or
4. coverages provided under this policy.

B. The General Aggregate Limit is the most we will pay for all damages covered under Insuring Agreement I. Coverage except for:

1. damages included in the **Products - Completed Operations Hazard**; and
2. coverages included in the **Scheduled Underlying Insurance** or **Scheduled Retained Limits** to which no underlying aggregate applies.

If any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit** contains aggregate limits, other than an aggregate applying to the **Products-Completed Operations Hazard**, the General Aggregate stated in the Declarations will apply in the same manner as the aggregate limits of each **Scheduled Underlying Insurance** or each **Scheduled Retained Limit**.

C. The Products - Completed Operations Aggregate Limit is the most we will pay for all damages included in the **Products - Completed Operations Hazard**.

D. Subject to B. and C. above, the Each Occurrence Limit is the most we will pay for all damages covered under Insuring Agreement I. Coverage because of all **Bodily Injury**, **Property Damage**, **Personal Injury** and **Advertising Injury** caused by any one **Occurrence**.

E. The limits of insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve months, starting with the beginning of the **Policy Period** shown in the Declarations. If, however, the **Policy Period** is extended after issuance for an additional period of less than 12 months, the additional period will be considered part of the last preceding period for purposes of determining the limits of insurance that apply.

IV. **Definitions**

A. **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 purposes of this definition:

1. notices that are published include material placed on the Internet or similar electronic means of communication;
2. only that part of your website that is about your goods, products or services for the purpose of attracting customers or supporters is considered an **Advertisement**; and

3. the placing of advertising, borders or frames for you or others, or links for or to others, on or in your website is not considered an **Advertisement**.

B. **Advertising Idea** means a manner or style of **Advertisement** that others use and intend to attract attention in their **Advertisement**. However, information used to identify or record customers or supporters, such as a list of customers or supporters, shall not be considered to be an **Advertising Idea**.

C. **Advertising Injury** means injury, other than **Bodily Injury** or **Personal Injury**, arising out of your business and caused by one or more of the following offenses:

1. oral, written or electronic publication of material in your **Advertisement** that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
2. oral, written or electronic publication of material in your **Advertisement** that violates a person's right of privacy;
3. unauthorized use in your **Advertisement** of another's **Advertising Idea**; or
4. infringement in your **Advertisement** of another's copyright, trade dress, or **Slogan**.

D. **Auto** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But **Auto** does not include **Mobile Equipment**.

E. **Bodily Injury** means any physical harm, sickness or disease to the physical health of other persons, including death or any of the following resulting at any time from such physical harm, sickness or disease:

1. mental injury;
2. mental anguish;
3. emotional distress;
4. shock; or
5. humiliation.

F. **Claim** means a demand that seeks damages.

G. **Employee** includes any 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. However, **Employee** does not include any person who is furnished to you to substitute for a permanent **Employee** on leave or to meet seasonal or short-term workload conditions.

H. **Hostile Fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.

I. **Impaired Property** means **Tangible Property**, other than **Your Product** or **Your Work**, that cannot be used or is less useful because:

1. it incorporates **Your Product** or **Your Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
2. you have, or anyone acting on your behalf has, failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

1. the repair, replacement, adjustment or removal of **Your Product** or **Your Work**; or
2. you, or anyone acting on your behalf, fulfilling the terms of the contract or agreement.

As used in this definition, **Tangible Property** does not include data.

J. **Insured** means each of the following, to the extent set forth:

1. the **Named Insured**;
2. any person or organization, other than the **Named Insured**, included as an additional insured in any **Scheduled Underlying Insurance** but then for no broader coverage than is provided to such person or organization under such **Scheduled Underlying Insurance**;
3. any of your **Employees**, other than:
   a. your managers if you are a limited liability company; or
   b. your executive officers if you are an organization other than a partnership, joint venture or limited liability company;

   but only for acts within the scope of their employment by you while performing duties related to the conduct of your business.

   However, no person or organization is an **Insured** under this paragraph IV.J.3. for the ownership, maintenance, operation, use, **Loading or Unloading**, or entrustment to others, of any **Autos**, aircraft or watercraft unless such coverage is included under the **Scheduled Underlying Insurance** and then for no broader coverage than is provided under such **Scheduled Underlying Insurance**.
4. any person, other than any of your **Employees**, or organization while acting as your real estate manager;
5. any person, organization, trustee or estate to whom you are obligated by a written contract or agreement to provide insurance such as is afforded by this policy but only with respect to liability arising out of:
   a. **Your Work**; or
   b. facilities owned or used by you.
6. any person (other than any of your partners or co-venturers if you are a partnership or joint venture, any of your members or managers if you are a limited liability company, or any of your executive officers, directors or stockholders if you are an organization other than a partnership, joint venture or limited liability company, or any of your **Employees**) or organization with respect to any **Auto**:
   a. owned by you, loaned to you or hired by you or on your behalf; and
   b. used by that person or organization with your permission.

   However, none of the following is an **Insured** under this paragraph IV.J.6.:
   a. the owner or anyone else from whom you hire or borrow an **Auto**. But this exception does not apply if the **Auto** is a trailer or semi-trailer connected to an **Auto** you own; or
   b. any person using an **Auto** while working in a business that sells, services, repairs or parks **Autos** unless you are in that business.

K. **Insured Contract** means that part of any contract or agreement pertaining to your business under which the **Named Insured** assumes the **Tort Liability** of another party to pay for **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** to a third person or organization, but only if:

1. the **Bodily Injury** or **Property Damage** occurs; or
2. the **Personal Injury** or **Advertising Injury** is caused by an **Occurrence** committed;

subsequent to the execution of the **Insured Contract**.

L. **Loading or Unloading** means the handling of property:

1. while it is being moved from the place where it is accepted for transportation;
2. while it is being loaded, transported or unloaded; and
3. until it is moved to the place where it is finally delivered.

M. **Mobile Equipment** means any of the following types of land vehicles, including any attached machinery or equipment:

1. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. vehicles maintained for use solely on or next to premises you own or rent;
3. vehicles that travel on crawler treads;
4. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    a. power cranes, shovels, loaders, diggers or drills; or
    b. road construction or resurfacing equipment such as graders, scrapers or rollers;
5. vehicles not described in paragraphs IV.M.1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    a. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    b. cherry pickers and similar devices used to raise or lower workers; and
6. vehicles not described in IV.M.1., 2., 3. or 4. 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**:

a. equipment designed primarily for:
    1) snow removal;
    2) road maintenance, but not construction or resurfacing; or
    3) street cleaning;
b. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
c. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

N. **Named Insured** means:

1. any person or organization listed in Item 1 of the Declarations, any company that is your subsidiary as of the effective date of this policy and any company in which you own a majority or controlling interest as of the effective date of this policy; and
2. any organization, other than a partnership, joint venture or limited liability company, which is newly acquired, controlled or formed by you during the Policy Period but only:
    a. as respects Occurrences taking place after you acquire, take control of or form such organization;

b. to the extent such organization is included under the coverage provided by any **Scheduled Underlying Insurance**;

c. if you give us prompt notice after you acquire, take control of or form such organization; and

d. if you own a majority or controlling interest in such organization;

We may make an additional premium charge for any such organizations you acquire, take control of or form during the **Policy Period**;

3. if you are an individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner;

4. if you are a partnership or joint venture, your partners or co-venturers and their spouses, but only with respect to the conduct of your business;

5. if you are a limited liability company, your members, but only with respect to the conduct of your business, and your managers, but only with respect to their duties as your managers; and

6. if you are an organization other than a partnership, joint venture or limited liability company, any of your executive officers, directors or stockholders but only while acting within their duties or capacities as such;

However, no person or organization is a **Named 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.

Also, no person or organization is a **Named Insured** under paragraphs IV.N.3., 4., 5. or 6. for the ownership, maintenance, operation, use, **Loading or Unloading**, or entrustment to others, of any **Autos**, aircraft or watercraft unless such coverage is included under the **Scheduled Underlying Insurance** and then for no broader coverage than is provided under such **Scheduled Underlying Insurance**.

O. **Occurrence** means:

1. as respects **Bodily Injury** or **Property Damage**, an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in **Bodily Injury** or **Property Damage**. All **Bodily Injury** or **Property Damage** caused by such exposure to substantially the same general harmful conditions shall be considered to be caused by one **Occurrence**;

2. as respects **Personal Injury**, an offense arising out of your business that results in **Personal Injury**. All **Personal Injury** caused by the same or related injurious material, act or offense shall be considered to be caused by one **Occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making **Claims** or bringing **Suits**; and

3. as respects **Advertising Injury**, an offense committed in the course of advertising your goods, products and services that results in **Advertising Injury**. All **Advertising Injury** caused by the same or related injurious material, act or offense shall be considered to be caused by one **Occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making **Claims** or bringing **Suits**.

P. **Other Insurance** means any insurance providing coverage for damages covered in whole or in part by this policy. **Other Insurance** includes alternative risk transfer, risk management or financing methods or programs, such as risk retention groups or self-insurance methods or programs. But **Other Insurance** does not include:

1. any **Scheduled Underlying Insurance**;

2. the **Self-Insured Retention**; or

3. any policy of insurance specifically purchased to be excess of this policy and affording coverage that this policy also affords.

Q. **Personal Injury** means injury, other than **Bodily Injury** or **Advertising Injury**, arising out of your business and caused by one or more of the following offenses:

1. false arrest, detention or imprisonment;

2. malicious prosecution;

3. 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;

4. oral, written or electronic publication of material that slanders or libels a person or organization, or disparages a person's or organization's goods, products or services; or

5. oral, written or electronic publication of material that violates a person's right of privacy.

R. **Policy Period** means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the termination date of this policy.

S. **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and **Waste**.

T. **Products - Completed Operations Hazard** means all **Bodily Injury** and **Property Damage** occurring away from premises you own, rent or borrow 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, we will consider **Your Work** to be 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; or

   c. when any person or organization, other than another contractor or subcontractor working on the same project, has put that part of the work done at a job site to its intended use.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, shall be considered to be completed.

The **Products - Completed Operations Hazard** does not include **Bodily Injury** or **Property Damage** arising out of:

1. the transportation of property, unless the **Bodily Injury** or **Property Damage** arises out of a condition in or on a vehicle created by the **Loading or Unloading** of that vehicle by an **Insured**; or

2. the existence of tools, uninstalled equipment or abandoned or unused materials.

U. **Property Damage** means:

1. physical injury to **Tangible Property** of others 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

2. loss of use of **Tangible Property** of others that is not physically injured. All such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

As used in this definition, **Tangible Property** does not include data.

V. **Scheduled Retained Limits** means the amount and type of insurance, not covered by any **Scheduled Underlying Insurance**, listed in the Schedule of Retained Limits forming a part of this policy.

W. **Scheduled Underlying Insurance** means:

1. the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy; and
2. automatically any renewal or replacement of any policy described in paragraph IV.W.1. above, provided that such renewal or replacement provides equivalent coverage to and affords limits of insurance equal to or greater than the policy being renewed or replaced.

X. **Self-Insured Retention** means the amount indicated in Item 4 of the Declarations which is the maximum amount that:

1. the **Insured** becomes legally obligated to pay by reason of liability imposed by law; or
2. the **Named Insured** becomes legally obligated to pay as damages assumed by the **Named Insured** under an **Insured Contract**;

not covered by either any Scheduled Underlying Insurance or any Scheduled Retained Limit and caused by any one Occurrence.

Y. **Slogan** means a phrase that others use and intend to attract attention in their **Advertisement**. However, a **Slogan** does not include a phrase used as, or in, the name of:

1. any person or organization, other than you; or
2. any business or any of the premises, goods, products or services of any person or organization, other than you.

Z. **Suit** means a civil proceeding that seeks damages. **Suit** includes:

1. an arbitration proceeding that seeks damages and to which you must submit or do submit with our consent; or
2. any other alternative dispute resolution proceeding that seeks damages and to which you submit with our consent.

AA. **Tort Liability** means a liability that would be imposed by law in the absence of any contract or agreement.

BB. **Waste** includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

CC. **Your Product** means:

1. any goods or products, other than real property, that are or were 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.

Your Product 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.

Your Product does not include vending machines or other property rented to or located for the use of others but not sold.

DD. **Your Work** means:

1. work or operations performed or being performed by you or on your behalf; and
2. materials, parts or equipment furnished in connection with such work or operations.

Your Work 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 warning or instructions.

V. **Exclusions**

This insurance does not apply to:

A. **Workers' Compensation, Disability Benefits or Unemployment Compensation Laws**

Any obligation of the **Insured** under any workers compensation law, disability benefits law, unemployment compensation law or any similar law.

B. **ERISA or COBRA**

Any obligation of the **Insured** under:

1. the Employees Retirement Income Security Act Of 1974 (ERISA);
2. the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA); or
3. any similar common or statutory law of any jurisdiction;

including any amendments to such laws.

C. **Uninsured Motorists, Underinsured Motorists or Automobile No-Fault Laws**

Any liability or obligation of the **Insured** under any automobile:

1. uninsured motorists;
2. underinsured motorists; or
3. no-fault or other first party benefits law.

D. **Asbestos**

1. **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the actual, alleged or threatened:
   a. absorption, ingestion or inhalation of asbestos in any form by any person; or
   b. existence of asbestos in any form.

2. **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the actual, alleged or threatened:

   a. absorption, ingestion or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and **Waste**, in any form by any person; or

   b. existence of any such other irritant or contaminant in any form;

   and that is part of any **Claim** or **Suit** that also alleges any **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** described in paragraph V.D.1. of this exclusion, above.

3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any **Insured** or others:

   a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize asbestos in any form; or

   b. respond to, or assess, in any way the effects of asbestos in any form.

Because asbestos, and any other such irritants or contaminants, are **Pollutants**, this exclusion applies in addition to any of the following exclusions that apply:

a. the pollution exclusion in this policy; or

b. any other pollution-related exclusion made part of this policy.

E. **Employment-Related Practices**

Bodily Injury or **Personal Injury** to:

1. a. person arising out of any:

      a. refusal to employ that person;

      b. termination of that person's employment; or

      c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, failure to promote or advance, harassment, humiliation or discrimination applied to or directed at that person; or

   2. the spouse, child, parent, brother or sister of that person as a consequence of such **Bodily Injury** or **Personal Injury** to that person described in paragraph V.E.1., of this exclusion, above.

This exclusion applies to any obligation to share damages with or repay someone else who must pay damages because of the **Bodily Injury** or **Personal Injury**.

F. **Property Damage to Certain Property**

Property Damage to:

1. property you own, rent or occupy;
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 any **Insured**;

5. that particular part of real property on which you or any contractors or sub-contractors working directly or indirectly on your behalf are performing operations if the **Property Damage** arises out of those operations;

6. that particular part of any property that must be restored, repaired or replaced because **Your Work** was incorrectly performed on it;

7. **Your Product** arising out of **Your Product** or any part of it; or

8. **Your Work** arising out of **Your Work** or any part of it and included in the **Products-Completed Operations Hazard**, unless the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

Paragraph V.F.2. of this exclusion, above, does not apply if the premises are **Your Work** and were never occupied, rented or held for rental by you.

Paragraph V.F.6. of this exclusion, above, does not apply to **Property Damage** included in the **Products-Completed Operations Hazard**.

G. **Property 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 fulfill the terms of a contract or agreement.

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.

H. **Product Recall**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

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.

I. **Expected or Intended Bodily Injury or Property Damage**

Bodily Injury or **Property Damage** expected or intended from the standpoint of the **Insured**.

This exclusion does not apply to **Bodily Injury** or **Property Damage** resulting from the use of reasonable force to protect persons or property.

J. **Known Violation of Rights**

Personal Injury or **Advertising Injury** caused by or committed at the direction of the **Insured**, or by an offense committed at the direction of the **Insured**, with knowledge that the rights of another would be violated and that **Personal Injury** or **Advertising Injury** would result.

K. Material Published with Knowledge of Falsity

Personal Injury or **Advertising Injury** arising out of oral, written, or electronic publication of material, if done by or at the direction of the **Insured** with knowledge of its falsity.

L. Material Published Prior to Policy Period

Personal Injury or **Advertising Injury** arising out of any:

1. oral, written, or electronic publication of material whose first publication;
2. unauthorized use in your **Advertisement** of another's **Advertising Idea** if that unauthorized use first; or
3. infringement in your **Advertisement** of another's copyright, trade dress or **Slogan** if that infringement first;

took place before the beginning of the **Policy Period.**

M. Criminal Acts

Personal Injury or **Advertising Injury** arising out the willful violation of a penal statute or ordinance committed by, at the direction of, any **Insured.**

N. Advertising, Broadcasting, Publishing, Telecasting, Media and Internet Businesses

Personal Injury or **Advertising Injury** committed by an **Insured** whose business is:

1. Advertising, broadcasting, publishing or telecasting;
2. Designing or determining content of websites for others; or
3. An Internet search, access, content or service provider.

However, this exclusions does not apply to **Personal Injury** caused by any of the following offenses:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. 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.

For the purpose of this exclusion, the placing of advertising, borders or frames for an **Insured** or others, or links for or to others, on or in an **Insured's** website is not by itself considered the business of advertising, broadcasting, publishing or telecasting.

O. Breach of Contract

Personal Injury or **Advertising Injury** arising out of breach of contract, other than misappropriation of **Advertising Ideas** under an implied contract.

P. Quality or Performance of Goods - Failure to Conforms to Statements

Advertising Injury arising out of the failure of goods, products or services to conform with advertised quality or performance.

Q. **Wrong Description of Prices**

Advertising Injury arising out of the wrong description of the price of goods, products or services.

R. **Intellectual Property**

Bodily Injury, Property Damage, Personal Injury or **Advertising Injury** arising out of the actual or alleged infringement or violation of any of the following rights or laws:

1. copyright;
2. patent;
3. trade name;
4. trade secret;
5. trademark; or
6. other intellectual property rights or laws.

This exclusion does not apply to **Bodily Injury** or **Property Damage** that:

1. results from **Your Products** or **Your Work**; or
2. is included in the **Products-Completed Operations Hazard**.

This exclusion also does not apply to **Advertising Injury** that results from:

1. the unauthorized use in your **Advertisement** of another's **Advertising Idea**; or
2. infringement in your **Advertisement** of another's copyright, trade dress or trademarked **Slogan**.

S. **Pollution**

1. **Bodily Injury, Property Damage or Personal Injury** or **Advertising Injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** anywhere in the world;
2. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that we, the **Insured** or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, respond to, neutralize or assess the effects of **Pollutants**; or
3. Any loss, cost or expense arising out of any **Claim** or **Suit** by or for any governmental authority or any other person or organization for damages arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or responding to or assessing in any way, **Pollutants**.

This exclusion does not apply to **Bodily Injury** or **Property Damage**:

a. arising out of heat, smoke or fumes from a **Hostile Fire**;

b. arising out of the upset, overturn or collision of an **Auto**; or

c. included in the **Products-Completed Operations Hazard**;

if insurance for such **Bodily Injury** or **Property Damage** is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit**. However, the insurance provided by this policy for such **Bodily Injury** or **Property Damage** will not be broader than the insurance provided by such **Scheduled Underlying Insurance** or **Scheduled Retained Limit**.

T. Nuclear Material

Bodily Injury, **Property Damage**, **Personal Injury** or **Advertising Injury** arising out of:

1. the actual, alleged or threatened exposure of any person or property to; or
2. the **Hazardous Properties** of;

any **Nuclear Material**.

As used in this exclusion:

1. **hazardous properties** includes radioactive, toxic or explosive properties;
2. **nuclear material** means source material, special nuclear material or by-product material;
3. **source material**, **special nuclear material** and **by-product material** have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof.

Because **Nuclear Material** is a **Pollutant**, this exclusion applies in addition to any of the following exclusions that apply:

1. the pollution exclusion in this policy; or
2. any other pollution-related exclusion made part of this policy.

VI. Additional Exclusions

This insurance does not apply to the following, unless insurance for such liability is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit** and then it will be no broader than the insurance provided by such **Scheduled Underlying Insurance** or **Scheduled Retained Limit**:

A. Fellow Employee

Liability of any **Employee** with respect to **Bodily Injury** or **Personal Injury** to:

1. another **Employee** of the same employer; or
2. the spouse or any child, parent, brother or sister of that other **Employee** as a consequence of such **Bodily Injury** or **Personal Injury** to that other **Employee** described in paragraph VI.A.1. of this exclusion.

B. Watercraft

Bodily Injury or **Property Damage** arising out of the ownership, maintenance, use, operation, **Loading or Unloading**, or entrustment to others of any watercraft owned, operated or rented by, or loaned to, any **Insured**. This exclusion does not apply to watercraft while ashore on premises owned or rented by any **Insured**.

C. Aircraft

Bodily Injury or **Property Damage** arising out of the ownership, maintenance, use, operation, **Loading or Unloading** or entrustment to others of any aircraft owned, rented or chartered by, or loaned to, any **Insured** or on an **Insured's** behalf, with or without crew.

VII. Conditions

A. Appeals

We have the right but not the duty to appeal an award or judgment, including damages covered by this policy, in excess of the applicable **Retained Limit**. If we elect to appeal we will pay, in addition to any applicable limits of insurance of this policy, all costs, interest and expenses incidental to such appeal. However, the result of an appeal will not change the limits of coverage that apply under this policy.

B. Audit

We may audit the **Insured's** books and records at any time during the term of the **Policy Period** or within three years after expiration or termination of this policy.

C. Bankruptcy or Insolvency

1. The **Insured's** bankruptcy, insolvency or inability to pay, or the bankruptcy, insolvency or inability to pay of any issuer of **Scheduled Underlying Insurance** will not relieve us of our obligations under this policy.

2. In the event of any such bankruptcy, insolvency or inability to pay:

   a. this insurance will neither replace or reduce the insurance provided by **Scheduled Underlying Insurance** nor replace or reduce any **Scheduled Retained Limit**; and

   b. this insurance will apply only to amounts in excess of the applicable limits of such **Scheduled Underlying Insurance** and **Scheduled Retained Limits**.

D. Cancellation

1. You may cancel this policy. You must mail or deliver to us advance written notice to us stating when the cancellation is to take effect.

2. We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you not less than 10 days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than 60 days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Declarations shall be sufficient to prove such notice.

3. The **Policy Period** will end on the day and time stated in the cancellation notice.

4. If we cancel, final premium shall be calculated pro rata based on the time this policy was in force.

5. If you cancel, final premium will be more than pro rata. It will be based on the time this policy was in force and increased by our short rate cancellation table and procedure.

6. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any premium refund due you. Our check, or our representative's check, mailed or delivered to you at your mailing address shown in Item 1 of the Declarations, shall be sufficient tender of any such refund due you.

7. The first **Named Insured** in Item 1 of the Declarations shall act on behalf of all other **Insureds** with respect to the giving or receiving of notice of cancellation and the receipt of any premium refund that may become payable under this policy.

8. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with that law.

E. Changes

Notice to any agent or knowledge possessed by any agent or any other person will not effect a waiver of, or a change in, any part of this policy. This policy can only be changed by a written endorsement that becomes a part of this policy and that is signed by one of our authorized representatives.

F. Duties in the Event of an Occurrence, Claim or Suit

1. You must see to it that we are notified as soon as practicable of an **Occurrence** which may result in a **Claim** or **Suit** seeking damages covered by this policy. To the extent possible, notice should include:
   a. how, when and where the **Occurrence** took place;
   b. the names and addresses of any injured persons and witnesses; and
   c. the nature and location of any **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** arising out of the **Occurrence**.
2. If a **Claim** is made or **Suit** is brought against any **Insured** that is reasonably likely to involve the coverage provided by this policy, you must notify us in writing as soon as practicable. You and any other involved **Insured** also must:
   a. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **Claim** or **Suit**;
   b. authorize us to obtain necessary records and other information;
   c. cooperate with us in the investigation, settlement or defense of any **Claim** or **Suit** we investigate, settle or defend; and
   d. 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 apply.
3. No **Insured** will, except at that **Insured's** own expense, voluntarily make a payment, assume any obligation, make any admission, or incur any expense, other than for first aid for **Bodily Injury** covered by this policy, without our consent.

G. First Named Insured

The person or organization first named in Item 1 of the Declarations is primarily responsible for the payment of all premiums, the giving and receiving of notice of cancellation and the receiving of any return premiums that become payable under this policy.

H. Inspection

We have the right, but are not obligated, to inspect your premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of your premises and operations and the premiums to be charged. We may give your reports on the conditions that we find. We may also recommend changes. However, we will not undertake to perform the duty of any person or organization to provide for the health or safety of your **Employees** or the public. We do not warrant the health and safety conditions of your premises or operations or represent that your premises or operations comply with any law, regulation, code or standard.

I. **Knowledge of Occurrence or Claim**

Knowledge of an **Occurrence, Claim** or **Suit** by your agent, servant or **Employee** shall not in itself constitute knowledge by you, unless a **Named Insured:**

1. shall have received notice of such **Occurrence, Claim** or **Suit** from said agent, servant or **Employee;** or
2. otherwise has knowledge of such **Occurrence, Claim** or **Suit.**

J. **Legal Action Against Us**

No person or organization has a right under this policy to sue us, join us as a party, or otherwise bring us into a **Suit** seeking damages from, or to determine the liability of, any **Insured** unless:

1. you have, and any other involved **Insured** has, complied with all the terms of this policy; and
2. the amount you owe has been determined with our consent or by actual trial and final judgment.

K. **Maintenance of Scheduled Underlying Insurance**

1. During the **Policy Period,** you agree:
   a. to keep **Scheduled Underlying Insurance** in full force and effect;
   b. that the terms, including definitions, conditions and exclusions, of **Scheduled Underlying Insurance** shall not materially change;
   c. that the total applicable limits of **Scheduled Underlying Insurance** shall not decrease, except for any reduction or exhaustion of aggregate limits by payment of **Claims** or **Suits** for **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** covered by this policy; and
   d. that any renewals or replacements of **Scheduled Underlying Insurance** shall provide equivalent coverage to and afford limits of insurance equal to or greater than the policy being renewed or replaced.
2. If you fail to comply with these requirements, we will be liable only to the same extent that we would have, had you fully complied with these requirements.
3. If you are unable to recover from an issuer of any **Scheduled Underlying Insurance** because that issuer is unable to pay or you fail to comply with any term or condition of any **Scheduled Underlying Insurance,** we will only pay those sums covered by this insurance which are in excess of the applicable limit of **Scheduled Underlying Insurance** shown in the **Schedule** of **Underlying Insurance.**

L. **Other Insurance**

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

M. **Premium**

The premium for this policy is the amount stated in Item 5 of the Declarations. It is a flat premium unless specified as subject to an audit adjustment.

N. **Separation of Insureds**

Except with respect to the limits of insurance of this policy and any rights or duties specifically assigned to the first **Named Insured** designated in Item 1 of the Declarations, this insurance applies:

1. as if each **Named Insured** were the only **Named Insured**; and
2. separately to each **Insured** against whom the **Claim** is made or the **Suit** is brought.

O. **Titles**

The titles of the various sections or paragraphs in this policy and endorsements, if any, attached to this policy are intended solely for convenience or reference and are not to be deemed in any way to affect the provisions to which they relate.

P. **Transfer of Rights of Recovery to Us**

1. If any **Insured** has rights to recover from any other person or organization all or part of any payment we have made under this policy, those rights are transferred to us. The **Insured** must do nothing after loss to impair those rights and must help us enforce them.

2. Any such recovery shall be applied as follows:
   a. first, any person or organization, including the **Insured**, that has paid an amount in excess of the applicable limits of insurance of this policy will be reimbursed for the actual excess amount paid under this policy;
   b. then, we will be reimbursed up to the amount we have paid; and
   c. last, any **Insured** or issuer of **Scheduled Underlying Insurance** is entitled to claim the remainder, up to the amount that **Insured** or issuer of **Scheduled Underlying Insurance** has paid.

3. Expenses incurred in the exercise of such rights of recovery shall be apportioned among such persons or organizations, including the **Insured**, in the same ratio as their respective recoveries are finally shared.

Q. **Transfer of Your Rights and Duties**

Your rights and duties under this policy may not be transferred without our written consent.

If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. However, notice of cancellation sent to the first **Named Insured** designated in Item 1 of the Declarations and mailed to the address shown in this policy will be sufficient notice to effect cancellation of this policy.

R. **Unintentional Failure to Disclose Hazards**

Your failure to disclose all hazards existing as the inception date of the policy shall not prejudice you with respect to the coverage afforded by this policy, provided that any such failure or omission is not intentional.

S. **When Damages Are Payable**

We will not make any payment under this policy unless and until the **Insured** or any other insurer is obligated to pay the **Retained Limit**.

When the amount of loss has been determined, we will promptly pay on behalf of the **Insured** the amount of loss covered by this policy.

You shall promptly reimburse us for any amount within the **Self-Insured Retention** paid by us on behalf of an **Insured**.

In Witness Whereof we have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by one of our duly authorized representatives where required by law.

Amendment of Cancellation Notice

Paragraph 2 of Section VII. Conditions, D. Cancellation is replaced by the following:

We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you not less than 10 days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than 90 days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Declarations shall be sufficient to prove such notice.

All other terms of your policy remain the same.

Claims-Made Coverage And Extended Reporting Period Endorsement

A. With respect to the coverage provided by this policy that applies in excess of the **Scheduled Underlying Insurance** listed directly below, which provides coverage on a claims-made basis, this policy also provides coverage on a claims-made basis:

Scheduled Underlying Insurance Description: EMPLOYEE BENEFITS LIABILITY
Scheduled Underlying Insurance Carrier: PER SCHEDULE ON INDIVIDUAL ACCOUNT CERTIFICATE
Scheduled Underlying Insurance Policy #: PER SCHEDULE ON INDIVIDUAL ACCOUNT CERTIFICATE
Scheduled Underlying Insurance Limits: $1,000,000/$1,000,000
Scheduled Underlying Insurance Retroactive Date:

Scheduled Underlying Insurance Description:
Scheduled Underlying Insurance Carrier:
Scheduled Underlying Insurance Policy #:
Scheduled Underlying Insurance Limits:
Scheduled Underlying Insurance Retroactive Date:

Scheduled Underlying Insurance Description:
Scheduled Underlying Insurance Carrier:
Scheduled Underlying Insurance Policy #:
Scheduled Underlying Insurance Limits:
Scheduled Underlying Insurance Retroactive Date:

B. Each of the following applies to such coverage provided by this policy on a claims-made basis:

1. The **Bodily Injury** or **Property Damage** must have occurred, the **Personal Injury** or **Advertising Injury** must have been caused by an **Occurrence** committed, or the negligent act, error, or omission must have been committed, on or after the **Retroactive Date** of this policy;
2. The **Bodily Injury** or **Property Damage** must have occurred, the **Personal Injury** or **Advertising Injury** must have been caused by an **Occurrence** committed, or the negligent act, error or omission must have been committed, on or before the earlier of the expiration date shown in Item 2 of the Declarations or the termination date of this policy;
3. The **Claim** or **Suit** for any **Bodily Injury, Property Damage, Personal Injury, Advertising Injury**, or negligent act, error, or omission must have been first made or brought during the **Policy Period** or within 60 days thereafter, or within any **Extended Reporting Period** provided under this policy. A **Claim** or **Suit** is deemed first made or brought when notice of such **Claim** or **Suit** is first received by any **Insured** or by us, whichever is earlier.
4. No insurance is provided by this policy for any **Claim** or **Suit**, or any notification being treated as a **Claim** or **Suit**, which is made or brought before the inception date shown in Item 2 of the Declarations and for which any **Insured** has given notice to any person or organization providing **Other Insurance**.

C. The following is added to section **VII. Conditions F. Duties in the Event of an Occurrence, Claim** or **Suit** but only with respect to this endorsement:

4. Notice of an **Occurrence** as described in F.1. above is not notice of a **Claim** or **Suit**. However, if:

   a. we are notified during the **Policy Period**, as specified above, of an **Occurrence**; and
   b. a **Claim** or **Suit** is made or brought within 36 months from the date we are notified of that **Occurrence**;

then this policy will apply as if notice of that **Claim** or **Suit** has been made during the **Policy Period.**

D. The following is added to section **VII. Conditions:**

Extended Reporting Period

1. If the **Insured** cancels or does not renew this policy, or if we either cancel or non-renew this policy for any reason other than non-payment of premium, the **Insured** may elect to purchase the **Extended Reporting Period.**

2. The **Extended Reporting Period** will apply only if:
   a. The **Insured** requests it in writing within 60 days after the end of the **Policy Period;**
   b. The **Insured** has paid all premiums due for this policy at the time the **Insured** makes such request; and
   c. The **Insured** pays the additional premium for such **Extended Reporting Period** as charged by us. The additional premium will not exceed 200%

3. Once the **Extended Reporting Period** is effective, neither we nor you may cancel the **Extended Reporting Period,** and we shall not refund any part of the premium paid for the **Extended Reporting Period** for any reason.

4. Any **Claim** or **Suit** first made or brought during the **Extended Reporting Period** will be deemed to have been made or brought on the last day of the **Policy Period.** The **Extended Reporting Period** will not extend the **Policy Period** or reinstate or increase the Limits of Liability of this policy.

5. Any insurance provided by this policy for **Claims** or **Suits** made or brought during the **Extended Reporting Period** is excess over any **Other Insurance** providing coverage for such **Claims** or Suits made or brought after the **Extended Reporting Period** begins.

E. With respect to this endorsement only, the following are added to section **IV. Definitions:**

Extended Reporting Period means a period of 5 years or the length of the addt'l Extended Reporting Period in your Scheduled Underlying Insurance, whichever is less. starting with the expiration date of this policy, during which **Claims** or **Suits** may be first made or brought.

Retroactive Date means . If no retroactive date is shown, then the retroactive date of this policy is the same as the retroactive date shown on the applicable **Scheduled Underlying Insurance** listed in part A. of this endorsement.

All other terms of your policy remain the same.

Anti-Stacking Endorsement

For the purpose of this endorsement only, the following is added to section **III. Limits of Insurance:**

Regardless of the Limits specified in the Declarations of this policy, if any **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** covered by this policy is also covered by any other Named Insured Certificate issued on the Premier Hotel Insurance Group policy QK06503290 **and** QK06503289, then the maximum that we will pay for all such **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** will be the highest applicable Each Occurrence Limit under any one of those certificates.

This endorsement does not apply to certificate holders that have no contractual relationship or common ownership between them.

All other terms of your policy remain the same.

Pollution Exclusion Exception For Certain Equipment Including Pollutants From Swimming Pools And Garages

The following is added to the second paragraph of section V. Exclusions S. Pollution 3.

d. arising out of the discharge, dispersal, seepage, migration, release or escape of pollutants from:
   1. chlorine equipment, refrigeration equipment, ventilation equipment, air conditioning equipment; or
   2. release of a substance from a swimming pool or a garage.

All other terms of your policy remain the same.

Employee Benefits Liability Endorsement

1. The following is added to section **I. Coverage A:**

   We will also pay on behalf of the **Insured** all sums in excess of the **Retained Limit** that the **Insured** becomes legally obligated to pay as damages by reason of liability imposed by law because of any negligent act, error or omission committed in the **Administration** of your **Employee Benefits Program**. However, the insurance provided by this endorsement will not be broader than the insurance provided by the applicable **Scheduled Underlying Insurance** or the applicable **Scheduled Retained Limit** for such damages.

2. The following are added to section **IV. Definitions:**

   Administration means any of the following administrative functions:
   1. Providing information to **Employees**, including dependents and beneficiaries, with respect to eligibility for or scope of an **Employee Benefit Program**;
   2. Handling records in connection with an **Employee Benefit Program**; or
   3. Effecting or terminating any **Employee's** participation in a plan included in the **Employee Benefit Program**.

   Employee Benefit Program means any of the following plans:
   1. 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 insurance or plans and such plans are generally available to those **Employees** who satisfy the plan's eligibility requirements;
   2. 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 plans and such plans are generally available to all **Employees** who are eligible under the plan;
   3. Unemployment insurance, social security benefits, workers compensation and disability benefits;
   4. Vacation plans; or
   5. Any other plan designated in the **Schedule of Designated Plans** below or added by endorsement to this policy.

   Schedule of Designated Plans

All other terms of your policy remain the same.

Lead Exclusion

This Insurance does not apply to:

1. **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** arising out of the actual, alleged or threatened:

   a. absorption, ingestion or inhalation of lead in any form by any person; or
   b. existence of lead in any form.

2. **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** arising out of the actual, alleged or threatened:

   a. absorption, ingestion or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and **Waste**, in any form by any person; or
   b. existence of any such other irritant or contaminant in any form;

   and that are part of any **Claim** or **Suit** that also alleges any **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** described in paragraph 1. of this exclusion, above.

3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any **Insured** or others:

   a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize lead in any form;
   b. respond to, or assess, in any way the effects of lead in any form.

   Because lead, and any other such irritant or contaminant, are **Pollutants**, this exclusion applies in addition to any of the following exclusions that apply:

   a. the pollution exclusion in this policy; or
   b. any other pollution-related exclusion made part of this policy.

All other terms of your policy remain the same.

Mold or Other Fungi or Bacteria Exclusion

This insurance does not apply to:

1. **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the actual, alleged or threatened:

   a. absorption, ingestion or inhalation of **Mold or other fungi** or **Bacteria** in any form by any person; or
   b. existence of **Mold or other fungi** or **Bacteria** in any form;

   Paragraph 1 of this exclusion does not apply to:

   a. **Bodily Injury** or **Property Damage** arising out of **Mold or other fungi** or **Bacteria** which are in, on or part of any good or product that is intended to be consumed as food, beverage or medicine;
   b. **Bodily Injury** arising out of **bacteria** which are directly transmitted solely by or from another person to the person sustaining the **Bodily Injury**, or
   c. **Bodily Injury** arising out of a bacterial infection which develops in connection with physical harm to the person sustaining the **Bodily Injury**, if such physical harm is not excluded by this paragraph of this exclusion, or by any other part of this exclusion, and a **Claim** or **Suit** is made or brought against the **Insured** because of such physical harm;

2. **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the actual, alleged or threatened:

   1. absorption, ingestion or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and **Waste**, in any form by any person; or
   2. existence of any such other irritant or contaminant in any form;

   and that is part of any **Claim** or **Suit** that also alleges any **Bodily Injury, Property Damage, Personal Injury**, or **Advertising Injury** described in paragraph 1. of this exclusion, above; or

3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any **Insured** or others:

   a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Mold or other fungi** or **Bacteria** in any form; or
   b. respond to, or assess in any way, the effects of **Mold or other fungi** or **Bacteria** in any form.

Because **Mold or other fungi** or **Bacteria** can be **Pollutants**, and such other irritants or contaminants are **Pollutants**, this exclusion applies in addition to any of the following exclusions that apply:

a. the pollution exclusion in this policy; or
b. any other pollution-related exclusion made part of this policy.

For purposes of this endorsement only, the following words or phrases have or include special meaning:

1. **Molds or other fungi** means:
   a. any type or form of mold or mildew;
   b. any other type or form of fungus; or
   c. any mycotoxin, spore, scent or byproduct that is produced or released by such mold, mildew or other fungus.

2. **Bacteria** means:
   a. any type or form of bacterium; or
   b. any mycotoxin, spore, scent or byproduct that is produced or released by such bacterium.

All other terms of your policy remain the same.

Pesticide, Herbicide or Fertilizer Applications Endorsement

The following is added to Section V. Exclusions, F. **Property Damage to Certain Property:**

Paragraph V.F.5. of this exclusion, above, does not apply to **Property Damage** to real estate property arising out of **Your Work** in the application of any pesticide, herbicide or fertilizer.

All other terms of your policy remain the same.

Waiver of Rights of Recovery Endorsement

The following is added to section **VII. Conditions, P. Transfer of Rights of Recovery to Us:**

If, prior to an Occurrence, covered by this policy, you have agreed in a written contract, to waive your rights to recovery of payment for damages for **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** caused by that **Occurrence**, then we agree to waive our right of recovery for such payment.

All other terms of your policy remain the same.

SCHEDULED RETAINED LIMITS

Type of Coverage	Limits Of Liability
Certified Acts of Terrorism	$1,000,000

Scheduled Underlying Insurance

Comprehensive General Liability	Limits Of Liability	
Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	General Aggregate.	$2,000,000
Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	Products/Completed Operations Aggregate.	$1,000,000
Policy Period SEE ACCOUNT CERTIFCATE	Personal and Advertising Injury.	$1,000,000
Coverage is: ☐ claims-made ☒ not claims-made	Each Occurrence.	$1,000,000

Automobile Liability	Limits Of Liability	
Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	Bodily Injury And Property Damage Combined. Each Accident $1,000,000 CSL	
Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	Bodily Injury. Each Person	Each Accident
Policy Period SEE ACCOUNT CERTIFCATE	$	$
	Property Damage. Each Accident	
	$	

Employers Liability	Limits Of Liability	
Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	Bodily Injury By Accident Each Accident	
Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT.	$500,000*	
Policy Period SEE ACCOUNT CERTIFCATE	Bodily Injury Disease Policy Limit	Each Employee
	$500,000*	$500,000*

*UNLIMITED IN THE STATE OF NEW YORK

ABOVE LIMITS OF LIABIILTY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)

Scheduled Underlying Insurance

Comprehensive General Liability	Limits Of Liability	
Carrier	General Aggregate.	$
Policy Number	Products/Completed Operations Aggregate.	$
Policy Period	Personal and Advertising Injury.	$
Coverage is: ☐ claims-made ☐ not claims-made	Each Occurrence.	$

Automobile Liability	Limits Of Liability	
Carrier	Bodily Injury And Property Damage Combined. Each Accident	$
Policy Number	Bodily Injury. Each Person	Each Accident
Policy Period	$	$
	Property Damage. Each Accident	$

Employers Liability	Limits Of Liability	
Carrier	Bodily Injury By Accident Each Accident	$
Policy Number	Bodily Injury By Disease Policy Limit	Each Employee
Policy Period	$	$

Scheduled Underlying Insurance - Continued

Type Of Coverage:	Limits Of Liability
FOREIGN LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Period SEE ACCOUNT CERTIFCATE Coverage is: ☐ claims-made ☒ not claims-made	$1,000,000 EACH OCCURRENCE $1,000,000 AGGREGATE ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)

Type Of Coverage:	Limits Of Liability
LIQUOR LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Period SEE ACCOUNT CERTIFCATE Coverage is: ☐ claims-made ☒ not claims-made	$1,000,000 EACH COMMON CAUSE $1,000,000 AGGREGATE ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)

Type Of Coverage:	Limits Of Liability
GARAGEKEEPERS LEGAL LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Period SEE ACCOUNT CERTIFCATE Coverage is: ☐ claims-made ☒ not claims-made	$1,000,000 EACH OCCURRENCE ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)

Scheduled Underlying Insurance - Continued

Type Of Coverage:	Limits Of Liability
MARINE OPERATORS LEGAL LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Period SEE ACCOUNT CERTIFCATE Coverage is: ☐ claims-made ☒ not claims-made	$5,000,000 OCCURRENCE $5,000,000 AGGREGATE ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)

Type Of Coverage:	Limits Of Liability
PROTECTION & INDEMNITY LIABILITY Carrier PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Number PER SCHEDULE ON INDIVIDUAL ACCOUNT CERT. Policy Period SEE ACCOUNT CERTIFCATE Coverage is: ☐ claims-made ☒ not claims-made	$5,000,000 $5,000,000 ABOVE LIMITS OF LIABILITY ARE MINIMUM LIMITS ONLY. INDIVIDUAL CERTIFICATE MAY REQUIRE HIGHER UNDERLYING LIMITS OR COVERAGE MAY NOT APPLY. (SEE INDIVIDUAL ACCOUNT CERTIFICATE)

Type Of Coverage:	Limits Of Liability
Carrier Policy Number Policy Period Coverage is: ☐ claims-made ☐ not claims-made	

Silica Exclusion

This insurance does not apply to:

1. **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of any actual, alleged or threatened:

   a. absorption, ingestion or inhalation of silica in any form by any person; or

   b. existence of silica in any form.

2. **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of any actual, alleged or threatened:

   a. absorption, ingestion, or inhalation of any other solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and **Waste**, in any form by any person; or

   b. existence of any such other irritant or contaminant in any form;

   and that are part of any **Claim** or **Suit** that also alleges any **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** described in paragraph 1 of this exclusion above.

3. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that any **Insured** or others:

   a. test for, monitor, clean up, remove, contain, treat, detoxify or neutralize silica in any form; or

   b. respond to, or assess, in any way the effects of silica in any form.

Because silica, and any other such irritants or contaminants, are **Pollutants**, this exclusion applies in addition to any of the following exclusions that apply:

   a. the pollution exclusion in this policy; or

   b. any other pollution-related exclusion made part of this policy.

All other terms of your policy remain the same.

Washington Amendatory Endorsement

This endorsement changes your policy to comply with, or otherwise respond to, Washington law. Therefore, each change made by this endorsement applies only to the extent:

1. required by Washington statutory or regulatory law; or
2. specifically described in the part of this endorsement which makes that change.

As a result, if the address shown for you in Item 1 of the Declarations of your policy is outside Washington, each change that is made to comply with Washington statutory or regulatory law applies only if, and to the extent:

1. your policy provides coverage for damages that result from your operations in, or which affect, Washington; and
2. that law applies to that coverage.

1. Section **VII. Conditions D. Cancellation 2.** is replaced by the following:

   2. We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you and your agent or broker not less than 10 days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you and your agent or broker not less than 60 days advance written notice stating when the cancellation is to take effect. The cancellation notice will state the specific reason for cancellation.

2. The following condition is added to Section **VII. Conditions D. Cancellation:**

   We may decide not to renew or continue this policy. If so, we will mail or deliver a notice of nonrenewal to you and your agent or broker at least 60 days before policy expiration unless you have obtained replacement insurance or you fail to pay any premium when due after we have offered to renew this policy at least 20 days before the expiration date. The notice will state the reason for cancellation. Mailing that notice to you at your mailing address shown in Item 1 of the Declarations shall be sufficient to prove such notice.

All other terms of your policy remain the same.

Unsolicited Communication Exclusion Endorsement

1. The following is added to section **V. Exclusions**:

   Unsolicited Communication

   This insurance does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury**:

   1. arising out of the actual or alleged violation of any law or regulation that restricts or prohibits the transmitting of **Unsolicited Communication**; or

   2. alleged in a **Claim** or **Suit** that also alleges a violation of any law or regulation that restricts or prohibits the transmitting of **Unsolicited Communication**.

2. The following is added to section **IV. Definitions**:

   Unsolicited Communication means any communication, in any form, that:

   1. is received by any person or organization; and

   2. such person or organization did not ask to receive.

All other terms of your policy remain the same.

Application of Limits of Insurance

1. The following replaces Section **III. Limits Of Insurance B.** of this policy:

   B. The General Aggregate Limit, applicable separately to each individual Certificate issued to member of **The Premier Hotel Insurance Group**, is the most we will pay for all damages covered under **Insuring Agreement I. Coverage** except for:

      1. damages included in the **Products-Completed Operations Hazard**, applicable separately for each individual Certificate issued to member of **The Premier Hotel Insurance Group**; and
      2. damages that would have been covered under any Automobile Liability type of coverage included in the **Scheduled Underlying Insurance** or **Scheduled Retained Limits** to which no aggregate limit applies.

   For damages because of **Bodily Injury** or **Property Damage**, if any one **Scheduled Underlying Insurance** or any one **Scheduled Retained Limit** contains aggregate limits in the same policy that apply separately to each **Location** or **Project**, other than an aggregate limit applying to the **Products-Completed Operations Hazard**, then the General Aggregate Limit stated in the Declarations will apply in the same manner as such aggregate limits of that **Scheduled Underlying Insurance** or **Scheduled Retained Limit**.

   However, with respect to **The Premier Hotel Insurance Group** and to each separate Certificate issued to members of **The Premier Hotel Insurance Group**, we will not pay more than **$100,000,000** for the combined total of all damages covered under **Insuring Agreement I. Coverage** because of **Bodily Injury** and **Property Damage** that arises out of any **Location** or **Project**. For the purposes of determining the applicable General Aggregate Limit, each **Location** or **Project** that includes premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, or waterway, or by a right-of-way of a railroad, will be considered a single **Location** or **Project**.

2. The following is added to section **III. Limits of Insurance**:

   With respect to each separately numbered Certificate issued to members of **The Premier Hotel Insurance Group**, endorsed to this policy, and evidenced by monthly bordereaux to us, the General Aggregate Limit will apply jointly to all **Named Insureds** shown on such Certificate.

3. The following is added to **Section IV. Definitions** of this policy:

   Location means any premises, site or location that you rent or lease from others, or own.

   Project means any area away from any premises, site, or location that you rent or lease from others, or own, and at which you are performing operations pursuant to a contract or agreement.

4. The following is added to section **IV. Definitions R. Policy Period**:

   For purposes of the beginning and ending date of coverage under this insurance for each **Named Insured**, **Policy Period** shall mean the period of time from the inception date shown on the applicable Certificate to the earlier of the expiration date shown on such Certificate or the termination date of this policy.

All other terms of your policy remain the same.

Auto Liability Limits of Insurance Endorsement - Exception for Damages Not Subject to Underlying Aggregate Limit Applies Only to Auto Liability

The following replaces the first paragraph of Section **III. Limits Of Insurance B.** of this policy:

B. The General Aggregate Limit is the most we will pay for all damages covered under Insuring Agreement I. Coverage except for:

1. damages included in the **Products-Completed Operations Hazard**; and

2. damages that would have been covered under any Automobile Liability type of coverage included in the **Scheduled Underlying Insurance** or **Scheduled Retained Limits** to which no aggregate limit applies.

All other terms of your policy remain the same.

Auto Liability Limitation

The following is added to section **V. Exclusions:**

Auto

This insurance does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the ownership, maintenance, operation, use, **Loading or Unloading** or entrustment to others of any **Auto.**

However, if insurance for such **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit**, then:

1. this exclusion shall not apply; and
2. the insurance provided by this policy will not be broader than the insurance provided by that **Scheduled Underlying Insurance** or that **Scheduled Retained Limit.**

All other terms of your policy remain the same.

Garagekeepers Legal Liability

This insurance does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of:

Garagekeepers Legal Liability.

However, if insurance for such **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit**, then:

1. this exclusion does not apply;
2. section **V. F. Property Damage To Certain Property** does not apply; and
3. the insurance provided by this policy will not provide broader coverage than the insurance provided by that **Scheduled Underlying Insurance** or that **Scheduled Retained Limit**.

All other terms of your policy remain the same.

Pollution Exclusion Except Building Heating Or Air Conditioning Equipment Or Water Heating Equipment

1. The following is added to Section **V. Exclusions S. Pollution** of this policy:

   This exclusion also does not apply to **Bodily Injury** arising out of **Building Heating or Air Conditioning Equipment or Water Heating Equipment Fumes, Smoke, Soot, or Vapors** if insurance for such **Bodily Injury** is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit**. However, the insurance provided by this policy for such **Bodily Injury** will not be broader than the insurance provided by such **Scheduled Underlying Insurance** or **Scheduled Retained Limit**.

2. The following is added to Section **IV. Definitions** of this policy:

   Building Heating or Air Conditioning Equipment or Water Heating Equipment Fumes, Smoke, Soot, or Vapors means only the fumes, smoke, soot, or vapors that:
   1. result from equipment used to:
      a. heat, cool or dehumidify, a building; or
      b. heat water for personal use by persons within a building;

      at or on any premises owned, rented, or occupied by or loaned to, any **Insured**; and
   2. are within that building.

All other terms of your policy remain the same.

Knowledge Of Occurrence Or Claim

1 The following replaces section VII. Conditions I. Knowledge of Occurrence or Claim

Knowledge of Occurrence or Claim

Knowledge of an **Occurrence, Claim** or **Suit** by your agent, servant or **Employee** shall not in itself constitute knowledge by you, unless an Executive Officer
or anyone working in the capacity as Partner

1. shall have received notice of such **Occurrence, Claim** or **Suit** from said agent, servant or **Employee**; or

2. otherwise has knowledge of such **Occurrence, Claim** or **Suit**.

All other terms of your policy remain the same.

Crisis Management Service Expenses Endorsement

1. The following is added to section **I. Coverage:**

   Crisis Management Service Expenses

   We will reimburse you, or pay on your behalf, **Crisis Management Service Expenses** arising out of a **Crisis Management Event** that first commences during the **Policy Period**. The most we will pay for all **Crisis Management Service Expenses** for all **Crisis Management Events** that first commence during the **Policy Period** is the Crisis Management Service Expenses Limit. The Crisis Management Service Expenses Limit is 1% of the General aggregate limit stated in Item 3.B. of the Declarations. A **Crisis Management Event** will be deemed to first commence at the time when any **Executive Officer** first becomes aware of an **Occurrence** that leads to a **Crisis Management Event** and will end when we determine that the crisis no longer exists, or when the Crisis Management Service Expenses Limit has been exhausted, whichever occurs first.

   A **Retained Limit** does not apply to **Crisis Management Service Expenses.**

   Any payment of **Crisis Management Service Expenses** that we make under this endorsement shall not be determinative of our obligations under this policy with respect to, nor create any duty to defend against or indemnify any **Insured** for, any **Claim** or **Suit.**

2. The following is added to section **III. Limits of Insurance:**

   The most we will pay for **Crisis Management Service Expenses** arising out of all **Crisis Management Events** is the Crisis Management Service Expenses limit as stated in paragraph 1. above. Payment of any such **Crisis Management Service Expenses** is in addition to, and shall not reduce, any aggregate limits under this policy.

3. The following is added to section **IV. Definitions:**

   Crisis Management Event means an **Occurrence** that an **Executive Officer** of the **Named Insured** reasonably determines has resulted, or may result, in:
   1. damages covered by this policy that are in excess of the total applicable limits of the **Scheduled Underlying Insurance** or **Scheduled Retained Limit**; and
   2. significant adverse regional or national media coverage.

   Crisis Management Service Expenses means the reasonable and necessary expenses you incur in:
   1. retaining a public relations consultant or firm, or a crisis management consultant or firm; or
   2. planning or executing your public relations campaign;

   to mitigate the negative publicity generated from a **Crisis Management Event.**

   Executive Officer means the:
   1. Chief Executive Officer;
   2. Chief Operating Officer;
   3. Chief Financial Officer;
   4. President;
   5. General Counsel;
   6. general partner (if the **Named Insured** is a partnership); or
   7. sole proprietor (if the **Named Insured** is a sole proprietorship);

   of the **Named Insured**, or any person acting in the same capacity as any individual listed above.

4. The following is added to section **V. Exclusions:**

Newly Acquired, Controlled or Formed Entities

Crisis Management Service Expenses arising out of a **Crisis Management Event** that occurred prior to the date you acquired, controlled or formed any other entity, even though an **Executive Officer** only first becomes aware of an **Occurrence** that leads to such **Crisis Management Event** after such date.

5. The following is added to section **VII. Conditions F. Duties in the Event of an Occurrence, Claim or Suit:**

You must also see to it that we are notified by telephone within 24 hours of a **Crisis Management Event** that may result in **Crisis Management Service Expenses.**

You must also provide written notice as soon as practicable. To the extent possible, notice should include:

a. how, when and where the **Crisis Management Event** took place;
b. the names and addresses of any injured persons and witnesses;
c. the nature and location of any **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the **Crisis Management Event**; and
d. the reason it is likely to involve damages covered by this policy in excess of the **Retained Limit** and involve regional or national media coverage.

You must submit all incurred expenses within 180 days after we have notified you of our determination that the **Crisis Management Event** no longer exists. Expenses submitted after 180 days of such notice are not reimbursable.

All other terms of your policy remain the same.

Failure To Notify Insurer Of Occurrence

The following is added to section **VII. Conditions F. 2:**

Your failure to notify us of an **Occurrence** that may result in a **Claim** or **Suit** seeking damages covered by this **Policy** because you inadvertently notified another insurer of such **Occurrence** will not invalidate this **Policy**, but only if you notify us immediately after you become aware of such inadvertent error.

All other terms of your policy remain the same.

POLICY CHANGE ENDORSEMENT

This endorsement summarizes the changes to your policy. All other terms of your policy not affected by these changes remain the same.

How Your Policy Is Changed

EFFECTIVE 11/01/2011 THE FOLLOWING FORMS ARE ADDED TO YOUR POLICY BUT ONLY WITH RESPECT TO THE NAMED INSURED AND CERTIFICATE LISTED:

SUP001 DESIGNATED PREMISES LIMITATION AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-A

SUP009 DESIGNATED OPERATIONS EXCLUSION AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-B

SUP007 PROFESSIONAL SERVICES EXCLUSION AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-C

SU301 LIMITED ABUSE OR MOLESTATION COVERAGE ENDORSEMENT AS RESPECTS:
NEVADA PROPERTY 1 LLC DBA THE COSMOPOLITAN OF LAS VEGAS
CERTIFICATE #2149-D

Premium Change Which Is Due Now

Additional premium N/A	Returned premium N/A
If issued after the date your policy begins, these spaces must be completed and our representative must sign below.	Policy issued to: PREMIER HOTEL INSURANCE GROUP (P2)
Authorized Representative	Endorsement takes effect: 11/01/11 Policy number: QK06503290 Processing date: 11/22/11 14:10 090

40704 Ed. 5-84 Endorsement

Designated Premises Limitation

This endorsement changes your Specialty Commercial Umbrella Liability Policy, but only as respects to:

Nevada Property I LLC dba The Cosmopolitan of Las Vegas
Certificate #2149-A
Effective Date of Cert Holder 11/01/2011
Effective Date of Endorsement 11/01/2011
Pol #QK06503290

This insurance only applies to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Liability** arising out of:

1. the ownership, maintenance, occupancy or use of the premises designated in the **Schedule of Covered Premises**, below, including any property located on such premises; or
2. any goods or products manufactured, distributed or serviced at or from such premises.

Schedule of Covered Premises

Description and Location of Premises:

	Added	Deleted
Cosmopolitan Hotel 3708 Las Vegas Blvd, Las Vegas NV 89109	11/01/2011	
Leased Office Space 4285 Polaris Ave, Las Vegas NV 89103	11/01/2011	
Leased Space - Recruitment Center 7180 Pollack Drive, Suites 100 and 140, Las Vegas NV 89119	11/01/2011	
Leased Office Space 3485 West Harmon Blvd, Las Vegas NV 89103	11/01/2011	
Leased Office - Training Space 650 White Drive, Suite 280, Las Vegas NV 89103	11/01/2011	
Leased Office Space - Corporate Office 5170 Badura Avenue, Las Vegas NV 89118	11/01/2011	
Leased Warehouse Space Units 100,110,120,130 6025 Procyon Street, Las Vegas NV 89118	11/01/2011	
Parking Lot - Used for Employee Parking 3200 West Tomkins Avenue, Las Vegas NV 89103	11/01/2011	

Description and Location of Premises (continued):

All other terms of your policy remain the same.

Designated Operations Exclusion

This endorsement changes your Specialty Commercial Umbrella Liability Policy, but only as respects to:

Nevada Property I LLC dba The Cosmopolitan of Las Vegas
Certificate #2149-B
Effective Date of Cert Holder 11/01/2011
Effective Date of Endorsement 11/01/2011
Pol #QK06503290

The following is added to section **V. Exclusions:**

Described Operations

This insurance does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the operations designated in the Schedule of Designated Operations below.

Schedule of Designated Operations

All Operations covered under OCIP/Wrap Up for the construction of the Cosmopolitan Hotel of Las Vegas and all property damage to "your work" arising out of it or any part of it including the Products/Completed Operations Hazard related to the original construction.

Professional Services Exclusion

This endorsement changes your Specialty Commercial Umbrella Liability Policy, but only as respects to:

Nevada Property I LLC dba The Cosmopolitan of Las Vegas
Certificate #2149-C
Effective Date of Cert Holder 11/01/2011
Effective Date of Endorsement 11/01/2011
Pol #QK06503290 with respect to Emergency Medical Techicians (EMT's)

This insurance does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the rendering of, or failure to render, any professional service by or on behalf of the **Insured.**

All other terms of your policy remain the same.

Limited Abuse Or Molestation Coverage Endorsement

Nevada Property I LLC dba The Cosmopolitan of Las Vegas
Certificate #2149-D
Effective Date of Cert Holder 11/01/2011, Effective Date of Endorsement 11/01/2011
Pol #QK06503290

1. The following is added to section **V. Exclusions:**

   This insurance does not apply to **Bodily Injury, Property Damage, Personal Injury,** or **Advertising Injury** arising out of any **Abuse or Molestation.**

   However if insurance for such **Bodily Injury** or **Personal Injury** is provided by any **Scheduled Underlying Insurance** or any **Scheduled Retained Limit,** then:
   1. this exclusion does not apply; and
   2. the insurance provided by this policy will not provide broader coverage than the insurance provided by that **Scheduled Underlying Insurance** or that **Scheduled Retained Limit.**

2. The following is added to section **IV. Definitions J. Insured:**

   However, none of the following is an **Insured** under paragraph IV. J. for **Bodily Injury** or **Personal Injury** arising out of any **Abuse** or **Molestation:**
   1. any **Perpetrator;**
   2. any person or organization that has been added to your policy as an additional insured, or any employee, leased worker, agent, representative or volunteer worker of such person or organization; or
   3. any of your independent contractors, or any employee, leased worker, agent, representative or volunteer worker of such independent contractor.

   Subject to **section II. Defense** of this agreement, paragraph 2.1 above does not apply to any **Perpetrator** once a final, non-appealable adjudication in the **Suit** establishes that such **Perpetrator** did not commit the **Abuse** or **Molestation.**

   Also, paragraph 2.2. above does not apply to any person or organization:

   1. to whom you have agreed in a written contract requiring insurance to include such person or organization as an additional insured; or

   2. that has been added to your policy as an additional insured because such person or organization owns property that you manage, but only to the extent such **Abuse or Molestation** is committed on such property.

   Such person or organization is an **Insured,** but only to the extent that the **Bodily Injury** or **Personal Injury** is caused by **Abuse or Molestation** arising out of your business. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization. The insurance provided to such additional insureds shall be limited to the limits of liability required by that written contract requiring insurance. This endorsement shall not increase the limits of insurance described in section **III. Limits of Insurance.**

3. The following is added to section **IV. Definitions O. Occurrence:**

   As respects **Bodily Injury** or **Personal Injury** arising out of any **Abuse or Molestation,** all single, multiple, continuous, sporadic or related acts of **Abuse or Molestation,** committed by one **Perpetrator** or two or more **Perpetrators** acting together, will be deemed to be one **Occurrence,** regardless of the number of:

   1. **Insureds;**
   2. **Claims** made or **Suits** brought; or

3. persons or organizations making **Claims** or bringing **Suits**.

Such **Occurrence** will be deemed to have been committed on the date the first such **Abuse or Molestation** is committed, regardless of when such acts or contacts are actually committed.

4. The following are added to section **IV. Definitions**:

Abuse or Molestation means any illegal or offensive physical act or contact committed by any **Perpetrator** against any person who is:
1. under 18 years of age;
2. legally incompetent; or
3. in the care, custody or control of any **Insured** and is physically or mentally incapable of consenting to such physical act or contact.

Perpetrator means any of the following persons who actually or allegedly commit any illegal or offensive physical act or contact:
1. you or your spouse, if you are an individual;
2. your partners or members, or their spouses, if you are a partnership or joint venture;
3. your managers or members, if you are a limited liability company;
4. your executive officers or directors, if you are an organization other than a partnership, joint venture or limited liability company;
5. your **Employees** or volunteer workers; or
6. any other person acting together with any of the persons described in paragraphs 1. through 5. above.

5. The following is added to section **II. Defense A.**:

We have no duty to defend, investigate or settle any **Claim** or **Suit** on behalf of any **Perpetrator**. However, we will reimburse you or such **Perpetrator** for the amount of such person's reasonable and necessary defense costs:

1. once a final, non-appealable adjudication in the **Suit** establishes that such **Perpetrator** did not commit the **Abuse or Molestation**;
2. when the **Retained Limit** has been exhausted by payment of judgment or settlements that would be covered by this policy; and
3. only to the extent that such defense costs are also covered by the applicable **Scheduled Underlying Insurance** or **Scheduled Retained Limit**.

All other terms of your policy remain the same.

EXHIBIT H

{03614133 / 1}

DECL
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DISTRICT COURT

CLARK COUNTY, NEVADA

ST. PAUL FIRE & MARINE INSURANCE COMPANY, Plaintiffs, vs. ASPEN SPECIALTY INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA; ROOF DECK ENTERTAINMENT, LLC d/b/a MARQUEE NIGHTCLUB; and DOES 1-25; inclusive, Defendants.	CASE NO.: A-17-758902-C DEPT. NO.: XXVI **DECLARATION OF RYAN A. LOOSVELT IN SUPPORT OF DEFENDANT ASPEN SPECIALITY INSURANCE COMPANY'S RENEWED MOTION FOR SUMMARY JUDGMENT**

DECLARATION OF RYAN A. LOOSVELT IN SUPPORT OF DEFENDANT ASPEN SPECIALITY INSURANCE COMPANY'S RENEWED MOTION FOR SUMMARY JUDGMENT

I, RYAN A. LOOSVELT, ESQ. do hereby declare as follows:

1. I am an attorney with Messner Reeves, LLP, counsel of record for Defendant Aspen Specialty Insurance Company, and file this Declaration in support of Aspen's Renewed Motion for Summary Judgment. I am over the age of 18, am competent to make this Declaration, and have personal knowledge of the matters herein.

2. Attached as **Exhibit A** is a true and correct copy of the 05/27/2020 Notice Entry and Order Denying Plaintiff's Motion for Partial Summary Judgment And Order Granting In Part Aspen's Countermotion for Summary Judgment.

3. Attached as **Exhibit B** is a true and correct copy of the 10/15/2019 Hearing Transcript on National Union's Motion for Summary Judgment.

4. Attached as **Exhibit C** is a true and correct copy of the 10/08/2019 Hearing Transcript on Plaintiff's Motion for Partial Summary Judgment and Aspen's Countermotion for Summary Judgment.

5. Attached as **Exhibit D** is a true and correct copy of the 05/27/2020 Notice Entry and Order Granting National Union's Motion for Summary Judgment.

6. Attached as **Exhibit E** is a true and correct copy of the 04/27/2020 Notice of Entry of Order on Plaintiff and Aspen's Stipulation and Order to Stay Discovery and Stay or Vacate Trial.

7. Attached as **Exhibit F and F1** is a true and correct copy of the Declaration of Marvin Robalino and the Aspen insurance policy; these were attached as Exhibit A and A1 to Aspen's Opposition to Plaintiff's Motion for Partial Summary Judgment and Countermotion for Summary Judgment.

8. Attached as **Exhibit G** is a true and correct Certified copy of the St. Paul insurance policy. This was also attached as Exhibit B to Aspen's Opposition to Plaintiff's Motion for Partial Summary Judgment and Countermotion for Summary Judgment.

/ / /

/ / /

/ / /

I declare that the foregoing is true and correct under the penalty of perjury under the ;aws of the State of Nevada.

DATED: the 11th day of June, 2020.

/s/ Ryan A. Loosvelt
RYAN A. LOOSVELT, ESQ.

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DISTRICT COURT

CLARK COUNTY, NEVADA

ST. PAUL FIRE & MARINE INSURANCE COMPANY, Plaintiff, v. ASPEN SPECIALITY INSRUANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA.; ROOF DECK ENTERTAINMENT, LLC d/b/a MARQUEE NIGHTCLUB; and DOES 1 through 25, inclusive, Defendants.	Case No.: A-17-758902-C Dept. No.: XXVI **PLAINTIFF'S RENEWED OPPOSITION TO DEFENDANT ASPEN'S RENEWED MOTION FOR SUMMARY JUDGMENT** Date of Hearing: August 4, 2020 Time of Hearing: 9:30 a.m.

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

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INTRODUCTION

As this court is aware, this is a renewal of Aspen's motion for summary judgment after this Court previously denied the motion solely because it presented issues of fact, not law. This Court granted summary judgment in favor of the other defendants, concluding that the claims against them failed as a matter of law. Those separate decisions are on appeal to the Nevada Supreme Court.

St. Paul believes Aspen has misrepresented the prior rulings of this Court regarding the denial of its prior counter-motion for summary judgment. It is St. Paul's opinion that this Court denied that motion outright; it did not defer ruling on it. Therefore, this motion is a very late motion for reconsideration, complete with the limiting standards of such a motion, not just a deferred motion for summary judgment.

I. PROCEDURAL POSTURE

A. This is an Untimely and Unsupported Motion for Reconsideration.

Aspen begins its renewed motion by asserting that "[t]he Court ultimately declined to rule at that time [when the motion was first brought] on the viability of St. Paul's claims against Aspen, limiting its ruling to the $1 million policy limits issue. The Court deferred ruling on the issues concerning the viability of St. Paul's subrogation claims against Aspen until after the Court could hear the other defendant's Motions for Summary Judgment concerning similar issues that were being heard one week after the hearing on the St. Paul-Aspen Motions." Renewed Motion at 3. Aspen repeats these assertions at page 6 of its renewed motion, and cites to the transcript of the hearing on the counter-motion, and to the order resolving it. These representations are not correct. Indeed, it appears these misrepresentations are intentional.

First, there is nothing in the transcript of the hearing to support Aspens representations that this Court was reserving ruling on Aspen's Counter-motion. This Court never suggested that the motion was being denied without prejudice, nor did it ever suggest that it was deferring ruling on the motion. It further never stated that its denial of the motion was without prejudice. Aspen will be able to cite to no language in the transcript supporting its misrepresentations.

Indeed, although this Court did mention once that other motions were pending that raised similar issues, it did not suggest at that time or later that it was reserving judgment on Aspen's motion pending those other matters. Instead, this Court specifically stated that it considered Aspen's

motion as raising questions of fact, and so it denied the motion outright.

> Near the end of St. Paul's argument on its motion, the Court asked:
> So did you want to say anything further with respect to his motion, because to the extent that I view this as -- you had narrowed the issue pretty clearly. I do think that these other issues are questions of fact about whether or not you can recover on any of these causes of action."

Transcript at 17 (interruption of sentence deleted). When counsel for Aspen suggested that the denial of Aspen's motion should be without prejudice, St. Paul responded with "those are fact questions," and the Court responded: "Yeah, I mean that seems very factual to me." Transcript at 20. The Court's only mention of "the same issues next week" noted that "there's a little bit of difference,"[1] and was in the context of whether or not to certify under NRCP 54(b) the decision on the policy limit, transcript at 22, a discussion that would have been irrelevant had the Court not been denying Aspen's counter-motion. After recognizing that the counter-motion presented questions of fact, the Court stated: "You know, I'm going to deny the initial motion, grant the counter-motion only as to coverage limits. I'm not getting into the other issues that you argued." Transcript at 23. This is a far cry from deferring ruling on the motion and inviting a renewed motion.[2]

Following the hearing, the parties could not agree on language for the order primarily based on Aspen's insistence that this Court had not denied its motion, but had only deferred ruling on it.

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[1]One major difference is that Aspen's liability is primary while National Union's is excess. Many of National Union's arguments were based upon it being an excess insurer, arguments which Aspen does not have.

[2]The open questions of fact are many.

As the primary insurer, controlling the defense from its inception, Aspen's acts and omissions are materially different from National Union's. Aspen decided not to try to settle for $1.5 million, when it was obvious that the exposure was much, much higher than that, it chose not to inform St. Paul of offers of judgment, and not to settle within the combined limits of Aspen and National Union's policies when the opportunity presented itself–twice.

What Aspen knew, when Aspen knew it, and what Aspen chose to do are issues that impact not only the equities of who should pay, but also the public policy considerations of whether a subrogated claim by a party (any party) that has paid a debt of an insured should exist in Nevada against that insured's primary carrier. This Court is therefore not bound because it ruled there is no cause of action by one excess carrier against another to conclude that there is no claim by a party who paid the debt of an insured against the primary carrier/wrongdoer, especially when that primary carrier called the shots. These are the factual issues that prompted the Court to deny Aspen's motion the first time around, and nothing has changed since that time.

Aspen submitted a proposed order that included the language:

> This Court reserves judgment on Aspen's Countermotion to the extent it seeks a ruling on the viability of Plaintiff's claims and/or whether they fail as a matter of law, pending the Court's ruling on the other defendants' motions for summary judgment that also argues the Plaintiff's claims are not viable and fail as a matter of law, which is/was heard October 15, 2019. Aspen may renew its Countermotion as a motion for summary judgment on the viability of the Plaintiff's claims and/or whether such claims fail as a matter of law, or otherwise, after the Court's ruling and order on the other defendants' motions for summary judgment.

Aspen's proposed order also included:

> To the extent Aspen's Countermotion seeks relief other than interpretation of the Aspen Policy limit, such relief is denied without prejudice to re filing for summary judgment after the order on the other defendants' motions for summary judgment is entered.

The Court rejected Aspen's proposed order in favor of the order proposed by St. Paul. The order the Court entered states:

> Regarding Aspen's Countermotion to the extent it seeks a ruling on the viability of Plaintiff's claims and/or whether they fail as a matter of law, the Court views these other issues as questions of fact.
> . . . .
> Aspen's Countermotion on other issues presented is denied.

St. Paul is not picking at nits; it is setting the record straight. This Court did not defer ruling on Aspen's motion nor did it invite a renewed motion. Thus, Aspen's motion is in the nature of reconsideration of a motion previously denied.

Aspen carries a heavy burden of persuasion with respect to its motion for reconsideration. EDCR 2.24 provides in relevant part:

> (a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30-day period for filing a notice of appeal from a final order or judgment.

St. Paul does not deny that this Court has discretion to grant a proper motion for reconsideration. *See Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 1095 (1980).

That discretion is recognized in NRCP 54(b) (an "order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the rights and liabilities of all the parties."). However, reconsideration should not be granted lightly.

The Nevada Supreme Court has set forth the following standard for motions for reconsideration in district court:

> A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. *See Little Earth of United Tribes v. Department of Housing*, 807 F.2d 1433, 1441 (8th Cir.1986); *see also Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which *new issues of fact or law* are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.") (Emphasis added).

Masonry and Tile Contractors Ass'n of Southern, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

St. Paul submits that this is not one of those "rare instances" where Aspen has demonstrated a good reason for reconsideration. The issues Aspen now raises for a third time are questions of fact, not the same as those decided in favor of the other defendants.

B. A Note on the Law-of-the-Case

Aspen has quoted long passages from this Court's decision in favor of the other defendants and has characterized those passages as the law of this case. Technically, in Nevada, that characterization is not correct.

In Nevada, the law-of-the-case doctrine applies only to the decision of court acting in an appellate capacity, and binds lower courts. Under the law-of-the-case doctrine, a lower tribunal cannot reconsider an issue or change an appellate court's decision if the appellate court has "actually address[ed] and decide[d] the issue explicitly or by necessary implication." *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) ("The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case."); *see also HSU v. Cty. of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007) (doctrine is intended to provide consistency in rulings).

Federal courts recognize a related doctrine which they also refer to as law-of-the-case precluding a court from changing its own decisions unless varying standards are met. *See, e.g., Dickinson Frozen Foods, Inc. v. FPS Food Process Sols. Corp.*, No. 1:17-CV-00519-DCN, 2020

WL 2841517, at *9 (D. Idaho June 1, 2020) (unpublished) (discussing in reconsideration context law-of-the-case doctrine and the public policy of stability of judgments). Nevada also recognizes through its reconsideration cases the public policy of not changing orders without sufficient cause to insure stability.

This Court has already denied Aspen's motion because of factual issues, and that decision is "law of the case" to the same extent that this Court's decisions in favor of the other defendants are law of the case. (Actually, such rulings should be respected by this Court to the extent necessary to maintain the public policy of stability and consistency.) But this Court always has the power to reconsider if it is convinced it has made an error, NRCP 54(b), and St. Paul believes this Court has erred in this case; not in denying Aspen's motion for summary judgment, but in granting summary judgment in favor of the other defendants. Despite the pending appeal, this Court has power to right that wrong should it feel inclined to reconsider. *See Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) (approved and explained in *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453 (2010).

C. A Note on the So Called Two "Towers" of Insurance

Both Aspen and, previously, National Union, argue that St. Paul is not entitled to relief because St. Paul insured the Cosmopolitan in a purportedly unique and mysterious separate "tower" of insurance from the "tower" in which Aspen and National Union insured Marquee. This two "tower" characterization obscures more than it illuminates, and it has led to profound confusion and, respectfully, to an incorrect ruling for National Union against St. Paul.

Aspen issued a primary insurance policy with a CGL Coverage Part and a Liquor Liability Coverage Part to Marquee effective October 16, 2011 to October 16, 2012. Derewetzky Decl., ¶4, Exh. 14. Per a blanket additional insured endorsement, the Cosmopolitan qualifies as an additional insured on Aspen's policy, meaning that both Marquee and the Cosmopolitan are Aspen's insureds. *See* Derewetzky Decl., Exh. 14 (ASPEN000090).[3] This is undisputed,[4] and has been found by the

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[3]National Union (AIG) also issued liability policies to Marquee pursuant to which the Cosmopolitan qualified as an additional insured.

[4]*See* Aspen's motion, p. 13, lines 13-16.

Court.[5]

St. Paul's rights in this case are not based on its status as an insurer in a "second tower" of insurance from the insurance provided by Aspen and National Union. St. Paul's claims against Aspen and National Union (and Marquee) are based on theories of subrogation, under which St. Paul–having paid the debt of the Cosmopolitan, for whatever reason–steps into the shoes of the Cosmopolitan and sues those who either contractually or equitably should be required to bear the loss. This case is not about a second "tower" of insurance, at all. It is about the "first tower."

St. Paul's claims against Aspen and National Union are the claims by the Cosmopolitan as an additional insured under Aspen's and National Union's policies:

(1) The Cosmopolitan had the rights of an additional insured to be defended and indemnified properly;

(2) Aspen and National Union admit this, as they must;

(3) Aspen and National Union breached their obligations to the Cosmopolitan when they recklessly squandered the opportunity to settle the Moradi claim against the Cosmopolitan for $1.5 million and, instead, they let the case go to a verdict of $160.5 million;

(4) This horrendous verdict resulted from a bad faith breach by Aspen and National Union making them liable, in tort, to their additional insured, the Cosmopolitan, for all resulting damages;

(5) St. Paul had to step into the breach to protect the Cosmopolitan; it did that; St. Paul paid millions of dollars to get the Cosmopolitan cleared of the Moradi claim;

(6) As a result, St. Paul now has the right, via subrogation, to enforce the Cosmopolitan's rights against Aspen and National Union for their bad faith breach.

St. Paul has standing to sue Aspen and National Union because the Cosmopolitan *was Aspen and National Union's additional insured,* and they failed their duties to it. The Cosmopolitan suffered millions in damages as a result. St. Paul paid for those damages. St. Paul has the right to hold them accountable. St. Paul's rights don't arise because of the alchemy of an independent "second tower." St. Paul's rights arise because it paid for harm caused by Aspen and National Union, who now must be held accountable.

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[5]*See* Finding 26 in Order Granting Summary Judgment to National Union ("Cosmopolitan qualified as an additional insured to the Aspen Primary Policy with respect to the Underlying Action").

The Court has ruled as a matter of law that St. Paul cannot assert claims against National Union by way of subrogation of the claims of the Cosmopolitan because those claims have not been expressly recognized in Nevada. St. Paul considers this conclusion erroneous, and it hopes this Court will reconsider based on the arguments of this opposition. Whether or not the Court agrees to revisit its prior ruling, it should not grant Aspen's renewed motion on the misconception that the Cosmopolitan has no possible claims against its insurers which St. Paul cannot enforce.

II. BACKGROUND FACTS

After introductory statements regarding the supposed procedural posture of this renewed motion, Aspen has repeated verbatim (so far as we can tell) its prior motion. St. Paul therefore responds to that renewed motion by repeating its arguments from the prior briefing (with some modifications).

This Court has had the facts briefed to it multiple times. Therefore, St. Paul will provide an abbreviated version of the facts here, but incorporates by this reference all of the facts and documentary evidence from its prior oppositions to defendants' motions for summary judgment. Citations are to the exhibits attached to St Paul's prior motion and reply.

A. The Underlying Parties

This dispute arises out of a $160,500,000 verdict based on an assault committed by security for the Marquee Nightclub against one of its patrons, David Moradi. *See* St. Paul's Request for Judicial Notice ("RJN"), Exh. 1. The nightclub was managed by Roof Deck Entertainment, LLC, dba Marquee Nightclub ("Marquee") on property owned by the Cosmopolitan. *See* Declaration of Marc J. Derewetzky in Support of Motion for Partial Summary Judgment ("Derewetzky Decl."), ¶ 1. Pursuant to the management agreement,Marquee agreed to defend and indemnify Cosmo for liability for Marquee's or its employees'breach of that agreement or their negligence or willful misconduct, that Cosmo would be named as an additional insured under any liability policies Marquee procured, and that such insurance provided by Marquee would be primary. Derewetzky Decl., ¶2, Exh. 13.

B. The Underlying Incident

On April 8, 2012, David Moradi, a patron at the Marquee, was detained by Marquee

employees and allegedly assaulted, suffering personal injuries. The Marquee denied that it was responsible for the fight and the injuries.

C. The Underlying Suit and Judgment

Moradi sued Marquee and the Cosmopolitan for his injuries alleging causes of action for: 1) assault and battery; 2) negligence; 3) intentional infliction of emotional distress; and 4) false imprisonment. *See* Exhibit 2 to RJN.

The Cosmopolitan's only exposure was as the landowner, *i.e.*, its alleged liability was based on purported premises liability and not on any actual wrongdoing. *See* Exhibit 2 to RJN. Prior to trial, the Court denied the Cosmopolitan's motion for summary judgment finding that the Cosmopolitan had a non-delegable duty to exercise reasonable care so as not to subject others to an unreasonable risk of harm. Derewetzky Decl., ¶ 25. Accordingly, the Cosmopolitan was found jointly and severally liable with Marquee to Moradi not as a result of any act or omission by the Cosmopolitan, but vicariously. Exhibit R.

In response to a tender, Aspen agreed to provide a joint defense to both Marquee and the Cosmopolitan while National Union (AIG), based on the large exposure, agreed to do the same. Aspen never sought nor procured a conflict waiver from the Cosmopolitan.[6] Derewetzky Decl., ¶ 5. As early as November 13, 2015, defense counsel who Aspen appointed and controlled specifically warned Aspen of the potential for a catastrophic verdict of $310 million in compensatory damages, and predicted a defense verdict only 3 out of 10 times, *i.e.*, there was a 70 percent chance of plaintiff prevailing. Derewetzky Decl., ¶ 6, Exh 17.

On or about December 10, 2015, Moradi served a formal, written statutory Offer of Judgment in the amount of $1,500,000. Derewetzky Decl., ¶ 7, Exh 18. Aspen failed to accept the offer. Aspen failed to inform either the Cosmopolitan or St. Paul of opportunities to settle before the offers expired. Derewetzky Decl., ¶ 28. These offers included a statutory offer of judgment for $1.5 million dated December 10, 2015 and offers to settle for $26 million (the undisputed amount of the

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[6]Aspen provided a single set of attorneys to represent the Cosmopolitan and Marquee jointly, despite the fact that the Cosmopolitan was entitled to be indemnified by Marquee pursuant to contract, thus improperly waiving the Cosmopolitan's rights.

combined Aspen and AIG limits) presented on November 2, 2016 and March 9, 2017, shortly before trial commenced. Rather than accept a settlement demands that would have insulated both Marquee and the Cosmopolitan, Aspen and AIG elected to reject the demands and instead unreasonably take its chances at trial. Aspen lost this gamble spectacularly.

At trial, the jury found in favor of Moradi. See Exhibit 1 to RJN. The jury awarded Moradi $160.5 million in damages. *Id.* The jury also allowed Moradi to recover punitive damages, but the matter settled for a confidential sum before conclusion of that phase of trial. *See* Exhibit 2 to RJN, Derewetzky Decl., ¶ 3.

III. LEGAL ARGUMENT

Put simply, subrogation is when one party stands in the shoes of another because it paid for that other party's injuries, thereby transferring to it via equity or contract the rights that injured party originally had to seek redress from the third party who injured it. Fundamental to this definition is that the originally injured party had its injuries paid for by the subrogating party.

Thus, the fact that the injured party had its injuries paid for does not obviate a right of subrogation as Aspen would have this Court believe; rather, it is what creates that right. Aspen's position has been referred to as "circular" and "illogical" repeatedly by the courts, because otherwise subrogation would not exist at all. *See, e.g., Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co.*, 182 Cal. App. 4th 23, 34 (Cal. 2010) (illogical); *Pub. Serv. Mut. Ins. Co. v. Liberty Surplus Ins. Corp.*, 2017 WL 3601381 (E.D. Cal. 2017) (circular). These (and other) cases are discussed, *infra.*

Further, contractual subrogation is when one party has the right to subrogate to the rights of another per a contract between them, rather than merely through equity. This contract is between the subrogating party and the injured party, not between the subrogating party and the tortfeasor who caused those injuries. Aspen's position that St. Paul needs a contract with Aspen to sue it in contractual subrogation is therefore misguided. If St. Paul did have a direct contract with Aspen, a suit on that contract would simply be a breach of contract action, not contractual subrogation. The reason it is called contractual "subrogation" is that St. Paul does not have such a contract, but rather subrogates to the Cosmopolitan's contract with Aspen (the Aspen insurance policy). That is the

whole point. St. Paul can sue under contractual subrogation because its policy includes a subrogation clause, which is undisputed, and which are enforced in Nevada. Therefore, again, Aspen's arguments fail.

All the cases Aspen cites either do not say what it claims they do, or are demonstrably incorrect themselves. If the Court were to hold to the contrary, that there is no right of subrogation in Nevada under these circumstances, then inevitably insurers will play chicken with each other in the settlement of cases, hoping that the other blinks first, pays the claim, and thereby gets stuck with the bill. Not only would this operate as a windfall to unscrupulous insurers like Aspen who commit bad faith while increasing premiums, but it would also greatly increase the risk of judgments in excess of policy limits that will directly injure insureds.

A. St. Paul Is Entitled to Subrogate to the Cosmopolitans Rights Against Aspen.

1. The General Law of Subrogation Nationally.

a. Misapplication of the Doctrine of Subrogation

Courts are sometimes confused by the doctrine of subrogation. As one highly influential opinion in this area stated, it is "difficult to think of two legal concepts that have caused more confusion and headache for both courts and litigants than have contribution and subrogation." *Fireman's Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal. App. 4th 1279, 1291 (1998) (describing cases properly and improperly applying the doctrine of subrogation); *see also, Herrick Corp. v. Canadian Ins.* Co., 29 Cal. App. 4th 753, 756, 34 Cal. Rptr. 2d 844, 845 (1994) ("Even lawyers find words like 'indemnity' and 'subrogation' ring of an obscure Martian dialect."); *U.S. Fid. & Guar. Co. v. Federated Rural Elec. Ins. Corp.*, 37 P.3d 828, 832 (Oklahoma 2001). For this reason, litigants are sometimes able to mislead courts about the nature of subrogation and how it operates, which is what, whether through intent or ignorance, Aspen is doing here. This is dangerous, because, as the *Fireman's v Maryland* court also explained, misapplying these rules encourages insurers to delay in paying claims, in the hopes that whichever carrier blinks first will be forever burdened with a particular loss in derogation of the equitable principals these doctrines were created to serve. *Id.* at 1297.

Accordingly, we provide a comprehensive overview of the history, purpose, and application

of the doctrine of subrogation nationally and in Nevada. It demonstrates that St. Paul has the right to subrogate to the Cosmopolitan's claims against Aspen because equity requires that Aspen pay for the damages it caused by its wrongful actions for which St. Paul paid.

b. The Origin, Meaning, and Purpose of the Doctrine of Subrogation.

The doctrine of subrogation has been an integral part of the law for over three centuries. M. L. Marasinghe, "An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine I," 10 Val. U. L. Rev. 45, 48 (1975); *see also*, M. L. Marasinghe, "An Historical Introduction to the Doctrine of Subrogation: The Early History of the Doctrine II," 10 Val. U. L. Rev. 275 (1976). It originated in the courts of equity in the 17th and early 18th Centuries as an offshoot of the doctrines of contribution and constructive trust, and was specifically developed for cases involving indemnities such as insurance and surety. *Id.* at 49. The earliest case in the common law courts permitting subrogation was *Mason v. Sainsbury*, 3 Doug. 61, 99 Eng. Rep. 538 (1782), where a first party insurer subrogated to its insured's rights against rioters who had damaged his property. "Since *Mason v. Sainsbury*, the right of the insurer to stand in the place of the assured has been unquestionably accepted and applied in the common law courts, with the same ease as it has been in the courts of equity." *Id.* Over the centuries, the doctrine has been expanded to other areas not involving insurance in the service of equity, but this in no way limits application of the doctrine to the insurance context for which it was originally developed. *See id.*

"Subrogation is not a cause of action in and of itself," but rather an equitable remedy that allows one party to assert the cause of action of another. 73 Am. Jur. 2d Subrogation § 75; *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 742, 923 A.2d 971, 1005 (2007), aff'd, 403 Md. 367, 942 A.2d 722 (2008); *Konkel v. Acuity*, 2009WI App 132, ¶ 19, 321 Wis. 2d 306, 322, 775 N.W.2d 258, 265. Subrogation is "defined as the substitution of one person in the place of another with reference to a lawful claim or right." 73 Am. Jur. 2d Subrogation § 1; *Fireman's Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal. App. 4th 1279, 1291, 77 Cal. Rptr. 2d 296, 302 (1998); *E. Boston Sav. Bank v. Ogan*, 428 Mass. 327, 329, 701 N.E.2d 331, 333 (1998). Under this doctrine, when one person, such as an insurer, pays for an injury to another caused by a third party, then the insurer has the right to step into the injured party's shoes to recover the cost of the injury from the wrongdoer.

Id. This allows the burden of the loss to be placed on the party that caused it, where it belongs. 73 Am. Jur. 2d Subrogation § 2; Kim v. Lee, 145 Wash. 2d 79, 88, 31 P.3d 665, 669 (Wash. 2001).

In other words, because the insurer is the one who paid for the loss, it has the right to seek recovery for it, as if it were the party who would have been damaged had the insurer not paid. Foundational to the operation of subrogation is that the party who would have been injured was not in fact injured, because the insurer paid for the injury. Indeed, in the very first subrogation case under the common law, *Mason v. Sainsbury*, 3 Doug. 61, 99 Eng. Rep. 538 (1782), the central issue was whether the insurer could stand in the shoes of its insured given that the insured had not itself suffered injury because the insurer had already paid its loss. The court rejected the argument that the insurer could not seek recovery because the loss should fall on the wrongdoers, thereby introducing the doctrine of subrogation to the common law. *Id.* at 540 ("The principle is, that the insurer and insured are one, and, in that light, paying before or after can make no difference."). Thus the fact that the injured party has not paid the loss itself, far from being a reason to deny subrogation, is the reason subrogation exists at all.

The fundamental reason for subrogation is that it is necessary to achieve a fair and just result. 73 Am. Jur. 2d Subrogation § 11 (subrogation "has its roots in natural justice and is an equitable remedy."); *see also*, 73 Am. Jur. 2d Subrogation §2 ("[T]he purpose of subrogation is to prevent injustice; it is designed to compel the ultimate payment of an obligation by the person who in justice, equity, and good conscience should pay it."); *see also, Republic Underwriters Ins. Co. v. Fire Ins. Exch.*, 1982 OK 67, 655 P.2d 544, 547 ("Subrogation is a creature of equity intended to achieve the natural justice of placing the burden where it ought to rest . . ."); *Calvert Fire Ins. Co. v. James*, 236 S.C. 431, 435 (1960); *Sourcecorp, Inc. v. Norcutt*, 227 Ariz. 463, 467 (Ct. App. 2011). Subrogation is just not only because it allows a party who did not cause a loss to recover the cost of paying for it, but also because it makes those parties who cause injury bear the burden of the wrongs they commit.

Given the effectiveness of subrogation in placing the burden of wrongdoing where justice demands it belongs–on the wrongdoer–the courts have repeatedly held that it is to be liberally and expansively applied, even in situations where it has not been applied before. As explained in a

well-respected secondary source:

> Subrogation, as a doctrine, is not fixed and inflexible nor is it static, but rather, it is sufficiently elastic to meet the ends of justice. Furthermore, the doctrine is not constrained by form over substance, nor is it within the form of a rigid rule of law. Thus, the mere fact that the doctrine has not been previously invoked in a particular situation is not a prima facie bar to its applicability.
>
> The doctrine of subrogation embraces all cases where, without it, complete justice cannot be done. Grounded upon this premise, there is no limit to the circumstances that may arise in which the doctrine may be applied, particularly if applying the doctrine will provide the most efficient and complete remedy which can be afforded.

73 Am. Jur. 2d Subrogation § 7 "Flexibility and Scope"; *see also, e.g., Gearing v. Check Brokerage Corp.*, 233 F.3d 469, 472 (7th Cir. (Ill.) 2000); *Smith v. Clavey Ravinia Nurseries*, 329 Ill. App. 548, 552, 69 N.E.2d 921, 923 (Ill. App. Ct. 1946); *Atlanta Int'l Ins. Co. v. Bell*, 438 Mich. 512, 521, 475 N.W.2d 294, 298 (1991); *W. Sur. Co. v. Loy*, 3 Kan. App. 2d 310, 313, 594 P.2d 257, 260 (1979); *Fenly v. Revell*, 170 Kan. 705, 711, 228 P.2d 905, 909 (1951).

This is why subrogation has expanded so far beyond the insurance context where it originated. This also, of course, necessarily encompasses situations in the insurance context that a particular court has not yet had the opportunity to address because no appropriate case has arisen, as often happens in Nevada. Conversely, to argue that subrogation should not be applied in a particular context simply because it has not been applied there before is to misunderstand the basis of the doctrine in natural justice, equity, and good conscience. 73 Am. Jur. 2d Subrogation § 7.

c. Types of Subrogation

There are a three principal types are subrogation: equitable (sometimes referred to as legal), contractual (also referred to as conventional), and statutory.[7] 73 Am. Jur. 2d Subrogation § 3; *Roberts v. Total Health Care, Inc.*, 109 Md. App. 635, 648, 675 A.2d 995, 1001 (1996), aff'd, 349 Md. 499, 709 A.2d 142 (1998). Equitable subrogation was the original type of subrogation, which, as explained above, follows from equity and natural justice. 73 Am. Jur. 2d Subrogation at § 5 n.5 (citing *Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 278 n.4. (Minn. 2010)). It "includes every instance in which one person, not acting voluntarily, has paid a debt for

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[7]Statutory subrogation is governed by whatever statute authorizes it. 73 Am. Jur. 2d Subrogation § 3. In this case, as no statute applies to Aspen, none is discussed here.

which another was primarily liable and which in equity and good conscience should have been discharged by the latter." *Id.* It does not arise by contract but by operation of law based on the legal consequences of the acts and relationships between the parties. 73 Am. Jur. 2d Subrogation at § 5. As such, it is "it is a broad doctrine . . . given a liberal application; the doctrine of equitable subrogation is highly favored in the law." *Id.* at § 5 (citing *U.S. Bank Nat. Ass'n v. Hylton*, 403 N.J. Super. 630, 637, 959 A.2d 1239, 1243 (Ch. Div. 2008)); *Bennett Truck Transp., LLC v. Williams Bros. Const.*, 256 S.W.3d 730, 734 (Tex. App. 2008); *see also, id.* at § 5 n.3.

Contractual subrogation developed later, and has its basis in an agreement of the parties granting the right to pursue reimbursement from the responsible third party in exchange for payment of a loss. 73 Am. Jur. 2d Subrogation § 4; Fortis Benefits v. Cantu, 234 S.W.3d 642, 646 (Tex. 2007). Insurers often include subrogation provisions in their policies toward the ends of "prevention of a windfall to the insured or to the third party wrongdoer, and the reduction of the cost of insurance to both the insurer and the insured by making third party wrongdoers pay for the wrong done." Turner, *Insurance Coverage of Construction Disputes* § 5:5 (2d ed.) (Thomson Reuters 2018); *see also*, Rejda, et al., *Principles of Risk Management and Insurance* at 194 (13th Ed. Pearson 2016) ("*subrogation helps hold down insurance rates.* Subrogation recoveries are reflected in the rate-making process, which tends to hold rates below where they would be in the absence of subrogation. Although insurers pay for covered losses, subrogation recoveries reduce loss payments.") (emphasis in original); https://www.claimsjournal.com/news/national/2017/07/06/279219.htm ("Subrogation is the necessary evil of recovering as much of our insureds' claim dollars as possible in order to help hold down insurance premiums and soften the blow a claim event might otherwise have on them."); https://www.thehartford.com/resources/alarm/ subrogation-insure-harmony ("Subrogation Actually Helps Lower Premium Costs").

As contractual subrogation is based on contract, it is governed by the terms of the agreement. 73 Am. Jur. 2d Subrogation § 4. Accordingly, most courts hold that a right to contractual subrogation can expand an insurer's rights beyond those available under equitable subrogation. *See, e.g., Fortis Benefits v. Cantu*, 234 S.W.3d 642, 646 (Tex. 2007); *see also, Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 126 S. Ct. 1869, 164 L. Ed. 2d 612 (2006); *Puente v. Beneficial Mortg.*

Co. of Indiana, 9 N.E.3d 208 (Ind. Ct. App. 2014); *Allstate Ins. Co. v. Hugh Cole Builder, Inc.*, 772 So. 2d 1145, 1146 (Ala. 2000); *Puente v. Beneficial Mortg. Co. of Indiana*, 9 N.E.3d 208, 217 (Ind. Ct. App. 2014); *Hill v. State Farm Mut. Auto. Ins. Co.*, 765 P.2d 864, 866 (Utah 1988); *Capitol Indem. Corp. v. Strike Zone*, 269 Ill. App. 3d 594, 596, 646 N.E.2d 310, 312 (1995). For example, "a subrogee invoking contractual subrogation can 'recover without regard to the relative equities of the parties'" or before the insured has been made whole. *Fortis Benefits v. Cantu*, 234 S.W.3d 642, 647 (Tex. 2007); *see also*, Windt, Insurance Claims and Disputes Section 10:5 (Thomson Reuters 2018); *see, e.g., Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Riggs Nat. Bank of Washington, D.C.*, 646 A.2d 966, 971 (D.C. 1994); *Liberty Mut. Ins. Co. v. Thunderbird Bank*, 113 Ariz. 375, 379, 555 P.2d 333, 337 (1976); *Mut. Serv. Cas. Ins. Co. v. Elizabeth State Bank*, 265 F.3d 601, 628 (7th Cir. 2001).

All types of subrogation may exist independently and simultaneously alongside the others, *i.e.*, they are not mutually exclusive, and a bar to one does not preclude the others. 73 Am. Jur. 2d Subrogation § 3; *Roberts v. Total Health Care, Inc.*, 109 Md. App. 635, 648, 675 A.2d 995, 1001 (1996), aff'd, 349 Md. 499, 709 A.2d 142 (1998); *Phillips v. State Farm Mut. Auto. Ins. Co.*, 73 F.3d 1535, 1538 (10th Cir. 1996); *Phillips v. State Farm Mut. Auto. Ins. Co.*, 73 F.3d 1535, 1538 (10th Cir. 1996). Thus a party may assert claims for equitable, contractual, and statutory subrogation simultaneously where it has grounds to do so. However, because an insurer's natural right to equitable subrogation is so broad, some courts have opined that in most situations a contractual subrogation provision has nothing to add to it. *See, e.g., Progressive W. Ins. Co. v. Yolo Cty. Superior Court*, 135 Cal. App. 4th 263, 37 Cal. Rptr. 3d 434 (2005).

2. Nevada's Long History of Applying Subrogation Where It Serves Justice.

a. Nevada Recognizes Subrogation Applies as an Equitable Remedy Whenever It Is Just, Such As In the Instant Case.

In accord with jurisdictions nationally, Nevada has long applied subrogation expansively and flexibly in the interests of justice. While subrogation originated in the insurance context, the first opportunity the Nevada Supreme Court had to apply it was with regard to a refinanced mortgage.

Laffranchini v. Clark, 39 Nev. 48, 153 P. 250, 251 (1915).[8] There, the court expanded subrogation in holding a party who paid off a mortgage is subrogated to rights under that mortgage. While no prior Nevada opinion on point existed, the court relied on national authority from well over a dozen jurisdictions to find subrogation should be broadly permitted. Even at that early date, the court quoted with approval the following:

> "Subrogation is, in point of fact, simply a means by which equity works out justice between man and man. Judge Peckham says, in *Pease v. Egan*, 131 N. Y. 262, 30 N. E. 102, that 'it is a remedy which equity seizes upon in order to accomplish what is just and fair as between the parties;' and the *courts incline rather to extend than to restrict the principle*, and the doctrine has been *steadily growing and expanding* in importance."

Id. at 252 (emphasis added).

In other words, subrogation should be applied expansively to promote justice, rather than limited in a way which allows wrongdoers to profit from their wrongs. Thus, the Nevada Supreme Court stated: *"Subrogation . . . applies to a great variety of cases, and is broad enough to include* ***every instance*** *in which one party pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter . . . ."* *Id.* at 252 (emphasis added). The court had no trouble extending subrogation to the mortgage context.

The Nevada courts adhere to these same principles today. *The Nevada Supreme Court stated as recently as 2010 that Nevada courts have "full discretion" to apply subrogation as an equitable remedy "based on the facts and circumstances of each particular case." Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. 423, 428, 245 P.3d 535, 538–39 (2010) (emphasis added); *see also, Zhang v. Recontrust Co., N.A.*, 405 P.3d 103 (Nev. 2017); *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368–69, 252 P.3d 206, 208 (2011); *NAD, Inc. v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 115 Nev. 71, 76, 976 P.2d 994, 997 (1999). For this reason, *Laffranchini*, the court's first subrogation opinion, has been cited favorably by the Nevada Supreme Court as recently as 2012 in

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[8]The Nevada Supreme Court commented on the propriety of subrogation as early as 1879, first in *Quilled v. Quigley*, 14 Nev. 215, 217 (1879), where the court noted that a surety had not been deprived of its right of subrogation, and also in *Revert v. Henry*, 14 Nev. 191, 197 (1879), where it observed that a surety which paid a claim subrogated to rights against responsible third party parties. Thus, even then the court was familiar with and accepted the concept, which is unsurprising given it had existed for over a century in the insurance and surety contexts, even if the court had not yet had a chance to apply the doctrine itself.

In re Fontainebleau Las Vegas Holdings, 128 Nev. 556, 573, 289 P.3d 1199, 1209 n.8 (2012), where the court observe that Nevada "has recognized the doctrine of equitable subrogation in a variety of situations" including workers compensation (*AT&T Technologies, Inc. v. Reid*, 109 Nev. 592, 855 P.2d 533 (1993)), negotiable instruments (*Federal Ins. Co. v. Toiyabe Supply*, 82 Nev. 14, 409 P.2d 623 (1966)), sureties (*Globe Indem. v. Peterson–McCaslin*, 72 Nev. 282, 303 P.2d 414 (1956)) and mortgages (*Laffranchini v. Clark*, 39 Nev. 48, 153 P. 250 (1915)). In addition to these contexts, the court also held that a developer and general contractor's builders risk insurer may subrogate against a subcontractor when the subcontractor was required to indemnify and provide additional insured coverage to developer and general contractor. *Lumbermen's Underwriting All. v. RCR Plumbing, Inc.*, 114 Nev. 1231, 1232, 969 P.2d 301, 302 (1998). These were all specific areas where the court had not previously spoken, but it did not matter, because the general doctrine of subrogation is well-established in Nevada, and that doctrine applies beyond any specific context.

The Nevada Supreme Court has only limited subrogation in rare instances consistent with other jurisdictions. These include situations involving a loan receipt agreement, which eliminates the requirement the insured suffered a loss (*Cent. Nat. Ins. Co. of Omaha v. Dixon*, 93 Nev. 86, 87, 559 P.2d 1187, 1188 (1977)), preventing an insurer from subrogating against its own insured, which undermines the purpose of insurance (*Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 218, 606 P.2d 1095, 1097 (1980)), or when the court is concerned an insured might not be fully compensated for its loss (*Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 778, 121 P.3d 599, 604 (2005)). In other words, all these limitations are based on the nature of subrogation itself, meaning they are not so much exceptions to as parameters of the rule. Therefore, Aspen's assertion that allowing subrogation here is without precedent is incorrect. In fact, it is Aspen's proposal that it be protected from subrogation when equity demands it applies that has no precedent in Nevada law. The path is well-worn for the Court to allow St. Paul to hold Aspen accountable for the tremendous harm it caused by recklessly mishandling the Cosmopolitan's defense in the Moradi action.

b. Nevada Law Supports Equitable Subrogation Between Insurers.

This is why the Nevada federal district court had no difficulty concluding that current Nevada

law supports equitable subrogation by an excess carrier against a primary carrier for bad faith failure to settle, even though Nevada state courts had not yet had the opportunity to specifically address that situation. *Colony Ins. Co. v. Colorado Cas. Ins. Co.*, 2016 WL 3360943 (D. Nev. June 9, 2016); *see also, Colony Ins. Co. v. Colorado Cas. Ins. Co.*, 2018 WL 3312965 (D. Nev. July 5, 2018). In *Colony*, a primary auto insurer rejected settlement demands within its limits. The case later settled in excess of primary limits with the participation of the excess carrier. The excess carrier sued the primary carrier, via equitable subrogation, for the sum it paid based on bad faith failure to settle. The primary carrier argued Nevada had not "recognized" the right of an excess carrier to do so, so it need not pay for the damages its bad faith caused.

The court rejected this claim based on established Nevada law. The court relied on the following definition of equitable subrogation as articulated by the Nevada Supreme Court:

> [E]quitable subrogation is "an equitable remedy that requires the court to balance the equities based on the facts and circumstances of each particular case. Subrogation's purpose is to 'grant an equitable result between the parties.' This court has expressly stated that district courts have full discretion to fashion and grant equitable remedies."

Colony Ins. Co. v. Colorado Cas. Ins. Co., 2016 WL 3360943 at 3 (D. Nev. June 9, 2016).

In other words, application of equitable subrogation where it serves justice is well established in Nevada. The only exception the court noted was where subrogation is precluded by statute, which was not the case there, and not the case here. This case is comparable to *Colony*, in that St. Paul is also suing Aspen for the excess judgment Aspen's bad faith failure to settle caused, though St. Paul has additional grounds for suit, as explained below. Thus, as in *Colony*, St. Paul has a right of subrogation against Aspen under Nevada law. *See also, Riverport Ins. Co. v. State Farm*, 2019 WL 4601511, at *8 (D. Nev. Sept. 20, 2019) (following *Colony* to permit equitable subrogation, but denying relief because additional insured carrier did not cover the loss, and its named insured was not responsible for the loss).

Notably, in arguing that Nevada should not permit subrogation, Aspen does not actually cite any jurisdictions that prevents subrogation between carriers. This is because such a rule makes no sense, so any cases it could cite would be a poorly-reasoned outlier which would undermine its position. To forbid subrogation would be to reward wrongdoers, and to undermine the insurance

industry. There is no Nevada public policy in favor of either. Accordingly, established Nevada law support subrogation between insurers.

c. Nevada Permits Contractual Subrogation.

While Aspen rejects Colony's holding that Nevada law supports equitable subrogation based on Nevada's long history of employing that doctrine whenever justice so requires, it embraces that court's position that in some situations a contractual subrogation claim cannot be maintained, and asserts this is such a situation.

In fact, *Colony* was incorrect when it held Nevada does not permit contractual subrogation. Nevada generally permits contractual subrogation, and it has only barred it in the very limited context of med-pay cases, as was explained by the Nevada Supreme Court in *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). There, the court enforced a contractual subrogation clause. The court first cited the principal that in Nevada the court will not rewrite unambiguous contracts, and then concluded:

> In this case, the language in the subrogation clause could not be more plain. The clause unequivocally provides that when an employee receives the same benefits from the plan and a negligent third party, the recipient "must reimburse the plan for the benefits provided." Since the subrogation clause is unambiguous, the Canforas are bound by the terms of the document.

Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005).

In other word, the court enforced the subrogation clause because it is not in the business of revising contracts. It distinguished a prior case–*Maxwell v. Allstate Ins. Companies*, 102 Nev. 502, 506 (1986)–which held contractual subrogation was not available in the med-pay context as a matter of public policy as reflected in NRS 41.100 because of concerns the insured would not be fully compensated.[9] *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 778 (2005) ("We have previously prohibited an insurer from asserting a subrogation lien against medical payments of its

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[9]As explained previously, case law is abundant across the country not only recognizing contractual subrogation but holding it is not limited by equitable doctrines such as the doctrine of superior equities. It is, however, the case that contractual subrogation will not be allowed where a statute reflects a public policy contrary to that particular type of subrogation. 73 Am. Jur. 2d Subrogation § 4 ("Subrogation clauses in contracts do not violate public policy; however, despite the parties' contractual agreement, it will not be recognized where a statute expresses a public policy against the enforcement of those rights."). While that was the case in *Maxwell*, in the med-pay context, it is not the case here.

insured as a matter of public policy."). However, "where an insured receives 'a full and total recovery,' *Maxwell* and its public policy concerns are inapplicable." *Id.* In other words, the Nevada Supreme Court specifically held that where the insured is fully compensated, contractual subrogation is permitted.

Aspen concedes the insured was fully compensated here because that is the basis of its no damages argument. Thus this limited bar on contractual subrogation does not apply in this case. Unfortunately, the *Colony* court concluded Nevada did not allow contractual subrogation because it did not recognize *Maxwell* had been so limited by the Nevada Supreme Court. Indeed, *Maxwell* was the only Nevada case *Colony* relied on for this point. In doing so, it erred. Likewise, the California cases it relied on–*Colony–21st Century Ins. Co. v. Superior Court*, 47 Cal. 4th 511, 518, 213 P.3d 972, 976 (2009), and *Progressive W. Ins. Co. v. Yolo Cty. Superior Court*, 135 Cal. App. 4th 263, 37 Cal. Rptr. 3d 434 (2005)–were also med-pay claims, and both cases specifically limited their reasoning to that context.

Likewise, those sections of *Progressive W.* cited by the *Colony* court for the proposition that contractual subrogation adds nothing to equitable subrogation are a misreading: Those sections only mean that equitable subrogation is very broad, not that contractual subrogation is disfavored or disallowed. Further, California is one of those few jurisdictions that apply equitable limitations to contractual subrogation. *State Farm Gen. Ins. Co. v. Wells Fargo Bank, N.A.*, 143 Cal. App. 4th 1098, 1110, 49 Cal. Rptr. 3d 785, 793 (2006). This is not the case in most of the country, where contractual subrogation can expand those rights available at equity, as explained above. Even the California appellate courts have opined it would make more sense for contractual subrogation to not be bound by equitable limitations. *Id.* Therefore, these opinions cannot circumscribe St. Paul's right to contractual subrogation here.

Lastly, the *Capitol* court referenced "windfalls" to the insurer as a reason to avoid contractual subrogation, because premiums are supposedly not calculated by taking into account anticipated subrogation recoveries. This argument was also employed in *Maxwell* based on cases from the 1960s. It is obsolete. Whatever underwriting practices may have been over a half century ago, today the technology exist for carriers to take into account anticipated subrogation recoveries in premiums,

as explained above in that section regarding the basis of contractual subrogation by citation to industry sources. Therefore, there is no windfall to St. Paul. Rather, the windfall would be to Aspen to the extent it is allowed to escape accountability for the damages it caused by its bad faith.

In addition, as other courts have explained, where the defendant caused the loss, that the insurer received a premium that requires it to pay for that loss does not alter the equities between them: The party that caused the loss should still pay for it, because the insurance was not purchased for the wrongdoer's benefit. *Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co.*, 182 Cal. App. 4th 23, 45, 105 Cal. Rptr. 3d 606, 624 (2010). Or as a California court put it, "it would be better for the windfall to go to the one that undisputedly fulfilled its contractual obligations, rather than to the one that allegedly breached them." *Id.* at 47. Justice would be better served by awarding recovery to St. Paul, which honored its contract, rather than Aspen which breached its contract.

Accordingly, as there is no public policy reason to protect an insurer which committed bad faith from paying for the consequences of its actions, St. Paul is entitled to contractual subrogation to the Cosmopolitan's claims under Nevada law.

3. Other States Allow Equitable Subrogation Actions Between Insurance Carriers.

Although candidly there are a few outliers, the overwhelming majority of courts that have considered the issue have held that an excess carrier has a cause of action for equitable subrogation against a primary carrier who has failed, in bad faith, to settle a claim within its policy limits. These courts cite policy reasons the solidly support their position.

For example, in *In re Farmers Texas Cty. Mut. Ins. Co.*, No. 04-19-00180-CV, 2019 WL 2605630, at *6 (Tex. App. June 26, 2019), the court stated:

> [O]ur prior decisions in *Stowers* and *Ranger County* imposed clear duties on the primary carrier to protect the interests of the insured. The primary carrier should not be relieved of these obligations simply because the insured has separately contracted for excess coverage. In this situation, where the insured has little incentive to enforce the primary carrier's duties, the excess carrier should be permitted to do so through equitable subrogation.

Id., *see Am. Centennial Ins. Co. v. Canal Ins. Co.*, 843 S.W.2d 480, 482–83 (Tex. 1992) (recognizing the right of an excess carrier to sue a primary for bad faith failure to settle the claim of an insured on a theory of equitable subrogation, and collecting many cases from around the country reaching same conclusion); see also, *Preferred Prof'l Ins. Co. v. The Doctors Co.*, 2018 COA 49, ¶ 14, 419

P.3d 1020, 1023, reh'g denied (May 3, 2018) (under settled Colorado law, an excess insurer may sue a primary by equitable subrogation for bad faith); *Ace Am. Ins. Co. v. Fireman's Fund Ins. Co.*, 2 Cal. App. 5th 159, 167, 206 Cal. Rptr. 3d 176, 181 (2016) ("Equitable subrogation allows an insurer that paid coverage or defense costs to be placed in the insured's position to pursue a full recovery from another insurer who was primarily responsible for the loss."); *St. Paul Fire & Marine Ins. Co. v. Liberty Mut. Ins. Co.*, 135 Haw. 449, 453, 353 P.3d 991, 995 (2015) (recognizing that the majority of jurisdictions recognize a cause of action based on equitable subrogation by an excess carrier against a primary carrier, and applying the remedy "broadly" in Hawaii); *Perera v. U.S. Fid. & Guar. Co.*, 35 So. 3d 893, 900 (Fla. 2010) ("Under the doctrine of equitable subrogation, an excess insurer has the right to maintain a cause of action for damages resulting from the primary carrier's bad faith refusal to settle the claim against their common insured." (citations omitted); *Ranger Ins. Co. v. Travelers Indem. Co.*, 389 So. 2d 272, 276 (Fla. Dist. Ct. App. 1980) (stating that the remedy of equitable subrogation is available in Florida by an excess carrier against a primary carrier and rejecting argument that there must be privity of contract between the carriers); *Great Am. Ins. Co. of New York v. Fed. Ins. Co.*, No. M200900833COAR3CV, 2010 WL 1712947, at *5 (Tenn. Ct. App. Apr. 28, 2010) (equitable subrogation between carriers allowed in Tennesee); *United Nat. Ins. Co. v. Providence Washington Ins. Co.*, No. 05CV1798A, 2008 WL 2745218, at *3 (Mass. Super. June 20, 2008) (noting general rule that an excess insurer has a claim against a primary based on equitable subrogation); *Fireman's Fund Ins. Co. v. Cont'l Ins. Co.*, 308 Md. 315, 320–21, 519 A.2d 202, 205 (1987) (recognizing that the majority of jurisdictions that have addressed this issue recognize the right of an excess carrier to sue a primary carrier for bad faith on theory of equitable subrogation; citing cases from California, Minnesota, New Hampshire, New Jersey, Ohio, and Florida). And the list goes on and on.

Each of these cited has stressed the strong policy considerations that make equitable subrogation necessary to address the very situation that exists in this case.

> The public has a strong interest in the prompt and reasonable settlement of lawsuits. If the presence of an excess insurer in the case relieves the primary insurer of a duty to settle, the primary insurer has no incentive to settle the suit within its policy limits. This disincentive to settle obviously would lead to increased insurance and litigation costs. *Valentine v. Aetna Ins. Co.*, 564 F.2d 292, 296-97 (9th Cir.1977); *Reserve Ins. Co.*, supra, 238 N.W.2d at 864-65.

Fireman's Fund Ins. Co. v. Cont'l Ins. Co., 308 Md. 315, 320–21, 519 A.2d 202, 205 (1987).

4. St Paul Alleges All Necessary Elements of an Insurer's Subrogation Claim.

"There is no general rule to determine whether a right of subrogation exists. Thus, ordering subrogation depends on the equities and attending facts and circumstances of each case." 73 Am. Jur. 2d Subrogation § 10. In the insurance context, an influential California court of appeal opinion broke down subrogation into eight elements:

> (a) the insured suffered a loss for which the defendant is liable, either as the wrongdoer whose act or omission caused the loss or because the defendant is legally responsible to the insured for the loss caused by the wrongdoer; (b) the claimed loss was one for which the insurer was not primarily liable; (c) *the insurer has compensated the insured* in whole or in part for the same loss for which the defendant is primarily liable; (d) *the insurer has paid the claim* of its insured to protect its own interest and not as a volunteer; (e) the insured has an existing, assignable cause of action against the defendant which the insured could have asserted for its own benefit had it not been compensated for its loss by the insurer; (f) *the insurer has suffered damages* caused by the act or omission upon which the liability of the defendant depends; (g) justice requires that the loss be entirely shifted from the insurer to the defendant, whose equitable position is inferior to that of the insurer; and (h) the insurer's damages are in a liquidated sum, generally *the amount paid to the insured.*

Fireman's v. Maryland, 65 Cal. App. 4th 1279, 1292 (1998) (emphasis added).

In the context of subrogation by an excess carrier against a lower level carrier, the Nevada federal district court held that while Nevada will weigh the California factors, because subrogation is an equitable remedy, none are dispositive except that only the insured's rights may be asserted. *Colony Ins. Co. v. Colorado Cas. Ins. Co.*, 2018 WL 3312965, at *5 (D. Nev. July 5, 2018).

Under the California test, St. Paul is entitled to subrogation from Aspen because: (a) the Cosmopolitan suffered a loss for which Aspen is liable, namely the $160.5 million excess judgment caused by Aspen's bad faith; (b) St. Paul is not primarily liable like Aspen because Aspen breached its duty to settle and St. Paul did not, because Aspen breached its duty to provide an adequate defense and St. Paul did not, and because St. Paul's policy responds after Aspen's[10]; (c) the Cosmopolitan has been compensated for the loss through the settlement of the underlying action and the payment by St. Paul of its limit; (d) St. Paul paid to protect its own interest, not as a volunteer,

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[10]While one might argue that St. Paul's excess policy responds at the same time as National Union's excess policy, there is no doubt that St. Paul's excess policy responds after Aspen's primary policy. This provides another reason for the Court to treat Aspen's motion differently from National Union's.

because the claim underlying the judgment was potentially covered under St. Paul's policy; (e) the Cosmopolitan had an existing assignable cause of action for bad faith against Aspen that it could have asserted had it not been compensated for its loss by St. Paul; (f) St. Paul has suffered damages because of Aspen's bad faith, in that it had to pay its limit to protect the Cosmopolitan; (g) justice requires the entirety of the loss be shifted to Aspen, because its equitable position is inferior because: (i) it breached its duty to settle; (ii) it breached its duty to defend by providing a conflicted defense; and (iii) St. Paul's policy is excess to Aspen; (h) the damages are in a liquidated sum, the $25 million St. Paul paid to protect the Cosmopolitan.

Again, for purposes of this motion, the Court does not need to decide that St. Paul has evidence sufficient to prove these allegations. Rather, all the Court need decide now is that, if the evidence supports, St. Paul is entitled to subrogation. As what St. Paul seeks to prove is more than adequate to establish this right, the Court should deny Aspen's renewed motion for summary judgment.

5. Aspen's Position That Subrogation Fails Because The Cosmopolitan Has No Damages Is Fundamentally Contrary to the Nature of Subrogation.

Aspen argues St. Paul's subrogation claim fails because the insured suffered no damages, because St. Paul paid them. In other words, because St. Paul stepped up and protected its insured from Aspen's bad faith, Aspen gets away with its tortious conduct.

While this argument is a trap courts occasionally fall into, it is only possible based on ignorance of the fundamental nature of subrogation. As explained above, the reason the doctrine of subrogation was introduced into the common law was because of, not despite, the fact that the insurer had paid the insured for its damages. *Mason v. Sainsbury*, 3 Doug. 61, 99 Eng. Rep. 538 (1782). Modern cases are in accord. *See, e.g., Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co.*, 182 Cal. App. 4th 23, 105 Cal. Rptr. 3d 606 (2010); *Troost v. Estate of DeBoer*, 155 Cal. App. 3d 289, 294, 202 Cal. Rptr. 47, 50 (Ct. App. 1984) ("Payment by the insurance company does not change the fact a loss has occurred."); *Maryland Cas. Co. v. Acceptance Indem. Ins. Co.*, 639 F.3d 701, 706 (5th Cir. 2011) (the law "does not bar contractual subrogation simply because the insured has been fully indemnified."); *Amerisure Ins. Co. v. Navigators Ins. Co.*, 611 F.3d 299, 307 (5th Cir. 2010) (same). This is because that is what subrogation is: the insurer paying for the insured's

damages, thereby protecting the insured, and thereby gaining the right to pursue whoever was responsible for causing those damages. Conversely, if the insurer paying to protect the insured obviated subrogation, then subrogation would not exist. As bluntly explained by one court:

> Under Cleveland's view, no insurer could ever state a cause of action for subrogation in order to recover amounts it paid on behalf of its insured, because of the very fact that it had paid amounts on behalf of its insured. Not only is this illogical, it contradicts decades of cases consistently holding that an insurer may be equitably subrogated to its insured's indemnification claims.

Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co., 182 Cal. App. 4th 23, 34 (Cal. 2010).

Subrogation demonstrably does exist in Nevada, including in the insurance context, as explained above. Therefore, Aspen is necessarily wrong.

To support its position, Aspen cites and misrepresents *California Capital Ins. Co. v. Scottsdale Indem. Ins. Co.*, 2018 WL 2276815 (Cal. Ct. App. May 18, 2018), which the California Supreme Court has made unpublished and thus uncitable in California courts. In that case, the insurer did not assert a cause of action for subrogation. Rather, after Capital breached its duty to settle, resulting in an excess judgment, it was sued by another insurer under an assignment. The court held Capital had no right under the assignment because it had paid the judgment, relying exclusively on cases in which insureds tried to sue their insurers directly after another insurer had compensated them, *i.e.*, double recovery cases, not subrogation cases. While this is of course wrong, because even an assignee has the right to sue for damages for which it paid, Aspen is incorrect that the court denied subrogation on a no damages argument, since such a claim was not asserted.

It is true that Capital tried to correct its deficient pleadings by arguing its indemnity cause of action included subrogation. The court held that even if such a claim had been made, it would fail because Capital did not have equitable superiority. It did not reject subrogation based on a no damages argument. It held Capital lacked equitable superiority. There would therefore be no equitable reason to shift the loss to the other carrier, since both were in breach.

The instant case is entirely different. This case involves subrogation, not assignment. St. Paul has equitable superiority, as outlined above, for numerous reasons. Aspen, not St. Paul, caused the excess judgment. Aspen is in breach and bad faith, while St. Paul is not. Regardless, even if *Capital* did say what Aspen says it does, it would be wrong, because subrogation presupposes

the insurer paid the loss and protected the insured.

Aspen also cites *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Tokio Marine & Nichido Fire Ins. Co.*, 233 Cal. App. 4th 1348, 1362 (2015), to support its misapplication of subrogation. This is an example of a case where the court misunderstood the fundamental nature of subrogation, as was later explained by the California federal court in *Pub. Serv. Mut. Ins. Co. v. Liberty Surplus Ins. Corp.*, 2017 WL 3601381 (E.D. Cal. Aug. 22, 2017), the only case to have ever cited *Tokio*. In rejecting *Tokio*, the court relied on *Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co.*, 182 Cal. App. 4th 23, 105 Cal. Rptr. 3d 606 (2010), reasoning:

> When Interstate sued Cleveland for breach of contract as its insured's subrogee, Cleveland demurred on grounds, inter alia, that because Interstate had fully compensated the indemnitee, it could not sue for subrogation on the indemnitee's behalf. The *Interstate* court squarely rejected this contention, stating that "Cleveland's insistence that [the insured] suffered no loss because Interstate paid [the insured's employee], and Interstate therefore suffered no loss because it stands in the shoes of its insured, is circular and erroneous." *Id.* at 35, n.3. As the Court observed, if Cleveland's "Illogical" contention were accepted "no insurer could ever state a cause of action for subrogation in order to recover amounts it paid on behalf of its insured, because of the very fact that it had paid amounts on behalf of its insureds." *Id.* at 34. In the court's view, that would contradict "decades of cases consistently holding that an insurer may be equitably subrogated to its insured's indemnification claims." *Id.*

Pub. Serv. Mut. Ins. Co. v. Liberty Surplus Ins. Corp., 2017 WL 3601381 (E.D. Cal. 2017).

In other words, *Tokio* is necessarily wrong, because if it were correct, then subrogation would not exist, and centuries of precedent demonstrate it plainly does. The federal court therefore held that subrogation was in fact available both for breach of contract and bad faith, not despite the fact the subrogating insurer paid the claim to protect its insured, but because of it.

Further, part of the reason the *Tokio* court held the insured suffered no damages was because there was no excess judgment, because the case settled on the first day of trial. Some cases suggest that an excess judgment is necessary for bad faith exposure. *See J.B. Aguerre, Inc. v. Am. Guarantee & Liab. Ins.* Co., 59 Cal. App. 4th 6, 13, 68 Cal. Rptr. 2d 837, 841 (1997). In the instant case, there was a $160.5 million excess judgment which constituted actual damage to the insured when it was rendered. Thus, while this should not matter so long as the claim is paid, on this ground also, *Tokio* is distinguishable.

Accordingly, the Court should not be misled by Aspen's no damages argument, which is,

quite frankly, profoundly ignorant. St. Paul's payment does not obviate its right to subrogation. It creates it. This is made plain by a simple question: if paying the claim obviates the right to subrogation, then how would such a right ever arise? The answer is, if that were true, it could not. Centuries of precedent, including that of the Nevada Supreme Court, would be wrong. Aspen's position is analogous to arguing a breach of contract claim fails whenever it is based on a contract. It is inherently absurd. Therefore, because St. Paul paid for the insured's damages caused by Aspen, St. Paul is entitled to subrogation against Aspen.

6. Aspen's Argument That a Contract Must Exist Between Aspen and St. Paul for St. Paul to Bring a Subrogation Action Against Aspen is Nonsensical and Contrary to the Nature of Subrogation.

Aspen's argument that for St. Paul to bring a contractual subrogation claim against Aspen St. Paul must have contracted with Aspen directly is just as ignorant as its no damages argument. As explained above, subrogation is when one party steps into the shoes of another, such that the first party can assert the rights of the second against a third. Thus, for example, through subrogation, St. Paul steps into the Cosmopolitan's shoes, and can assert the Cosmopolitan's contractual rights against Aspen, even though St. Paul did not have its own contract with Aspen. St. Paul is not asserting its own contact rights against Aspen, but rather the Cosmopolitan's. That is the point of subrogation. Therefore, St. Paul does not need a contract with Aspen. Rather, it need only pay for the Cosmopolitan's injury, because the Cosmopolitan has a contract–an insurance contract–with Aspen. As authority, St. Paul cites every subrogation case to have ever been decided, including those cited above in its explanation of the fundamental nature of subrogation. Aspen of course cites nothing supporting it, because its argument is contrary to the very nature of subrogation. If Aspen were correct, subrogation would not exist.

Fireman's v. Maryland's, 21 Cal. App. 4th 1586, 26 Cal. Rptr. 2d 762 (1994), which Aspen misunderstands, analyzed whether carriers at different levels had a contract between them because there the insured had released one of them. Therefore, the carriers could not proceed via subrogation, because the insured had given up its contractual rights, *i.e.*, it no longer had any rights left to subrogate to. As the carriers had no direct contract with each other, there was thus no legal conduit remaining to assert a claim. The whole point of the case was that subrogation was not

available under those facts.

Here, in contrast, the Cosmopolitan has not released Aspen. Therefore, St. Paul's subrogation to the Cosmopolitan's breach of contract and bad faith claims against Aspen is perfectly viable. Likewise, Aspen's rambling about the need for St. Paul to be a third party beneficiary on the Cosmopolitan's contract with Aspen also has nothing to do with St. Paul's right to subrogate to the Cosmopolitan's existing rights, because again, it is the Cosmopolitan's rights against Aspen that St. Paul is asserting, not its own.

Fundamentally, what Aspen is trying to do here is avoid the consequences of its bad faith failure to settle. If there are no consequences for bad faith, then there is nothing to prevent it. Indeed, that is why bad faith is available in tort along with extra contractual damage; because it is so very important that insurers be prevented from committing bad faith. If this Court fails to allow subrogation here, it not only rewards Aspen for its conduct, it essentially tells St. Paul, "Well, you should have committed bad faith too if you didn't want to be stuck with the bill." That cannot be the right answer. It is certainly contrary to the equitable principals for which subrogation was created, and pursuant to which the Nevada Supreme Court has enforced subrogation in the past. Accordingly, this Court should deny Aspen's motion, and instead hold that St. Paul can subrogate to the Cosmopolitan's rights against Aspen because subrogation, both equitable and contractual, is available in Nevada.

B. St. Paul's Equitable Estoppel Claim Includes Aspen.

Aspen moves for summary judgment on St. Paul's cause of action for equitable estoppel on the ground it only alleges liability against National Union (AIG). This is not correct. Because Aspen's argument is not evidence-based, but rather pleading-based, it can be easily disposed of on the face of the pleading.

Equitable estoppel includes the following elements:

> (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.

S. Nevada Mem'l Hosp. v. State, Dep't of Human Res., 101 Nev. 387, 391 (1985).

St. Paul alleges a number of facts in its pleading supporting equitable estoppel against Aspen. It alleges Aspen is estopped to assert Marquee's direct coverage (including both Aspen and National Union) is not wholly responsible for this loss rather than the Cosmopolitan's direct coverage (including both Zurich and St. Paul). Among other bases for this, Aspen appointed a single, conflicted defense counsel to defend Marquee and the Cosmopolitan together, based on both the implicit and explicit representation that Marquee's coverage would cover this loss, not the Cosmopolitan's. The Cosmopolitan relied on this conduct by not asserting its own cross-complaint against Marquee, which could have allocated all liability to Marquee, and by not requesting a special verdict which would have clearly allocated liability between them. Aspen knew that its conduct would be relied upon by the Cosmopolitan, and the Cosmopolitan did not know Aspen would argue its own direct coverage had to share the loss. Therefore, the Cosmopolitan, and thus St. Paul via subrogation, is entitled to equitable estoppel. Likewise, Aspen behaved toward St. Paul in a way that estops Aspen from asserting it is not wholly responsible for this loss, by failing to tender the claim to St. Paul until the eve of trial, failing to inform St. Paul of trial until after it had begun, and preventing St. Paul from participating in handling the case. All these actions caused St. Paul to rely to its detriment on Aspen's representations that St. Paul would not be responsible, Aspen knew the truth was to the contrary and intended its actions to be relied upon so that it could maintain control of the defense and thus prevent a cross-complaint against Marquee and a special verdict form laying out the allocation of liability, and St. Paul did not know of Aspen's schemes to the contrary. This also supports equitable estoppel. St. Paul believes Aspen takes the position that St. Paul had the same duty to settle the underlying case that Aspen did, even though its actions belied that position. If that last belief is not so, St. Paul is happy to take Aspen's concession on this point. However, the other points are perfectly valid bases for equitable estoppel, and Aspen is plainly included in the cause of action as drafted. Accordingly, Aspen's motion as to St. Paul's equitable estoppel claim should be denied.

C. Aspen's Evidentiary Objections Are Irrelevant.

In it prior incarnation of this motion, Aspen decided to waste St. Paul and this Court's time by objecting to certain evidence Aspen knew is perfectly reliable and which, in any event, is not

critical to the issues addressed on this motion. These objections do not in any way support Aspen's motion or undermine St. Paul's prior motion.

First, Aspen raised its judicial notice objection only generally, and cited only three specific documents with respected to its authentication objection, Exhibits 15-17. Objections must be specific. *In re J.D.N.*, 128 Nev. 462, 468, 283 P.3d 842, 846 (2012) ("When objecting to the admission of evidence, a party must state the specific grounds for the objection. NRS 47.040(1)(a). This specificity requirement applies not only to the grounds for objection, but also to the particular part of the evidence being offered for admission."); *State v. Kallio*, 92 Nev. 665, 668, 557 P.2d 705, 707 (1976); Nev. Rev. Stat. Ann. § 47.040 (West). Therefore, Aspen only effectively objects to authentication of the three documents specified.

Exhibits 15 and 16 are Aspen's reservation of rights to the Cosmopolitan and Marquee respectively, in which it appoints conflicted defense counsel, and Exhibit 17 a defense analysis from this counsel to Aspen and the Cosmopolitan explaining the defendants faced excess exposure. None of these documents impacts the specific issues currently before the Court, *i.e.*, whether St. Paul alleges a viable subrogation claim under Nevada law. The only facts the Court needs to determine that issue are: (1) the underlying complaint; (2) Aspen's policy; and (3) St. Paul's policy. Even the underlying special verdict was not strictly necessary, though it does prove the viability of both Coverage A and Coverage B claims. Aspen does not dispute introduction of this evidence, including the special verdict, because it cannot. Aspen provided its own policy, St. Paul provided its policy, and the other two are subject to judicial notice. Thus Aspen's evidentiary objections are irrelevant. The three disputed documents merely provide broader factual context for the Court. The same holds true as to Aspen's vague judicial notice objection, which also does not appear to encompass these documents. Therefore, these objections should not bear on the Court's consideration of this motion or St. Paul's response to it.

CONCLUSION

For all the foregoing reasons, Aspen's renewed motion for summary judgment should be denied.

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DATED this 2 day of July, 2020.

HUTCHISON & STEFFEN, PLLC

By: _____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 2nd day of July, 2020, I caused the above and foregoing document entitled **PLAINTIFF'S RENEWED OPPOSITION TO DEFENDANT ASPEN'S RENEWED 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

[X] 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:

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DISTRICT COURT

CLARK COUNTY, NEVADA

ST. PAUL FIRE & MARINE INSURANCE COMPANY, Plaintiffs, vs. ASPEN SPECIALTY INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA; ROOF DECK ENTERTAINMENT, LLC d/b/a MARQUEE NIGHTCLUB; and DOES 1-25; inclusive, Defendants.	CASE NO.: A-17-758902-C DEPT. NO.: XXVI **DEFENDANT ASPEN SPECIALITY INSURANCE COMPANY'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT ASPEN SPECIALITY INSURANCE COMPANY'S RENEWED MOTION FOR SUMMARY JUDGMENT** **HEARING REQUESTED** **Date: August 4, 2020** **Time: 9:30 A.M.**

Defendant, ASPEN SPECIALTY INSURANCE COMPANY ("Defendant" or "Aspen"), by and through its counsel of record, the law firm MESSNER REEVES, LLP, files this Reply I support of its Renewed Motion for Summary Judgment.

Defendant Aspen Granted Plaintiff an extension to file its Opposition, and Plaintiff granted Aspen an extension to file its Reply through July 31, 2020.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In a desperate and transparent attempt to undo this Court's prior rulings in the case and avoid summary judgment for Aspen, St. Paul argues in Opposition that (1) the Court somehow lacks authority to hear a follow up motion for summary judgment --based on the new factual findings and legal rulings in its recent summary judgment orders--now that the Court's summary judgment orders have been entered, and (2) St. Paul argues that regardless, all the court's ruling on summary judgment for National Union (that now apply to Aspen) were all wrong—because such rulings entitle Aspen to summary judgment too. In essence, St. Paul has filed its appellate brief in Opposition after waiving its right to seek reconsideration of the Court's prior summary judgment rulings with which it belatedly now takes issue.

Plaintiff's attempt to undo the Court's ruling as to National Union is not properly before the Court on a motion for reconsideration by St. Paul, and its arguments in its Opposition to that effect cannot and should not be considered here. Those summary judgment factual findings and legal rulings are in fact controlling, apply to Aspen too *now that the National Union Order has been entered*, and the Court most certainly has authority to hear this Motion before the expiration of the dispositive motion deadline.

St. Paul's argument is simply that first the Court's construction of *all* its legal rulings in the National Union summary judgment order were *all* wrong and that the Court purportedly somehow abused its wide discretion declining to recognize the equitable claims. The summary judgment rulings however, whether characterized as law of the case or simply controlling legal rulings, still apply, control, and warrant summary judgment for Aspen.

St. Paul asserts three (3) claim against Aspen: (1) Subrogation – breach of the duty to settle by failing to accept $1.5 million offer (because St. Paul contended it was within Aspen's alleged $2 million policy limit); (2) Subrogation – breach of the Aspen insurance contract for failing to provide a conflict free defense to Marquee and Cosmopolitan and failing to pay all available limits under

the Aspen policy; and, (3) Equitable Estoppel – that the defendants should be prevented from arguing National Union's policy was co-excess with St. Paul's policy. Aspen is entitled to summary judgment on all three claims as a matter of law.

Nevada has not recognized subrogation in the context here, this Court declined to do so when granting National Union's motion for summary judgment, and should do so again here for the same and similar reasons. Regardless, St. Paul's subrogation claims, even if recognized for the first time here, would still fail as a matter of law.

St. Paul is not a party to the Aspen contract, like it is not a party to the National Union contract as this Court ruled, and thus contractual subrogation, which has not been recognized elsewhere either in this context, is not viable here as this Court ruled in granting National Union summary judgment.

St. Paul's insured, in whose shoes it stands, has not suffered any cognizable legal damages as a matter of law either, again as this Court recently and correctly held when granting National Union's Motion for Summary Judgment because, among other things, the insurers, including Aspen, paid their full policy limits, Aspen and National Union fully funded the insured's defense and indemnity, and the insureds did not contribute toward settlement. The Court correctly relied on caselaw in jurisdictions that had recognized equitable subrogation yet still dismissed the subrogation claims as not viable for lack of damages for these very same reasons.

Consequently, as this Court previously ruled, there are no damages as the National Union summary judgment order holds here., which would be, if recognized, an essential element of the breach of contract subrogation claims. Therefore, even were this Court to recognize equitable subrogation for the first time here, the claim would still fail as a matter of law, just as it ruled when granting National Union summary judgment, because an essential element of the claim is lacking as a matter of law.

In addition, St. Paul's subrogation claim for failure to accept a $1.5 million settlement offer within an alleged $2 million policy limit also now inherently fails as a matter of law because this Court has now determined Aspen's policy limit is $1 million; thus, Aspen, as a matter of law, did not fail to accept a settlement within policy limits even if subrogation could be applied here.

Finally, St. Paul's Estoppel 'claim' also fails as a matter of law. It is derivative of the other claims which all fail as well, and was directed at National Union, to estop National Union from arguing it was a co-excess insurer. However, National Union has been granted summary judgment, and the Court ruled St. Paul was not excess to National Union. Therefore, the claim also fails as a matter of law.

II. ARGUMENT

A. The Court Recently Entered Controlling Legal Rulings.

In much ado about nothing, St. Paul's Opposition takes issue with the 'law of the case' characterization of the Court's factual findings and legal rulings in the recent summary judgment orders. St. Paul's form over substance argument wholly lacks merit; the Court's factual findings and legal rulings do control and are applicable here to Aspen as much as they are to the other parties that have been granted summary judgment. The Court need not wait for an appeal to apply the legal rulings made in this case to Aspen.

The Court previously granted and recently entered the orders granting Aspen partial summary judgment (Exhibit A) and granting National Union summary judgment (Exhibit D). The following rulings are now controlling.

1. Aspen Has A $1 Million Policy Limit.

The Court previously held that the plain language of the Aspen Policy operates to limit coverage for the Moradi action to $1 million. *Exhibit A*. at 8:15-20.

2. Court Declined To Recognize Subrogation Amongst Insurers For The First Time In Nevada

The Court's Order granting National Union Summary Judgment concluded, in its Conclusion of Law section:

> 3. As a threshold matter, the Second Cause of Action [Subrogation – Breach of the Duty to Settle] fails as a matter of law because the Nevada Supreme Court has never recognized an equitable subrogation claim between insurers, and this Court is unwilling to do so in the first instance.

14. … Specifically, the Nevada Supreme Court has never recognized the viability of an equitable subrogation claim between insurers, and this Court is unwilling to do so in the first instance.

Exhibit D.

3. Court Ruled Contractual Subrogation Is Not Viable.

The Court's Order granting National Union Summary Judgment concluded, in its Conclusion of Law section:

16. The Fourth Cause of Action [Subrogation – breach of insurance contract] also fails as a matter of law because Nevada courts have expressly rejected contractual subrogation claims between insurers. In the insurance context, contractual subrogation generally is not applied by an excess insurer against a primary insurer, but between an insurer and a third-party tortfeasor. *See Colony Ins. Co. v. Colorado Cas. Ins. Co*., No. 2:12-cv-01727-RFB-NJK, 2016 WL 3360943 at *6 (D. Nev. June 9, 2016). As noted by the *Colony* court, the Nevada Supreme Court has held that contractual subrogation in the context of insurers and insureds may contravene public policy and contractual subrogation may provide for windfalls in the insurance context. *Id*. (citing *Maxwell v. Allstate Ins. Cos*., 102 Nev. 502, 506, 728 P.2d 812, 815 (1986)). As such, St. Paul cannot pursue claims against National Union based on a contractual subrogation theory of recovery.

Exhibit D.

4. Court Ruled Equitable Subrogation Is Not Viable.

The Court's Order granting National Union Summary Judgment concluded, in its Conclusion of Law section:

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

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

***

20. A claim for breach of contract is not actionable without damage. *Nalder ex rel. Nalder v. United Auto. Ins. Co*., No. 70504, 2019 WL 5260073, 449 P.3d 1268 (Nev. 2019) (unpublished) ("It is beyond cavil that a party must suffer actual loss before it is entitled to damages." (quoting *Riofrio Anda v. Ralston Purina Co*., 959 F.2d 1149, 1153 (1st Cir. 1992)); *California Capital Ins. Co. v. Scottsdale Indem. Ins. Co*., 2018 WL 2276815, at *4 (Cal.Ct.App. May 18, 2018) (unpublished);

Bramalea California, Inc. v. Reliable Interiors, Inc., 14 Cal. Rptr. 3d 302, 306 (Cal. Ct. App. 2004). In the insurance context, damages for breach of an insurance policy are based on the failure to provide benefits owed under the policy. *Morris v. Paul Revere Life Ins. Co*., 135 Cal. Rptr. 2d 718, 726 (Cal. Ct. App. 2003); *Avila v. Century Nat'l Ins. Co*., No. 2:09-cv-00682-RCJ-GWF, 2010 WL 11579031 (D. Nev. Feb. 10, 2010). If the insured does not suffer "actual loss" from the insurer's breach of a duty under the policy, there can be no claim for damages. *Nalder ex rel. Nalder v. United Auto. Ins. Co*., No. 70504, 2019 WL 5260073, 449 P.3d 1268 (Nev. 2019) (unpublished).

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

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

***

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

Exhibit D.

5. Court Ruled Plaintiff's Estoppel Claim Are Not Viable.

The Court's Order granting National Union Summary Judgment concluded, in its Conclusion of Law section:

> 30. In the FAC, St. Paul asserts the Seventh Cause of Action for Equitable Estoppel ("Seventh Cause of Action"), seeking to preclude National Union [and Aspen] from asserting that: (1) National Union's policies were not primarily responsible for the defense and resolution of the Underlying Action; and (2) St. Paul, a non-defending carrier, had the same obligation to resolve the Underlying Action as Aspen and National Union. (FAC ¶ 135.)
>
> ***
>
> 33. Because the Second, Fourth, and Eighth Causes of Action fail as a matter of law, including for reasons that are unaffected by National Union's assertions that St. Paul seeks to estop, this Seventh Cause of Action must also fail.

Exhibit D.

B. <u>The Court May Hear This Renewed Motion.</u>

St. Paul argues Aspen may not bring the instant Motion and unprofessionally accuses Aspen of purportedly misrepresenting matters. To do so, St. Paul disingenuously **ignores** (i) its own Stipulation to Stay Discovery where it stipulated the Court deferred ruling on the viability of the claims against Aspen pending the filing and determination of this very Renewed Motion (which was an Order entered by the Court), as well as St. Paul (ii) ignoring its own counsel's express discussion on record with the judge *during the National Union hearing* when the Court already **rejected** the attempts by St. Paul arguing that the ruling on the viability of the claims against Aspen was decided and finally determined by the ruling on the Aspen Countermotion, but which the Court made very clear was not the case and had not been determined.

St. Paul and Aspen signed a Stipulation to Stay Discovery and Vacate Trial that was entered by the Court on April 27, 2020 while entry of the parties' summary judgment orders were pending. *See* 4/27/2020 Notice of Entry of Stipulation and Order to Stay Discovery and Stay or Vacate Trial. The Stipulation, **signed by both parties and entered by the Court**, stipulates, agrees, and provides as follows:

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

> One week after the hearing on the Plaintiff-Aspen Motions, the Court then granted National Union's and Marquee's Motions for Summary Judgment as to the viability of Plaintiff's claims, and **invited Aspen to submit a renewed Motion as to the viability of Plaintiff's claims, now that it had ruled on the other defendants' Motions**.[1]
>
> ***
>
> Expert deadlines are approaching though discovery has not been conducted in light of the dispositive motions. The expert deadline per the Scheduling Order was April 1, 2020. However, the Court's administrative order dated March 20, 2020 due to the Coronavirus COVID-19 emergency, stayed all deadlines 30 days. The new expert deadline is therefor currently May 1, 2020.
>
> **The Court will still have to rule on the viability of the claims against Aspen** which may obviate the need for any discovery, experts, and related discovery considerations. Aspen intends to, and also stipulates hereby, to file its Renewed Motion for Summary Judgment on the viability of Plaintiff's claims within two weeks of the entry of both pending orders on the defendants' motions for summary judgment (i.e, two weeks from notice of entry of the latter order to be filed), since the renewed motion concerns the rulings in both orders.
>
> Consequently, Plaintiff and Aspen agree to stay discovery, deadlines, and trial pending notice of entry of the Court's order on Aspen's Renewed Motion for Summary Judgment as to the viability of Plaintiff's claims. Should there be claims remaining after such order, Plaintiff and Aspen will submit a new proposed discovery schedule and deadlines to the Court.
>
> **The parties submit there is good cause under EDCR 2.35(a) for a stay of deadlines because Aspen's Renewed Motion is potentially dispositive of the remaining claims in this action which may obviate the need for any discovery**.

Id. at 2:19-3:28.

St. Paul stipulated that as to when Aspen could file its Renewed Motion, that it would potentially be dispositive of all claims given the recent summary judgment rulings, and that the Court deferred ruling on the viability of the claims against Aspen until it could hear the National Union Motion. It cannot be heard to the contrary now.

In addition to the above Stipulation and Order, St. Paul's counsel specifically raised the issue during the National Union hearing, but which the Court rejected and made clear that it had not made dispositive rulings on the viability of the claims against Aspen yet.

[1] While the transcript record stopped recording/transcribing before the conversation with the judge about Aspen's 'me-too' Motion took place, those in the court room were aware of the conversation, and Plaintiff so stipulated here whether its new counsel was there or not.

The following transpired during the National Union hearing:

> MR, DERETZKY [St. Paul's former counsel]: … I didn't have the benefit of being at the hearing last week, but it's my understanding that the Court denied Aspen's motion for summary judgment on the subrogation claims that were brought against it by St. Paul.
>
> THE COURT: **I just said I wasn't going to hear them**.
>
> MR. DEREWETZKY: I'm sorry?
>
> THE COURT: **I didn't deny them. I just said I wasn't going to hear them**. We -- because we -- my concern here was were, they going to be seeking a 54(b) ruling on the decision, such that we would need to certify that and that would go up. So then I felt like we shouldn't get into the whole issue of their subrogation claim. **That seemed premature to me, so I said I wasn't going to consider those -- that part of the motion**.
>
> ***
>
> MR. REEVES: **he had understood you found questions of fact otherwise, so this is new information to us**.
>
> THE COURT: **No**. I said -- I wanted to know what was going on with the 54(b) certification on this question of limits, because it seemed like we wouldn't want to get into the all the subrogation, if we first had to take the subroga --
>
> MR. REEVES: I guess he wanted to get into --
>
> THE COURT: -- take the 50 --
>
> MR. REEVES: -- all the subrogation, so --
>
> THE COURT: Yeah, **well, I didn't, so**.

Exhibit B, 38:1-39:25.

It is clear by the Court's statements and St. Paul's Stipulation and Order that Aspen's Renewed Motion is proper, and the Court may rule on it based on the new findings of fact and legal rulings in the recent summary judgment orders.

Despite the Transcript and clarification by the judge, St. Paul slipped into its proposed order a short phrase about there being an "issue of fact," but which does not identify any specific factual issue as precluding summary judgment. As is clear by the transcripts and Stipulation, the Court deferred ruling on the viability of Aspen's claims at the time, and may hear them here now.

To the extent St. Paul's deception slipped in language to the Court's Order on the prior Aspen Countermotion that was contrary to the facts, Transcript above, and rulings known to St. Paul, the Court may correct that inadvertent mistake now and should caution St. Paul from attempting to perpetuate such fraud on the Court in the future.

The dispositive motion deadline has not expired rendering this Motion timely. Even assuming the Aspen order was with prejudice to filing another motion, which it was not, a motion to alter or amend a judgment may be filed within 28 days of service of notice of written entry of the judgment, which Aspen's Motion may be construed as to the extent that is even necessary, rendering the instant Motion timely. NRCP 59(e). In addition, the "court may correct a clerical mistake or a mistake arising from oversight or omission ***whenever one is found in a judgment***, order, or other part of the record" and "The court may do so on motion or on its own, with or without notice." NRCP 60(a) (relief from a judgment or order).

But, regardless of the initial ruling on Aspen's Motion, it did **not** identify any specific or particular factual issue precluding summary judgment as to the viability of the claims against Aspen, and the same is true here again. There is no specific issue of fact identified that is material to the instant Renewed Motion that would warrant denying it; rather, the controlling findings of fact and legal rulings compel summary judgment in favor of Aspen.

The Court did not previously rule that the claims against Aspen are viable as a matter of law nor did it rule there was any specific, identifiable disputed factual issue material to summary judgment. In fact, all indications are to the contrary. The Court may hear Aspen's Renewed Motion and should grant summary judgment to Aspen.

C. Aspen Is Entitled To Summary Judgment On St. Paul's Subrogation and Estoppel Claims.

St. Paul's Renewed Opposition is simply rehash of its prior Oppositions to Aspen's Countermotion and National Union's Motion for Summary Judgment. St. Paul discusses the history of subrogation ad nauseum, but in the end, it is merely left with disputing the legal rulings already made in this case, which is why St. Paul instead focuses on its appellate arguments as to why it believes the Court got it wrong when ruling on National Union's Motion. St. Paul did not seek reconsideration of the National Union Order or legal rulings, and the Court should rule consistently here again.

As a threshold matter, the Subrogation claims fail as a matter of law because the Nevada Supreme Court has never recognized an equitable subrogation claim between insurers, and this Court stated it "is unwilling to do so in the first instance" when ruling on National Union's Motion. Exhibit D, Conclusion of Law #3. It should decline here as well.

There can also be no breach of the duty to settle within policy limits because the Aspen limit was $1 million and St. Paul contends the settlement offer was $1.5 million when it unsuccessfully tried to turn insurance law on its head and convince the Court Aspen had a $2 million limit.

There can be no breach of insurance contract either because, as this Court previously ruled, "Nevada courts have expressly rejected contractual subrogation claims between insurers." Exhibit D, Conclusion of Law #16. In the insurance context, contractual subrogation generally is not applied by an excess insurer against a primary insurer, but between an insurer and a third-party tortfeasor. *See Colony Ins. Co. v. Colorado Cas. Ins. Co*., No. 2:12-cv-01727-RFB-NJK, 2016 WL 3360943 at *6 (D. Nev. June 9, 2016). As noted by the *Colony* court, the Nevada Supreme Court has held that contractual subrogation in the context of insurers and insureds may contravene public policy and contractual subrogation may provide for windfalls in the insurance context. *Id*. (citing *Maxwell v. Allstate Ins. Cos*., 102 Nev. 502, 506, 728 P.2d 812, 815 (1986)). As such, St. Paul cannot pursue claims against Aspen based on a contractual subrogation theory of recovery.

The subrogation claims fail for additional reasons too because, as this Court previously ruled, "as a matter of law … Cosmopolitan has suffered no contractual damages." Exhibit D, Conclusion of Law #17.

Here, the Court previously found and ruled that the settlement of the underlying action was completely funded by insurance carriers and no defendant in the underlying case contributed any money out-of-pocket towards the settlement. Exhibit D, Finding of Fact(A) #11. The combined defense of Cosmopolitan and Marquee was funded entirely by Aspen and National Union. *Id*. at #13.

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

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

A claim for breach of contract is not actionable without damage. *Nalder ex rel. Nalder v. United Auto. Ins. Co*., No. 70504, 2019 WL 5260073, 449 P.3d 1268 (Nev. 2019) (unpublished) ("It is beyond cavil that a party must suffer actual loss before it is entitled to damages." (quoting *Riofrio Anda v. Ralston Purina Co.,* 959 F.2d 1149, 1153 (1st Cir. 1992)); *California Capital Ins. Co. v. Scottsdale Indem. Ins. Co*., 2018 WL 2276815, at *4 (Cal.Ct.App. May 18, 2018) (unpublished); *Bramalea California, Inc. v. Reliable Interiors, Inc.,* 14 Cal. Rptr. 3d 302, 306 (Cal. Ct. App. 2004).

In the insurance context, damages for breach of an insurance policy are based on the failure to provide benefits owed under the policy. *Morris v. Paul Revere Life Ins. Co*., 135 Cal. Rptr. 2d 718, 726 (Cal. Ct. App. 2003); *Avila v. Century Nat'l Ins. Co.,* No. 2:09-cv-00682-RCJ-GWF, 2010 WL 11579031 (D. Nev. Feb. 10, 2010). If the insured does not suffer "actual loss" from the insurer's breach of a duty under the policy, there can be no claim for damages. *Nalder ex rel. Nalder v. United Auto. Ins. Co*., No. 70504, 2019 WL 5260073, 449 P.3d 1268 (Nev. 2019) (unpublished).

Here, St. Paul alleges that Aspen breached its obligations to Cosmopolitan and seeks extra-contractual damages for such breach. However, as the Court previously ruled, "it is undisputed that Cosmopolitan's defense and indemnity in the Underlying Action were fully paid for by insurers." Exhibit D, Conclusion of Law #21. "The damages sought by St. Paul are not contract damages suffered by Cosmopolitan due to any failure to provide policy benefits, but are instead an attempt to recoup extra-contractual damages to reimburse St. Paul for the money it was required to pay under its policy in discharge of its separate obligation to Cosmopolitan." *Id*.

It is undisputed that Cosmopolitan was indemnified by Aspen when it exhausted its policy limit by participating in the settlement of the Underlying Action (as this Court determined the limit in the prior motion). "Cosmopolitan's defense in the Underlying Action was funded entirely by insurers"." *Id*. at #22. "Accordingly, Cosmopolitan suffered no contract damages as a matter of law and, as such, has no viable claim for breach of contract." Id. As Cosmopolitan has no viable claim for breach of contract … neither does St. Paul under subrogation principles as it holds no greater rights than Cosmopolitan." *Id*.

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

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

Like the plaintiff insurer in California Capital, St. Paul is not a party to the Aspen policy and has no direct cause of action against Aspen for breach of contract or breach of the covenant of good faith and fair dealing. Both St. Paul and Aspen had independent obligations to Cosmopolitan, "and both insurers discharged those obligations by settlement of the Underlying Action … As such, neither insurer is in an equitably superior position as to the other." Exhibit D, Conclusion of Law #24. Further, given the cost of Cosmopolitan's defense and the post-verdict settlement was fully funded by insurers in the Underlying Action, Cosmopolitan has no contract damages for policy benefits against Aspen. Therefore, Cosmopolitan has no viable breach-of-contract claim for St. Paul to step into its shoes to pursue against Aspen, just as it could not against National Union. Accordingly, St. Paul's claims for Subrogation fail as a matter of law.

Finally, St. Paul's Equitable Estoppel claims also fails as a matter of law. St. Paul asserts the Cause of Action for Equitable Estoppel seeking to preclude National Union and Aspen from asserting that: (1) National Union's policies were not primarily responsible for the defense and resolution of the Underlying Action; and (2) St. Paul, a non-defending carrier, had the same obligation to resolve the Underlying Action as National Union. The claim is thus truly asserted against National Union's positions, who is no longer a party to the action.

Typically, equitable estoppel is raised as an affirmative defense. However, under Nevada Law, equitable estoppel can be treated as an affirmative claim under the appropriate circumstances. To establish equitable estoppel, the plaintiff must prove the following: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must have relied to his detriment on the conduct of the party to be estopped. *See Cheqer, Inc. v. Painters & Decorators Joint Comm., Inc*., 98 Nev. 609, 614, 655 P.2d 996, 999 (1982); *In re Harrison Living Trust*, 121 Nev. 217, 223, 112 P.3d 1058, 1061-1062 (2005).

Because St. Paul's other claims fail as a matter of law, including for reasons that are unaffected by National Union's assertions that St. Paul seeks to estop, this cause of action must also fail.

IV. CONCLUSION

For the foregoing reasons and arguments, Aspen is entitled to summary judgment on St. Paul's claims including on, but not limited to, the following grounds:

1. Nevada has not recognized the subrogation claims in the context here, previously declined do so on National Union's Motion for Summary Judgment, and this Court should decline to do so as well here and rule consistent with its Order granting National Union's Motion for Summary Judgment;
2. St. Paul's subrogation claims fail as a matter of law because St. Paul is not a party to the Aspen contract;
3. St. Paul's subrogation claims further fail as a matter of law because, as this Court ruled when granting National Union summary judgment, St. Paul's insured has not suffered damages (an essential element of subrogation in other jurisdictions where the claims have been recognized in certain circumstances) since the insurers here fully paid for the defense and settlement of the insured in the underlying action, and the Court should rule consistent with its Order granting National Union's Motion for Summary Judgment;

4. St. Paul's subrogation claims fail because, contrary to Plaintiff's contention, Aspen did not fail to accept a $1.5 million settlement offer within policy limits as alleged by Plaintiff because, as a matter of law, this Court has already ruled, the Aspen Policy Limit is $1 million policy limit and therefore the alleged settlement offer was in excess of the Aspen limit;
5. St. Paul's subrogation claims fail because Aspen exhausted policy limits;
6. Equity does not require recognizing St. Paul's claims here for the first time in Nevada, St. Paul is not in an equitably superior position, and this Court may exercise its discretion and decline to recognize the claims in equity as a result;
7. St. Paul's Estoppel claim fails as a matter of law because it is not directed against Aspen but against National Union, National Union obtained summary judgment on the Estoppel claim and is no longer a party, and, the Court has determined National Union is an excess insurer in a different tower of coverage than St. Paul and St. Paul is not excess to National Union, so the estoppel claim to estop National Union and others from arguing St. Paul is excess to National Union thus fails as a matter of law given the Court's rulings.

This Court should therefore grant Aspen's Renewed Motion for Summary Judgment in full, granting in favor of all claims against Aspen.

DATED this 31st day of July, 2020

MESSNER REEVES LLP

/s/ Ryan A. Loosvelt

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PROOF OF SERVICE

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

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

On this 31st day of July, 2020, I served the following document(s):

DEFENDANT ASPEN SPECIALITY INSURANCE COMPANY'S REPLY TO PLAINTIFF'S OPPPOSITION TO DEFENDANT ASPEN SPECIALITY INSURANCE COMPANY'S RENEWED MOTION FOR SUMMARY JUDGMENT

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

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

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

/s/ Desja Wilder
An employee of Messner Reeves LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

ST. PAUL FIRE & MARINE INSURANCE COMPANY, Plaintiff, v. ASPEN SPECIALITY INSRUANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA.; ROOF DECK ENTERTAINMENT, LLC d/b/a MARQUEE NIGHTCLUB; and DOES 1 through 25, inclusive, Defendants.	Case No.: Dept. No.:	A-17-758902-C XXVI **ORDER DENYING DEFENDANT ASPEN SPECIALTY INSURANCE COMPANY'S RENEWED MOTION FOR SUMMARY JUDGMENT**

Defendant Aspen Specialty Insurance Company's ("Aspen") Renewed Motion for Summary Judgment came on for hearing on August 4, 2020, before the Honorable District Court Judge Gloria Sturman in Department XXVI of the Eighth Judicial District Court, Clark County, Nevada. The hearing was conducted remotely over Zoom.

Attorney Ryan A. Loosvelt of Messner Reeves, LLP, appeared on behalf of the Aspen. Appellant Michael K. Wall of Hutchison & Steffen, PLLC, appeared on behalf of plaintiff St. Paul Fire & Marine Insurance Company ("St. Paul"). Attorney Samuel J. Morris of Herold & Sager appeared on behalf of defendants National Union Fire Insurance Company of Pittsburgh PA ("National Union"), and Roof Deck Entertainment, LLC, d.b.a. Marquee Nightclub ("Marquee").[1]

[1]Final judgments have previously been entered in favor of National Union Marquee. Those

The Court, having reviewed the papers and exhibits submitted by the parties, rules as follows:

PROCEDURAL POSTURE

1. St. Paul previously moved for summary judgment, and Aspen filed a countermotion for summary judgment.

2. In an order dated May 14, 2020, the Court denied St. Paul's motion for summary judgment.

3. With respect to Aspen's countermotion, the Court ruled: "Regarding Aspen's Countermotion to the extent it seeks a ruling on the viability of Plaintiff's claims and/or whether they fail as a matter of law, the Court views these other issues as questions of fact."

4. Therefore, the Court granted and denied Aspen's countermotion for summary judgment as follows: "Aspen's Countermotion for Summary Judgment is GRANTED IN PART in that the Court concludes the Aspen Policy's policy limit for the *Moradi* Action is a $1 million policy limit. Aspen's Countermotion on other issues presented is denied."

5. Thereafter, the Court granted summary judgment in favor of National Union and Marquee, and certified those judgments as final and appealable pursuant to NRCP 54(b).

6. Believing that its motion for summary judgment on the issue of the viability of St. Paul's claims had been deferred, rather than denied, and believing the summary judgment in favor of National Union mandates summary judgment in favor of Aspen, Aspen filed a "Renewed Motion for Summary Judgment," on June 11, 2020.

FINDINGS OF FACT

1. This action relates to a post-judgment settlement by St. Paul, National Union, Zurich Insurance (non-party), and Aspen following a jury trial in the personal injury case of *Moradi v. Nevada Property 1, LLC dba The Cosmopolitan, et al., District Court Clark County, Nevada*, Case No. A-14-698824-C ("Moradi Action").

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judgments are presently on appeal to the Nevada Supreme Court.

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2. Moradi sued the Cosmopolitan and Marquee for personal injuries.

3. Zurich was the primary insurer of the Cosmopolitan. St. Paul was the excess insurer of the Cosmopolitan. Aspen was the primary insurer of Marquee. The Cosmopolitan was also an insured under the Aspen primary policy. National Union was the excess insurer for Marquee; the Cosmopolitan was also an insured under the National Union policy.

4. Aspen, as the primary insurer, provided a joint defense for both the Cosmopolitan and Marquee. National Union, as excess carrier, appointed separate counsel to jointly represent both the Cosmopolitan and Marquee.

5. *Moradi* resulted in a substantial verdict. St. Paul, National Union, Zurich and Aspen all contributed to a global settlement of Moradi's claims in a confidential amount.

6. St. Paul, alleging that it paid more than its equitable share of the settlement, seeks to recover money it paid toward the settlement from National Union and Aspen on theories of subrogation–beach of duty to settle; subrogation–breach of insurance contract; and equitable estoppel.[2]

7. On May 14, 2020, the Court granted summary judgment in favor of National Union, concluding, among other things, that "the Nevada Supreme Court has never recognized an equitable subrogation claim between insurers, and this Court is unwilling to do so in the first instance."

8. In support of this conclusion, this Court stated: "St. Paul issued an umbrella policy to Cosmopolitan while National Union issued an umbrella policy to Marquee. Thus, St. Paul's and National Union's respective umbrella policies remain in separate towers of coverage and, as such, St. Paul and National Union are co-excess insurers that provided coverage to Cosmopolitan at equal levels of coverage under two separate and distinct coverage towers."

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[2]The other causes of action against other defendants are not relevant here.

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9. Having concluded that St. Paul and National Union were both excess carriers on the same footing in the underlying litigation, and that neither was in an equitably superior position as to the other, the Court refused to recognize equitable subrogation claims between by St. Paul against National Union.

10. Aspen believes the same reasoning applies to the subrogation claims against it; however, Aspen is a primary carrier, not and excess carrier, and the Court's reasoning as to St. Paul's claims against National Union does not apply to St. Paul's claims against Aspen.

11. If any of the foregoing findings of fact would more appropriately be a conclusion of law, it is so deemed.

CONCLUSIONS OF LAW

1. The Court has reviewed the transcripts of the prior hearings in this matter, including the transcript of the hearing on Aspen's original countermotion for summary judgment and the hearing on National Union's motion for summary judgment.

2. The Court concludes that it did not hold Aspen's motion for summary judgment in abeyance pending consideration of National Union's motion for summary judgment. The Court considered that questions of fact precluded the granting of Aspen's motion for summary judgment, and denied that motion, both in the transcript of the hearing, and in the written order.

3. This Court is not bound in this matter by its decisions in the National Union order. St. Paul stands in a different relationship with respect to National Union than it does with respect to Aspen.

4. Aspen was the primary insurer in *Moradi* that made the decisions that resulted in the case going to trial, and in the verdict, and the consequent settlement. Aspen is the entity that allegedly refused to settle. Aspen is in a completely different position than National Union.

5. The Court has not previously ruled that there is no cause of action for subrogation between a primary carrier and an excess carrier; the ruling in National

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Union was between two excess carriers. That ruling does not apply here.

6. The Court finds that there are issues of fact as to whether Aspen is guilty of negligence in its handling of the case. Even with the policy limit of only $1 Million, and assuming there was no opportunity to settle within that limit, does that mean that Aspen should have refused to pay, or does it mean that Aspen should have gotten St. Paul and the other carriers involved sooner because there was not enough insurance and the risks of trial were great? There are questions of fact as to whether Aspen did not properly settle when it should have.

7. Summary Judgment is not appropriate not only because there are questions of fact, but as a matter of law, the legal principles that affect the claims as between Aspen and St. Paul are not the same as those that affect the legal issues between National Union and St. Paul.

ORDER

Based on the foregoing, Aspen's renewed motion for summary judgment is denied.

IT IS SO ORDERED this _____ day of Dated this 9th day of October, 2020.

0DA 225 E159 A89B
Gloria Sturman
District Court Judge

DISTRICT COURT JUDGE

Respectfully submitted by:

HUTCHISON & STEFFEN, PLLC

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Attorney for Plaintiff

Approved as to Form and Content:

MESSNER REEVES LLP

DID NOT SIGN

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OUR FILE NO.: 8709-002

September 14, 2020

Via e-mail: dept26inbox@clarkcountycourts.us

Marwanda Knight
Judicial Executive Assistant to the Honorable Kathleen Delaney
Regional Justice Center, Dept. 26
200 Lewis Avenue,
Las Vegas, NV 89155

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

Dear Ms. Knight:

Enclosed please find St. Paul Fire & Marine Insurance Company's proposed order from the August 4, 2020 hearing. Despite attempts to prepare a countersigned order, we were unable to obtain a countersignature.

The undersigned sent the order to opposing counsel on August 19, 2020. Despite e-mails from opposing counsel indicating the undersigned would have their proposed changes, our office has not heard anything. We have attached the relevant correspondence. Having reviewed the court minutes, we believe the attached proposed order complies with this court's orders and so submit it without the signature of opposing counsel.

Sincere regards,

HUTCHISON & STEFFEN, LLC

Michael K. Wall
For the Firm

MKW/kc
Enclosures

Kaylee Conradi

From: Ryan A. Loosvelt <RLoosvelt@messner.com>
Sent: Tuesday, September 08, 2020 9:04 AM
To: Michael K. Wall; Kaylee Conradi
Cc: Desja Wilder; Michael Edwards
Subject: RE: St. Paul Fire & Marine v. Aspen Ins., et. al Supreme Ct. Appeal No. 81344

Michael, just wanted to let you know we will have approved comments over in the next day or two.

Regards,

Ryan A. Loosvelt
Partner

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From: Michael K. Wall <MWall@hutchlegal.com>
Sent: Thursday, August 27, 2020 1:58 PM
To: Michael Edwards <medwards@messner.com>; Kaylee Conradi <kconradi@hutchlegal.com>
Cc: Ryan A. Loosvelt <RLoosvelt@messner.com>
Subject: RE: St. Paul Fire & Marine v. Aspen Ins., et. al Supreme Ct. Appeal No. 81344

Will do. Sorry about any oversight.

From: Michael Edwards [mailto:medwards@messner.com]
Sent: Thursday, August 27, 2020 10:48 AM
To: Kaylee Conradi <kconradi@hutchlegal.com>
Cc: Michael K. Wall <MWall@hutchlegal.com>; Ryan A. Loosvelt <RLoosvelt@messner.com>
Subject: RE: St. Paul Fire & Marine v. Aspen Ins., et. al Supreme Ct. Appeal No. 81344
Importance: High

Please hold off on this until next week. Your prior email did not come through to me and I see you neglected to include Ryan Loosvelt, the attorney that argued this motion, from your email thought he is included on other emails from your office. While I'm sure this is simply an oversight, please correct this error and we will provide our comment and edits to this order shortly.

Michael M. Edwards
Partner

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From: Kaylee Conradi <kconradi@hutchlegal.com>
Sent: Wednesday, August 26, 2020 11:20 AM
To: Michael Edwards <medwards@messner.com>
Cc: Michael K. Wall <MWall@hutchlegal.com>
Subject: FW: St. Paul Fire & Marine v. Aspen Ins., et. al Supreme Ct. Appeal No. 81344

Good morning Mr. Edwards,

I am following-up on the below and attached. Please note that our office intends to submit the attached order tomorrow (8/27).

Thank you,
Kaylee

From: Michael K. Wall
Sent: Wednesday, August 19, 2020 8:31 AM
To: Michael Edwards <medwards@messner.com>
Subject: RE: St. Paul Fire & Marine v. Aspen Ins., et. al Supreme Ct. Appeal No. 81344

Mr. Edwards,

Please find attached (in several formats so you will be sure to be able to open it) a proposed order on the renewed motion for summary judgment. If you approve, please sign and return an original, or let me know whether I can attach you e-signature. If you would like to propose changes, I look forward to your input.

From: Michael Edwards [mailto:medwards@messner.com]
Sent: Tuesday, August 18, 2020 8:38 AM
To: lwl1@sbcglobal.net; Nicholas Salerno <nsalerno@heroldsagerlaw.com>; Kaylee Conradi <kconradi@hutchlegal.com>
Cc: Michael K. Wall <MWall@hutchlegal.com>; Jennifer Keller <jkeller@kelleranderle.com>; Laurie Moreno <LMoreno@messner.com>; Ryan A. Loosvelt <RLoosvelt@messner.com>; Desja Wilder <DWilder@messner.com>; Andy Herold <aherold@heroldsagerlaw.com>; Jeremy Stamelman <jstamelman@kelleranderle.com>; Smith, Abraham <asmith@lrrc.com>; Daniel F. Polsenberg <dpolsenberg@lrrc.com>; Michael Edwards <medwards@messner.com>
Subject: RE: St. Paul Fire & Marine v. Aspen Ins., et. al Supreme Ct. Appeal No. 81344

Aspen is agreeable to October 1, starting at 9:00 a.m.

Michael M. Edwards
Partner

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

St. Paul Fire & Marine Insurance Company, Plaintiff(s) vs. Aspen Specialty Insurance Company, Defendant(s)	CASE NO: A-17-758902-C DEPT. NO. Department 26

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/9/2020

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