

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

KARMEL DAVIS AND ASSOCIATES,  
ATTORNEYS-AT-LAW, LLC, individually  
and on behalf of all others similarly situated,

*Plaintiff,*

v.

HARTFORD CASUALTY INSURANCE  
COMPANY,

*Defendant.*

Case No.: 1:20-cv-02181-WMR

**DEFENDANT HARTFORD CASUALTY  
INSURANCE COMPANY'S MOTION TO DISMISS  
PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Hartford Casualty Insurance Company ("HCIC") moves to dismiss all claims against it for failure to state a claim upon which relief can be granted. In support of this Motion, HCIC submits the accompanying brief and exhibits. HCIC respectfully requests an oral argument on this Motion.

Dated: October 16, 2020

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**CERTIFICATE OF COMPLIANCE**

In accordance with LR 7.1(D), NDGa, I certify that the foregoing document is prepared in 14-point Times New Roman font. *See* LR 5.1(C), NDGa.

*/s/ Christopher C. Frost*

Christopher C. Frost

**CERTIFICATE OF SERVICE**

This document is being filed with the Court electronically via the ECF system. The requirements of service and proof of service of this document are satisfied by the automatic notice of filing sent by the CM/ECF software in accordance with the Local Rules of this Court on this 16th day of October 2020.

*/s/ Christopher C. Frost*

Christopher C. Frost

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**DEFENDANT HARTFORD CASUALTY INSURANCE  
COMPANY’S BRIEF IN SUPPORT OF MOTION TO DISMISS**

Defendant Hartford Casualty Insurance Company (“HCIC”) submits this brief in support of its Motion to Dismiss the First Amended Class Action Complaint (“FAC”) of Plaintiff Karmel Davis and Associates, Attorneys-At-Law, LLC (“Plaintiff” or “Karmel Davis”).

**INTRODUCTION**

Karmel Davis, a bankruptcy law firm in Douglasville, Georgia, seeks coverage under its property insurance policy for purported losses it allegedly incurred when it “significantly curtail[ed] its legal practice” to slow the spread of COVID-19. Doc. 50, FAC ¶ 2. Plaintiff seeks its insurer, HCIC, to cover this loss.

HCIC does not dispute that measures to slow the spread of COVID-19 have resulted in broad disruption to the economy. But even the unprecedented fallout from a global pandemic does not provide a basis to override the plain terms of an insurance policy. Here, Plaintiff's property policy does not cover the alleged loss for at least three reasons.

First, to qualify for business-income or extra-expense coverage, the policy requires Plaintiff to show that direct physical loss of or physical damage to its law office caused it to suspend its operations. The FAC alleges nothing of the sort. Plaintiff does not allege that anything physical happened to its law office at all. Plaintiff has not alleged that the virus was actually present at its law office—much less that it caused any tangible change to the property, as Georgia law requires.

Moreover, the policy requires proof that the cause of the law firm's suspended operations was direct physical loss or physical damage. According to the FAC, Plaintiff's law practice was not affected by any supposed property damage at its law office. Rather, Plaintiff limited its operations to comply with government orders designed to slow the spread of COVID-19 and/or because it feared that COVID-19 may be present at its law office.

Second, Plaintiff has not alleged facts showing that it is entitled to dependent-property coverage. Nor could it. Plaintiff claims that it lost business income due to

direct physical loss or physical damage to the United States Bankruptcy Court for the Northern District of Georgia. As with the business-income coverage provisions, Plaintiff must show that there was an actual physical change to the Bankruptcy Court; loss-of-access allegations will not do. The FAC does not assert any facts that show that there was an actual physical change to the Bankruptcy Court. Instead, it merely shows that the Bankruptcy Court modified its operations to limit face-to-face interactions in an effort to prevent the spread of COVID-19. This is not enough.

Third, Plaintiff has alleged no facts showing that access to its law office was “specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property,” *i.e.*, direct physical loss to property in the immediate area. Indeed, Plaintiff meets none of the requirements: (1) access to the law office was not specifically prohibited, (2) Plaintiff does not allege any damage to property in the immediate area, and (3) Plaintiff admits that the government order it cites was issued to address the potential spread of COVID-19, not property damage.

This is the not the first case in this District where an insured has sought coverage for COVID-19-related losses under a property insurance policy. Just last week, in *Henry’s Louisiana Grill, Inc. v. Allied Insurance Co. of America*, Chief Judge Thrash dismissed a complaint remarkably similar to Plaintiff’s FAC, finding that the government order that Plaintiff cites here did not cause “direct physical loss”

to property and that the plaintiff had failed to plead the necessary conditions to civil authority coverage. No. 1:20-CV-2939-TWT, 2020 WL 5938755, at \*6 (N.D. Ga. Oct. 6, 2020). The Court should find the same here and dismiss Plaintiff's FAC.

## **BACKGROUND**

### **I. THE POLICY**

Karmel Davis has a business insurance policy with HCIC (the "Policy"). FAC ¶ 14. The current version of the Policy covers the period from May 23, 2020, to May 23, 2021. *Id.* The previous version of the Policy (covering the year starting May 23, 2019) and the current version contain the same policy provisions at issue here. *Id.* A copy of the current version of the Policy was attached to Plaintiff's original Complaint as Exhibit A. *See* Doc. 1-1.

While the Policy covers lost business income and extra expenses under certain circumstances, it does not cover every loss of business income or incursion of extra expense. There are only three circumstances in which the Policy covers business-income loss or extra expense that are relevant to this dispute—all of which Plaintiff has failed to allege (as discussed below):

***Loss of Business Income and Incursion of Extra Expense Due to Direct Physical Loss or Physical Damage at Karmel Davis's Office:*** HCIC agreed to cover Plaintiff's lost business income due to a suspension of operations that is

“caused by direct physical loss of or physical damage to property at the ‘scheduled premises’” (which is defined as Plaintiff’s law office). *See* Ex. A, Policy at 35 (coverage for “Business Income” loss); *id.* at 50 (defining “Scheduled Premises”). HCIC also agreed to cover certain extra expenses incurred during the “period of restoration” of Karmal Davis’s office in the event of “direct physical loss or physical damage to” the law office. *See id.* at 35–36 (coverage for “Extra Expense”).

***Loss of Business Income From Dependent Properties:*** HCIC agreed to cover Plaintiff’s lost business income that is “due to physical loss or physical damage at the premises of a Dependent Property.” *Id.* at 111. The Policy defines a “Dependent Property” as a property owned, leased, or operated by others that Plaintiff depends on to (a) deliver materials to it or others for its account, (b) accept its products or services, (c) manufacture its products, or (d) attract customers to its business premises. *Id.* at 111–12.

***Loss of Business Income Based on Order of a Civil Authority:*** HCIC agreed to cover Plaintiff’s lost business income when access to its law office “is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of” the office. *Id.* at 36 (“Civil Authority” coverage). The Policy defines a “Covered Cause of Loss” as “risks of direct physical loss” unless excluded by the Policy terms. *Id.* at 27 (capitalization altered).

## **II. PLAINTIFF'S ALLEGATIONS REGARDING THE COVID-19 PANDEMIC, ORDERS OF CIVIL AUTHORITY, AND ITS CLAIM**

Plaintiff alleges that its purported loss was caused by COVID-19 and the government responses to it. FAC ¶ 2. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. *Id.* ¶ 29. A few days later, President Donald Trump declared a national emergency. *Id.*

Plaintiff alleges that, to curb the spread of COVID-19, state and local officials across the country issued orders restricting the operations of non-essential businesses and ordering individuals to stay at home. *Id.* ¶ 33. Plaintiff alleges that Georgia Governor Brian Kemp issued a statewide Executive Order declaring a public Health State of Emergency on March 14, 2020 and a statewide Shelter-in-Place Executive Order on April 2, 2020 (collectively, “Shelter Order”). *Id.* ¶ 35. The Shelter Order required both residents and visitors of Georgia to “shelter in place within their homes or places of residence . . . to prevent the spread or infection of COVID-19 to themselves and any other person.” *Id.* ¶ 36. While the Shelter Order restricted the movement of Georgians to prevent the spread of COVID-19, it did not prohibit them from accessing their businesses: Individuals were expressly permitted to access their businesses to perform “Minimum Basic Operations.” *Id.* ¶ 37; *see also* Ex. B, Executive Order at 2–4 (Apr. 2, 2020).

The United States Bankruptcy Court for the Northern District of Georgia also

implemented measures to slow the spread of COVID-19. FAC ¶ 38. Among other things, the Bankruptcy Court restricted access to courthouses, modified case schedules, and ordered that hearings be conducted telephonically. *Id.*<sup>1</sup> The Bankruptcy Court did not shut down entirely, though. It simply instituted procedures to limit face-to-face interaction.

Plaintiff claims that it had to “almost entirely cease business activities” due to COVID-19 and the Shelter Order. FAC ¶ 39. Based on this alleged suspension of its business operations (and the purported associated losses), Plaintiff submitted an insurance claim to HCIC under the Policy. *Id.* ¶ 51.

On May 7, 2020, HCIC denied the claim. *Id.* HCIC based the denial on, among other things, (1) a lack of any evidence of physical loss or damage at Karmel Davis’s office or a dependent property, and (2) a lack of any information to indicate that the Shelter Order prohibited access to Karmel Davis’s office as a direct result of direct physical loss to property in the immediate area. FAC ¶ 52; Doc. 1-2.

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<sup>1</sup> *See, e.g.*, Ex. F, Public Notice Regarding Court Operations During COVID-19 Outbreak at 1 (Mar. 12, 2020) (stating that hearings “will be held telephonically only unless arrangements have been made otherwise with chambers” (capitalization altered and emphasis omitted)); *see also, e.g.*, General Order No. 31-2000 (Bankr. N.D. Ga. Mar. 15, 2020) (resetting hearings); General Order No. 32-2000 (Bankr. N.D. Ga. Mar. 16, 2020 (extending deadlines); General Order No. 20-03 (N.D. Ga. Mar. 23, 2020) (restricting access to the Rome, Georgia, Courthouse).

### III. THIS LAWSUIT

On May 21, 2020, Plaintiff filed this lawsuit against HCIC and its parent, The Hartford Financial Services Group, Inc. Doc. 1. On September 18, 2020, Plaintiff filed its FAC against HCIC only. Doc. 50. Plaintiff seeks relief on behalf of itself and members of five putative nationwide classes. *Id.* ¶¶ 61–63. Specifically, Plaintiff seeks coverage for business income and extra expense it allegedly sustained due to COVID-19 and the Shelter Order. *Id.* ¶¶ 2–7, 60–63, 76–142. Plaintiff seeks this coverage under the Business Income, Extra Expense, Extended Business Income, Business Income from Dependent Properties, and Civil Authority coverage provisions of the Policy. *Id.*

#### STANDARD OF REVIEW

A complaint that “fail[s] to state a claim upon which relief can be granted” is subject to dismissal under Federal Rule of Civil Procedure 12(b)(6). To survive a motion to dismiss, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must contain “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the

elements of a cause of action will not do.” *Id.* (quoting *Twombly*, 550 U.S. at 555).

On this Motion to Dismiss, the Court may consider “documents incorporated into the [Complaint] by reference” and “matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). In addition, the Court may consider materials that are cited in the FAC and central to Plaintiff’s claims, provided the contents of those documents are not in dispute. *See Fin. Sec. Assur., Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1284 (11th Cir. 2007).

### **ARGUMENT**

Under Georgia law, “insurance is a matter of contract, and the parties to an insurance policy are bound by its plain and unambiguous terms.” *Hays v. Ga. Farm Bureau Mut. Ins. Co.*, 722 S.E.2d 923, 925 (Ga. Ct. App. 2012) (internal quotation marks omitted).<sup>2</sup> As a result, “[w]here the contractual language unambiguously governs the factual scenario before the court, the court’s job is simply to apply the terms of the contract as written, regardless of whether doing so benefits the carrier or the insured.” *Reed v. Auto-Owners Ins. Co.*, 667 S.E.2d 90, 92 (Ga. 2008). It should not adopt a “strained construction to make an insurance policy more

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<sup>2</sup> HCIC assumes for purposes of this Motion that Georgia law applies to Plaintiff’s claims, given that Karmel Davis is a Georgia company that seeks coverage for lost income associated with the purported suspension of operations at properties in Georgia. Plaintiff has not alleged which law governs its claims, including the claims asserted on behalf of the purported nationwide classes.

beneficial by extend[ing]” contracted for coverage. *Varsalona v. Auto-Owners Ins. Co.*, 637 S.E.2d 64, 66 (Ga. Ct. App. 2006).

Plaintiff asks this Court to find coverage where the Policy makes clear that none exists. The Policy covers losses only when the losses are the result of direct physical loss of or physical damage to an insured or dependent property, or when they are the result of a civil authority’s specific prohibition against accessing insured property and that prohibition is a result of “direct physical loss” to other property. There are no facts alleged in the FAC that show that COVID-19 or the Shelter Order caused a direct physical loss of or physical damage to any property, as those terms are understood under Georgia law. There also are no facts alleged in the FAC that show that the Shelter Order was issued due to direct physical loss to property. Instead, the FAC makes plain that the Shelter Order was issued to prevent the spread of COVID-19. Because no amount of discovery can change the realities underlying Plaintiff’s pleading failures, the Court should dismiss the FAC in its entirety.<sup>3</sup>

**I. PLAINTIFF IS NOT ENTITLED TO COVERAGE UNDER THE POLICY BECAUSE THERE WAS NO DIRECT PHYSICAL LOSS OF OR DAMAGE TO ITS LAW OFFICE.**

In Claims I through III, Plaintiff seeks to recover business income and extra

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<sup>3</sup> A decision based on the plain language of the Policy and the facts alleged in the FAC would eliminate the need for the Court to address the deficiencies in Plaintiff’s class allegations.

expense that it purportedly incurred under the Business Income, Extra Expense, and Extended Business Income coverage provisions of the Policy. FAC ¶¶ 76–110. Similarly, in part of Claim VI, Plaintiff seeks a declaration that its purported business-income losses and extra expense due to COVID-19 and the Shelter Order are covered losses under these Policy provisions. *Id.* ¶¶ 132–142.

To recover business income loss and extra expense under these provisions, Plaintiff must show that its losses were due to a suspension of operations at its law office that was caused by direct physical loss of or physical damage to property at the office. Ex. A at 35–36; *see* FAC ¶¶ 20–22. Plaintiff cannot meet these requirements for at least three reasons: (1) Plaintiff did not reduce its operations because of any physical loss of or damage to its property; (2) there is no allegation that the virus was actually present at the law office; and (3) even if the virus were actually present at the law office, it did not alter Plaintiff’s property.

**A. Plaintiff Did Not Curtail Its Operations Because of Direct Physical Loss or Physical Damage**

Plaintiff alleges that it suspended its operations at the Karmel Davis law office due to the Shelter Order and/or the “likely presence of COVID-19 on or within the property.” FAC ¶¶ 48, 54, 60, 83. But either cause is insufficient to trigger coverage.

For business income or extra expense coverage, the Policy requires that the suspension of operations be “*caused by* direct physical loss of or physical damage

to” Karmel Davis’s law office.<sup>4</sup> Ex. A at 35–36. If Karmel Davis suspended its operations due to the Shelter Order (as it alleges), that would be insufficient to establish coverage. The Shelter Order was aimed at limiting community spread of COVID-19, and it was not based on identifying premises that suffered a direct physical loss or physical damage. FAC ¶ 36 (stating that the Shelter Order was issued “to limit social interaction to prevent the spread or infection of COVID-19”). Otherwise, it would have distinguished between damaged and undamaged premises.

Similarly, if Karmel Davis suspended its operations because it feared that COVID-19 was present at the law offices, that also would be insufficient to establish coverage. Courts routinely reject claims for business-income coverage when an insured suspends operations based on its concerns about property rather than actual direct physical loss or damage. *See, e.g., AFLAC, Inc. v. Chubb & Sons, Inc.*, 581 S.E.2d 317, 319 (Ga. Ct. App. 2003) (no physical loss or damage to property when policyholder incurred costs to convert its computer systems out of concerns that Y2K issues might cause systems to fail); *United Air Lines, Inc. v. Ins. Co. of the State of Pa.*, 439 F.3d 128, 134–35 (2d Cir. 2006) (closure of airport after 9/11 because of

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<sup>4</sup> Extended business income coverage under the Policy is triggered if “the necessary suspension of [Plaintiff’s] ‘operations’ produces a Business Income loss” that is “caused by direct physical loss or physical damage” at Karmel Davis’s office. Ex. A at 36. Where, as here, there is no business-income coverage, there can consequently be no extended business-income coverage.

“fears of future attacks” did not occur due to physical loss or damage to property).<sup>5</sup>

Where, as here, the cause of a business income loss is not direct physical loss or damage, no coverage exists. In *Northeast Georgia Heart Center, P.C. v. Phoenix Insurance Co.*, for example, a policyholder attempted to recover for lost business income when its medical equipment (a “CardioGen-82 generator”) was recalled by the product manufacturer (Bracco) to investigate a potential issue. No. 2:12-cv-00245-WCO, 2014 WL 12480022, at \*2 (N.D. Ga. May 23, 2014). This Court concluded the “lost business income did not result from a direct physical loss of covered property.” *Id.* at \*5. The Court reasoned that “the property did not break down or become damaged. Instead, Bracco told plaintiff to stop using the generator as a precaution after Bracco received a report that another practice’s CardioGen-82 generator may have overly irradiated two patients.” *Id.* Though the equipment was away from the insured for a period of time, the Court concluded the loss fell “within the very narrow area where coverage is absent: when the insured loses the use of its property and the property is not defective, damaged, lost, or stolen.” *Id.* at \*7.

So too here. Nothing has happened to Plaintiff’s property, and the cause of its loss is a “precaution” taken to reduce the spread of COVID-19. *Id.* at \*5.

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<sup>5</sup> See also, e.g., *Phoenix Ins. Co. v. Infogroup, Inc.*, 147 F. Supp. 3d 815, 824 (S.D. Iowa 2015) (abandonment of property because of fear of flooding that had not occurred is not direct physical loss or damage to property).

**B. Plaintiff Experienced No Physical Loss or Damage at Its Law Office.**

Plaintiff does not allege the virus was actually present at the Karmel Davis office.<sup>6</sup> The absence of any allegation that the virus was present at the law office, much less caused any actual physical change to the law office, is dispositive.

Georgia law is clear: “direct physical loss or damage” only occurs when there is “an actual change in insured property then in a satisfactory state, occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so.” *AFLAC*, 581 S.E.2d at 319. A mere loss of use of the property without some actual change to the property itself is insufficient to demonstrate “direct physical loss” or damage. *See Ne. Ga. Heart Ctr.*, 2014 WL 12480022, at \*6 (“The court will not expand ‘direct physical loss’ to include loss-of-use damages when the property has not been physically impacted in some way.”).

Plaintiff has not alleged any physical change or alteration to its law office. Nor could it. It has alleged only that it has taken preventative measures to stop the spread of COVID-19. This is simply not enough. *See, e.g., Mama Jo’s Inc. v. Sparta Ins. Co.*, No. 18-12887, 2020 WL 4782369, at \*8 (11th Cir. Aug. 18, 2020) (finding

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<sup>6</sup> While Plaintiff alleges that the virus was “likely” present, it does not allege that it was actually present. FAC ¶ 47.

insured had not established “direct physical loss” in absence of facts demonstrating that covered property experienced actual change and citing *AFLAC* with approval).

Indeed, just last week, Chief Judge Thrash found that the Shelter Order “did not create a ‘direct physical loss of’ the [p]laintiffs’ [property].” *Henry’s*, 2020 WL 5938755, at \*6. At least sixteen other courts have decided that neither government orders nor COVID-19 cause direct physical loss or damage under property insurance policies:

- *Social Life Magazine, Inc. v. Twin City Ins. Co.*, No. 1:20-cv-03311-VEC (S.D.N.Y. May 14, 2020) (“there is no damage to . . . property”; the coronavirus “damages lungs. It doesn’t damage printing presses.”) (Ex. C at 4–5, Transcript of Hearing on Mot. for Prelim. Inj.);
- *Gavrilides Mgmt. Co. v. Mich. Ins. Co.*, Case No. 20 258-CB-C30, 2020 WL 4561979 (Mich. Cir. Ct., Ingham Cty., July 1, 2020) (“[L]oss of access or use of the premises due to executive orders and the Covid-19 virus” does “not constitute . . . direct physical damage or injury that’s required”) (Ex. D at 23, Transcript of Oral Argument on Mot. for Summ. Disposition);
- *Rose’s I, LLC v. Erie Ins. Exch.*, No. 2020 CA 002424 B, 2020 WL 4589206, at \*4 (D.C. Super. Ct. Aug. 6, 2020) (Mayor’s closure orders did not cause “direct physical loss” to property);
- *Diesel Barbershop, LLC v. State Farm Lloyds*, No. 5:20-cv-461-DAE, 2020 WL 4724305, at \*5 (W.D. Tex. Aug. 13, 2020) (COVID-19 pandemic and associated governmental orders did not amount to “direct physical loss” to a group of barbershops because there was no “tangible injury to property”);
- *10E, LLC v. Travelers Indem. Co. of Conn.*, No. 2:20-cv-044118-SVW-AS, 2020 WL 5359653, at \*5 (C.D. Cal. Sept. 2, 2020) (governmental restrictions on in-room dining because of COVID-19 did “not physically alter any of Plaintiff’s property” and, therefore, were insufficient to trigger coverage);

- *Turek Enters., Inc. v. State Farm Mut. Auto. Ins. Co.*, No. 20-11655, 2020 WL 5258484, at \*8 (E.D. Mich. Sept. 3, 2020) (“‘[A]ccidental direct physical loss to Covered Property’ is an unambiguous term that plainly requires Plaintiffs to demonstrate some tangible damage to Covered Property.”);
- *Malaube, LLC v. Greenwich Ins. Co.*, No. 20-22615, 2020 WL 5051581, at \*8 (S.D. Fla. Aug. 26, 2020) (Plaintiffs “cannot state a claim because the loss must arise [due] to actual damage. And it is not plausible how two government orders meet that threshold when the restaurant merely suffered economic losses – not anything tangible, actual, or physical”);
- *Plan Check Downtown III, LLC v. AmGuard Ins. Co.*, No. 2:20-cv-06954-GW-SK, 2020 WL 5742712, at \*4, \*6 (C.D. Cal. Sept. 10, 2020) (“[I]t would be a sweeping expansion of insurance coverage without manageable bounds” to interpret “direct physical loss” to include “changes in what activities can physically occur in the space that cause loss to the insured” with no physical manifestation);
- *Pappy’s Barber Shops, Inc. v. Farmers Grp., Inc.*, No. 20-CV-907, 2020 WL 5500221, at \*4 (S.D. Cal. Sept. 11, 2020) (“[L]osses from inability to use property do not amount to ‘direct physical loss of or damage to property’ within the ordinary and popular meaning of that phrase.”);
- *Mudpie, Inc. v. Travelers Cas. Ins. Co.*, No. 20-cv-03213, 2020 WL 5525171 at \*5 (N.D. Cal. Sept. 14, 2020) (“Because Mudpie’s complaint contains no allegations of a physical force which ‘induced a detrimental change in the property’s capabilities,’ the Court finds that Mudpie has failed to establish a ‘direct physical loss of property.’”);
- *Sandy Point Dental, PC v. Cincinnati Ins. Co.*, No. 20 CV 2160, 2020 WL 5630465, at \*3 (N.D. Ill. Sept. 21, 2020) (“[C]oronavirus does not physically alter the appearance, shape, color, structure, or other material dimension of the property.”);
- *Infinity Exhibits, Inc. v. Certain Underwriters at Lloyd’s London Known as Syndicate PEM 4000*, No. 8:20-CV-1605-T-30AEP, 2020 WL 5791583, at \*3 (M.D. Fla. Sept. 28, 2020) (“Florida law and the plain language of the Policies reflect that actual, concrete damage is necessary.”);

- *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, No. 4:20-cv-00222-CRW-SBJ, 2020 WL 5820552, at \*1 (S.D. Iowa Sept. 29, 2020) (“Recent cases cited by Cincinnati have held that virus-related closures of business do not amount to direct loss to property covered by the Cincinnati policy of insurance.”);
- *It’s Nice, Inc. v. State Farm Fire and Casualty Co.*, No. 20-L-547 (Ill. Cir. Ct. Sept. 29, 2020) (finding no physical alteration or structural degradation of the property) (Ex. E at 31, Transcript of Hearing);
- *Mark’s Engine Co. No. 28 Rest., LLC v. The Travelers Indem. Co.*, 2:20-cv-04423-AB-SK, 2020 WL 5938689, at \*5 (C.D. Cal. October 2, 2020) (“Plaintiff suffered no complete ‘direct physical loss of’ its property as it always had complete access to the premises even after the order was issued.”); and
- *Vandelay Hospitality Grp. v. Cincinnati Ins. Co.*, No. 3:20-CV-1348-D, 2020 WL 5946863, at \*1 (N.D. Tex. Oct. 7, 2020) (finding complaint failed to allege direct physical loss).<sup>7</sup>

Plaintiff is identically situated to the insureds in those cases—Plaintiff has failed to allege any direct physical loss to its premises. In the absence of direct physical loss or damage to property, Plaintiff cannot demonstrate coverage under the Policy. For this reason, all of Plaintiff’s claims should be dismissed.

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<sup>7</sup> One district in Missouri has acted against the weight of authority and declined to dismiss a few similar cases, but the plaintiffs in those cases alleged that COVID-19 was present on their property and caused the physical damage. *See Henry’s*, 2020 WL 5938755 at \*4 n.1 (discussing cases and citing *Studio 417, Inc. v. Cincinnati Ins. Co.*, No. 20-cv-03127, 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020)). As in *Henry’s*, the Plaintiff here has not alleged that the virus was present on its property. And even if it did, Georgia law requires a physical change or alternation to the property—something not present with COVID-19.

**C. Even if the Virus Were Present at the Law Office, Plaintiff Still Could Not Demonstrate Direct Physical Loss**

The presence of the virus alone would be insufficient to demonstrate direct physical loss under the Policy. The virus does not alter or change the property in a material way, and it can be readily cleaned away.

The existence of a potentially dangerous substance at a property that does not physically alter or change the property does not establish physical loss or damage to a property. *See, e.g., Universal Image Prods., Inc. v. Fed. Ins. Co.*, 475 F. App'x 569, 573–75 (6th Cir. 2012) (mold and bacteria in a building did not physically damage building because it did not cause “actual change” to property); *Port Auth. of N.Y. & N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235–36 (3d Cir. 2002) (building not physically damaged despite presence of asbestos because it did not amount to “‘distinct, demonstrable, and physical alteration’ of [the] structure”); *Columbiaknit, Inc. v. Affiliated FM Ins. Co.*, No. Civ. 98-434, 1999 WL 619100, at \*7 (D. Or. Aug. 4, 1999) (“The mere adherence of molecules to porous surfaces, without more, does not equate physical loss or damage.”).

This is especially true when the substance is only temporarily at the property and can be remediated by cleaning. *See, e.g., Mama Jo’s*, 2020 WL 4782369, at \*8 (no direct physical loss when dust and debris from roadwork could be remediated by cleaning); *Mastellone v. Lightning Rod Mut. Ins. Co.*, 884 N.E.2d 1130, 1144 (Ohio

Ct. App. 2008) (mold removable by cleaning was not physical damage, as it did not alter or otherwise affect structural integrity building). Here, Plaintiff readily admits the virus only remains viable on surfaces for a limited time, *see* FAC ¶ 32, and the virus undisputedly can be readily cleaned away with household cleaners. Thus, even if COVID-19 were located at Karmel Davis’s office, the office would not have suffered direct physical loss or physical damage.<sup>8</sup>

Simply put, Karmel Davis has not and cannot demonstrate direct physical loss or damage and, therefore, the Policy does not cover the alleged losses.

## **II. PLAINTIFF IS NOT ENTITLED TO COVERAGE UNDER THE POLICY BECAUSE THERE WAS NO DIRECT PHYSICAL LOSS OF OR DAMAGE TO A DEPENDENT PROPERTY**

In Claim IV and part of Claim VI, Plaintiff argues that the “Business Income from Dependent Properties” provisions allow it to recover business income that it purportedly lost due to changes in operations at the United States Bankruptcy Court for the Northern District of Georgia. FAC ¶¶ 111–21, 132–37, 141. Setting aside that Karmel Davis has not demonstrated that the Bankruptcy Court is a Dependent

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<sup>8</sup> In addition, any coverage due to direct “direct physical loss of or physical damage to” Plaintiff’s property lasts only for the “Period of Restoration,” Ex. A at 35–36, which ends when the property is “repaired, rebuilt or replaced with reasonable speed and with similar quality” or when “business is resumed at a new, permanent location,” *id.* at 49. This confirms that “direct physical loss of or physical damage to” means something more than the temporary presence of a virus.

Property under the terms of the Policy, Plaintiff has failed to allege facts that show that any of the business income that it allegedly lost is recoverable under the Dependent Property Policy provisions.

Like the other business-income coverage provisions, the Dependent Properties provisions also require a threshold showing that the business income that it seeks to recover was “due to physical loss or physical damage” at the Bankruptcy Court. Ex. A at 111; *see* FAC ¶ 25. This, again, requires Plaintiff to show that there was an actual, physical change to the Bankruptcy Court. *See Ne. Ga. Heart Ctr.*, 2014 WL 12480022, at \*6.

Plaintiff has failed to allege any facts that demonstrate that there was an actual, physical change at—much less damage to—the Bankruptcy Court due to COVID-19 or the Shelter Order. Instead, the FAC only alleges that the Bankruptcy Court “has issued numerous orders altering its court operations because of the state of emergency surrounding COVID-19 and the Shelter Order.” FAC ¶ 38. For all the reasons explained above, alterations of court operations to limit face-to-face interaction are not *actual physical changes* to the Bankruptcy Court’s property.

Plaintiff also has made no showing that the Bankruptcy Court is a Dependent Property under the Policy. There are no facts in the FAC that show that Plaintiff uses the Bankruptcy Court to attract customers to its business or that the Bankruptcy

Court meets any of the other parameters of a Dependent Property. Ex. A at 111–12 (defining Dependent Property). Moreover, at least one court has decided that a courthouse is not a dependent property to a law firm. *See, e.g., Goldstein v. Trumbull Ins. Co.*, No. 652633/2013, 2016 WL 1324197, at \*12 (N.Y. Sup. Ct. Apr. 05, 2016) (concluding that plaintiff had not established that courthouse buildings fell within law firm’s insurance policy’s definition of dependent property). As a result, Plaintiff has failed to state a claim for coverage under the Business Income for Dependent Properties coverage provision.

### **III. PLAINTIFF CANNOT DEMONSTRATE IT IS ENTITLED TO CIVIL AUTHORITY COVERAGE**

The Court also should dismiss Claim V and the rest of Claim VI, both of which seek coverage under the Civil Authority provisions of the Policy. FAC ¶¶ 122–131, 142. The Policy’s Civil Authority coverage provisions grant coverage for an “actual loss of Business Income” sustained by Plaintiff during a 30-day period “when access to [its law office] is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of [its law office].” *See* Ex. A at 36. The Policy defines “Covered Causes of Loss” as “risks of direct physical loss.” *Id.* at 27 (capitalization altered). Thus, Plaintiff must show that (a) access to its law office was “specifically prohibited,” (b) property in the

immediate area suffered direct physical loss, and (c) the Shelter Order was issued as a “direct result” of that direct physical loss. Plaintiff has done none.

First, as discussed above, Plaintiff has not alleged any direct physical loss to property. Indeed, the FAC lacks any allegations about property in the immediate area. That alone is fatal to any claim for Civil Authority coverage.

Second, Plaintiff has failed to show that “access” to its law office was “specifically prohibited by order of a civil authority.” *See* Ex. A at 36. Plaintiff claims that the Civil Authority coverage provisions were triggered by the Shelter Order. FAC ¶ 48. While Plaintiff makes the conclusory assertion that the Shelter Order “specifically prohibited” access to its property, it does not cite or quote any provision of the Shelter Order that supports that assertion. The reason is that the Shelter Order—which was cited and quoted in the FAC and can be considered for purpose of this Motion to Dismiss—does not contain such a provision.<sup>9</sup> *See* Ex. B. In fact, the Shelter Order specifically states that an individual can perform “Minimum Basic Operations” at a business, which include the “minimum necessary activities to maintain the value of a business.” *Id.*; *see also* FAC ¶ 37. Because

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<sup>9</sup> *See Fin. Sec. Assur.*, 500 F.3d at 1284; *see also Henderson v. Sun Pharm. Indus., Ltd.*, 809 F. Supp. 2d 1373, 1379 n.4 (N.D. Ga. 2011) (“The Court is permitted to take judicial notice of documents made publicly available by a government entity.”).

Plaintiff's employees were permitted to access their office to perform "Minimum Basic Operations" pursuant to the terms of the Shelter Order, access to Karmel Davis's property was not "specifically prohibited" by the Shelter Order. Thus, no coverage exists. *See, e.g., Henry's* 2020 WL 5938755, at \*5 (stating that the Shelter Order has "no substantive provisions limiting access to private businesses or their operations"); *Sandy Point*, 2020 WL 5630465, at \*3 (finding that government COVID-19 order did not prohibit access); *Pappy's*, 2020 WL 5500221, at \*1, \*6 (same); *Paradies Shops, Inc. v. Twin City Fire Ins. Co.*, No. 1:03-cv-3154, 2004 WL 5704715, at \*5 (N.D. Ga. Dec. 15, 2004) (no civil authority coverage for airport shop owner because access to airport stores was not "specifically prohibited" by FAA order grounding flights post-9/11 terrorist attacks).

Finally, Plaintiff tacitly admits the Shelter Order was not issued as a "direct result" of a risk of direct physical loss. Rather, Plaintiff states that the Shelter Order was issued "to slow down the spread of the virus." FAC ¶ 33; *see id.* ¶¶ 35–36. In other words, Plaintiff alleges the Shelter Order was issued to prevent or limit the *future* spread of the coronavirus, not as a "direct result" of direct physical loss.

Courts routinely reject civil-authority claims where, as here, orders of civil authority are aimed at fear of future harm, not existing property loss or damage. This Court concluded in *Paradies* "that an order . . . that is designed to prevent, protect

against, or avoid future damage is not a ‘direct result’ of already existing property loss or damage.” 2004 WL 5704715, at \*7. In *United Air Lines v. Ins. Co. of the State of Pa.*, the court likewise held that any prohibition of access to premises at Ronald Reagan National Airport after the September 11 attacks was not covered by civil-authority insurance because the government’s “decision to halt operations at the Airport indefinitely was based on fears of future attacks,” not because of property damage at the nearby Pentagon. 439 F.3d at 134.

Thus, even if the Shelter Order prohibited access to Plaintiff’s law office—which it did not—that is insufficient to trigger Civil Authority coverage. The order was preventative in nature to slow the future spread of the coronavirus; it was not issued because of direct physical loss in the immediate area of Plaintiff’s property, as required by the Policy. Claim V and the remainder of Claim VI, therefore, fail to state a claim upon which relief can be granted and must be dismissed with prejudice.

#### **IV. THE ABSENCE OF A VIRUS EXCLUSION IN THE POLICY DOES NOT MEAN VIRUS-RELATED LOSSES ARE COVERED**

Plaintiff alleges that because the Policy lacks a virus exclusion, this means that losses from a virus were intended to be covered. *Id.* ¶¶ 5, 58–59. Not true.

A policyholder bears the initial burden of demonstrating an alleged loss falls within the policy. *Travelers Home & Marine Ins. Co. v. Castellanos*, 773 S.E.2d 184, 186 (Ga. 2015). The presence or absence of an exclusion addressing a specific

condition, such as a virus, does not shed any light on whether there has been direct physical loss or physical damage in the first instance. The coverage determination must instead be made based on the plain language of the Policy's coverage terms. *See, e.g., Doe Run Res. Corp. v. Lexington Ins. Co.*, 719 F.3d 868, 876 (8th Cir. 2013) (applying Missouri law) (“[T]he absence of an exclusion, standing alone, does not imply coverage; coverage must be provided in the remaining policy terms.”). Indeed, the D.C. Superior Court confirmed that “even in the absence of such an exclusion [for pandemic-related losses], Plaintiffs would still be required to show ‘direct physical loss’” which “they cannot do.” *Rose’s I*, 2020 WL 4589206, at \*5.

That is the only logical result. If Plaintiff's inferential argument were correct, then anything that resulted in the suspension of operations would be covered regardless of whether it caused physical loss or physical damage (*e.g.*, if the lawyers were unable to meet with clients because their return flights from vacation were delayed for weeks). That is not how the Policy works, and Plaintiff has failed to meet its burden of showing that any of its claimed losses are covered by the Policy.

### **CONCLUSION**

For these and other reasons appearing on the record, HCIC respectfully requests that the Court dismiss with prejudice all claims in the FAC.

Dated: October 16, 2020

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**CERTIFICATE OF COMPLIANCE**

In accordance with LR 7.1(D), NDGa, I certify that the foregoing document is prepared in 14-point Times New Roman font. *See* LR 5.1(C), NDGa.

*/s/ Christopher C. Frost*

Christopher C. Frost

**CERTIFICATE OF SERVICE**

This document is being filed with the Court electronically via the ECF system. The requirements of service and proof of service of this document are satisfied by the automatic notice of filing sent by the CM/ECF software in accordance with the Local Rules of this Court on this 16th day of October 2020.

*/s/ Christopher C. Frost*

Christopher C. Frost

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

KARMEL DAVIS AND ASSOCIATES,  
ATTORNEYS-AT-LAW, LLC, individually  
and on behalf of all others similarly situated,

*Plaintiff,*

v.

HARTFORD CASUALTY INSURANCE  
COMPANY,

*Defendant.*

Case No.: 1:20-cv-02181-WMR

**INDEX OF EXHIBITS TO DEFENDANT HARTFORD CASUALTY  
INSURANCE COMPANY'S MOTION TO DISMISS  
PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT**

<u>Exhibit</u>	<u>Description</u>
A.	Insurance Policy No. 45 SBA UT1411 DV issued by Hartford Casualty Insurance Company to The Law Office of Karmel S. Davis for the Policy Period from May 23, 2019, to May 23, 2020
B.	Executive Order 04.02.20.01 (Apr. 2, 2020)
C.	Transcript, <i>Social Life Magazine, Inc. v. Sentinel Insurance Co. Ltd.</i> , No. 20-cv-3311 (S.D.N.Y. May 14, 2020), ECF No. 24-1
D.	Transcript, <i>Gavrilides Management Co. v. Michigan Insurance Co.</i> , Case No. 20-258-CB (Mich. Cir. Ct., Ingham County, July 1, 2020)

- E. Transcript and Order, *It's Nice, Inc. v. State Farm Fire & Casualty Co.*, No. 20 L 547 (Ill. Cir. Ct., Du Page County, Sept. 29, 2020)
- F. Public Notice Regarding Court Operations During COVID-19 Outbreak (Mar. 12, 2020), <https://www.ganb.uscourts.gov/news/public-notice-regarding-court-operations-during-covid-19-outbreak>

Dated: October 16, 2020

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*Attorneys for Defendant Hartford Casualty Insurance Company*

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/s/ Christopher C. Frost  
Christopher C. Frost

**CERTIFICATE OF SERVICE**

This document is being filed with the Court electronically via the ECF system. The requirements of service and proof of service of this document are satisfied by the automatic notice of filing sent by the CM/ECF software in accordance with the Local Rules of this Court on this 16th day of October, 2020.

/s/ Christopher C. Frost  
Christopher C. Frost

# **Exhibit A**

**Insurance Policy No. 45 SBA UT1411 DV**

Prepare. Protect. Prevail.



Business Insurance  
Employee Benefits  
Auto  
Home

May 28, 2020

Re: Insured: THE LAW OFFICE OF KARMEL S. DAVIS  
Policy Number: 45 SBA UT1411  
Policy Term: 5/23/2019 – 5/23/2020  
Writing Company: Hartford Casualty Insurance Company

This will verify that, to the best of the undersigned's knowledge, the attached is a complete and accurate representation of insurance policy referenced above. Documents and/or information produced herewith are kept and maintained in the ordinary course of business.

Peyton Dziura  
Operations Support Specialist  
Clinton Business Center  
Hartford Office Location

301 Woods Park Dr.  
Clinton, NY 13323  
Toll Free: 888-525-2652  
Fax: 866-809-1178



## THANK YOU FOR RENEWING YOUR POLICY WITH US

If you're receiving this renewal through the mail directly from The Hartford, please note that we've only attached new, changed or updated documents. These include your new declarations page, which outlines your coverage, as well as any notices and brochures with updated information. We leave out unchanged documents to help cut down on paperwork and mailing costs. You can keep the attached documents filed alongside those from your previous policy if you wish.

If you're receiving this renewal electronically, or it's been mailed by your agent, it may include all of your documents - even ones that haven't changed.

In either case, keep in mind that you can view, download or print any of these documents online. Just register or log into your account <https://business.thehartford.com> and click on "Documents". For added convenience, you can also pay your bill, request a Certificate of Insurance, check claims status, update preferences and more.

THE LAW OFFICE OF

PO BOX 5736  
DOUGLASVILLE

GA 30154



Policy Number: 45 SBA UT1411  
Renewal Date: 05/23/19

Thank you for being a loyal customer of The Hartford.

### # 1: Your Hartford Policy

Enclosed are renewal documents for your policy, which is scheduled to renew on 05/23/19. Along with a new Declarations Page, which details the coverages provided by your policy, we are enclosing important policy documents. Please be aware that you will receive an invoice separately for this new policy term approximately 30 days prior to the renewal date; no action is required now.

To ensure the premium you paid for this past policy term was accurate, we may contact you by letter, phone or email to conduct a premium audit. If contacted, we will advise what information is needed to complete the audit.

### # 2: Your Business Insurance Coverage Checkup

Now is a great time to complete a business insurance coverage checkup with a Hartford Insurance Professional. Because you wear so many hats each day, you may not be thinking about how changes to your business can impact the type and amount of insurance coverage needed to protect it.

Together we will evaluate how your needs may have changed over the past year. Examples include:

- Has your mailing address and/or the physical location of your business changed?
- Has there been any increase/decrease in the amount of business property/equipment you own?
- Has there been any increase/decrease in your company's payroll or sales?
- Have you added or eliminated any vehicles used in your business operations?
- Are the bill plan and deductible on your policy right for your business?

**During the review we may make coverage recommendations, provide peace of mind solutions, and possibly reduce your costs. Here is all you need to do:**

- **Call toll free (866) 467-8730, and select our renewal review service option any weekday from 7 A.M. to 7 P.M. CST and request your business insurance check-up.**
- **To best serve you, please have your Policy Number or Account Number and a Copy of your current Renewal Policy in hand when you call.**

### # 3: Servicing Your Needs

To login or register for our Online Business Service Center, go to [www.thehartford.com/servicecenter](http://www.thehartford.com/servicecenter) where any time, day or night you can:

- Pay your bill, view payment history and enroll in Auto Pay
- Request Auto ID Cards and Certificates of Insurance
- View electronic copies of billing and policy documents and sign up for paperless delivery

### # 4: If You've Had A Loss or Accident... Report It Immediately

We want to help! Contact us as quickly as possible at 1-800-327-3636.

- Representatives are available 24-7 to assist in helping you recover from your loss.

On behalf of BRUNSWICK COMPANIES/PHS and The Hartford, we appreciate the opportunity to have been of service to you this past year and look forward to serving your business insurance needs for the upcoming year.

Sincerely,  
Your Hartford Team



## IMPORTANT NOTICE TO POLICYHOLDERS

### THE HARTFORD CYBER CENTER WEBSITE ACCESS

Thank you for choosing The Hartford for your business insurance needs.

You are receiving this Notice because you purchased a business owner's policy from The Hartford, (your Policy was issued by The Hartford writing company identified on your policy Declarations page) which includes access to The Hartford Cyber Center. This portal was created because we recognize that businesses face a variety of cyber-related exposures and need help managing the related risks. These exposures include data breaches, computer virus attacks and cyber extortion threats.

Through The Hartford Cyber Center, you have access to:

- o A panel of third party incident response service providers
- o Third party cybersecurity pre-incident service providers and a list of approved services to help protect your business before a cyber-threat occurs
- o Risk management tools, including self-assessments, best practice guides, templates, sample incident response plans, and data breach cost calculators
- o White papers, blogs and webinars from leading privacy and security practitioners
- o Up-to-date cyber-related news and events, including examples of privacy and security related events

Accessing The Hartford Cyber Center is easy

1. Visit [www.thehartford.com/cybercenter](http://www.thehartford.com/cybercenter)
2. Enter policyholder information
3. Access code: 952689
4. Login to The Hartford Cyber Center

This Notice does not amend or otherwise affect the provisions of your business owner's policy.

#### **Coverage Options:**

The Hartford offers a variety of endorsements to your business owner's policy that can help protect your business from a broad range of cyber-related threats. Please review your coverage with your insurance agent or broker to determine the most appropriate cyber coverages and limits for your business.

#### **Claims Reporting:**

If you have a claim, you can report it by calling The Hartford's toll-free claims line at **1-800-327-3636**.

Should you have any questions, please contact your insurance agent, broker or you may contact us directly.

We appreciate your business and look forward to being of continued service to you.

Please be aware that:

- o The Hartford Cyber Center is a proprietary web portal exclusively provided to customers of The Hartford. Please do not share the access code with anyone outside your organization.
- o Registration is required to access the Cyber Center. You may register as many users as necessary.
- o Contacting a service provider about any issue does not constitute providing The Hartford notice of a claim as required under your insurance policy. Read your insurance policy and discuss any questions with your agent or broker.

The Hartford Cyber Center provides third party service provider references and materials for educational purposes only. The Hartford does not specifically endorse any such service provider within The Hartford Cyber Center and hereby disclaims all liability with respect to use of or reliance on such service providers. All service providers are independent contractors and not agents of The Hartford. The Hartford does not warrant the performance of the service providers, even if such services are covered under your Business Owners Policy. We strongly encourage you to conduct your own assessments of the service providers' services and the fitness or adequacy of such services for your particular needs.

## Insurance Policy Billing Information

**Thank you for selecting The Hartford for your business insurance needs.**

**Shortly, you will receive your first bill from us. You are receiving this Notice so you know what to expect as a valued customer of The Hartford. Should you have any questions after reviewing this information, please contact us at 866-467-8730, and we will be happy to assist you.**

- o Your total policy premium will appear on your policy's Declarations Page. You will be billed based on the payment plan you selected.
- o You may pay the "minimum due" as it appears on your insurance bill or pay the policy balance in full.
- o An installment service fee is added to each installment. A late fee will also be applied if the "minimum due" is not **received** by the due date shown on your bill. Service and late payment fees do not apply in all states.
- o If you selected installment billing, any credit or additional premium due as the result of a change made to your policy, will be spread over the remaining billing installments. Additional premium due as a result of an **audit** will be billed in full on your next bill date following the completion of the audit.
- o If you elected Electronic Funds Transfer (EFT), policy changes may result in changes to the amount automatically withdrawn from your bank account. The invoice you receive following a policy change will include future withdrawal amounts. If you need to adjust or stop your next scheduled EFT withdrawal, please contact us **at least 3 days prior** to the scheduled withdrawal date at the telephone number shown below.
- o If you selected installment billing and pay the premiums for your first policy term on time, at renewal, your account may qualify for our "Equal Installment" feature. This means that the percentage due for each installment, including the initial renewal installment, will be the same throughout the policy term – helping you better manage cash flow. Equal installments will continue as long as you pay your premiums on time and no cancellation notices are issued for any policy on your account. If you no longer qualify for Equal Installments, future renewals will be billed based on the payment plan you selected, which includes a higher initial installment amount.
- o If your policy is eligible for renewal, your bill for the upcoming policy term will be sent to you approximately 30 days prior to your policy's renewal date. If your insurance needs change, please contact us at least 60 days prior to your renewal date so we can properly address any adjustments needed.
- o **One bill convenience** -- you have the option of combining all eligible Hartford policies on one single bill allowing you to make one payment for all policies on your account as payments are due.

### **You're In Control**

In addition to selecting a bill plan option that best meets your budget, you have the flexibility to decide **how** your payments are made ...

- o **Repetitive EFT:** Sign up for Repetitive EFT payments and have payments automatically withdrawn from your bank account. This option saves you money by reducing the amount of the installment service fee.
- o **Pay Online:** Register at [www.thehartford.com/servicecenter](http://www.thehartford.com/servicecenter). Online Bill Pay is Quick, Easy and Secure!
- o **Pay by Check:** Send a check with your remittance stub in the envelope provided with your bill.
- o **Pay by Phone:** Call toll-free 1-866-467-8730.

**Should you have any questions about your bill, please call Customer Service toll-free number: 1-866-467-8730 - 7AM – 7PM CST. We look forward to being of service to you.**

# Spectrum<sup>®</sup>

## Business Owner's Policy





**PRODUCER COMPENSATION NOTICE**

You can review and obtain information on The Hartford's producer compensation practices at [www.TheHartford.com](http://www.TheHartford.com) or at 1-800-592-5717.

POLICY NUMBER: 45 SBA UT1411



**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT.**

## DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

### SCHEDULE

**Terrorism Premium:**  
\$ 9.00

**A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act, as amended (TRIA), we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for "certified acts of terrorism" under TRIA. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement.

**B. The following definition is added with respect to the provisions of this endorsement:**

1. A "certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of TRIA, to be an act of terrorism under TRIA. The criteria contained in TRIA for a "certified act of terrorism" include the following:
  - a. The act results in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to TRIA; and
  - b. The act results in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of an United States mission; and
  - c. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the

United States or to influence the policy or affect the conduct of the United States Government by coercion

**C. Disclosure Of Federal Share Of Terrorism Losses**

The United States Department of the Treasury will reimburse insurers for a portion of insured losses, as indicated in the table below, attributable to "certified acts of terrorism" under TRIA that exceeds the applicable insurer deductible:

Calendar Year	Federal Share of Terrorism Losses
2015	85%
2016	84%
2017	83%
2018	82%
2019	81%
2020 or later	80%

However, if aggregate industry insured losses under TRIA exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion. The United States government has not charged any premium for their participation in covering terrorism losses.

**D. Cap On Insurer Liability for Terrorism Losses**

If aggregate industry insured losses attributable to "certified acts of terrorism" under TRIA exceed \$100 billion in a calendar year and we have met, or will meet, our insurer deductible under TRIA, we shall not be liable for the payment of any portion of the amount of such losses that exceed \$100 billion. In such case, your coverage for terrorism losses may be reduced on a pro-rata basis in accordance with procedures established by the Treasury, based on its estimates of aggregate industry losses and our estimate that we will exceed our insurer deductible. In accordance with the Treasury's procedures, amounts paid for losses may be subject to further adjustments based on differences between actual losses and estimates.

**E. Application of Other Exclusions**

The terms and limitations of any terrorism exclusion, the inapplicability or omission of a terrorism exclusion, or the inclusion of terrorism coverage, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Form, Coverage Part or Policy.

**F. All other terms and conditions remain the same.**



## IMPORTANT NOTICE TO POLICYHOLDERS

To help your insurance keep pace with increasing costs, we have increased your amount of insurance . . . giving you better protection in case of either a partial, or total loss to your property.

If you feel the new amount is not the proper one, please contact your agent or broker.

11 This **Spectrum Policy** consists of the Declarations, Coverage Forms, Common Policy Conditions and any  
14 other Forms and Endorsements issued to be a part of the Policy. This insurance is provided by the stock  
UT insurance company of The Hartford Insurance Group shown below.

SBA

**INSURER:** HARTFORD CASUALTY INSURANCE COMPANY  
ONE HARTFORD PLAZA, HARTFORD, CT 06155  
COMPANY CODE: 3



**Policy Number:** 45 SBA UT1411 DV

**SPECTRUM POLICY DECLARATIONS**

**Named Insured and Mailing Address:** THE LAW OFFICE OF  
(No., Street, Town, State, Zip Code) KARMEL S. DAVIS  
PO BOX 5736  
DOUGLASVILLE GA 30154

**Policy Period:** From 05/23/19 To 05/23/20 1 YEAR  
12:01 a.m., Standard time at your mailing address shown above. **Exception:** 12 noon in New Hampshire.

**Name of Agent/Broker:** BRUNSWICK COMPANIES/PHS  
**Code:** 452250

**Previous Policy Number:** 45 SBA UT1411

**Named Insured is:** INDIVIDUAL

**Audit Period:** NON-AUDITABLE

**Type of Property Coverage:** SPECIAL

**Insurance Provided:** In return for the payment of the premium and subject to all of the terms of this policy, we agree with you to provide insurance as stated in this policy.

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**TOTAL ANNUAL PREMIUM IS:** \$460 MP

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Countersigned by *Susan L. Castaneda* 03/25/19  
Authorized Representative Date

**SPECTRUM POLICY DECLARATIONS (Continued)**

**POLICY NUMBER:** 45 SBA UT1411

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

**Location:** 001      **Building:** 001

3379 HWY 5 STE A-AA  
DOUGLASVILLE      GA 30135

**Description of Business:**

LAWYERS & LAW FIRMS

**Deductible:** \$ 500 PER OCCURRENCE

**BUILDING AND BUSINESS PERSONAL PROPERTY LIMITS OF INSURANCE**

**BUILDING**

NO COVERAGE

**BUSINESS PERSONAL PROPERTY**

**REPLACEMENT COST**      \$ 23,300

**PERSONAL PROPERTY OF OTHERS**

**REPLACEMENT COST**      NO COVERAGE

**MONEY AND SECURITIES**

INSIDE THE PREMISES      \$ 10,000  
OUTSIDE THE PREMISES      \$ 5,000

**SPECTRUM POLICY DECLARATIONS (Continued)**

**POLICY NUMBER:** 45 SBA UT1411

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

**Location:** 001      **Building:** 001

**PROPERTY OPTIONAL COVERAGES APPLICABLE    LIMITS OF INSURANCE  
TO THIS LOCATION**

SUPER STRETCH  
FORM: SS 04 74  
THIS FORM INCLUDES MANY ADDITIONAL  
COVERAGES AND EXTENSIONS OF  
COVERAGES. A SUMMARY OF THE  
COVERAGE LIMITS IS ATTACHED.

**SPECTRUM POLICY DECLARATIONS (Continued)**

**POLICY NUMBER:** 45 SBA UT1411

**PROPERTY OPTIONAL COVERAGES APPLICABLE TO ALL LOCATIONS LIMITS OF INSURANCE**

**BUSINESS INCOME AND EXTRA EXPENSE  
COVERAGES** 12 MONTHS ACTUAL LOSS SUSTAINED  
**COVERAGES INCLUDES THE FOLLOWING  
COVERAGES EXTENSIONS:**

**ACTION OF CIVIL AUTHORITY:** 30 DAYS  
**EXTENDED BUSINESS INCOME:** 30 CONSECUTIVE DAYS

**EQUIPMENT BREAKDOWN COVERAGE  
COVERAGES FOR DIRECT PHYSICAL LOSS  
DUE TO:  
MECHANICAL BREAKDOWN,  
ARTIFICIALLY GENERATED CURRENT  
AND STEAM EXPLOSION**

**THIS ADDITIONAL COVERAGE INCLUDES  
THE FOLLOWING EXTENSIONS**

**HAZARDOUS SUBSTANCES** \$ 50,000  
**EXPEDITING EXPENSES** \$ 50,000

**MECHANICAL BREAKDOWN COVERAGE ONLY  
APPLIES WHEN BUILDING OR BUSINESS  
PERSONAL PROPERTY IS SELECTED ON  
THE POLICY**

**IDENTITY RECOVERY COVERAGE** \$ 15,000  
**FORM SS 41 12**

**SPECTRUM POLICY DECLARATIONS (Continued)**

**POLICY NUMBER:** 45 SBA UT1411

<b>BUSINESS LIABILITY</b>	<b>LIMITS OF INSURANCE</b>
<b>LIABILITY AND MEDICAL EXPENSES</b>	\$1,000,000
<b>MEDICAL EXPENSES - ANY ONE PERSON</b>	\$ 10,000
<b>PERSONAL AND ADVERTISING INJURY</b>	\$1,000,000
<b>DAMAGES TO PREMISES RENTED TO YOU ANY ONE PREMISES</b>	\$ 300,000
<b>AGGREGATE LIMITS</b>	
<b>PRODUCTS-COMPLETED OPERATIONS</b>	\$2,000,000
<b>GENERAL AGGREGATE</b>	\$2,000,000
<b>BUSINESS LIABILITY OPTIONAL COVERAGES</b>	
<b>HIRED/NON-OWNED AUTO LIABILITY FORM: SS 04 38</b>	\$1,000,000

**SPECTRUM POLICY DECLARATIONS (Continued)**

**POLICY NUMBER:** 45 SBA UT1411

**Form Numbers of Forms and Endorsements that apply:**

SS 00 01 03 14	SS 00 05 12 06	SS 00 07 07 05	SS 00 08 04 05
SS 00 62 09 15	SS 00 64 09 16	SS 84 15 09 07	SS 01 04 07 16
SS 89 93 07 16	SS 00 60 09 15	SS 04 19 07 05	SS 04 22 07 05
SS 04 30 07 05	SS 04 38 09 09	SS 04 39 07 05	SS 04 41 03 18
SS 04 42 03 17	SS 04 44 07 05	SS 04 45 07 05	SS 04 46 09 14
SS 04 47 04 09	SS 04 74 09 07	SS 04 78 12 17	SS 04 80 03 00
SS 04 86 03 00	SS 40 18 07 05	SS 41 12 12 17	SS 41 51 10 09
SS 41 63 06 11	IH 10 01 09 86	SS 05 47 09 15	SS 50 19 01 15
SS 50 38 10 03	SS 51 10 03 17	SS 51 11 03 17	IH 99 40 04 09
IH 99 41 04 09	SS 83 76 01 15		



## SUPER STRETCH SUMMARY

### SUMMARY OF COVERAGE LIMITS

This is a summary of the Coverages and the Limits of Insurance provided by the Super Stretch Coverage form SS 04 74 which is included in this policy. No coverage is provided by this summary. Refer to coverage form SS 04 74 to determine the scope of your insurance protection.

The Limits of Insurance for the following Additional Coverages are in addition to any other limit of insurance provided under this policy:

<b>Blanket Coverage Limit of Insurance: \$150,000</b>
<b>Blanket Coverages</b>
Accounts Receivable- On/Off Premises
Computers and Media
Debris Removal
Personal Property of Others
Temperature Change
Valuable Papers and Records- On/Off Premises

Coverage	Limit
Brands and Labels	Up to Business Personal Property Limit
Claim Expenses	\$ 10,000
Computer Fraud	\$ 5,000
Employee Dishonesty (including ERISA)	\$ 25,000
Fine Arts	\$ 25,000
Forgery	\$ 25,000
Laptop Computers- Worldwide Coverage	\$ 10,000
Off Premises Utility Services – Direct Damage	\$ 25,000
Outdoor Signs	Full Value
Pairs or Sets	Up to Business Personal Property Limit
Property at Other Premises	\$ 10,000
Salespersons' Samples	\$ 5,000
Sewer and Drain Back Up	Included Up to Covered Property Limits
Sump Overflow or Sump Pump Failure	\$ 25,000
Tenant Building and Business Personal Property Coverage-Required by Lease	\$ 20,000
Transit Property in the Care of Carriers for Hire	\$ 10,000
Unauthorized Business Card Use	\$ 5,000

The Limits of Insurance for the following Coverage Extensions are a replacement of the Limit of Insurance provided under the Standard Property Coverage Form or the Special Property Coverage Form, whichever applies to the policy:

<b>Coverage</b>	<b>Limit</b>
Newly Acquired or Constructed Property – 180 Days	
Building	\$1,000,000
Business Personal Property	\$ 500,000
Business Income and Extra Expense	\$ 500,000
Outdoor Property	\$ 25,000 aggregate/ \$1,000 per item
Personal Effects	\$ 25,000
Property Off-Premises	\$ 25,000

The following changes apply only if Business Income and Extra Expense are covered under this policy. The Limits of Insurance for the following Business Income and Extra Expense Coverages are in addition to any other Limit of Insurance provided under this policy:

<b>Coverage</b>	<b>Limit</b>
Business Income Extension for Off-Premises Utility Services	\$ 25,000
Business Income Extension for Web Sites	\$ 50,000/7 days
Business Income from Dependent Properties	\$ 50,000

The following Limit of Insurance for the following Business Income Coverage is a replacement of the Limit of Insurance provided under the Standard Property Coverage Form or the Special Property Coverage Form, whichever applies to the policy:

<b>Coverage</b>	<b>Limit</b>
Extended Business Income	90 Days

The following changes apply to Loss Payment Conditions:

<b>Coverage</b>	<b>Limit</b>
Valuation Changes	
Commodity Stock	Included
"Finished Stock"	Included
Mercantile Stock - Sold	Included

## **COMMON POLICY CONDITIONS**

**QUICK REFERENCE - SPECTRUM POLICY**

**DECLARATIONS  
and  
COMMON POLICY CONDITIONS**

**I. DECLARATIONS**

Named Insured and Mailing Address

Policy Period

Description and Business Location

Coverages and Limits of Insurance

**II. COMMON POLICY CONDITIONS**

**Beginning on Page**

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<b>B.</b> Changes	<b>1</b>
<b>C.</b> Concealment, Misrepresentation Or Fraud	<b>2</b>
<b>D.</b> Examination Of Your Books And Records	<b>2</b>
<b>E.</b> Inspections And Surveys	<b>2</b>
<b>F.</b> Insurance Under Two Or More Coverages	<b>2</b>
<b>G.</b> Liberalization	<b>2</b>
<b>H.</b> Other Insurance - Property Coverage	<b>2</b>
<b>I.</b> Premiums	<b>2</b>
<b>J.</b> Transfer Of Rights Of Recovery Against Others To Us	<b>2</b>
<b>K.</b> Transfer Of Your Rights And Duties Under This Policy	<b>3</b>
<b>L.</b> Premium Audit	<b>3</b>



## COMMON POLICY CONDITIONS

All coverages of this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 5 days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy:

(1) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:

- (a) Seasonal unoccupancy; or
- (b) Buildings in the course of construction, renovation or addition.

Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.

- (2) After damage by a Covered Cause of Loss, permanent repairs to the building:
  - (a) Have not started; and
  - (b) Have not been contracted for, within 30 days of initial payment of loss.
- (3) The building has:
  - (a) An outstanding order to vacate;
  - (b) An outstanding demolition order; or
  - (c) Been declared unsafe by governmental authority.
- (4) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.

### (5) Failure to:

- (a) Furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or
  - (b) Pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.
- b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.
  - c. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
  4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  5. If this policy is canceled, we will send the first Named Insured any premium refund due. Such refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.
  6. If notice is mailed, proof of mailing will be sufficient proof of notice.
  7. If the first Named Insured cancels this policy, we will retain no less than \$100 of the premium.

### B. Changes

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

**COMMON POLICY CONDITIONS****C. Concealment, Misrepresentation Or Fraud**

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

1. This policy;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this policy.

**D. Examination Of Your Books And Records**

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

**E. Inspections And Surveys**

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

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

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

**F. Insurance Under Two Or More Coverages**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**G. Liberalization**

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

**H. Other Insurance - Property Coverage**

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

**I. Premiums**

1. The first Named Insured shown in the Declarations:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. If applicable, on each renewal, continuation or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.
3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:
  - a. Paid to us prior to the anniversary date; and
  - b. Determined in accordance with Paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

4. Changes in exposures or changes in your business operation, acquisition or use of locations that are not shown in the Declarations may occur during the policy period. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

**J. Transfer Of Rights Of Recovery Against Others To Us**

Applicable to Property Coverage:

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property.
2. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or

**COMMON POLICY CONDITIONS**

**c. Your tenant.**

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

**K. Transfer Of Your Rights And Duties Under This Policy**

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

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

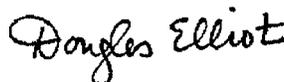
**L. Premium Audit**

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. The premium amount shown in the Declarations is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Any additional premium found to be due as a result of the audit are due and payable on notice to the first Named Insured. If the deposit premium paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must maintain all records related to the coverage provided by this policy and necessary to finalize the premium audit, and send us copies of the same upon our request.

Our President and Secretary have signed this policy. Where required by law, the Declarations page has also been countersigned by our duly authorized representative.



Lisa Levin, Secretary



Douglas Elliot, President

## **SPECIAL PROPERTY COVERAGE FORM**

# QUICK REFERENCE

## SPECIAL PROPERTY COVERAGE FORM READ YOUR POLICY CAREFULLY

<b>SPECIAL PROPERTY COVERAGE FORM</b>	<b>Beginning on Page</b>
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Limitations	2
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Coverage Extensions	13
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## SPECIAL PROPERTY COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks have special meaning. Refer to the SECTION G - PROPERTY DEFINITIONS.

### A. COVERAGE

We will pay for direct physical loss of or physical damage to Covered Property at the premises described in the Declarations (also called "scheduled premises" in this policy) caused by or resulting from a Covered Cause of Loss.

#### 1. Covered Property

Covered Property as used in this policy, means the following types of property for which a Limit of Insurance is shown in the Declarations:

**a. Buildings**, meaning only building(s) and structure(s) described in the Declarations, including:

- (1) Completed additions;
- (2) Permanently installed:
  - (a) Fixtures;
  - (b) Machinery; and
  - (c) Equipment;
- (3) Outdoor fixtures;
- (4) Your personal property in apartments, rooms or common areas furnished by you as landlord;
- (5) Building Glass, meaning glass that is part of a building or structure;
- (6) Personal property owned by you that is used to maintain or service the buildings or structures on the premises, including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering; and
- (7) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the buildings or structures;

**(b) Materials, equipment, supplies and temporary structures**, on or within 1,000 feet of the "scheduled premises", used for making additions, alterations or repairs to the buildings or structures.

**b. Business Personal Property** located in or on the building(s) described in the Declarations at the "scheduled premises" or in the open (or in a vehicle) within 1,000 feet of the "scheduled premises", including:

- (1) Property you own that is used in your business;
- (2) Tools and equipment owned by your employees, which are used in your business operations;
- (3) Property of others that is in your care, custody or control;
- (4) "Tenant Improvements and Betterments"; and
- (5) Leased personal property for which you have contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

#### 2. Property Not Covered

Covered Property does not include:

- a.** Aircraft, automobiles, motor trucks and other vehicles subject to motor vehicle registration;
- b.** Automobiles held for sale;
- c.** "Money", bullion, numismatic and philatelic property and bank notes or "securities" except as provided in any Additional Coverages or Optional Coverages. Lottery tickets held for sale and postage stamps in current use and having face value are not "securities".
- d.** Contraband, or property in the course of illegal transportation or trade;

**SPECIAL PROPERTY COVERAGE FORM**

- e. Land (including land on which the property is located), water, growing crops or lawns;
- f. Outdoor fences, radio or television antennas (including satellite dishes), including their lead in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than those held for sale or sold but not delivered), except as any of these may be provided in the:
  - (1) Outdoor Property Coverage Extension; or
  - (2) Outdoor Signs Optional Coverage;
- g. Watercraft (including motors, equipment and accessories) while afloat;
- h. The cost to research, replace or restore the information on "valuable papers and records", except as may be provided in any Coverage Extensions or Optional Coverages.
- i. "Data" and "software" which exists on electronic "media" including the cost to research, replace or restore them, except as may be provided for in any Additional Coverages or Optional Coverages.
- j. Accounts, bills, food stamps, other evidences of debt, accounts receivable or "valuable papers and records"; except as otherwise provided for in this policy.

**3. Covered Causes of Loss**

RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

- a. Excluded in Section **B.**, **EXCLUSIONS**; or
- b. Limited in Paragraph **A.4.** Limitations; that follow.

**4. Limitations**

- a. We will not pay for direct loss of or damage to:
  - (1) Property that is missing, where the only evidence of the direct physical loss or physical damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property. This limitation does not apply to the Additional Coverage for "Money" and "Securities".
  - (2) Property that has been transferred to a person or to a place outside the "scheduled premises" on the basis of unauthorized instructions.
  - (3) The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (a) The building or structure first sustains physical damage by a

Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or

- (b) The direct physical loss or physical damage is caused by or results from thawing of snow, sleet, or ice on the building or structure.

- b. Pets and animals are covered only if:

- (1) They are inside the building; and
- (2) They are owned by others and boarded by you, or owned by you and held for sale or sold but not delivered.

And then we will pay only if they are killed, stolen, or their destruction is made necessary by a "specified cause of loss".

- c. For direct physical loss or physical damage by "theft", the following types of property are covered only up to the limits shown:

- (1) \$2,500 for furs, fur garments and garments trimmed with fur;
- (2) \$5,000 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$500 or less per item;
- (3) \$2,500 for patterns, dies, molds and forms; and
- (4) \$500 for stamps, lottery tickets held for sale and letters of credit.

- d. Unless specifically provided under a separate endorsement and with a specific Limit of Insurance indicated in the Declarations, we will not pay for direct physical loss of or physical damage to "perishable stock" caused by or resulting from:

- (1) A change in temperature or humidity resulting from:
  - (a) Mechanical breakdown or failure of:
    - (i) Stationary heating plants; or
    - (ii) Refrigerating, cooling, or humidity control apparatus or equipment;
  - (b) Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires; or
  - (c) Complete or partial failure of electric power on your "scheduled premises".

- (2) Contamination by refrigerant.

**SPECIAL PROPERTY COVERAGE FORM****5. Additional Coverages****a. Collapse****(1) With respect to Buildings:**

- (a)** Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building cannot be occupied for its intended purpose;
- (b)** A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- (c)** A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
- (d)** A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, or expansion.

**(2) We will pay for direct physical loss or physical damage caused by or resulting from risks of collapse of a building or any part of a building that is insured by this policy caused only by one or more of the following:**

- (a)** "Specified cause of loss" or breakage of building glass, if such loss or breakage was covered by this policy;
- (b)** Decay that is hidden from view, unless the presence of such decay was known to an insured prior to collapse;
- (c)** Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- (d)** Weight of people or personal property;
- (e)** Weight of rain that collects on a roof; and
- (f)** Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

The criteria set forth in Paragraphs **(1)(a)** through **(1)(d)** do not limit the coverage otherwise provided under this Additional Coverage for the Causes of Loss listed in Paragraph **(2)(a)**, **(2)(d)**, and **(2)(e)**.

**(3) If the collapse is caused by a Covered Cause of Loss listed in Paragraphs **(2)(b)** through **(2)(f)**, we will pay for direct physical loss of or physical damage to the property listed below, but only if such physical loss or physical damage is a direct result of the collapse of a building insured under this policy, and the property is property covered under this policy:**

- (a)** Awnings; gutters and downspouts; yard fixtures; outdoor swimming pools; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces.

**(4) If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if**

- (a)** The collapse was caused by a cause of loss listed in Paragraphs **(2)(a)** through **(2)(f)** of this Additional Coverage;
- (b)** The personal property which collapses is inside a building; and
- (c)** The property which collapses is not of a kind listed in Paragraph **(3)** above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **(4)** does not apply to personal property if marring or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

**(5) This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this policy.**

**SPECIAL PROPERTY COVERAGE FORM****b. Debris Removal**

(1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (a) The date of direct physical loss or physical damage; or
- (b) The end of the policy period.

(2) The most we will pay under this additional Coverage is 25% of the amount we pay for the direct loss of or physical damage to Covered Property plus the deductible in this policy applicable to that physical loss or physical damage.

But this limitation does not apply to any additional Debris Removal limit provided in the Limits of Insurance section.

(3) This Additional Coverage does not apply to costs to:

- (a) Extract "pollutants and contaminants" from land; or
- (b) Remove, restore or replace polluted or contaminated land or water.

**c. Equipment Breakdown**

(1) We will pay for direct physical loss or physical damage caused by or resulting from an Equipment Breakdown Accident to Equipment Breakdown Property.

Equipment Breakdown Accident means:

- (a) Mechanical breakdown, including rupture or bursting caused by centrifugal force.
- (b) Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires.
- (c) Explosion of steam boilers, steam piping, steam engines or steam turbines owned or leased by you, or operated under your control.
- (d) Physical loss or physical damage to steam boilers, steam pipes, steam engines or steam turbines

caused by or resulting from any condition or event inside such boilers or equipment.

- (e) Physical loss or physical damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

Equipment Breakdown Property means Covered Property built to operate under vacuum or pressure, other than weight of contents, or used for the generation, transmission or utilization of energy.

The following is not Equipment Breakdown Property:

- (a) Any structure, foundation, cabinet, compartment or air supported structure building;
- (b) Any insulating or refractory material;
- (c) Any sewer piping, any underground vessels or piping, any piping forming a part of a sprinkler system, water piping other than boiler feed water piping, boiler condensate return piping, or water piping forming a part of a refrigerating or air conditioning system;
- (d) Any vehicle or any equipment mounted on a vehicle. As used here, vehicle means any machine or apparatus that is used for transportation or moves under its own power. Vehicle includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester. However, any property that is stationary, permanently installed at a "scheduled premises" and that receives electrical power from an external power source will not be considered a vehicle.
- (e) Any equipment manufactured by you for sale.

**(2) Coverage Extensions**

The following coverage extensions apply only to direct physical loss or physical damage caused by or resulting from an Equipment Breakdown Accident:

**SPECIAL PROPERTY COVERAGE FORM****(a) Hazardous Substances**

We will pay in any one occurrence for the additional cost, not to exceed \$50,000, to repair or replace Covered Property because of contamination by a hazardous substance. This includes the expenses to clean up or dispose of such property. Hazardous substance means any substance that is hazardous to human health or that has been declared by a government agency to be hazardous to human health.

Additional cost in this extension means those beyond what would have been required had no hazardous substance been involved.

This limit is part of and not in addition to the Limits of Insurance for Covered Property.

**(b) Expediting Expenses**

With respect to your damaged Covered Property, we will pay in any one occurrence, up to \$50,000, for the reasonable and necessary additional expenses you incur to:

- (i) Make temporary repairs; or
- (ii) Expedite permanent repairs or permanent replacement.

**(c) Defense**

If a claim or "suit" is brought against you alleging that you are liable for damage to property of another in your care, custody or control directly caused by Equipment Breakdown we will either:

- (i) Settle the claim or "suit"; or
- (ii) Defend you against the claim or "suit," but keep for ourselves the right to settle it at any point.

**(d) Supplementary Payments**

We will pay, with respect to any claim or "suit" we defend:

- (i) All expenses we incur;
- (ii) The cost of bonds to release attachments, but only for bond

amounts within the Limit of Insurance. We do not have to furnish these bonds;

- (iii) All reasonable expenses incurred by you at our request to assist us in the investigation or defense of the claim or "suit" including actual loss of earnings up to \$100 a day because of time off from work;
- (iv) All costs taxed against you in any "suit" we defend;
- (v) Prejudgment interest awarded against you 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; and
- (vi) 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 Limit of Insurance shown in the Declarations.

These payments will not reduce the Limit of Insurance shown in the Declarations.

**(e) Business Income and Extra Expense Extension**

The Business Income and Extra Expense Additional Coverages are extended to provide coverage for a tenant who has a loss of income from the lack of heating, cooling or power as a result of equipment breakdown to mechanical, electrical or pressure equipment of the building owner.

- (f) If Equipment Breakdown Property requires replacement due to an Equipment Breakdown Accident, we will pay your additional cost to replace it with equipment that is better for the environment, safer or more efficient than the equipment being replaced. However, we will not pay more than 125% of what the cost would have been to repair or replace with property of

**SPECIAL PROPERTY COVERAGE FORM**

comparable material and quality. This coverage does not increase any of the applicable limits. This coverage does not apply to any property indicated as being valued on an Actual Cash Value basis.

If you wish to retrofit air conditioning or refrigeration equipment that utilizes a refrigerant containing CFC (chlorofluorocarbon) substances to accept a non-CFC refrigerant or replace the system with a system using a non-CFC refrigerant, we will consider this better for the environment. Any associated Business Income or Extra Expense will be included in determining the additional cost, if Business Income and Extra Expense apply to this policy.

**(3) Additional Condition - Bankruptcy**

The bankruptcy or insolvency of you or your estate will not relieve us of any obligation under this Additional Coverage.

**(4) Jurisdictional Inspections:**

If any boiler or pressure vessel requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf.

**d. Fire Department Service Charge**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$25,000 in any one occurrence for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

**e. Fire Extinguisher Recharge**

We will pay to cover your expenses for recharge of your hand fire extinguishers when they are emptied while fighting fire.

**f. Forgery**

- (1) We will pay for loss resulting directly from forgery or alteration of any check, draft, promissory note, or similar written promises, orders or directions to pay a sum certain in "money" that you or your

agent has issued, or that was issued by someone who impersonates you or your agent. This includes written instruments required in conjunction with any credit, debit, or charge card issued to you or any "employee" for business purposes.

- (2) If you are sued for refusing to pay any Covered Instrument on the basis that it has been forged or altered, and you have our written consent to defend against the "suit", we will pay for any reasonable expenses that you incur and pay in that defense.
- (3) We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:
  - (a) Money orders, including counterfeit money orders, of any United States or Canadian post office, express company or national or state (or Canadian) chartered bank that are not paid upon presentation; and
  - (b) Counterfeit United States or Canadian paper currency.
- (4) The most we will pay in any one occurrence, including legal expenses, under this Additional Coverage is \$5,000, unless a higher Limit of Insurance is shown in the Declarations.

**g. Glass Expense**

We will pay for necessary expenses incurred to:

- (1) Put up temporary plates or board up openings if repair or replacement of damaged glass is delayed;
- (2) Repair or replace encasing frames; and
- (3) Remove or replace obstructions when repairing or replacing glass that is part of a building.

This does not include removing or replacing window displays.

**h. Lock and Key Replacement**

We will pay up to \$1,000 in any one occurrence for the re-keying of locks or the repair or replacement of locks at "scheduled premises" following the theft or the attempted theft of keys by burglars.

**i. Money and Securities**

- (1) We will pay for loss of "money" and "securities" used in your business while

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at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the "scheduled premises", or in transit between any of these places, resulting directly from:

- (a) "Theft";
  - (b) Disappearance; or
  - (c) Destruction.
- (2) In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:
- (a) Resulting from accounting or arithmetical errors or omissions;
  - (b) Due to the giving or surrendering of property in any exchange or purchase; or
  - (c) Of property contained in any "money"-operated device unless a continuous recording instrument in the device records the amount of "money" deposited in the "money"-operated device.
- (3) The most we will pay for loss in any one occurrence is:
- (a) The limit shown in the Declarations for Inside the Premises for "money" and "securities" while:
    - (i) In or on the "scheduled premises"; or
    - (ii) Within a bank or savings institution; and
  - (b) The limit shown in the Declarations for Outside the Premises for "money" and "securities" while anywhere else.
- (4) All loss:
- (a) Caused by one or more persons; or
  - (b) Involving a single act or series of related acts;
- is considered one occurrence.
- (5) You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.

**j. Ordinance or Law**

- (1) If a Covered Cause of Loss occurs to covered Building property, we will pay on a "scheduled premises" any of the following costs that are caused by enforcement of an ordinance or law:

**Undamaged Part**

- (a) For loss to the undamaged portion of the Building that requires the demolition of parts of the same property not damaged by a Covered Cause of Loss provided that any such ordinance or law resulting in this type of loss:
- (i) Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the "scheduled premises"; and
  - (ii) Is in force at the time of the loss.

The most we will pay in any one occurrence for this coverage is \$25,000 as a Limit of Insurance.

**Demolition Cost**

- (b) The cost to demolish and clear the site of undamaged parts of the property caused by enforcement of a building, zoning or land use ordinance or law.

The most we will pay in any one occurrence for this coverage is \$25,000 as a Limit of Insurance.

**Increased Cost of Construction**

- (c) The increased cost to repair, rebuild or reconstruct the covered property, caused by enforcement of a building, zoning or land use ordinance or law.

The most we will pay in any one occurrence for this coverage is \$25,000 as a Limit of Insurance.

**"Tenants Improvements and Betterment"**

- (d) The increased cost to repair, rebuild or reconstruct "tenant's improvements and betterments" caused by enforcement of building, zoning or land use ordinance or law.

The most we will pay in any one occurrence for this coverage is \$25,000 as a Limit of Insurance.

**(2) Additional Exclusions**

We will not pay under this Additional Coverage for:

- (a) The enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or

**SPECIAL PROPERTY COVERAGE FORM**

remediation of property due to contamination by “pollutants and contaminants” or due to the presence, growth, proliferation, spread of any activity of “fungi”, wet or dry rot, bacteria or virus; or

- (b) The costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants or contaminants”, “fungi”, wet or dry rot, bacteria or virus.
- (c) Loss caused by, resulting from, contributed to or aggravated by earthquake or volcanic eruption.
- (d) Loss due to an ordinance or law that:
  - (i) You were required to comply with before the loss even if the building was undamaged; and
  - (ii) You failed to comply with.

**(3) Additional Limitations – Loss to Undamaged Portion of Building**

Subject to the limit stated in Paragraph **A.5.j.(1)(a)**, the insurance provided under this Additional Coverage for loss in value to the undamaged portion of the building is limited as follows:

- (a) If Replacement Cost applies and the property is repaired or replaced on the same or another premises, we will not pay more for physical loss of or physical damage to designated Building property, including loss caused by enforcement of an ordinance or law, than:
  - (i) The amount you actually spend to repair, rebuild or reconstruct the Building, but not for more than the amount it would cost to restore the Building on the same premises; and
  - (ii) The amount it would cost to restore the undamaged portion to the same height, floor area, style and comparable quality of the original property insured.

- (b) If the Building(s) Full Value Endorsement applies and the property is repaired or replaced on the same or another premises, we will not pay more for physical loss of or physical damage to designated Building property, including loss caused by enforcement of an ordinance or law, than:

- (i) The amount you actually spend to repair, rebuild or reconstruct the Building, but not for more than the amount it would cost to restore the Building on the same premises; and
- (ii) The amount it would cost to restore the undamaged portion to the same height, floor area, style and comparable quality of the original property insured.

- (c) If Replacement Cost or the Building(s) Full Value Endorsement applies and the property is not repaired or replaced, or if Actual Cash Value applies, then we will not pay more for physical loss of or physical damage to designated Building property, including loss caused by enforcement of an ordinance or law, than the lesser of:

- (i) The Actual Cash Value of the Building at the time of loss; or
- (ii) The Limit of Insurance applicable to the covered Building property stated in Paragraph **A.5.j.(1)(a)**.

**(4) Additional Limitation – Demolition Cost**

We will not pay more than the lesser of:

- (a) The amount actually spent to demolish and clear the site of the “scheduled premises”; or
- (b) The applicable Demolition Cost Limit of Insurance as stated in Paragraph **A.5.j.(1)(b)**.

**(5) Additional Limitation – Increased Cost of Construction**

The insurance provided under this Additional Coverage for increased cost of construction is limited as follows:

- (a) We will not pay:

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- (i) Until the property is actually repaired or replaced, at the same or another premises; and
  - (ii) Unless the repairs or replacements are made as soon as reasonably possible after the physical loss or physical damage, not to exceed two years. We may extend this period in writing during the two years.
- (b) If the Building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay is the lesser of:
- (i) The increased cost of construction at the same premises; or
  - (ii) The applicable Increased Cost of Construction Limit of Insurance stated in Paragraph **A.5.j.(1)(c)**.
- (c) If the ordinance or law requires relocation to another premises, the most we will pay is the lesser of:
- (i) The Increased Cost of Construction at the new premises; or
  - (ii) The applicable Increased Cost of Construction Limit of Insurance stated in Paragraph **A.5.j.(1)(c)**.

**k. "Pollutants and Contaminants" Clean Up and Removal**

We will pay your expense to extract "pollutants and contaminants" from land or water at the "scheduled premises" if the discharge, dispersal, seepage, migration, release or escape of the "pollutants and contaminants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (1) The date of direct physical loss or physical damage; or
- (2) The end of the policy period.

The most we will pay in any one occurrence for each location under this Additional Coverage is \$15,000 for the sum of all such expenses arising out of Covered Causes of Loss.

**l. Preservation of Property**

If it is necessary to move Covered Property from the "scheduled premises" to preserve it from direct physical loss or physical damage by a Covered Cause of Loss, we will pay for any direct physical loss of or physical damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the direct physical loss or physical damage occurs within 45 days after the property is first moved.

**m. Theft Damage to Building**

This Additional Coverage applies only to premises where you are a tenant and are responsible in the lease for physical loss or physical damage to the building you lease, rent, or occupy that is caused by or results from "theft", burglary or robbery.

We will pay for direct physical loss or physical damage directly resulting from "theft", burglary or robbery (except loss by fire or explosion) to a building:

- (1) You occupy, including personal property that is used to maintain or service the building; or
- (2) Containing covered personal property if you are legally liable for such physical loss or physical damage.

But we will not pay for such physical loss of or physical damage to property that is away from the "scheduled premises".

**n. Water Damage, Other Liquid, Powder or Molten Material Damage**

If direct physical loss or physical damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay the cost to repair any defect that caused the direct physical loss or physical damage except as provided in paragraph **A.5.c., Equipment Breakdown** of this coverage form. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- (1) Results in discharge of any substance from an automatic fire protection system; or

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(2) Is directly caused by freezing.

**o. Business Income**

(1) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or physical damage to property at the "scheduled premises", including personal property in the open (or in a vehicle) within 1,000 feet of the "scheduled premises", caused by or resulting from a Covered Cause of Loss.

(2) With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the "scheduled premises" are located, your "scheduled premises" also means:

(a) The portion of the building which you rent, lease or occupy; and

(b) Any area within the building or on the site at which the "scheduled premises" are located, but only if that area services, or is used to gain access to, the "scheduled premises".

(3) We will only pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or physical damage.

This Additional Coverage is not subject to the Limits of Insurance.

(4) Business Income means the:

(a) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or physical damage had occurred; and

(b) Continuing normal operating expenses incurred, including payroll.

(5) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; or

(b) That part or all of the "scheduled premises" is rendered untenable as a result of a Covered Cause of Loss if coverage for Business Income applies to the policy.

**p. Extra Expense**

(1) We will pay reasonable and necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or physical damage to property at the "scheduled premises", including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from a Covered Cause of Loss.

(2) With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the "scheduled premises" are located, your "scheduled premises" also means:

(a) The portion of the building which you rent, lease or occupy; and

(b) Any area within the building or on the site at which the "scheduled premises" are located, but only if that area services, or is used to gain access to, the "scheduled premises".

(3) Extra Expense means expense incurred:

(a) To avoid or minimize the suspension of business and to continue "operations":

(i) At the "scheduled premises"; or

(ii) At replacement premises or at temporary locations, including:

(aa) Relocation expenses; and

(bb) Cost to equip and operate the replacement or temporary location, other than those costs necessary to repair or to replace damaged stock and equipment.

(b) To minimize the suspension of business if you cannot continue "operations".

(c) (i) To repair or replace any property; or

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- (ii) To research, replace or restore the lost information on damaged "valuable papers and records";

to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage o., Business Income.

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or physical damage. This Additional Coverage is not subject to the Limits of Insurance.

- (4) With respect to the coverage provided in this Additional Coverage, suspension means:

- (a) The partial slowdown or complete cessation of your business activities; or
- (b) That part or all of the "scheduled premises" is rendered untenable as a result of a Covered Cause of Loss if coverage for Extra Expense applies to the policy.

**(5) Limitation**

This Extra Expense Coverage does not apply to:

- (a) Any deficiencies in insuring building or business personal property; or
- (b) Any expense related to any recall of products you manufacture, handle or distribute.

**q. Civil Authority**

- (1) This insurance is extended to apply to the actual loss of Business Income you sustain when access to your "scheduled premises" is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your "scheduled premises".
- (2) The coverage for Business Income will begin 72 hours after the order of a civil authority and coverage will end at the earlier of:

- (a) When access is permitted to your "scheduled premises"; or
- (b) 30 consecutive days after the order of the civil authority.

**r. Extended Business Income**

- (1) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
- (i) The date you could restore your "operations" with reasonable speed, to the condition that would have existed if no direct physical loss or damage occurred; or
- (ii) 30 consecutive days after the date determined in (1)(a) above.

Loss of Business Income must be caused by direct physical loss or physical damage at the "scheduled premises" caused by or resulting from a Covered Cause of Loss.

- (2) With respect to the coverage provided in this Additional Coverage, suspension means:

- (a) The partial slowdown or complete cessation of your business activities; and
- (b) That a part or all of the "scheduled premises" is rendered untenable as a result of a Covered Cause of Loss.

**s. Business Income from Dependent Properties**

- (1) We will pay for the actual loss of Business Income you sustain due to direct physical loss or physical damage at the premises of a dependent property caused by or resulting from a Covered Cause of Loss.

The most we will pay under this Additional Coverage is \$5,000 in any one occurrence unless a higher Limit of Insurance is indicated in the Declarations.

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(2) We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:

- (a) Source of materials; or
- (b) Outlet for your products.

(3) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

(4) Dependent Property means property owned, leased or operated by others whom you depend on to:

(a) Deliver materials or services to you or to others for your account. But services do not include:

- (i) Water, communication, power services or any other utility services; or
- (ii) Any type of web site, or Internet service.

- (b) Accept your products or services;
- (c) Manufacture your products for delivery to your customers under contract for sale; or
- (d) Attract customers to your business premises.

The dependent property must be located in the coverage territory of this policy.

(5) The coverage period for Business Income under this Additional Coverage:

- (a) Begins 72 hours after the time of direct physical loss or physical damage caused by or resulting from a Covered Cause of Loss at the premises of the dependent property; and
- (b) Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.

(6) The Business Income coverage period, as stated in Paragraph (5), does not include any increased period required due to the enforcement of any ordinance or law that:

(a) Regulates the construction, use or repair, or requires the tearing down of any property; or

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

(7) The definition of Business Income contained in the Business Income Additional Coverage also applies to this Business Income From Dependent Properties Additional Coverage.

**t. Tenant Glass**

This Additional Coverage applies only to premises where you are a tenant and are responsible in the lease for such damage.

We will cover loss to glass, which is in your care, custody or control and for which the lease holds you responsible. The glass must be part of a building described in the Declarations or at a location that would be included in Coverage Extension b. Newly Acquired or Constructed Property.

The most that we will pay in any one occurrence for each location under this Additional Coverage is \$25,000.

**u. Leasehold Improvements**

If your lease is cancelled in accordance with a valid lease provision as the direct result of a Covered Cause of Loss to property at the location in which you are a tenant, and you cannot legally remove "Tenant Improvements and Betterments", we will extend Business Personal Property coverage to apply to the unamortized value of "Tenants Improvement and Betterment" that remain and that you were forced to abandon.

The most we will pay in any one occurrence for loss under this Additional Coverage is \$25,000.

**v. Lease Assessment**

Your Business Personal Property is extended to apply to your share of any assessment charged to all tenants by the building owner as a result of direct physical damage caused by or resulting from a Covered Cause of Loss to building property you occupy as agreed to in your written lease agreement.

We will pay no more than \$2,500 in any one occurrence for this Additional Coverage.

**SPECIAL PROPERTY COVERAGE FORM****6. Coverage Extensions**

Except as otherwise provided, the following Extensions apply to property located in or on the building at the "scheduled premises" or in the open (or in a vehicle) within 1,000 feet of the "scheduled premises". All Coverage Extensions are subject to the terms, conditions and exclusions of this policy, except as otherwise provided.

In addition to the Limits of Insurance, you may extend the insurance provided by this policy as follows:

**a. Accounts Receivable**

- (1) You may extend the insurance that applies to your Business Personal Property, to apply to your accounts receivable.

We will pay for:

- (a) All amounts due from your customers that you are unable to collect;
- (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (c) Collection expenses in excess of your normal collection expenses that are made necessary by the physical loss or physical damage; and
- (d) Other reasonable expenses that you incur to reestablish your records of accounts receivable;

that result from direct physical loss of or physical damage to your records of accounts receivable.

- (2) Paragraph **A.3.**, Covered Causes of Loss, and Section **B.**, Exclusions, do not apply to this Additional Coverage except for:

- (a) Paragraph **B.1.b.**, Governmental Action;
- (b) Paragraph **B.1.c.**, Nuclear Hazard; and
- (c) Paragraph **B.1.e.**, War and Military Action.

- (3) Additional Exclusions

- (a) Dishonest acts by you, anyone else with an interest in the records of accounts receivable, or your or their employees or authorized

representatives, or anyone entrusted with the records of accounts receivable, whether or not acting alone or in collusion with other persons or occurring during the hours of employment.

This exclusion does not apply to a carrier for hire.

- (b) Alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money," "securities," or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- (c) Bookkeeping, accounting or billing errors or omissions.
- (d) Electrical or magnetic injury, disturbance or erasure of electronic recordings.

But we will pay for direct physical loss or physical damage caused by Lightning.

- (e) Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- (f) Unauthorized instructions to transfer property to any person or to any place.

- (4) We will not pay for direct physical loss or physical damage that requires any audit of records or any inventory computation to prove its factual existence.

- (5) The most we will pay in any one occurrence for direct physical loss of or physical damage to your accounts receivable at each "scheduled premises" is \$25,000.

- (6) The most we will pay in any one occurrence for direct physical loss of or physical damage to accounts receivables away from the "scheduled premises", including while in transit, is \$25,000.

**b. Arson and "Theft" Reward**

- (1) In the event that a covered fire loss was the result of an act of arson, we will reimburse you for rewards you pay for information leading to convictions for that act of arson.

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- (2) In the event of a covered "theft" loss, we will reimburse you for rewards you pay for information leading to convictions for the "theft" loss.

The most we will pay to reimburse you in any one occurrence for arson or "theft" rewards is \$10,000.

This is additional insurance. The deductible does not apply to these reimbursements.

**c. Data and Software**

We will pay up to \$10,000 in any one occurrence to cover your costs to research, replace or restore "data" or "software" which exists or existed on electronic or magnetic "media" that is lost or damaged as a result of direct physical loss or physical damage to "computer equipment" at the "scheduled premises".

**d. Garages, Storage Buildings and Other Appurtenant Structures**

- (1) You may extend the insurance that applies to Building to apply to garages, storage buildings and other appurtenant structures, except outdoor fixtures, at the "scheduled premises".

The most we will pay in any one occurrence for direct physical loss or physical damage under this Extension is \$50,000 at each "scheduled premises".

- (2) You may extend the insurance that applies to Business Personal Property in garages, storage buildings and other appurtenant structures at the "scheduled premises".

The most we will pay in any one occurrence for direct physical loss or physical damage under this Extension is \$5,000 at each "scheduled premises".

**e. Newly Acquired or Constructed Property**

- (1) You may extend the insurance that applies to Building to apply to:

- (a) Your new buildings while being built on the "scheduled premises"; and
- (b) Buildings you acquire at locations other than the "scheduled premises", intended for:
  - (i) Similar use as the Building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay in any one occurrence for loss or damage under this Extension is 25% of the Limit of Insurance for Building shown in the Declarations, but not more than \$500,000 at each premises.

- (2) You may extend the insurance that applies to Business Personal Property to apply to:

- (a) Property at any premises you acquire or construct;
- (b) Business Personal Property, including such property that you newly acquire, located at your newly constructed building, or
- (c) Business Personal Property that you newly acquire, located at the "scheduled premises".

This extension does not apply to:

- (a) Personal Property that you temporarily acquire in the course of installing or performing work on such property;
- (b) Personal property of others that you temporarily acquire in the course of your wholesaling activity.
- (c) Merchandise held for sale, except as provided under Paragraph C.6. Business Personal Property Limit – Seasonal Increase.

The most we will pay in any one occurrence for direct physical loss or physical damage under this Extension is \$250,000 at each premises.

- (3) You may extend the insurance that applies to Business Income and Extra Expense to apply to newly acquired or constructed locations.

The most we will pay in any one occurrence under this Extension is \$50,000.

- (4) If Covered Property is moved to a new premises endorsed onto this policy, from a "scheduled premises" being endorsed off this policy, the Limit of Insurance applicable to that vacated premises will apply proportionately to both premises as the property is moved. This coverage applies to up to 180 days after the move begins or upon completion of the move, whichever is sooner. This coverage does not apply to Business Personal Property while in transit.

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**(5)** Insurance under this Extension for each newly acquired or constructed property will end when any of the following first occurs:

- (a)** This policy expires;
- (b)** 180 days after you acquire or begin to construct the property, or
- (c)** You report values to us.

We will charge you additional premium for values reported from the day construction begins or you acquire the property.

**f. Outdoor Property**

You may extend the insurance provided by this policy to apply to your outdoor:

**(1)** Fences, signs (other than signs attached to buildings), trees, shrubs and plants caused by or resulting from any of the following causes of loss:

- (a)** Fire;
- (b)** Lightning;
- (c)** Explosion;
- (d)** Riot or Civil Commotion; and
- (e)** Aircraft.

The most we will pay in any one occurrence for direct physical loss or physical damage, including debris removal expense, under this Extension is \$10,000 but not more than \$1,000 for any one tree, shrub or plant.

**(2)** Radio and television antennas (including satellite dishes) caused by or resulting from any of the following causes of loss:

- (a)** Fire;
- (b)** Lightning;
- (c)** Windstorm;
- (d)** Ice, Snow, Sleet or Hail;
- (e)** Explosion;
- (f)** Riot or Civil Commotion; and
- (g)** Aircraft.

The most we will pay in any one occurrence for direct physical loss or physical damage, including debris removal expense, under this Extension is \$2,000.

**g. Personal Effects**

You may extend the insurance that applies to Business Personal Property to apply to personal effects owned by you, your officers, your partners, "managers", "members", or your employees.

The most we will pay in any one occurrence for physical loss or physical damage under this Extension is \$10,000 at each "scheduled premises".

**h. Property Off-Premises**

**(1)** You may extend the insurance that applies to Building to apply to such property that is temporarily at a location you do not own, lease or operate. This Extension applies only if physical loss or physical damage is caused by or resulting from a Covered Cause of Loss. This Extension does not apply to property in course of transit.

The most we will pay in any one occurrence under this coverage extension is \$5,000.

**(2)** You may extend the insurance that applies to Business Personal Property to apply to such property, other than Accounts Receivable, "money" and "securities" while:

- (a)** In the course of transit and more than 1,000 feet from the "scheduled premises". Property must be in or on, but not permanently attached to or installed in, a motor vehicle you own, lease or operate while between points in the coverage territory; or
- (b)** Temporarily at a premises you do not own, lease or operate.
- (c)** At a premises owned, leased, operated or used by you and the Business Personal Property is a vending machine.
- (d)** In or on, but not permanently attached to or installed in, motor vehicles operated by your employees in the course of your business operations.
- (e)** On temporary public display, or while being used at fairs, exhibitions, expositions, or trade shows or while in transit to and from these temporary sites.

The most we will pay in any one occurrence under this Extension is \$2,500.

**i. Valuable Papers and Records - Cost of Research**

You may extend the insurance that applies to Business Personal Property to apply to your costs to research, replace or restore the lost information on lost or damaged "valuable papers and records", for which duplicates do not exist.

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The most we will pay in any one occurrence under this Extension is \$25,000 at each "scheduled premises". For "valuable papers and records" not at the "scheduled premises", including while in transit, the most we will pay in any one occurrence is \$25,000.

**B. EXCLUSIONS**

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

**a. Earth Movement**

- (1) Earthquake, meaning a shaking or trembling of the earth's crust, caused by underground tectonic forces resulting in breaking, shifting, rising, settling, sinking or lateral movement;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil, and the action of water under the ground surface;

But if Earth Movement, as described in Paragraphs (1) through (4) above, results in fire or explosion, we will pay for the physical loss or physical damage caused by that fire or explosion.

- (5) Volcanic eruption, meaning the eruption, explosion or effusion of a volcano. But if physical loss or physical damage by fire or volcanic action results, we will pay for that resulting physical damage.

Volcanic action means direct physical loss or physical damage resulting from the eruption of a volcano when the physical loss or physical damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust, or particulate matter; or
- (c) Lava flow.

- (d) All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust, or particulate matter. That does not cause direct physical loss or physical damage to Covered Property.

**b. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

**c. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination however caused.

But if physical loss or physical damage by fire results, we will pay for that resulting physical loss or physical damage.

**d. Power Failure**

The failure of power or other utility service supplied to the "scheduled premises", however caused, if the failure occurs away from the "scheduled premises". Failure includes lack of sufficient capacity and reduction in supply necessary to maintain normal operations.

But if physical loss or physical damage by a Covered Cause of Loss results, we will pay for that resulting physical loss or physical damage.

**e. War and Military Action**

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

**f. Water**

- (1) Flood, including the accumulation of surface water, waves, tides, tidal waves, overflow of streams or any other bodies of water, or their spray, all whether driven by wind or not;

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- (2) Mudslide or mud flow;
- (3) Water that backs up from a sewer or drain; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.
 But if loss or damage by fire, explosion or sprinkler leakage results, we will pay for that resulting physical loss or physical damage.
- (5) Water damage caused by or resulting from earthquake or volcanic eruption:
  - (a) Earthquake means a shaking or trembling of the earth's crust, caused by underground tectonic forces resulting in breaking, shifting, rising, settling, sinking or lateral movement or other movement;
  - (b) Volcanic eruption means the eruption, explosion or effusion of a volcano.

**g. Neglect**

Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

- 2. We will not pay for physical loss or physical damage caused by or resulting from:
  - a. **Consequential Losses:** Delay, loss of use or loss of market.
  - b. **Smoke, Vapor, Gas:** Smoke, vapor or gas from agricultural smudging or industrial operations.
  - c. **Miscellaneous Types of Loss:**
    - (1) Wear and tear;
    - (2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
    - (3) Smog;
    - (4) Settling, cracking, shrinking or expansion;
    - (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents, mold, spore or other animals;

- (6) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

But if physical loss or physical damage by the "specified causes of loss", building glass breakage or Equipment Breakdown Accident results, we will pay for that resulting physical loss or physical damage.

- d. **Frozen Plumbing:** Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1) You do your best to maintain heat in the building or structure; or
  - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- e. **Dishonesty:** Dishonest or criminal act by you, any of your partners, "members", officers, "managers", employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
  - (1) Acting alone or in collusion with others; or
  - (2) Whether or not occurring during the hours of employment.
 This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.
- f. **False Pretense:** Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- g. **Exposed Property:** Rain, snow, ice or sleet to personal property in the open, except as provided in the Coverage Extension for Outdoor Property.
- h. **Collapse:** Collapse, except as provided in the Additional Coverage for Collapse. But if loss or damage by a Covered Cause of Loss results at the "scheduled premises", we will pay for that resulting loss or damage.
- i. **Pollution:** We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants and

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contaminants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss." But if physical loss or physical damage by the "specified causes of loss" results, we will pay for the resulting physical loss or physical damage caused by the "specified cause of loss."

3. We will not pay for loss or damage caused by or resulting from any of the following. But if physical loss or physical damage by a Covered Cause of Loss results, we will pay for that resulting physical loss or physical damage.

- a. Weather conditions:** Weather conditions. This exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the physical loss or physical damage.
- b. Acts or Decisions:** Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Negligent Work:** Faulty, inadequate or defective:
- (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance of part or all of any property on or off the "scheduled premises".

4. **Business Income and Extra Expense Exclusions.** We will not pay for:

- a.** Any Extra Expense, or increase of Business Income loss, caused by or resulting from:
- (1) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (2) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration".
- b.** Any other consequential loss.

**5. Equipment Breakdown Exclusion**

We will not pay for physical loss or physical damage caused by or resulting from any of the following tests:

- (a) A hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or
- (b) An insulation breakdown test of any type of electrical equipment.

**C. LIMITS OF INSURANCE**

1. The most we will pay for physical loss or physical damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.
2. The most we will pay for physical loss of or physical damage to outdoor signs attached to buildings is \$5,000 per sign in any one occurrence.
3. The limits applicable to:
  - a. Coverage Extensions; and
  - b. The following Additional Coverages:
    - (1) Accounts Receivable,
    - (2) Fire Department Service Charges,
    - (3) Fire Extinguisher Recharge, and
    - (4) "Pollutants and Contaminants" Clean Up and Removal
 are in addition to the Limits of Insurance.
4. Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:
  - a. Preservation of Property; or
  - b. Debris Removal; but if:
    - (1) The sum of direct physical loss or physical damage and Debris Removal expense exceeds the Limit of Insurance; or
    - (2) The Debris Removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage.

We will pay up to an additional \$10,000 for each location stated in the Declarations in any one occurrence under the Debris Removal Additional Coverage.

**5. Building Limit - Automatic Increase**

- a. The Limit of Insurance for Buildings will automatically increase annually by 8%.
- b. The amount of increase will be:
  - (1) The Limit of Insurance for Buildings that applied on the most recent of the policy

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inception date, policy anniversary date, or the date of any other policy change amending the Buildings limit, times

- (2) The percentage of annual increase shown above, expressed as a decimal (.08); times
- (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance for Buildings, divided by 365.

Example: The applicable Limit of Insurance for Buildings is \$100,000. The annual percentage increase is 8%. The number of days since the beginning of the policy period (or last policy change) is 146.

The amount of increase is:

$\$100,000 \times .08 \times 146 \text{ divided by } 365 = \$3,200$

**6. Business Personal Property Limit - Seasonal Increase**

- a. The Limit of Insurance for Business Personal Property will automatically increase by 25% to provide for seasonal variations.
- b. This increase will apply only if all Limits of Insurance shown in the Declarations for Business Personal Property at the "scheduled premises" is at least 100% of your average monthly values during the lesser of:
  - (1) The 12 months immediately preceding the date the physical loss or physical damage occurs; or
  - (2) The period of time you have been in business as of the date the physical loss or physical damage occurs.

**D. DEDUCTIBLES**

1. We will not pay for physical loss or physical damage in any one occurrence until the amount of physical loss or physical damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance.
2. Except as otherwise listed, the deductible applicable to Additional Coverages and Coverage Extensions is the Special Property Coverage Form is \$250.
3. A \$250 deductible applies to the following Glass Coverages, unless Glass Coverage is provided under a separate coverage form:

- a. Building Glass
  - b. Glass Expense
  - c. Tenant Glass
4. Unless a separate deductible is shown in the Declarations, the deductible applicable to the following Additional Coverages or Coverage Extensions is \$250, whether the coverage is provided under this coverage form, provided on a separate coverage form or the coverage is provided in a form that includes a package of coverages, such as a Stretch endorsement:
    - a. Accounts Receivable;
    - b. Fine Arts
    - c. Outdoor Signs; and
    - d. "Valuable Papers and Records";
  5. Unless a separate deductible is shown in the Declarations, the deductible applicable to the following Additional Coverages or Coverage Extensions is \$100, whether the coverage is provided under this coverage form, provided on a separate coverage form or the coverage is provided in a form that includes a package of coverages, such as a Stretch endorsement:
    - a. Employee Dishonesty; and
    - b. Temperature Change.
  6. No deductible applies to the following Coverage Extensions and Additional Coverages:
    - a. Fire Extinguisher Recharge;
    - b. Preservation of Property;
    - c. Fire Department Service Charge;
    - d. Business Income, Extra Expense, Civil Authority and Extended Business Income;
    - e. Arson Reward; and
    - f. Lock and Key Replacement
  6. The Deductible applicable to the following Additional Coverages is the policy deductible or the deductible shown in the Declarations for the following coverage:
    - a. Equipment Breakdown;
    - b. Ordinance or Law Coverage; and
    - c. Leasehold Improvements.
  7. Each deductible applicable to this policy shall be applied separately but only to the coverage specified, and the total deductible for all losses in any one occurrence shall be the highest deductible amount that applies to the occurrence.

**E. PROPERTY LOSS CONDITIONS**

**1. Abandonment**

There can be no abandonment of any property to us.

**SPECIAL PROPERTY COVERAGE FORM****2. Appraisal**

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In that event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss.

If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

**3. Duties In The Event Of Loss Or Damage**

You must see that the following are done in the event of loss of or damage to Covered Property:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the physical loss or physical damage. Include a description of the property involved.
- c. As soon as possible, give us description of how, when and where the physical loss or physical damage occurred.
- d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damaged property aside in the best possible order for examination. Also, keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of the claim.

This will not increase the Limits of Insurance.

- e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- f. Permit us to inspect the property and records proving the loss or damage. Also permit us to take samples of damaged property for inspection, testing and analysis.
- g. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.

h. Send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

i. Cooperate with us in the investigation or settlement of the claim.

j. Resume part or all of your "operations" as quickly as possible.

**4. Legal Action Against Us**

No one may bring a legal action against us under this insurance unless:

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within 2 years after the date on which the direct physical loss or physical damage occurred.

**5. Loss Payment**

In the event of physical loss or physical damage covered by this policy:

- a. At our option we will either:
  - (1) Pay the value of physically lost or physically damaged property, as described in paragraph **d.** below;
  - (2) Pay the cost of repairing or replacing the physically lost or physically damaged property, plus any reduction in value of repaired items;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality.
- b. We will give notice of our intentions within 30 days after we receive the sworn statement of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. We will determine the value of Covered Property as follows:
  - (1) At replacement cost (without deduction for depreciation), except as provided in (2) through (7) below.
    - (a) You may make a claim for physical loss or physical damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have physical loss or physical damage settled on an actual cash value basis, you may still make a claim on a

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replacement cost basis if you notify us of your intent to do so within 180 days after the physical loss or physical damage.

**(b)** We will not pay on a replacement cost basis for any physical loss or physical damage:

**(i)** Until the physically lost or physically damaged property is actually repaired or replaced; and

**(ii)** Unless the repairs or replacement are made as soon as reasonably possible after the physical loss or physical damage.

However, if the cost to repair or replace the damaged property is \$2,500 or less, we will settle the loss according to the provisions of Paragraphs **d.(1)(a)** and **d.(1)(b)** above whether or not the actual repair or replacement is complete.

**(c)** We will not pay more for physical loss or physical damage on a replacement cost basis than the least of:

**(i)** The cost to replace, on the same premises, the physically lost or physically damaged property with other property of comparable material and

quality and which is used for the same purpose; or

**(ii)** The amount you actually spend that is necessary to repair or replace the physically lost or physically damaged property.

**(2)** If the **Actual Cash Value - Buildings** option applies, as shown in the Declarations, paragraph (1) above does not apply to Buildings. Instead, we will determine the value of Buildings at actual cash value.

**(3)** The following property at actual cash value:

**(a)** Manuscripts;

**(b)** Works of art, antiques or rare articles, including etchings, pictures, statuary, objects of marble, bronzes, porcelains and bric-a-brac.

**(c)** Household contents, except personal property in apartments or rooms furnished by you as landlord.

**(4)** Glass at the cost of replacement with safety glazing material if required by law.

**(5)** "Tenants' Improvements and Betterments" at:

**(a)** Replacement cost if you make repairs promptly.

**(b)** A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

**(i)** Multiply the original cost by the number of days from the physical loss or physical damage to the expiration of the lease; and

**(ii)** Divide the amount determined in **(i)** above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

**(c)** Nothing, if others pay for repairs or replacement.

**(6)** "Valuable Papers and Records", at the cost of:

**(a)** Blank materials for reproducing the records; and

**(b)** Labor to transcribe or copy the records.

**(7)** "Money" and "Securities":

**(a)** "Money" at its face value; and

**(b)** "Securities" at their value at the close of business on the day the loss is discovered.

**(8)** The value of United States Government Internal Revenue taxes and custom duties and refundable state and local taxes paid or fully determined on the following property held for sale will not be considered in determining the value of Covered Property:

**(a)** Distilled spirits;

**(b)** Wines;

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- (c) Rectified products; or
  - (d) Beer.
- (9) Applicable to Accounts Receivable:
- (a) If you can not accurately establish the amount of the accounts receivable outstanding as of the time of physical loss or physical damage the following method will be used:
    - (i) Determine the total of the average monthly value of accounts receivable for 12 months immediately preceding the month in which the direct physical loss or physical damage occurred; and
    - (ii) Adjust the total determined in paragraph (i) above for any normal fluctuations in the value of accounts receivable for the month in which the direct physical loss or physical damage occurred for any demonstrated variance from the average of that month.
  - (b) The following will be deducted from the total value of accounts receivable, however that value is established:
    - (i) The value of the accounts for which there is no physical loss or physical damage;
    - (ii) The value of the accounts that you are able to re-establish or collect;
    - (iii) A value to allow for probable bad debts that you are normally unable to collect; and
    - (iv) All unearned interest and services charged.
- e. Our payment for physical loss of or physical damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of physically lost or physically damaged property if other than you. If we pay the owners, such payment will satisfy your claims against us for the owners' property.
- We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
  - g. We will pay for covered physical loss or physical damage within 30 days after we receive the sworn statement of loss, if:
    - (1) You have complied with all of the terms of this policy; and
    - (2) (a) We have reached agreement with you on the amount of loss, or
      - (b) An appraisal award has been made.
  - h. The following condition applies to any loss payment for Extra Expense:
 

We will deduct from the total Extra Expense to be paid:

    - (1) The salvage value that remains of any property bought for temporary use during the Period of Restoration, once business operations are resumed; and
    - (2) Any Extra Expense that is paid for by other insurance.
- 6. Recovered Property**
- If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limits of Insurance.
- 7. Resumption of Operations**
- In the event of physical loss or physical damage at the "scheduled premises" you must resume all or part of your "operations" as quickly as possible.
- We will reduce the amount of your:
- a. Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the "scheduled premises" or elsewhere.
  - b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- 8. Vacancy**
- a. **Description of Terms**
    - (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in Paragraphs.

**SPECIAL PROPERTY COVERAGE FORM**

(a) and (b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

(i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

**b. Vacancy Provisions**

If the building where physical loss or physical damage occurs has been vacant for more than 60 consecutive days before that physical loss or physical damage occurs:

(1) We will not pay for any physical loss or physical damage caused by any of the following even if they are Covered Causes of Loss:

(a) Vandalism;

(b) Sprinkler leakage, unless you had protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** above, we will reduce the amount we would otherwise pay for the physical loss or physical damage by 15%.

**F. PROPERTY GENERAL CONDITIONS**

**1. Control of Property**

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Form at one or more locations will not affect coverage at any location where, at the time of physical loss or physical damage, the breach of condition does not exist.

**2. Mortgage Holders**

a. The term mortgage holder includes trustee.

b. We will pay for covered physical loss of or physical damage to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.

c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgage holder will still have the right to receive loss payment if the mortgage holder:

(1) Pays any premium due under this policy at our request if you have failed to do so;

(2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so; and

(3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this policy will then apply directly to the mortgage holder.

e. If we pay the mortgage holder for any physical loss or physical damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

(1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and

(2) The mortgage holder's rights to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

**SPECIAL PROPERTY COVERAGE FORM**

f. If we cancel this policy, we will give written notice to the mortgage holder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

**3. No Benefit to Bailee**

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

**4. Policy Period, Coverage Territory**

Under this form:

a. We cover physical loss or physical damage commencing:

- (1) During the policy period shown in the Declarations; and
- (2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.

But we do not cover physical loss or physical damage that is also covered by a preceding policy.

b. The coverage territory is:

- (1) The United States of America (including its territories and possessions);
- (2) Puerto Rico; and
- (3) Canada.

**5. Additional Conditions**

The following conditions apply to paragraph **A.5.u.**, Forgery Additional Coverage:

- a. We will treat mechanically reproduced facsimile signatures the same as handwritten signatures.
- b. You must include with your proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.
- c. The Coverage Territory is revised to cover loss you sustain anywhere in the world.

**G. PROPERTY DEFINITIONS**

1. "Computer" means a programmable electronic device that can store, retrieve and process "data".

2. "Computer Equipment" means "computers", "peripheral devices", "media", and manuals that are purchased to be used in conjunction with hardware and "software".

3. "Counterfeit" means an imitation of an actual valid original which is intended to deceive and to be taken as the original.

4. "Data" means information or facts stored in a "computer's" memory, on "software" or on "media".

5. "Finished Stock" means stock you have manufactured.

"Finished Stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this policy.

6. "Manager" means a person serving in a directorial capacity for a limited liability company.

7. "Media" means the material used solely with the "computer" or "peripheral device" upon which "software" or "data" is stored, such as tapes, CD-ROMs or disks.

8. "Member" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".

9. "Messenger" means you, any any of your partners or any employee while having care and custody of the property outside your premises.

10. "Money" means:

- a. Currency, coins and bank notes whether or not in current use; and
- b. Travelers checks, registered checks and money orders held for sale to the public.

11. "Operations" means your business activities occurring at the "scheduled premises" and tenantability of the "scheduled premises".

12. "Period of Restoration" means the period of time that:

- a. Begins with the date of direct physical loss or physical damage caused by or resulting from a Covered Cause of Loss at the "scheduled premises", and
- b. Ends on the date when:
  - (1) The property at the "scheduled premises" should be repaired, rebuilt or replaced with reasonable speed and similar quality;
  - (2) The date when your business is resumed at a new, permanent location.

**SPECIAL PROPERTY COVERAGE FORM**

"Period of Restoration" does not include any increased period required due to enforcement of any law that:

- a. Regulates the construction, use or repair, or required the tearing down of any property; or
- b. Regulates the prevention, control, repair, clean up or restoration of environmental damage.

The expiration date of this policy will not cut short the "period of restoration".

13. "Peripheral Device" means any physical unit used to operate the "computer" that cannot be used for purposes other than as part of the computer's system, such as tape or disk drives, printers, or modems.
14. "Perishable Stock" means personal property:
  - a. Maintained under controlled conditions for its preservation; and
  - b. Susceptible to physical loss or physical damage if the controlled conditions change.
15. "Pollutants and Contaminants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, or any other material which causes or threatens to cause physical loss, physical damage, impurity to property, unwholesomeness, undesirability, loss of marketability, loss of use of property, or which threatens human health or welfare. Waste includes materials to be recycled, reconditioned or reclaimed.
16. "Scheduled Premises" means any premises listed by location address in the Scheduled Premises section of the Declarations.
17. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or other property and includes:
  - a. Tokens, tickets except Lottery Tickets, revenue and other non-postage stamps whether or not in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which are not of your own issue;

but does not include "money."
18. "Software" means instructions or programs that are stored on "media" and which instruct the hardware as to how to process "data".

19. "Specified Cause of Loss" means the following:  
Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

- a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. It does not include the cost of filling sinkholes.
- b. Falling objects does not include loss of or damage to:
  - (1) Personal property in the open; or
  - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

20. "Suit" means a civil proceeding and includes:

- a. An arbitration proceeding in which damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which damages are claimed and to which you submit with our consent.

21. "Tenant Improvements and Betterments" means fixtures, alterations, installations or additions made a part of the Building you occupy but do not own and that you cannot legally remove; and

- a. Which are made at your expense; or
- b. That you acquired from the prior tenant at your expense.

22. "Theft" means the act of stealing.

23. "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, deeds, drawings, films, maps or mortgages.

But "valuable papers and records" does not mean "money" and "securities", "data" and "software" or the materials on which the "data" and "software" is recorded.

# **BUSINESS LIABILITY COVERAGE FORM**

**QUICK REFERENCE  
BUSINESS LIABILITY COVERAGE FORM  
READ YOUR POLICY CAREFULLY**

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## BUSINESS LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

### A. COVERAGES

#### 1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

##### Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

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

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

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

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

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

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C.** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

**e. Incidental Medical Malpractice**

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
  - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
  - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

**2. MEDICAL EXPENSES**

**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:
  - (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
  - (3) 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.

**3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS**

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
  - (1) All expenses we incur.
  - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
  - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - (4) 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 \$500 a day because of time off from work.
  - (5) All costs taxed against the insured in the "suit".
  - (6) 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.
  - (7) 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.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. 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:

- (1) 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";
- (2) This insurance applies to such liability assumed by the insured;
- (3) 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";
- (4) 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 interest of the indemnitee;
- (5) 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
- (6) The indemnitee:
  - (a) Agrees in writing to:
    - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
    - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (b) Provides us with written authorization to:
    - (i) Obtain records and other information related to the "suit"; and
    - (ii) Conduct and control the defense of the indemnitee in such "suit".

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 **1.b.(b)** of Section **B.** – Exclusions, 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:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph **(6)** above, are no longer met.

## B. EXCLUSIONS

### 1. Applicable To Business Liability Coverage

This insurance does not apply to:

#### a. Expected Or Intended Injury

- (1) "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; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

#### b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

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

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

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

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

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

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

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

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
- (i) Any insured; or
- (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

**i. War**

"Bodily injury", "property damage" or "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.

**j. Professional Services**

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
  - (a) Body piercing (not including ear piercing);
  - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
  - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

**k. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**l. Damage To Your Product**

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

**m. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**o. Recall Of Products, Work Or Impaired Property**

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

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal And Advertising Injury**

"Personal and advertising injury":

- (1) 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;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
  - (a) Advertising, broadcasting, publishing or telecasting;
  - (b) Designing or determining content of web sites for others; or
  - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
  - (a) An "advertisement" for others on your web site;
  - (b) Placing a link to a web site of others on your web site;
  - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
  - (d) Computer code, software or programming used to enable:
    - (i) Your web site; or
    - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

**q. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

**r. Employment-Related Practices**

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

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

**s. Asbestos**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information**

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (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.

**Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion**

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

**2. Applicable To Medical Expenses Coverage**

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 with the "products-completed operations hazard".

**g. Business Liability Exclusions**

Excluded under Business Liability Coverage.

**C. WHO IS AN INSURED**

**1. If you are designated in the Declarations as:**

**a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

**b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

**c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

**d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

**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. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

**(1)** "Bodily injury" or "personal and advertising injury":

**(a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

**(b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "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.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such 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. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

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. Legal Representative If You Die**

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 insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, 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 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

**a. Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**b. Lessors Of Equipment**

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

## **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

### **1. The Most We Will Pay**

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. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

### **3. Each Occurrence Limit**

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

### **4. Personal And Advertising Injury Limit**

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

### **5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

### **6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

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.

## **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**

### **1. Bankruptcy**

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

### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

#### **a. Notice Of Occurrence Or Offense**

You or any additional insured 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. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

#### **c. Assistance And Cooperation Of The Insured**

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, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

#### **d. Obligations At The Insured's Own Cost**

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.

#### **e. Additional Insured's Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

#### **f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph f. applies separately to you and any additional insured.

**3. Financial Responsibility Laws**

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

**4. Legal Action Against Us**

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

- 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 Form 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 insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**5. Separation Of Insureds**

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

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

**6. Representations**

**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

**b. Unintentional Failure To Disclose Hazards**

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

**7. Other Insurance**

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

**a. Primary Insurance**

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**b. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

**(1) Your Work**

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

**(2) Premises Rented To You**

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

**(3) Tenant Liability**

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;

**(4) Aircraft, Auto Or Watercraft**

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 A. – Coverages.

**(5) Property Damage To Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

**(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part 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.

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:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

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 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.

**8. Transfer Of Rights Of Recovery Against Others To Us****a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, 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. This condition does not apply to Medical Expenses Coverage.

**b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

## F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

### 1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

### 2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

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

### 3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

### 4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

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

### 5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

### 6. Additional Insured - State Or Political Subdivision - Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

#### 7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
  - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
  - (b) Any express warranty unauthorized by you;
  - (c) Any physical or chemical change in the product made intentionally by the vendor;
  - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

#### 8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

**9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

**10. Additional Insured – Co-Owner Of Insured Premises**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

**G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS**

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "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".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "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 **a.** above;
- 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 **a.** above;
  - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; 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 the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
  - a. Stored as or on;
  - b. Created or used on; or
  - c. 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.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "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:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

**12. "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, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- 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, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement 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.

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

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs 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
- (2) 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 (1) above and supervisory, inspection, architectural or engineering activities.
13. "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".
14. "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".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in 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 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, of at least 1,000 pounds gross vehicle weight, 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.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "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 the person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. 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;
  - e. Oral, written or electronic publication of material that violates a person's right of privacy;
  - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
  - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
  - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19.** "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 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.
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
    - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
    - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20.** "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 "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21.** "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.
- 22.** "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.
- 23.** "Volunteer worker" means a person who:
- a. Is not your "employee";

**BUSINESS LIABILITY COVERAGE FORM**

- b. Donates his or her work;
  - c. Acts at the direction of and within the scope of duties determined by you; and
  - d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 24. "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.
- 25. "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.



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

## **SPECIAL PROPERTY COVERAGE AMENDATORY ENDORSEMENT- GEORGIA**

This endorsement modifies insurance provided under the following:

### **SPECIAL PROPERTY COVERAGE FORM**

I. The following provisions modify the **Special Property Coverage Form**.

**A. Property Definitions**

"Data" **G.4.** is deleted and replaced with the following.

- 4. "Electronic data" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a "computer" or device connected to it, which enable the "computer" or device to receive, process, store, retrieve or send data.

**B. Exclusions**

1. The following is added to **Exclusions B.1:**

**h. Electronic Vandalism or Corruption of "Electronic Data" or Corruption of "Computer Equipment"**

This exclusion does not apply if SS 14 29 Electronic Vandalism or SS 40 08 Electronic Vandalism has been made part of this policy.

Electronic Vandalism or Corruption of "Electronic Data" or Corruption of "Computer Equipment" which means:

- (1) A virus, malicious code or similar instruction introduced into or enacted on a computer system (including "electronic data") or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation.
- (2) Unauthorized viewing, copying or use of electronic data (or any proprietary or confidential information or intellectual property in any form) by any person, even if such activity is characterized as "theft";
- (3) Errors or omissions in programming or processing "electronic data";
- (4) Errors or deficiency in design, installation, maintenance, repair or modification of your computer system or any computer system or network to which your system is connected or on which your system depends (including "electronic data");
- (5) Manipulation of your computer system, including "electronic data", by an employee, volunteer worker or contractor, for the purpose of diverting or destroying "electronic data" or causing fraudulent or illegal transfer of any property;

- (6)** Interruption in normal computer function or network service or function due to insufficient capacity to process transactions or to an overload of activity on the system or network;
- (7)** Unexplained or indeterminable failure, malfunction or slowdown of a computer system, including "electronic data" and the inability to access or properly manipulate the "electronic data";
- (8)** Complete or substantial failure, disablement or shutdown of the Internet, regardless of the cause;
- (9)** The inability of a computer system to correctly recognize, process, distinguish, interpret or accept one or more dates or times.



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

**BUSINESS LIABILITY COVERAGE FORM  
AMENDATORY ENDORSEMENT-  
SUPPLEMENTARY PAYMENTS**

This endorsement modifies insurance provided under the following:

**BUSINESS LIABILITY COVERAGE FORM**

- A. Sub-subparagraph 3.a.(5) of Paragraph 3., Section A. **Coverages** is deleted and replaced with the following:
  - 3. **Coverage Extension - Supplementary Payments:**
    - a. **(5)** 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.



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

## **BUSINESS LIABILITY COVERAGE FORM AMENDATORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS LIABILITY COVERAGE FORM**

**A.** Sub-subparagraphs 1.p. (7), (8), (15) of Paragraph 2., of Section B. **Exclusions** are deleted and replaced with the following:

**p. Personal and Advertising Injury:**

**(7) (a)** Arising out of any actual or alleged infringement or violation of any intellectual property right, such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity; or

**(b)** Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

**(1)** Infringement, in your "advertisement", of:

**(a)** Copyright;

**(b)** Slogan; or

**(c)** Title of any literary or artistic work; or

**(2)** Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

**(8)** Arising out of an offense committed by an insured whose business is:

**(a)** Advertising, broadcasting, publishing or telecasting;

**(b)** Designing or determining content of web sites for others; or

**(c)** An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. of the definition 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.

**(15)** Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information. This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

**B.** Subparagraph 1.r. of Section B. **Exclusions** is deleted and replaced with the following:

**r. Employment-Related Practices**

"Personal and advertising injury" to:

**(1)** A person arising out of any "employment-related practices"; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (a) Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (b) Whether the insured may be liable as an employer or in any other capacity; and
- (c) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- C. Subparagraph 1.q. "Electronic Data" of Section B. **Exclusions** is deleted and replaced with the following:

- q. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

- (1) Damages, other than damages because of "personal and advertising injury", arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

- D. Sub-subparagraph 7.b.(1) Other Insurance of Section E. **Liability and Medical Expenses General Conditions** is deleted and replaced with the following:

- b. **Excess Insurance**

- (1) **Your Work**

That is Fire, Extended Coverage, Builder's Risk, Installation Risk, Owner Controlled Insurance Program or OCIP, Wrap Up Insurance or similar coverage for "your work".

- E. Subparagraph 17. c. "Personal and Advertising Injury" of Section G, **Liability and Medical Expenses Definitions** is deleted and replaced with the following:

"Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- 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 or organization occupies, committed by or on behalf of its owner, landlord or lessor;

- F. Subparagraph 17.h. of Section G, **Liability and Medical Expenses Definitions** deleted.



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

## **GEORGIA CHANGES**

This endorsement modifies insurance provided under the following:

**COMMON POLICY CONDITIONS  
STANDARD PROPERTY COVERAGE FORM  
SPECIAL PROPERTY COVERAGE FORM**

- I. The following provisions modify the **COMMON POLICY CONDITIONS**:
- A. Paragraph **A.1.** of the **Cancellation Condition** is replaced by the following:
1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation stating a future date on which the policy is to be cancelled, subject to the following:
    - a. If only the interest of the first Named Insured is affected, the effective date of cancellation will be either the date we receive notice from the first Named Insured or the date specified in the notice, whichever is later.
    - b. If by statute, regulation or contract this policy may not be cancelled unless notice is given to a governmental agency, mortgagee or other third party, we will mail or deliver at least 10 days notice to the first Named Insured and any such third party as soon as practicable after receiving the first Named Insured's request for cancellation.  
  
Our notice will state the effective date of cancellation, which will be the later of the following:
      - (1) 10 days from the date of mailing or delivering our notice, or
      - (2) The effective date of cancellation stated in the first Named Insured's notice to us.
- B. Paragraph **A.5.** of the **Cancellation Condition** is replaced by the following:
5. Premium Refund
    - a. If this policy is cancelled, we will send the first Named Insured any premium refund due.
    - b. If we cancel, the refund will be pro rata, except as provided in **c.** below.
    - c. If the cancellation results from failure of the first Named Insured to pay, when due, any premium to us or any amount, when due, under a premium finance agreement, then the refund may be less than pro rata. Calculation of the return premium at less than pro rata represents a penalty charged on unearned premium.
    - d. If the first Named Insured cancels, the refund may be less than pro rata.
    - e. The cancellation will be effective even if we have not made or offered a refund.
- C. The following is added to the **Cancellation Condition** and supersedes any other provisions to the contrary:
- If we decide to:
1. Cancel or nonrenew this policy; or
  2. Increase current policy premium by more than 15% (other than any increase due to change in risk, exposure or experience modification or resulting from an audit of auditable coverages); or
  3. Change any policy provision which would limit or restrict coverage;
- Then:
- We will mail or deliver notice of our action (including the dollar amount of any increase in renewal premium of more than 15%) to the first Named Insured and lienholder, if any, at the last mailing address known to us. Expect as applicable as described in Paragraph **D.** below, we will mail or deliver notice at least:
1. 10 days before the effective date of cancellation if this policy has been in effect less than 60 days or if we cancel for nonpayment of premium; or

2. 45 days before the effective date of cancellation if this policy has been in effect 60 or more days and we cancel for a reason other than nonpayment of premium; or
  3. 45 days before the expiration date of this policy if we decide to nonrenew, increase the premium or limit or restrict coverage.
- D. The following provisions apply to insurance covering residential real property, if the named insured is a natural person.

With respect to such insurance, the following is added to the **Cancellation Condition** and supersedes any provisions to the contrary:

1. When this policy has been in effect for 60 days or less and is not a renewal with us, we may cancel for any reason by notifying the first named insured at least 10 days before the date of cancellation takes effect.
2. When this policy has been in effect for more than 60 days, or at any time if it is a renewal with us, we may cancel only for one or more of the following reasons, or as permitted under applicable Georgia law:
  - (a) Nonpayment of premium, whether payable to us or to our agent;
  - (b) Upon discovery of fraud, concealment of a material fact, or material misrepresentation made by or with the knowledge of any person insured under this policy in obtaining this policy, continuing this policy or presenting a claim under this policy;
  - (c) Upon the occurrence of a change in the risk which substantially increases any hazard insured against; or
  - (d) Upon the violation of any of the material terms or conditions of this policy by any person insured under this policy.
3. We may cancel by providing notice to the first named insured at least:
  - (a) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

- (b) 45 days before the effective date of cancellation if we cancel for any of the reasons listed in **2.(b), (c) or (d)** above.

III. The following provisions modify the **STANDARD PROPERTY** and **SPECIAL PROPERTY COVERAGE FORM**:

A. The following exclusion and related provisions are added to paragraph **B.2 Exclusions**:

1. We will not pay for loss or damage arising out of any act committed:
  - a. By or at the direction of any insured; and
  - b. With the intent to cause a loss.
2. However, this exclusion will not apply to deny coverage to an innocent co-insured, provided the loss:
  - a. Is otherwise covered under this coverage part; and
  - b. Arose out of an act of family violence by an insured, against whom a family violence complaint is brought for such act.
3. If we pay a claim pursuant to Paragraph **E.2.** our payment to the insured is limited to that insured's legal interest in the property less any payments we first made to a mortgageholder or other party with a legal secured interest in the property. In no event will we pay more than the applicable Limit of Insurance as stated in the Declarations.

B. With respect to Section **E.5. Loss Payment**, Subsection **(d)**, this policy covers only the cost of repair, rebuilding or replacement. Such cost does not include recovery of, and therefore this policy does not pay any compensation for, an actual or perceived reduction of the market value of any property. But if the property that has sustained loss or damage is subject to an endorsement which explicitly addresses the market value, then that endorsement will apply to such property in accordance with its terms.



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

## **BUSINESS INCOME EXTENSION FOR OFF-PREMISES UTILITY SERVICES**

This endorsement modifies insurance provided under the following:

### **STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM**

This insurance applies only when Business Income and Extra Expense is shown in the Declarations as applicable. Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

#### **A. BUSINESS INCOME EXTENSION FOR OFF-PREMISES UTILITY SERVICES**

This Coverage Extension applies only when the Business Income Additional Coverage is included in this policy.

We will pay for loss of Business Income or Extra Expense at the "scheduled premises" caused by the interruption of service to the "scheduled premises". The interruption must result from direct physical loss or physical damage by a Covered Cause of Loss to the following property not on "scheduled premises":

1. "Water Supply Services";
2. "Communication Supply Services"; or
3. "Power Supply Services".

#### **B. WAITING PERIOD**

We will only pay for loss you sustain after the first 12 consecutive hours following the direct physical loss of or physical damage to the off-premises property to which this endorsement applies. We will not pay for any reduction in business income or extra expense after electricity, steam or gas has been restored to the "scheduled premises".

#### **C. LIMIT OF INSURANCE**

The most we will pay for loss under this extension is \$25,000 at each "scheduled premises".

#### **D. ADDITIONAL DEFINITIONS**

1. "**Water Supply Services**", meaning the following types of property supplying water to the "scheduled premises":
  - a. Pumping stations; and
  - b. Water mains.
2. "**Communication Supply Services**", meaning property, including overhead transmission lines supplying communication services, including telephone, radio, microwave or television services, to the "scheduled premises", such as:
  - a. Communication transmission lines, including optic fiber transmission lines;
  - b. Coaxial cables; and
  - c. Microwave radio relays except satellites.
3. "**Power Supply Services**", meaning the following types of property supplying electricity, steam or gas, including overhead transmission lines to the "scheduled premises":
  - a. Utility generating plants;
  - b. Switching stations;
  - c. Substations;
  - d. Transformers; and
  - e. Transmission Lines.



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

## FINE ARTS

This endorsement modifies insurance provided under the following:

### SPECIAL PROPERTY COVERAGE FORM

This insurance applies only when the property is covered under the Special Property Coverage Form. Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

The following changes are made to the Special Property Coverage Form:

#### A. Under A. Coverage:

1. The following paragraph is added to **1. Covered Property**:  
Fine Arts listed and described in the Declarations or Schedule which are:
  - a. Owned by you; or
  - b. Owned by others, and in your care, custody and control; and
  - c. Located at the "scheduled premises", or in transit to and from the "scheduled premises", or at your residence.
2. The following is added to Paragraph **2. Property Not Covered** with respect to coverage afforded by this endorsement:  
Property on exhibition at fairgrounds or at any type of exposition, unless such locations are listed and described in the Declarations or Schedule.
3. The following special Limitation provision applies to property covered by this endorsement:  
Art glass windows, glassware, statuary, marbles, bric-a-brac, porcelains and other articles of fragile or brittle nature are covered against loss by breakage only if loss or damage is caused by "specified causes of loss."

4. Section **B. EXCLUSIONS** do not apply to coverage afforded under this endorsement, except for:

- (1) **Governmental Action**;
- (2) **Nuclear Hazard**; and
- (3) **War and Military Action**.

5. Additional Exclusions

We will not pay for physical loss or physical damage caused by or resulting from:

- a. Delay, loss of use, loss of market, or any other causes of consequential loss;
- b. Wear and tear, depreciation or obsolescence;
- c. Rust, corrosion, fungus, decay, deterioration, hidden or latent defect, or any quality in property that causes it to damage or destroy itself;
- d. Insects, birds, rodents or other animals.
- e. Dishonest acts by:
  - (1) You or any of your partners;
  - (2) Your directors or trustees;
  - (3) Your authorized representatives or employees; or
  - (4) Anyone, other than a carrier for hire, to whom you entrusted the Covered Property, including their employees, for any purpose:

Whether acting alone or in collusion with others; and

Whether or not occurring during the hours of employment.

- f. Voluntary parting with any property whether or not induced to do so by any fraudulent scheme, trick, device or false pretense.
- g. Unauthorized instructions to transfer property to any person or to any place.
- h. Theft from any unattended vehicle unless at the time of theft its windows, doors and compartments were closed and locked and there are visible signs that the theft was the result of forced entry.

But this exclusion does not apply to property in the custody of a carrier for hire.

- i. Processing or work performed upon the property.

**B. Limits of Insurance**

Section C. LIMITS OF INSURANCE is replaced by the following:

The most we will pay for physical loss or physical damage in any one occurrence for property covered under this endorsement is the Limit of Insurance shown in the Declarations for "Fine Arts", but no more than \$25,000 for any one item of "Fine Arts".

**C. Deductible**

We will adjust loss in any one occurrence under this endorsement as a single loss. The only deductible amount that applies under this coverage is the larger of:

- 1. \$250; or
- 2. The amount shown in the Declarations as a deductible applicable to this coverage.

**D. Additional Conditions**

**1. Valuation**

The following is added to Section **E. PROPERTY LOSS CONDITIONS:**

The value of Covered Property will be the amount shown in the Declarations or Schedule for each item of Covered Property, which is agreed to be the value of the item.

**2. Pair or Set**

In case of total loss to an item of Covered Property which is part of a pair or set, we agree to pay you the full amount of the pair or set as shown in the Declarations or Schedule and you agree to surrender the remaining item(s) of the pair or set to us.

**3. Packing**

You agree that Covered Property will be packed and unpacked by competent packers.

**E. Additional Definition**

The following definition is added to Section **H. DEFINITIONS:**

"Fine Arts" meaning paintings, etchings, pictures, tapestries, art glass windows, valuable rugs, statuary, marbles, bronzes, antique furniture, rare books, antique silver, manuscripts, porcelains, rare glass, bric-a-brac, and similar property of rarity, historical value or artistic merit.

**F. Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the Covered Property, subject to the Limit of Insurance.



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

## **TRANSIT COVERAGE – PROPERTY IN THE CARE OF CARRIERS FOR HIRE**

This endorsement modifies insurance provided under the following:

### **SPECIAL PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement the terms and conditions of the policy and of the Special Property Coverage Form apply to the insurance stated below.

**A.** With respect to this Transit Coverage – Property in the Care of Carriers for Hire only, the following changes are made to the Special Property Coverage Form:

1. Under **A.4. Limitations**, subparagraph **c.(3)** which limits coverage for patterns, dies, molds and forms, is deleted.
2. Under **B. Exclusions**
  - a. Exclusions **1.a.** (Earth Movement) and **1.f.** (Water) do not apply to property in transit.
  - b. Exclusions **2.e.** (Dishonesty) and **2.g.** (Exposed Property) do not apply to property in custody of a carrier for hire.
  - c. Exclusion **2.f.** (False Pretense) does not apply to loss or damage caused by your good faith acceptance of false bills of lading or shipping receipts.
  - d. The following Exclusion is added:  
We will not pay for physical loss or physical damage caused by or resulting from poor or insufficient packaging or packing.

**B. Transit Coverage – Property in the Care of Carriers for Hire**

1. The insurance that applies to your Business Personal Property and Personal Property of Others is extended to apply to shipments of that property while in transit at your risk, by motor vehicle, railroad car or aircraft between points within the Coverage Territory. This includes property you have sold and for which your responsibility continues until it is delivered.

2. The Transit Coverage – Property in the Care of Carriers for Hire also applies to:

**a. Expenses to Inspect, Repackage and Reship Damaged Shipments**

The necessary additional expenses you incur to inspect, repackage and reship Covered Property which is physically damaged as a result of a Covered Cause of Loss.

**b. Expenses to Protect Covered Property from Spoilage or Change in Temperature**

The necessary additional expense you incur to temporarily store Covered Property in a temperature controlled environment in order to avoid or minimize physical loss or physical damage to such property from spoilage or change in temperature. Such temporary storage must be made necessary by the sudden and accidental breakdown of heating or refrigeration unit(s) on transporting conveyances.

This additional expense will not include:

- (1) Expenses to repair or replace heating or refrigeration unit(s);
- (2) Costs or penalties due to detention or delay of any vehicles, trailers, conveyances or containers; or
- (3) Costs for additional wages, room, board or meals.

**c. F.O.B. Shipments**

Outgoing shipments where the risk of physical loss or physical damage is transferred to the buyer when such property leaves your premises.

You must use all reasonable means to collect the amount due you from the buyer

before making a claim under this Transit Coverage. We will not make payment until you grant us the right of recovery against the buyer.

**d. Loading and Unloading**

Shipments during loading or unloading and within 500 feet of any transporting conveyance.

**e. Return Shipments**

Outgoing shipments which have been rejected by the consignee or are not deliverable, while:

- (1) In due course of transit, being returned to you; or
- (2) Up to 10 days after delivery or attempted delivery awaiting return shipment to you.

Payment under paragraphs **a., b., c., d. and e.** above will not increase the Transit Coverage Limit of Insurance.

**C. Under this Transit Coverage – Property in the Care of Carriers for Hire, we will not pay for:**

- 1. Property in the care, custody or control of your salespersons.
- 2. Mail shipments in the custody of the U.S. Postal Service.
- 3. Property of Others for which you are responsible as a:
  - a. Carrier for hire; or
  - b. Carloader, consolidator, broker, freight forwarder, shipping association, or other arranger of transportation.
- 4. Property in or on a motor vehicle you own, lease or operate.

**D. Limit of Insurance**

The Limit of Insurance shown in the Declarations for Transit Coverage – Property in the Care of Carriers for Hire is the most we will pay for all physical loss or physical damage in any one occurrence to property insured under this endorsement.

**E. Deductible**

We will not pay for physical loss or physical damage in any one occurrence until the amount of physical loss or physical damage exceeds \$250. We will then pay the amount of physical loss or physical damage in excess of \$250 up to the applicable Limit of Insurance.

**F. Additional Conditions**

**1. Valuation**

Property Loss Condition **E.5.** is deleted and replaced by the following:

**a. Valuation**

**(1) Property You Own**

The value of Covered Property will be the amount of invoice plus accrued charges, prepaid charges and charges since shipment; or

**(2) In the absence of an invoice, the value of Covered Property will be its actual cash value, with proper deduction for depreciation, at the point of destination on the date of expected arrival.**

**b. Property of Others**

The most we will pay for Covered Property owned by others is the lesser of:

**(1) Your legal liability for direct physical loss or physical damage to such property; or**

**(2) What we would pay if you had owned the property.**

**2. Impairment of Rights of Recovery**

We will not pay for physical loss or physical damage, if you impair our rights to recover damages from any carrier for hire. But you may accept from carriers for hire bills of lading, receipts or contracts of transportation which contain a limitation of value.



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

## HIRED AUTO AND NON-OWNED AUTO

This endorsement modifies insurance provided under the following:

### BUSINESS LIABILITY COVERAGE FORM

This coverage is subject to all provisions in the **BUSINESS LIABILITY COVERAGE FORM** not expressly modified herein:

#### A. Amended Coverage:

Coverage is extended to "bodily injury" and "property damage" arising out of the use of a "hired auto" and "non-owned auto".

#### B. Paragraph B. EXCLUSIONS is amended as follows:

1. Exclusion **g. Aircraft, Auto or Watercraft** does not apply to a "hired auto" or a "non-owned auto".

2. Exclusion **e. Employers Liability** does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract".

3. Exclusion **f. Pollution** is replaced by the following:

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

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

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

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

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

**b.** Before the "pollutants" or any property in which the "pollutants" are contained are

moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

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

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

(1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive, or dispose of such "pollutants"; and

(2) The "bodily injury" and "property damage" does not arise out of the operation of any equipment listed in paragraphs **15.b.** and **15.c.** of the definition of "mobile equipment".

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

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

(2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage as a result of the maintenance or use of a covered "auto".

4. With respect to this coverage, the following additional exclusions apply:

**a. Fellow employee**

Coverage does not apply to "bodily injury" to any fellow "employee" of the "insured" arising out of the operation of an "auto" owned by the "insured" in the course of the fellow "employee's" employment.

**b. Care, custody or control**

Coverage does not apply to "property damage" involving property owned or transported by the "insured" or in the "insured's" care, custody or control.

C. With respect to "hired auto" and "non-owned auto" coverage, Paragraph C. **WHO IS AN INSURED** is deleted and replaced by the following:

The following are "insureds":

a. You.

b. Your "employee" while using with your permission:

- (1) An "auto" you hire or borrow; or
- (2) An "auto" you don't own, hire or borrow in your business or personal affairs; or
- (3) An "auto" hired or rented by your "employee" on your behalf and at your direction.

c. Anyone else while using a "hired auto" or "non-owned auto" with your permission except:

- (1) The owner or anyone else from whom you hire or borrow an "auto".
- (2) Someone using an auto while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (3) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".
- (4) A partner (if you are a partnership), or a member (if you are a limited liability

company) for an "auto" owned by him or her or a member of his or her household.

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

D. With respect to the operation of a "hired auto" and "non-owned auto", the following additional conditions apply:

**1. OTHER INSURANCE**

a. Except for any liability assumed under an "insured contract" the insurance provided by this Coverage Form is excess over any other collectible insurance.

However, if your business is the selling, servicing, repairing, parking or storage of "autos", the insurance provided by this endorsement is primary when covered "bodily injury" or "property damage" arises out of the operation of a customer's "auto" by you or your "employee".

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

**2. TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US**

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

E. The following definitions are added:

**G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:**

1. "Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any auto you lease, hire, rent or borrow from any of your "employees", your partners (if you are a partnership), members (if you are a partnership), members (if you are a limited liability company),

or your "executive officers" or members of their households.

This does not include a long-term leased "auto" that you insure as an owned "auto" under any other auto liability insurance policy or a temporary substitute for an "auto" you own that is out of service because of its breakdown, repair, servicing or destruction.

2. "Non-owned auto " means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes:
  - a. "Autos" owned by your "employees" your partners (if you are a partnership), members (if you are a limited liability company), or your "executive officers", or members of their households, but only while used in your business or your personal affairs.
  - b. Customer's "auto" that is in your care, custody or control for service.



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

## **ACCOUNTS RECEIVABLE**

This endorsement modifies insurance provided under the following:

**STANDARD PROPERTY COVERAGE FORM  
SPECIAL PROPERTY COVERAGE FORM**

This coverage applies only when it is indicated in the Declarations. The provisions of this policy apply to the coverage stated in this endorsement, except as indicated below.

**A.** When shown in the Declarations as applicable, the Limit of Insurance stated in paragraph **A.5.a.(1), Accounts Receivable**, in the Standard Property Coverage Form and **A.6.a.(1), Accounts Receivable**, in the Special Property Coverage Form is replaced by the Limit of Insurance for Accounts Receivable shown in the Declarations. All other terms and conditions of the Accounts Receivable Coverage Extension apply to this Optional Coverage.

**B. Limit of Insurance**

The most we will pay under this coverage extension in any one occurrence is the Limit of Insurance shown in the Declarations for Accounts Receivable.

**C. Deductible**

We will not pay for loss in any one occurrence unless the amount of loss exceeds the policy deductible stated in the Declarations. We will then pay the amount of loss in excess of the Deductible, up to the Limit of Insurance.

**D. Additional Conditions**

- (1)** If you cannot accurately establish the value of accounts receivable outstanding as of the time of direct physical loss or physical damage the following method will be used:
  - (a)** Determine the total of the average monthly value of accounts receivable for the 12 months immediately preceding the month in which the direct physical loss or physical damage occurred; and
  - (b)** Adjust that total for any normal fluctuations in the value of accounts receivable for the month in which the direct physical loss or physical damage occurred or for any demonstrated variance from the average for that month.
- (2)** The following will be deducted from the total value of accounts receivable, however that value is established:
  - (a)** The value of the accounts for which there is no loss or damage;
  - (b)** The value of the accounts that you are able to reestablish or collect;
  - (c)** A value to allow for probable bad debts that you are normally unable to collect; and
  - (d)** All unearned interest and service charges.



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

## COMPUTERS AND MEDIA

This endorsement modifies insurance provided under the following:

### STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM

The provisions of this policy apply to the coverage stated in this endorsement, except as indicated below.

#### A. Computer Equipment, Electronic Data and Software

##### 1. Coverage

We will pay for direct physical loss of or physical damage, to "computer equipment" and the cost to research, replace or restore physically lost or physically damaged "electronic data" and "software" subject to the Limit of Insurance shown in the Declarations for Computers and Media while anywhere within the coverage territory, and while in transit, but only if:

- a. Owned by you; or
- b. Owned by others but in your care, custody and control regardless of whether you use it for personal or business needs.

##### 2. Property Not Covered

"Computer Equipment" as used in this optional coverage does not include:

- a. Source documents, other than manuals purchased with hardware or "software";
- b. Worksheets and printouts;
- c. Property held for sale or lease;
- d. Property leased or rented to others; or
- e. "Money", deeds, notes, "securities" or other financial instruments, including such instruments in electronic form.

##### 3. Extended Causes of Loss

Direct physical loss or physical damage to your "computer equipment", "electronic data" or "software", or "computer equipment", "electronic data" or "software" of others in your care, custody or control is extended to include the following:

- a. Electromagnetic injury caused by:
  - (1) Blackout or brownout;

(2) Power Failure;

(3) Airport security check, or radio or telephone line interference; or

(4) Electromagnetic disturbance outside the "computer system".

b. Head crash, meaning physical damage to disks, tapes or hardware caused by a contact of electromagnetic heads (which read or write information) with such disks or tapes;

c. Damage caused by a "computer virus"; and

d. Theft of "computer equipment" away from the "scheduled premises". Theft means an act of stealing or an attempt to steal. Theft includes loss of property from a known place when it is likely that the property has been stolen.

##### 4. Exclusion

We will not pay to research, replace or restore physically lost or physically damaged "electronic data" or "software" which is licensed, leased or rented to others.

##### 5. Deductible

We will not pay for loss or damage in any one occurrence to "computer equipment" until the amount of loss or damage exceeds \$250, unless a separate deductible is stated in the Declarations for Computers and Media Coverage.

#### B. Additional Coverage

##### 1. Business Income and Extra Expense Coverage

If Business Income and Extra Expense Coverage is included in this policy then the following applies.

##### a. Coverage

(1) Coverage under this endorsement applies to the following Additional

Coverages and Coverage Extensions in the Standard or Special Property Coverage Form with respect to "computer equipment", "electronic data" and "software":

- (a) Business Income;
- (b) Extra Expense;
- (c) Civil Authority;
- (d) Extended Business Income; and
- (e) Newly Acquired or Constructed Property Coverage.

- (2) Coverage under this endorsement does not apply to any other Additional Coverage or Coverage Extension.

**b. Coverage Limitations**

The following limitations apply only if the physical loss or physical damage is a direct result of the **Extended Causes of Loss** for "computer equipment", "software" and "electronic data" as indicated below.

**(1) Limit of Insurance**

This Additional Coverage is included in the Limit of Insurance for Computers and Media shown in the Declarations when the actual loss of business income and extra expense you incur due to the necessary suspension (slowdown or cessation) of your operations is a result of:

- (a) A cause of loss included in **A.3.a.**, **b.** or **c.**, **Extended Causes of Loss**, of this endorsement; or
- (b) Physical damage or physical loss to "computer equipment", "electronic data", and "software" that was away from the scheduled premises at the time of loss.

This is not an additional limit of insurance.

**(2) Waiting Period**

We will not pay for any covered Business Income loss you sustain under this provision due to physical loss or physical damage to "electronic data", or "software" caused by a "computer virus" which results in the necessary suspension (slowdown or cessation) of your business described in the Declarations during the first 12 hours that immediately follow the start of such suspension. This Waiting Period applies independent of the deductible applicable to "Computer Equipment".

**2. Equipment Breakdown Coverage**

The Additional Coverage for Equipment Breakdown applies to "computer equipment",

"electronic data", and "software" when this endorsement is attached to the Special Property Coverage Form and Equipment Breakdown Additional Coverage is included on the policy.

**C. Exclusion of Certain Computer Related Losses**

The provisions of this endorsement do not override or in any way affect the application of the Exclusion of Certain Computer Related Losses if such exclusion is endorsed to or otherwise made a part of this policy. That exclusion addresses the inability of a "computer system" to correctly recognize process, distinguish, interpret or accept one or more dates or times.

**D. Exclusions**

- 1. Section **B. Exclusions**, of the Standard or Special Property Coverage Form do not apply to coverage provided by this endorsement, except for the exclusions of:

- a. Earth Movement;
- b. Governmental Action;
- c. Nuclear Hazard;
- d. War and Military Action; and
- e. Water.

**2. Additional Exclusions**

We will not pay for loss or damage caused by or resulting from:

- a. Input, programming or processing errors;
- b. Mechanical breakdown or failure, however head crash will not be considered as a mechanical breakdown or failure.

This exclusion does not apply to "computer equipment", "electronic data", and "software" when this endorsement is attached to the Special Property Coverage Form and Equipment Breakdown Additional Coverage is included on the policy;

- c. Faulty construction, materials or workmanship;
- d. Error, omission or deficiency in design;
- e. Rust, corrosion, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- f. Dryness or dampness of atmosphere; changes in or extremes of temperature;
- g. Wear and tear, marring or scratching;
- h. Insects, birds, rodents, or other animals;
- i. Obsolescence;
- j. Dishonest or criminal acts by you, any of your partners, employees, trustees, authorized representatives or anyone to whom you entrust the property for any purpose, whether acting alone or in collusion with others;

- k. Unexplained disappearance, however we will cover theft of "computer equipment" as provided in provision **A.3.d.**;
- l. Unlawful trade, or seizure by orders of governmental authority;
- m. Delay or loss of market; and
- n. Theft of laptop, palmtop or similar portable property while in transit as checked baggage.

**E. Limit of Insurance**

The most we will pay for physical loss or physical damage in any one occurrence is the Limit of Insurance for Computers and Media shown in the Declarations.

**F. Loss Payment**

This Loss Payment condition is applicable to the "computer equipment", "electronic data", and "software" coverage provided by this endorsement. We will determine the value of Covered Property as follows:

1. "Computers," "peripheral devices", "media", and manuals at the full cost to repair or replace the property subject to the Limit of Insurance. However, we will not pay more for physical loss or physical damage on a replacement cost basis than the lesser of and the following:
  - a. The amount necessary to replace the item with similar property possessing the minimum characteristics necessary to perform the same functions when replacement with identical property is not possible or practical.
  - b. The amount necessary to repair or replace the item with one substantially identical to the physically lost or physically damaged item. In the event of a covered total loss to one or more items, we will allow up to 20% over the current replacement cost as described in this provision, as an Optional Upgrade Allowance for the purchase of new

property with upgraded processing or performance characteristics. This Optional Upgrade Allowance will, at our option, be payable after you have purchased the replacement property and have provided us with written proof of such purchases; or

- c. If the item is not repaired or replaced, we will not pay more than the actual cash value of the item at the time of physical loss or physical damage. If you elect this option, you have the right to make further claim within 180 days after loss for any additional payment on a replacement cost basis.

2. In the event of physical loss or physical damage to "electronic data" or "software", we will pay the reasonable amount you actually spend to reproduce, restore, or replace the physically lost or physically damaged "electronic data" or "software". This includes the cost of computer consultation services for restoration and the cost of research to reconstruct lost or damaged information. But we will not pay more than the Limit of Insurance for Computers and Media specified in the Declarations.
3. In the event of physical loss or physical damage to any part of "computer equipment", "electronic data" or "software", we will pay only what it would cost to replace, reproduce, or restore the physically lost or physically damaged part.

**G. Additional Definitions**

1. "Computer Virus" means a program, which is intentionally created to cause damage or disruption in the computer operations of a party using or coming in contact in any way with the program.
2. "Computer System" includes "computer", "peripheral devices", "software", and "electronic data" necessary for the "computer" to function for its intended purpose.



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

## **EMPLOYEE DISHONESTY COVERAGE**

This endorsement modifies insurance provided under the following:

### **STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

#### **A. COVERAGE**

1. The following is added to Paragraph **A.5.**, Additional Coverages, of the Special Property Coverage Form:

##### **Employee Dishonesty Coverage**

- (1) We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Causes of Loss.

Covered Property, solely as used in this Additional Coverage, means "money", "securities", and other tangible property of intrinsic value and not otherwise excluded.

Covered Causes of Loss means dishonest acts committed by an "employee", except you, whether identified or not, acting alone or in collusion with other persons, with the manifest intent to:

- (a) Cause you to sustain loss; and also
- (b) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions or other employee benefits earned in the normal course of employment) for:
  - (i) That "employee"; or
  - (ii) Any person or organization intended by the "employee" to receive that benefit.

##### **(2) Employee Dishonesty Additional Coverages:**

- (a) We will pay for loss of Covered Property arising out of a Covered

Cause of Loss caused by any "employee" while temporarily outside the Coverage Territory for a period of not more than 90 days.

- (b) We will pay for any loss of Covered Property arising out of a Covered Cause of Loss caused by your "employee" while at the premises of your client or customer.

Any claim for loss sustained by any client or customer and covered by this policy may only be made by you in your Proof of Loss. No third party has a direct right against this insurance and no third party may make a direct claim against us as the writer of your insurance.

##### **(3) Coverage under the Employee Retirement Income Security Act of 1974, as amended ("ERISA")**

- (a) We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Causes of Loss.

Covered Property, solely as applicable to ERISA coverage, means the funds or other property of any employee pension benefit plan or employee welfare benefit plan that:

- (i) Is subject to (and not exempt from) the bond requirement set forth in Section 412 of ERISA, and
- (ii) You establish and maintain for your employees (a "Plan")

and which is not otherwise excluded.

Covered Causes of Loss, solely as applicable to ERISA coverage,

means an act of fraud or dishonesty committed by an "employee", except you, whether identified or not, acting alone or in collusion with other persons, that results in a loss to a Plan of funds or other property which is used or may be used to pay benefits under the Plan. "Covered Causes of Loss" does not include investment losses or any other loss resulting from a breach of fiduciary duty under ERISA or a prohibited transaction as defined by ERISA and for which coverage is not required by Section 412 of ERISA.

**(b) Welfare and Pension Plan ERISA Compliance**

In compliance with certain provisions of the ERISA:

- (i) For the purposes of this insurance, the Plans you establish and maintain for the benefit of your employees shall be Named Insureds under this Employee Dishonesty Coverage.
- (ii) "Employee" includes any natural person you employ and any owner, officer, trustee or director of your company who "handles" the funds or other property of the Plan (as defined in 29 C.F.R. 2580.412-6) including, but not limited to, the Plan Administrator. "Employee" does not include any third party (including but not limited to a broker, independent contractor, record keeper, payroll provider, trustee or other fiduciary) who provides services to you or to a Plan.
- (iii) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator must select a Limit of Insurance under this Employee Dishonesty Coverage Form that is sufficient to provide an amount of insurance for each Plan that is at least equal to that required if each Plan were separately insured.
- (iv) If the insured first named in the Declarations is an entity other than a Plan, any payment we make to that insured for loss sustained by any Plan must be

paid promptly into such plan for the use and benefit of the Plan(s) sustaining the loss.

- (v) If two or more Plans are insured under this insurance, any payment we make for loss either sustained by two or more plans, or of commingled funds or other property of two or more Plans that arises out of one occurrence, is to be shared by each Plan sustaining loss in the proportion that the amount of insurance required for each such Plan under ERISA provisions bears to the total of those amounts.

**(4) Theft Limitation Exception**

Limitation A.4.c., of the Special Property Coverage Form does not apply to coverage provided by this endorsement.

**(5) Additional Exclusions**

**(a) Employee Terminated Under Prior Insurance**

We will not pay for loss caused by any "employee" of yours, or predecessor in interest of yours, for whom similar prior insurance has been terminated and not reinstated since the last such termination.

**(b) Insurance Operations**

We will not pay for direct or indirect loss resulting from contractual or extra-contractual liability sustained by you in connection with the issuance of contracts or purported contracts of insurance, indemnity or suretyship.

**(c) Inventory Shortages**

We will not pay loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (i) An inventory computation; or
- (ii) A profit and loss computation.

**(d) Partners**

We will pay only for loss caused by any partner or member of a limited liability corporation that is in excess of the sum of:

- (i) Any amounts you owe that partner or member; and
- (ii) The value of that partner's or member's ownership interest determined by the closing of

you organization's books on the date of discovery of the loss by anyone in your organization not involved in the Employee Dishonesty; and

(iii) Any applicable deductible amount.

**(e) Trading Loss**

We will not pay for loss resulting directly or indirectly from trading, whether in your name or in a genuine or fictitious account if such loss does not result from dishonesty or fraud.

**(6) Additional Conditions**

**(a) Termination As To Any "Employee"**

This insurance is terminated as to any "employee":

(i) Immediately upon discovery by you, or any of your partners, officers or directors not in collusion with the "employee", of any dishonest or fraudulent act committed by that "employee" whether before or after becoming employed by you; or

(ii) On the date specified in a notice mailed to you. That date will be at least 30 days after the date of mailing.

The mailing of notice to you at the last mailing address known to us will be sufficient proof of notice. Delivery of notice is the same as mailing.

**(7) Limit of Insurance**

The most we will pay for each occurrence of loss under this Additional Coverage is the Employee Dishonesty Limit of Insurance stated in the Declarations.

**(8) Deductible**

We will not pay for loss in any one occurrence unless the amount of loss exceeds the Deductible shown Paragraph **D.5.** the Special Property Coverage Form, unless a separate Deductible for Employee Dishonesty applies and is stated in the Declarations. We will then pay the amount of the loss in excess of the Deductible, up to the Limit of Insurance.

No deductible applies to the coverage granted in Paragraph **A.1.(3)** of this endorsement.

**(9) Occurrence Definition**

As used in this Additional Coverage, occurrence means all loss caused by, or involving, one or more "employees", whether the result of a single act or series of acts.



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

## **OUTDOOR SIGNS**

This endorsement modifies insurance provided under the following:

### **STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM**

This coverage applies only when it is indicated in the Declarations. The provisions of this policy apply to the coverage stated in this endorsement, except as indicated below.

**A.** We will pay for direct physical loss of or physical damage to all outdoor signs at the "scheduled premises":

- (1) Owned by you; or
- (2) Owned by others but in your care, custody and control.

**B.** Paragraph **A.3.**, Covered Causes of Loss, and Section **B.**, Exclusions, do not apply, to this Optional Coverage, except for:

- (1) Governmental Action;
- (2) Nuclear Hazard; and
- (3) War and Military Action.

**C. Additional Exclusion**

We will not pay for physical loss or physical damage caused by or resulting from:

- (1) Wear and tear;
- (2) Hidden or latent defect;
- (3) Rust;
- (4) Corrosion; or
- (5) Mechanical breakdown.

**D. Limit of Insurance**

The most we will pay for physical loss or physical damage in any one occurrence is the Limit of Insurance for Outdoor Signs shown in the Declarations.

**E.** The provisions of this Optional Coverage supersede all other references to outdoor signs in this policy.



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

## **PERSONAL PROPERTY OF OTHERS**

This endorsement modifies insurance provided under the following:

**STANDARD PROPERTY COVERAGE FORM  
SPECIAL PROPERTY COVERAGE FORM**

This coverage applies only when it is indicated in the Declarations. The provisions of this policy apply to the coverage stated in this endorsement, except as indicated below.

We will pay, on replacement cost basis, for direct physical loss or physical damage by a Covered Cause of Loss to Personal Property of Others that is in your care, custody and control.

The most we will pay for direct physical loss or physical damage in any one occurrence is the Limit of Insurance applicable to Personal Property of Others shown in the Declarations.



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

## TEMPERATURE CHANGE

This endorsement modifies insurance provided under the following:

### STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM

This coverage applies only when it is indicated in the Declarations. The provisions of this policy apply to the coverage stated in this endorsement, except as indicated below.

**A.** We will pay for direct physical loss of or physical damage to "perishable stock" at the "scheduled premises" caused by or resulting from:

1. A change in temperature or humidity resulting from:

(a) Mechanical breakdown or failure of:

- (1) Stationary heating plants; or
- (2) Refrigerating, cooling or humidity control apparatus or equipment;

But only while such plants, equipment or apparatus are at the "scheduled premises".

(b) Complete or partial failure of electric power, either on or away from your "scheduled premises". Such failure of power must be due to conditions beyond your control; or

2. Contamination by a refrigerant.

### **B. SELLING PRICE**

We will determine the value of finished "perishable stock" in the event of direct physical loss or physical damage at the selling price, as if no physical loss or physical damage had occurred less discounts and expenses you otherwise would have had.

**C.** We will not pay for direct physical loss of or physical damage to "perishable stock" located:

- 1. On buildings;
- 2. In the open; or
- 3. In vehicles, other than trailers used for storage located within 1000 feet of the "scheduled premises".

### **D. EXCLUSIONS**

1. The following exclusions under SECTION B - EXCLUSIONS are deleted:

(a) Ordinance or Law;

(b) Power Failure; and

(c) Mechanical Breakdown in the Standard Property Coverage Form.

2. The following exclusions are added:

We will not pay for direct physical loss or physical damage caused by or resulting from:

(a) The disconnecting of any of the following systems from the source of power:

- (1) Refrigerating;
- (2) Cooling; or
- (3) Humidity control.

(b) The loss of electrical power caused by the shutting off of any switch or other device used to control the flow of electric power or current.

(c) The inability of an electrical utility company, your stationary heating plant or any other power source to provide sufficient heat or power due to:

- (1) Lack of fuel;
- (2) Lack of capacity to make enough heat or power; or
- (3) Order of the government.

(d) Breaking of any glass that is a permanent part of a refrigerating, cooling or humidity control unit.

### **E. DEDUCTIBLE**

We will not pay for loss in any one occurrence unless the amount of loss exceeds the deductible stated in paragraph **D.5.** of the Standard Property Coverage Form or **D.5.** of the Special Property Coverage Form., unless a different deductible is stated in the

Declarations for Temperature Change. We will then pay the amount of loss in excess of the deductible, up to the Limit of Insurance.

**F. LIMIT OF INSURANCE**

The most we will pay for direct physical loss or physical damage in any one occurrence is the Limit of Insurance for Temperature Change shown in the Declarations.

**G. ADDITIONAL CONDITIONS**

1. We will pay for direct physical loss or physical damage under this Optional Coverage only when:
  - (a) Such physical loss or physical damage is not covered elsewhere in this policy or any other policy that insures the "perishable stock" at the "scheduled premises"; and
  - (b) This Temperature Change coverage is shown as a specific item of insurance in the Declarations.
2. In the event of physical loss or physical damage, none of the other coverages under this policy or any other policy will share in its payment unless the provisions of the policy are similar to the provisions of this Optional Coverage.
3. We will not pay more than the Limit of Insurance shown in the Declarations for the Temperature Change.

**H. ADDITIONAL DEFINITIONS**

For the purpose of this insurance:

1. "Mechanical breakdown" means:
  - (a) Breaking or separation of any mechanical part(s) other than gas pipes or lines; or
  - (b) Burning out of any electrical motor servicing such unit; andrequiring replacement of the damaged parts to become functional.

But "mechanical breakdown" does not mean faulty operation or failure of equipment which results in temperature change but does not require replacement of broken parts.

We will not pay for direct physical loss or physical damage to "perishable stock" caused by such faulty operation or failure of equipment.
2. "Perishable stock" means personal property:
  - (a) Maintained under controlled conditions for its preservation; and
  - (b) Susceptible to direct physical loss or physical damage if the controlled conditions change.



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

## VALUABLE PAPERS AND RECORDS

This endorsement modifies insurance provided under the following:

### STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM

This coverage applies only when it is indicated in the Declarations. The provisions of this policy apply to the coverage stated in this endorsement, except as indicated below.

- A.** We will pay for direct physical loss of or physical damage to the following types of property at the "scheduled premises" that is your property or property of others in your care, custody or control:

Valuable Papers and Records, meaning inscribed, printed or written:

- (1) Documents;
- (2) Manuscripts;
- (3) Records including patient records; or
- (4) X-Rays

including abstracts, books, deeds, drawings, films, maps or mortgages.

**But Valuable Papers and Records does not include:**

- (1) Property that cannot be reproduced, replaced or restored;
- (2) "Money" and "Securities";
- (3) Converted data; or
- (4) Programs or instructions used in your data processing operations, including the material on which the data is recorded.

**B. Limit of Insurance**

The most we will pay for direct physical loss or physical damage in any one occurrence is the Limit of Insurance for Valuable Papers and Records shown in the Declarations.

**C. Deductible**

We will not pay for loss in any one Occurrence unless the amount of loss exceeds the policy deductible stated in the Declarations. We will then pay the amount of loss in excess of the Deductible, up to the Limit of Insurance.

- D.** Under this Optional Coverage we will not pay for property:

- (1) Held as samples or for delivery after sale;
- (2) In storage away from the premises shown in the Declarations; or
- (3) If such property can not be replaced with other property of like kind and quality.

- E.** With respect to this Optional Coverage, Coverage Extension **A.5.h.**, Property Off-Premises in the Standard Property Coverage Form and Coverage Extension **A.6.h.**, Property Off-Premises in the Special Property Coverage Form are replaced by the following:

1. You may apply the insurance provided under this Optional Coverage to Valuable Papers and Records while such property is not at the "scheduled premises", including while in transit. The most we will pay for direct physical loss or physical damage under this Coverage Extension is 25% of the Limit of Insurance shown in the Declarations for Valuable Papers and Records but not more than \$25,000.
2. However, if Valuable Papers and Records – Off-Premises is scheduled in the Declarations, then the limit in E.1. above is replaced by the limit of insurance shown in the Declarations for Valuable Papers and Records – Off-Premises.

- F.** The Valuable Papers and Records Coverage Extension, paragraph **A.5.i.** in the Standard Property Coverage Form and paragraph **A.6.i.** in the Special Property Coverage Form., do not apply to any premises where this Optional Coverage applies.

- G.** With respect to coverage provided by this endorsement, paragraph **E.5.d.(6)** in the Standard Property Coverage Form and in the Special Property Coverage Form are replaced by the following:

- (6) We will determine the value of "Valuable Papers and Records" at the cost of:
  - a. Blank materials for reproducing the records; and

b. The reasonable cost to research, replace or restore the lost information.

H. **Section B. Exclusions** does not apply to this Optional Coverage except for:

- (1) Governmental Action;
- (2) Nuclear Hazard; and
- (3) War and Military Action.

I. **Additional Exclusions**

We will not pay for direct physical loss or physical damage caused by or resulting from any of the following:

- (1) Dishonest acts by:
  - (a) You, or your employees or authorized representatives;
  - (b) Anyone else with an interest in the property, or their employees or authorized representatives; or

(c) Anyone else to whom the property is entrusted.

This exclusion applies whether or not such persons are acting alone or in collusion with other persons or such acts occur during the hours of employment.

But this exclusion does not apply to a carrier for hire.

(2) Errors or omissions in processing or copying.

But we will pay for direct physical loss or physical damage caused by resulting fire or explosion.

(3) Electrical or magnetic injury, disturbance or erasure of electronic recordings.

But we will pay for direct physical loss or physical damage caused by lightning.

(4) Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

(5) Unauthorized instructions to transfer property to any person or to any place.



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

## **SUPER STRETCH**

This endorsement modifies insurance provided under the following:

### **STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

**A.** The following changes apply to the Standard Property Coverage Form, Additional Coverages, **A.4.**, or to the Special Property Coverage Form, Additional Coverages, **A.5.**:

**1. Blanket Coverage Limit of Insurance**

The following Additional Coverage is added:

We will pay up to \$150,000 in any one occurrence as a Blanket Coverage Limit of Insurance to apply at each "scheduled premises" to apply to sum of all covered loss under the coverages described in this section **A.1.a.** through **A.1.f.** arising out of a single Covered Cause of Loss occurrence. You may apportion this Limit among these coverages as you choose.

This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for these coverages.

**a. Accounts Receivable**

Within the Blanket Coverage Limit of Insurance, we will pay for direct physical loss of or physical damage to your records of accounts receivable receivable on or away from your "scheduled premises", including while in transit.

This Additional Coverage is subject to the provisions of Accounts Receivable, Form SS 04 39, with the exception of the Limit of Insurance provision contained in that form. Accounts Receivable, Form SS 04 39 is made a part of this policy whether or not Accounts Receivable coverage is indicated in the Declarations.

**b. Computers and Media**

Within the Blanket Coverage Limit of Insurance, we will pay for direct physical

loss of or physical damage to your computer systems.

This Additional Coverage is subject to the provisions of Computers and Media, Form SS 04 41, with the exception of the Limit of Insurance provision contained in that form. Computers and Media, Form SS 04 41 is made a part of this policy whether or not Computers and Media coverage is indicated in the Declarations.

**c. Debris Removal**

Within the Blanket Coverage Limit of Insurance, we will pay for increases under Debris Removal additional limit, **C.4.b.**

**d. Personal Property of Others**

Within the Blanket Coverage Limit of Insurance, we will pay for direct physical loss of or physical damage to personal property of others that is in your care, custody or control.

This Additional Coverage is subject to the provisions of Personal Property of Others, Form SS 04 45, with the exception of the statement concerning Limit of Insurance applicable to Personal Property of Others shown in the Declarations, contained in that form. Personal Property of Others, Form SS 04 45 is made a part of this policy whether or not Personal Property of Others coverage is indicated in the Declarations.

**e. Temperature Change**

Within the Blanket Coverage Limit of Insurance, we will pay for direct physical loss of or physical damage to perishable stock caused by or resulting from a change of temperature or contamination by a refrigerant.

This additional coverage is subject to the provisions of the Temperature Change, Form SS 04 46, with the exception of the Limit of Insurance provision contained in that form. Temperature Change, Form SS 04 46 is made a part of this policy whether or not Temperature Change coverage is indicated in the Declarations.

**f. Valuable Papers and Records**

Within the Blanket Coverage Limit of Insurance, we will pay for direct physical loss of or physical damage to your valuable papers and records on or away from your "scheduled premises", including while in transit.

This Additional Coverage is subject to the provisions of the Valuable Papers and Records Coverage in form SS 04 47, with the exception of the Limit of Insurance provision contained in that form. Valuable Papers and Records Coverage, Form SS 04 47 is made a part of this policy whether or not Valuable Papers and Records coverage is indicated in the Declarations.

**2. Brands and Labels**

The following Additional Coverage is added:

In the event of covered physical loss or physical damage to merchandise that is branded or labeled, we will take all or part of the physically damaged property at an agreed or appraised value and we will pay for:

**a. Expenses you incur to:**

- (1)** Stamp salvage on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
- (2)** Remove the brands or labels, if doing so will not physically damage the merchandise. You must relabel the merchandise and its containers to comply with the law.

**b. Any reduction in the salvage value of the physically damaged merchandise as the result of the removal of the brand or label.**

This Additional Coverage is included within the Business Personal Property Limit of Insurance.

**3. Claim Expenses**

The following Additional Coverage is added:

In the event of covered loss or physical damage, we will pay up to \$10,000 in any one occurrence as an additional Limit of Insurance to cover reasonable expenses incurred by you at our specific request to assist us in:

**a. The investigation of a claim or suit; or**

**b. The determination of the amount of loss, such as taking inventory, or auditing business records.**

**4. Computer Fraud**

The following Additional Coverage is added:

We will pay up to \$5,000 in any one occurrence for physical loss of or physical damage to "money", "securities", and other property having intrinsic value resulting directly from computer fraud. Computer fraud means any act of stealing property following and directly related to the use of any computer to fraudulently cause a transfer of that property from inside your premises or from a banking institution or similar safe depository, to a person (other than a "messenger") outside those premises or to a place outside those premises.

This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

**5. Employee Dishonesty (including ERISA)**

The following Additional Coverage is added:

We will pay up to \$25,000 in any one occurrence as a Limit of Insurance to cover loss from employee dishonesty. This includes ERISA coverage. This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

This Additional Coverage is subject to the provisions of the Employee Dishonesty Coverage, Form SS 04 42, with the exception of the Limit of Insurance provision contained in that form. Employee Dishonesty Coverage, Form SS 04 42 is made a part of this policy whether or not Employee Dishonesty Coverage is indicated in the Declarations.

**6. Fine Arts**

The following Additional Coverage is added:

We will pay up to \$25,000 in any one occurrence as a Limit of Insurance at each "scheduled premises" to apply to Fine Arts. This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

This Additional Coverage is subject to the provisions of Fine Arts Coverage Form, Form SS 04 22, with the exception of the following:

- a. The requirement contained under Paragraph A.1., Under A. Coverage, to list and describe Fine Arts in the Declarations or Schedule is deleted when Fine Arts are covered under this Stretch endorsement; and**
- b. The Limit of Insurance provision does not apply.**

- c. Paragraph **D.1.** Valuation is deleted and replaced by the following:

The value of Fine Arts will be the market value at the time of physical loss or physical damage.

Fine Arts Coverage, Form SS 04 22 is made a part of this policy whether or not Fine Arts Coverage is indicated in the Declarations.

**7. Forgery**

The following Additional Coverage is added:

We will pay up to \$25,000 in any one occurrence as a Limit of Insurance to cover loss from forgery of covered instruments, money orders, credit cards, and counterfeit money. This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

This Additional Coverage is subject to the provisions of Forgery Coverage, Form SS 04 86, with the exception of the Limit of Insurance provision contained in that form. Forgery Coverage, Form SS 04 86 is made a part of this policy, whether or not Forgery Coverage is indicated in the Declarations.

**8. Laptop Computers - Worldwide Coverage**

The following Additional Coverage is added:

We will pay up to \$10,000 in any one occurrence as a Limit of Insurance to apply to laptop, palmtop, personal digital assistants (PDAs), and similar portable computer equipment and accessories anywhere in the world, including while in transit. This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

**Limitation:** We will not pay for direct physical loss or physical damage caused by, resulting from, arising out of the theft of this property which in transit as checked baggage.

This Additional Coverage is subject to the provisions of Computers and Media, Form SS 04 41, with the exception of the Limit of Insurance provision contained in that form. Computers and Media, Form SS 04 41 is made a part of this policy whether or not Computers and Media coverage is indicated in the Declarations.

**9. Off-Premises Utility Services - Direct Damage**

The following Additional Coverage is added:

We will pay up to \$25,000 in any one occurrence as a Limit of Insurance to apply at each "scheduled premises" to cover direct physical loss of or physical damage to Covered Property caused by or resulting from the interruption of utility services.

This additional coverage is subject to the provisions of Off-Premises Utility Services - Direct Damage, Form SS 40 18, with the exception of the Utility Services Limit of Insurance contained in that form. Off-Premises Utility Services - Direct Damage, Form SS 40 18 is made a part of this policy, whether or not Off-Premises Utility Services - Direct Damage coverage is indicated in the Declarations.

**10. Outdoor Signs**

The following Additional Coverage is added and supersedes any other coverage for signs in this policy:

We will pay up to full value of outdoor signs at each "scheduled premises" to cover direct physical loss of or physical damage to outdoor signs.

This Additional Coverage is subject to the provisions of Outdoor Signs, Form SS 04 44, with the exception of the Limit of Insurance provision and paragraph **E.** of that form. Outdoor Signs, Form SS 04 44 is made a part of this policy whether or not Outdoor Signs coverage is indicated in the Declarations.

**11. Pairs or Sets**

The following Additional Coverage is added:

If pairs or sets of stock are damaged by a Covered Cause of Loss, we will pay any reduction in value of the undamaged parts of such damaged pairs or sets.

As used in this Additional Coverage, the term stock means merchandise held in storage or for sale, raw materials, and goods in-process or finished.

This coverage is included within the Business Personal Property Limit of Insurance.

**12. Property at Other Premises**

The following Additional Coverage is added:

We will pay up to \$10,000 in any one occurrence to extend coverage for Business Personal Property at any premises not described in the Declarations.

This includes property that you have sold under an installation agreement and your responsibility continues until the property is accepted by the customer.

This Extension does not apply to:

- a. Property in the care, custody or control of your salespersons;
- b. Property at any fair or exhibition;
- c. Property in transit; or
- d. Property temporarily stored at any premises not described in the Declarations.

This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

**13. Salespersons' Samples**

The following Additional Coverage is added:

We will pay up to \$5,000 in any one occurrence as an additional Limit of Insurance to extend Business Personal Property to cover:

- a. Samples of your stock in trade (including containers); and
- b. Similar property of others;

but only while such property is in:

- a. Your custody while acting as a sales representative; or
- b. In the custody of your sales representatives or agents.

**14. Sewer and Drain Back Up**

The following Additional Coverage is added:

We will pay for direct physical loss or physical damage to Covered Property at the "scheduled premises" solely caused by water that backs up from a sewer or drain.

This coverage is included within the Covered Property Limits of Insurance.

**THIS IS NOT FLOOD INSURANCE**

We will not pay for water or other materials that back up from any sewer or drain when it is caused by any flood. This applies regardless of the proximity of the flood to Covered Property. Flood includes the accumulation of surface water, waves, tides, tidal waves, overflow of streams or other bodies of water, or their spray, all whether driven by wind or not.

**15. Sump Overflow or Sump Pump Failure**

The following Additional Coverage is added:

The maximum we will pay is \$25,000 in any one occurrence for any loss, including loss of Business Income or Extra Expense, resulting from physical loss or physical damage to Covered Property that is caused by or resulting from water that overflows due to the failure of a sump pump, sump pump well, or any other type of system designed to remove subsurface water from the foundation area to operate if the failure is directly or indirectly the result of a Covered Cause of Loss. Failure means an abrupt cessation of normal functioning. This Limit of Insurance is the maximum we will pay regardless of any other coverage provided under this policy.

This Additional Coverage is subject to the terms and conditions of this policy with the exception of:

Paragraph **B.1.f.**, Power Failure, of the Standard Property Coverage Form and

- a. Paragraph **B.1.d.**, Power Failure, of the Special Property Coverage Form; and
- b. Paragraph **B.1.h.(4)**, Water, of the Standard Property Coverage Form and Paragraph **B.1.f.(4)**, Water, of the Special Property Coverage Form.

**THIS IS NOT FLOOD INSURANCE**

We will not pay for water or other materials that overflow from a sump when the overflow is caused by any flood. This applies regardless of the proximity of the flood to Covered Property. Flood includes the accumulation of surface water, waves, tides, tidal waves, overflow of streams or other bodies of water, or their spray, all whether driven by wind or not that enters the sewer or drain system.

**16. Tenant Building and Business Personal Property Coverage - Required by Lease**

The following Additional Coverage is added:

The maximum we will pay in any one occurrence is \$20,000 as a Limit of Insurance to apply to direct physical loss of or physical damage to Building and Business Personal Property for which you have a contractual responsibility to insure. This includes building fixtures, machinery and equipment.

**17. Transit Property in the Care of Carriers for Hire**

The following Additional Coverage is added:

We will pay up to \$10,000 in any one occurrence as a Limit of Insurance to apply to direct physical loss of or physical damage to property while in transit at your risk.

This Additional Coverage is subject to the provisions of Transit Property in the Care of Carriers for Hire, Form SS 04 30, with the exception of the Limit of Insurance provision contained in that form. Transit Property in the Care of Carriers for Hire, Form SS 04 30 is made a part of this policy whether or not Transit Property in the Care of Carriers for Hire is indicated in the Declarations.

**18. Unauthorized Business Card Use**

The following Additional Coverage is added:

The maximum we will pay in any one occurrence is \$5,000 as a Limit of Insurance to

cover loss resulting from the theft or unauthorized use of your Business Credit, Debit or Charge Cards, including the reasonable legal expenses you incur.

The Business Credit, Debit or Charge Cards must be issued to you or registered in your name or the business name.

**Limitation.** We will not pay for the theft or unauthorized use of Business Credit, Debit or Charge Cards entrusted to others or your employees.

- B.** The following changes apply to the Standard Property Coverage Form, Coverage Extensions, **A.5.**, or to the Special Property Coverage Form, Coverage Extensions, **A.6.** The Limits of Insurance stated in the paragraphs below replace the Limits of Insurance stated in the Standard Property Coverage Form or the Special Property Coverage Form for the coverages provided under this section. Except as otherwise stated, any other Limit of Insurance purchased under this policy as an option for the following coverages is in addition to the Limit of Insurance stated below:

**1. Newly Acquired or Constructed Property**

The following changes are made to Newly Acquired or Constructed Property:

**a. Building**

- (1) The most we will pay in any one occurrence in subparagraph (1) is increased from \$500,000 to \$1,000,000 at each premises.
- (2) The Limit of Insurance stated above is the maximum Limit of Insurance available for this coverage under this policy.

**b. Business Personal Property**

- (1) The most we will pay in any one occurrence in subparagraph (2) is increased from \$250,000 to \$500,000 at each premises.
- (2) The Limit of Insurance stated above is the maximum Limit of Insurance available for this coverage under this policy.

**c. Business Income and Extra Expense**

- (1) If Business Income or Extra Expense is provided under this policy, the most we will pay in any one occurrence in subparagraph (3) is increased from \$50,000 to \$500,000 at each premises.
- (2) The Limit of Insurance stated above is the maximum Limit of Insurance

available for this coverage under this policy.

**2. Outdoor Property**

In the Outdoor Property Coverage Extension, the most we will pay in any one occurrence is increased to \$25,000, but not more than \$1,000 for any one tree, shrub or plant.

**3. Personal Effects**

In the Personal Effects Coverage Extension, the most we will pay in any one occurrence is increased from \$10,000 to \$25,000 at each "scheduled premises."

The Limit of Insurance stated above is the maximum Limit of Insurance available for this coverage under this policy.

**4. Property Off-Premises**

In the Personal Property Off-Premises Coverage Extension, the most we will pay in any one occurrence in subparagraph **A.6.h.(2)** is increased from \$2,500 to \$25,000.

- C.** The following changes apply only if Business Income and Extra Expenses are covered under this policy. These changes apply to the Standard Property Coverage Form, Additional Coverages, **A.4.**, or to the Special Property Coverage Form, Additional Coverages, **A.5.:**

**1. Business Income Extension for Off-Premises Utility Services**

The following Additional Coverage is added:

We will pay up to \$25,000 in any one occurrence as a Limit of Insurance to apply at each "scheduled premises" to cover loss of Business Income and Extra Expense caused by or resulting from the interruption of utility services. This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

This additional coverage is subject to the provisions of Business Income Extension for Off-Premises Utility Services, Form SS 04 19, with the exception of the Limit of Insurance provision contained in that form. Business Income Extension For Off-Premises Utility Services, Form SS 04 19 is made a part of this policy whether or not Business Income Extension For Off-Premises Utility Services coverage is indicated in the Declarations.

**2. Business Income Extension for Web Sites**

The following Additional Coverage is added:

We will pay up to \$50,000 in any one occurrence as a Limit of Insurance to cover loss of Business Income you sustain due to the necessary

interruption of business operations caused by or resulting from direct physical loss of or physical damage to your Web Site operation at the premises of a vendor acting as your service provider. Such interruption must be caused by or result from a Covered Cause of Loss.

**a. Coverage Time Period**

We will only pay for loss you sustain during the 7 day period immediately following the first 12 hours after the Covered Cause of Loss.

**b. Conditions**

This coverage applies only:

(1) If you have a back-up copy of your Web Page stored at a location other than the site of the Web Site vendor.

(2) To the extent that Business Income is permanently lost.

This Limit of Insurance is in addition to any other Limit of Insurance that may be provided by this policy for this coverage.

**3. Business Income From Dependent Properties**

The following Additional Coverage is added:

We will pay up to \$50,000 in any one occurrence as a Limit of Insurance to apply loss of Business Income and Extra Expense due to direct physical damage at the premises of a dependent property caused by or resulting from a Covered Cause of Loss. This Limit of Insurance is in addition to any other Limit shown in the Declarations for specific Dependent Properties.

This additional coverage is subject to the provisions of Business Income from Dependent Properties, Form SS 04 78, with the exception of the Limit of Insurance provision contained in that form. Business Income from Dependent Properties, Form SS 04 78 is made a part of this policy whether or not Business Income from Dependent Properties coverage is indicated in the Declarations.

There is no requirement for Dependent Properties to be scheduled for the coverages provided by this Stretch endorsement to apply.

**4. Extended Business Income**

Extended Business Income Additional Coverage, paragraph **4.j.(1)(b)(ii)** of the Standard Property Coverage Form and paragraph **5.r.(1)(b)(ii)** of the Special Property Coverage Form is amended to read as follows:

(b) 90 consecutive days after the date determined in (a) above.

D. The following changes apply to Paragraph **E.5.d.**, Loss Payment, of the Standard Property Coverage Form and the Special Property Coverage Form:

**1. Valuation Changes**

The following are added to Paragraph **E.5.d.**:

**(10)Commodity Stock**

We will determine the value of merchandise and raw materials that are bought and sold at an established market exchange. We will determine the value at:

(a) The posted market price as of the time and place of loss;

(b) Less discounts given and expenses you otherwise would have had.

**(11)"Finished Stock"**

We will determine the value of goods that you have manufactured at the selling price less discounts given and expenses you otherwise would have had.

**(12)Mercantile Stock - Sold**

We will determine the value of goods you have sold but not delivered at the selling price less discounts given and expenses you otherwise would have had.



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

## **BUSINESS INCOME FROM DEPENDENT PROPERTIES**

This endorsement modifies insurance provided under the following:

### **STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of this policy apply to the insurance stated below

#### **A. Coverage**

##### **1. Dependent Properties**

- a. We will pay the actual loss of Business Income you sustain due to physical loss or physical damage at the premises of a Dependent Property caused by or resulting from a Covered Cause of Loss.
- b. We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole, or in part, by using any other available:
  - (1) Sources of materials; or
  - (2) Outlet for your products.
- c. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

#### **B. Additional Conditions**

The following conditions also apply:

1. Coverage provisions respecting direct physical loss or physical damage will apply separately to each Dependent Property premises.
2. This Additional Coverage will end when the Dependent Property should be rebuilt or replaced with reasonable speed and similar quality.
3. The Business Income coverage period does not include any increased period required due to the enforcement of any ordinance or law that:
  - a. Regulates the construction, use or repair, or requires the tearing down of any property; or
  - b. Requires any insured or others to test for, monitor, clean up, remove, contain, treat,

detract, or neutralize, or in any way respond to, or assess the effects of "pollutants or contaminants".

4. The definition of Business Income contained in Paragraph **g.**, Business Income Additional Coverage, of the Standard Property Coverage Form and Paragraph **o.**, Business Income Additional Coverage, of the Special Property Coverage Form also applies to this Business Income from Dependent Properties Additional Coverage.
5. Paragraph **A.5.s.(5)(a)**, Business Income from Dependent Properties of the Special Property Coverage Form is deleted and replaced with the following:
  - (a) Begins on the date of direct physical loss or physical damage caused by or resulting from a Covered Cause of Loss at the premises of the Dependent Property

#### **C. Limit of Insurance**

The most we will pay for each occurrence of loss under this Additional Coverage is the Limit of Insurance for this coverage stated in the Declarations.

When shown in the Declarations as applicable, the Limit of Insurance stated in Paragraph **A.5.s.(1)** of the Additional Coverage entitled Business Income from Dependent Properties in the Special Property Coverage Form is replaced by the Limit of Insurance for Business Income from Dependent Properties shown in the Declarations.

#### **D. Definitions**

1. **Dependent Property** means property operated by others that you depend on to:
  - a. Deliver materials or services to you or to others for your account. This does not include:
    - (1) Water, communication, power supply or any other utility service, or
    - (2) Any type of web site or internet service.

- b. Accept your products or services;
- c. Manufacture products for delivery to your customers under contract of sale; or
- d. Attract customers to your business premises.



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

## **CRIME COMMON CONDITIONS AND EXCLUSIONS**

This endorsement modifies insurance provided under the following:

### **STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM**

The following conditions are added the **Standard Property Coverage Form** and the **Special Property Coverage Form**.

#### **A. CRIME COMMON CONDITIONS**

##### **1. Consolidation - Merger**

If through consolidation or merger with, or purchase of assets of, some other entity:

- a. Any additional persons become "employees" ; or
- b. You acquire the use and control of any additional premises;

any insurance afforded for "employees" or premises also applies to those additional "employees" and premises, but only if you:

- (1) Give us written notice within 60 days thereafter; and
- (2) Pay us an additional premium.

##### **2. Discovery Period for Loss**

We will pay only for covered loss discovered no later than one year from the end of the policy period.

Discovery of loss occurs when you first become aware of facts which would cause a reasonable person to assume that a loss covered by this policy has been, or may be incurred even though the exact amount or the details of the loss may not then be known.

Discovery also occurs when you receive notice of an actual or potential claim against you alleging facts, which if true, would be a covered loss under this policy.

##### **3. Joint Insured**

- a. If more than one Insured is named in the Declarations, the first named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first named Insured ceases to be covered, then the next named Insured will become the first named Insured.
- b. If any Insured or partner or officer of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- c. An "employee" of any Insured is considered to be an "employee" of every Insured.
- d. If this insurance or any of its coverages is canceled or terminated as to any Insured, loss sustained by that Insured is covered only if discovered no later than one year from the date of that cancellation or termination.
- e. We will not pay more for loss sustained by more than one Insured than the amount we would pay if all the loss had been sustained by one Insured.

##### **4. Legal Action Against Us**

The following replaces the Legal Action Against Us in the Property Loss Conditions:

No one may bring a legal action against us under this Coverage Part unless:

- a. There has been full compliance with all of the terms of this Coverage Part; and
- b. The action is brought within 2 years after the date on which you discover the loss .

**5. Loss Sustained During Prior Insurance**

a. If you, or any predecessor in interest, sustained loss during the period of any prior insurance that you or the predecessor in interest could have recovered under that insurance except that the time within which to discover loss had expired, we will pay for it under this insurance, provided:

- (1) This insurance became effective at the time of cancellation or termination of the prior insurance; and
- (2) The loss would have been covered by this insurance had it been in effect when the acts or events causing the loss were committed or occurred.

b. The insurance under this Condition is part of, not in addition to, the Limits of Insurance applying to this insurance and is limited to the lesser of the amount recoverable under:

- (1) This insurance as of its effective date; or
- (2) The prior insurance had it remained in effect.

**6. Non-Cumulation of Limit of Insurance**

Regardless of the number of years this insurance remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

**7. Loss Covered Under This Insurance and Prior Insurance Issued by Us or Any Affiliate**

If any loss is covered under this policy and under any prior canceled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest, we will not pay more than the highest single Limit of Insurance. We will settle such claim as follows:

- a. We will first pay the Limit of Insurance applicable under this policy subject to this policy's applicable deductible; then
- b. If the Limit of Insurance under that prior policy is equal to or less than the Limit of Insurance under this policy, we will make no further payment; or
- c. If the Limit of Insurance under that prior policy is higher than the Limit of Insurance under this policy, we will then pay for any remaining part of the loss.

But in no event will our total payment for loss be more than would be payable under the policy with the highest Limit of Insurance.

We will also apply any deductible under that prior policy to the extent it exceeds the deductible under this policy.

**8. Ownership of Property, Interests Covered**

The property covered under this insurance is limited to property:

- a. That you own or hold; or
- b. For which you are legally liable.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization.

**9. Policy Period**

- a. The Policy Period is stated in the Declarations.
- b. Subject to the Loss Sustained During Prior Insurance condition, **A.5.** above, we will pay only for loss that you sustain through acts committed or events occurring during the Policy Period.

**10. Recoveries**

The following replaces the Recovered Property in the Property Loss Conditions:

- a. Any recoveries less the cost of obtaining them, made after settlement of loss covered by this insurance will be distributed as follows:
  - (1) To you, until you are reimbursed for any loss that you sustain that exceeds the Limit of Insurance and the Deductible Amount, if any;
  - (2) Then to us, until we are reimbursed for the settlement made;
  - (3) Then to you, until you are reimbursed for that part of the loss equal to the Deductible Amount, if any.
- b. Recoveries do not include any recovery:
  - (1) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
  - (2) Of original "securities" after duplicates of them have been issued.

**B. CRIME COMMON EXCLUSIONS**

The following are Exclusions replace the Exclusions in Section B:

**1. Governmental Action**

We will not pay for loss resulting from seizure or destruction of property by order of governmental authority.

**2. Indirect Loss**

We will not pay for loss that is an indirect result of any act or occurrence covered by this insurance including, but not limited to, loss resulting from:

- a. Your inability to realize income that you would have realized had there been no loss of, or loss from damage to, Covered Property.
- b. Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance.
- c. Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.

**3. Legal Expenses**

We will not pay for expenses related to any legal action.

**4. Nuclear Hazard**

We will not pay for loss resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.

**5. War and Similar Actions**

We will not pay for loss resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

**C. CRIME COMMON DEFINITIONS**

The following is added to Definitions

**"Employee"** means:

- 1. Any natural person:
  - a. While in your service (and for 60 days after termination of service); and
  - b. Whom you compensate directly by salary, wages or commissions; and
  - c. Whom you have the right to direct and control while performing services for you;
- 2. Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you excluding, however, any such person while having care and custody of property outside the premises;

- 3. Any natural person who is your partner or member of a limited liability corporation.
- 4. Any natural person, whether or not compensated, while performing services for you as the chairman or a member of any committee;
- 5. Any natural person who is a non-compensated officer;
- 6. Any natural person who is a director or trustee while acting as a member of any of your elected or appointed committees or while acting within the scope of the usual duties of an "employee";
- 7. Any natural person who is a non-compensated volunteer, other than one who is a fund solicitor, while performing services for you that are usual to the duties of an "employee";
- 8. Any natural person who is a former employee, director, partner, member, representative or trustee retained as a consultant while performing services for you;
- 9. Any natural person who is a student intern who is pursuing studies or acting within the scope of the usual duties of an "employee" ;
- 10. Any natural person, who is a student enrolled in your facility, while handling or has possession of property or funds in connection with sanctioned student activities;
- 11. The spouses of and children over 18 years old who reside with any "employee" who is a building manager, superintendent or janitor.

Each family is deemed to be, collectively, one "employee" for the purposes of this insurance, except that any Termination Condition applies individually to the spouse and children.

**"Employee" does not mean:**

- (1) An agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (2) Any manager, director, partner, member or trustee, except while acting within the scope of the usual duties of an "employee" .



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

**FORGERY COVERAGE**  
**(Including Credit Cards, Currency and Money Orders)**

This endorsement modifies insurance provided under the following:

**STANDARD PROPERTY COVERAGE FORM**  
**SPECIAL PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

**The following is added to Additional Coverages:**

**A. FORGED OR ALTERED INSTRUMENTS COVERAGE**

**1. Covered Property**

Covered Property means the following instruments:

- a. Checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (1) Made or drawn by or drawn upon you;
- (2) Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn; and

- b. Written instruments required in conjunction with any credit, debit or charge card issued to you or any "employee" for business purposes.

**2. Covered Causes of Loss**

Covered Causes of Loss means forgery or alteration.

**3. Legal Expense Additional Coverage**

If you are sued for refusing to pay any Covered Instrument on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we

will pay for any reasonable legal expenses that you incur and pay in that defense. This payment is in addition to the applicable Limit of Insurance. The Deductible does not apply to this Coverage Extension.

**4. Additional Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Crime Common Conditions and Exclusions Form.

- a. We will treat mechanically reproduced facsimile signatures the same as handwritten signatures.
- b. You must include with your proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.
- c. The Coverage Territory is revised to cover loss you sustain anywhere in the world.

**5. Exclusion**

The following Exclusion applies in addition to the Exclusions in the Crime Common Conditions and Exclusions.

We will not pay for loss resulting from any dishonest or criminal act committed by any of your "employees", directors, or trustees:

- a. Acting alone or in collusion with other persons; or
- b. While performing services for you or otherwise.

**B. COUNTERFEIT CURRENCY AND MONEY ORDERS COVERAGE**

**1. Covered Property**

Covered Property means the following:

We will pay for loss directly resulting from

- a. Money orders, including counterfeit money orders, of any United States or Canadian post office, express company or national or state (or Canadian) chartered bank that are not paid upon presentation; and
- b. Counterfeit United States or Canadian paper currency.

**2. Covered Causes of Loss**

Covered Causes of Loss means the acceptance of Covered Property in good faith, in exchange for merchandise, money or services, during the regular course of business.

**3. Exclusions**

The following Exclusion applies in addition to the Exclusions in the Crime Common Conditions and Exclusions.

- a. We will not pay for loss resulting from any dishonest or criminal act committed by any of your "employees", directors, trustees or authorized representatives:
  - (1) Acting alone or in collusion with other persons; or
  - (2) While performing services for you or otherwise.

- b. We will not pay for loss resulting from the giving or surrendering of property in any exchange or purchase.
- c. We will not pay for loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**C. DEDUCTIBLE**

We will not pay for loss in any one Occurrence unless the amount of loss exceeds the **Deductible** stated in the Declarations. We will then pay the amount of loss in excess of the Deductible, up to the Limit of Insurance.

**D. LIMIT OF INSURANCE**

The most we will pay for each Occurrence of loss under this Endorsement is the Forgery Limit of Insurance stated in the Declarations.

The Additional Coverages are included in this Limit of Insurance.

**E. OCCURRENCE DEFINITION**

- 1. For Forged or Altered Instruments Coverage, **Occurrence** means all loss caused by any person or in which that person is involved, whether the loss involves one or more instruments of Covered Property.
- 2. For Counterfeit Currency and Money Order Coverage, **Occurrence** means an:
  - a. Act or series of related acts involving one or more persons; or
  - b. Act or event, or series of related acts or events not involving any person.



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

## **OFF-PREMISES UTILITY SERVICES – DIRECT DAMAGE**

This endorsement modifies insurance provided under the following:

### **STANDARD PROPERTY COVERAGE FORM SPECIAL PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

#### **A. DIRECT DAMAGE EXTENSION FOR OFF-PREMISES UTILITY SERVICES**

This Coverage Extension applies only to the "scheduled premises" shown in the Declarations with a Utility Services Limit of Insurance. The Utility Services Limit of Insurance is part of, not in addition to, the Limit of Insurance stated in the Declarations as applicable to the Covered Property.

We will pay for direct physical loss of or physical damage to Covered Property described in the Declarations caused by the interruption of utility service to the "scheduled premises". The interruption must result from direct physical loss or physical damage by a Covered Cause of Loss to the following property, not on the "scheduled premises":

1. "Water Supply Services";
2. "Communication Supply Services"; or
3. "Power Supply Services".

#### **B. ADDITIONAL DEFINITIONS**

1. **"Water Supply Services"**, meaning the following types of property supplying water to the "scheduled premises":
  - a. Pumping stations; and
  - b. Water mains.
2. **"Communication Supply Services"**, meaning property supplying communication services, including telephone, radio, microwave or television services, including overhead transmission lines to the "scheduled premises", such as:
  - a. Communication transmission lines, including optic fiber transmission lines;
  - b. Coaxial cables; and
  - c. Microwave radio relays except satellites.
3. **"Power Supply Services"**, meaning the following types of property supplying electricity, steam or gas, including overhead transmission lines to the "scheduled premises":
  - a. Utility generating plants;
  - b. Switching stations;
  - c. Substations;
  - d. Transformers; and
  - e. Transmission Lines.



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

## **IDENTITY RECOVERY COVERAGE FOR BUSINESSOWNERS AND EMPLOYEES**

### **IDENTITY THEFT CASE MANAGEMENT SERVICE AND EXPENSE REIMBURSEMENT**

This endorsement modifies insurance provided under the following:

#### **SPECIAL PROPERTY COVERAGE FORM**

- A.** The following is added to paragraph 5. Additional Coverages (Section A. - Coverage):
- IDENTITY RECOVERY COVERAGE**
- We will provide the Case Management Service and Expense Reimbursement Coverage indicated below if all of the following requirements are met:
1. There has been an "identity theft" involving the personal identity of an "identity recovery insured" under this policy; and
  2. Such "identity theft" is first discovered by the "identity recovery insured" during the policy period for which this Identity Recovery coverage is applicable; and
  3. Such "identity theft" is reported to us as soon as practicable but in no event later than 60 days after it is first discovered by the "identity recovery insured."
- If all three of the requirements listed above have been met, then we will provide the following to the "identity recovery insured":
1. **Case Management Service**  
Services of an "identity recovery case manager" as needed to respond to the "identity theft"; and
  2. **Expense Reimbursement**  
Reimbursement of necessary and reasonable "identity recovery expenses" incurred as a direct result of the "identity theft."
- This coverage is additional insurance.
- B.** The following additional exclusions are added to Section B. - Exclusions and apply to this coverage:
- EXCLUSIONS**
- We do not cover loss or expense arising from any of the following:
1. Theft of a professional or business identity.
  2. Any fraudulent, dishonest or criminal act by an "identity recovery insured" or any person aiding or abetting an "identity recovery insured", or by any authorized representative of an "identity recovery insured", whether acting alone or in collusion with others. However, this exclusion shall not apply to the interests of an "insured" who has no knowledge of or involvement in such fraud, dishonesty or criminal act.
  3. Loss other than "identity recovery expenses".
  4. An "identity theft" that is first discovered by the "identity recovery insured" prior to or after the policy period for which this coverage applies. This exclusion applies whether or not such "identity theft" began or continued during the period of coverage.
  5. An "identity theft" that is not reported to us within 60 days after it is first discovered by the "identity recovery insured."
  6. An "identity theft" that is not reported in writing to the police.

**C. LIMITS OF INSURANCE**

1. Case Management Service is available as needed for any one "identity theft" for up to 12 consecutive months from the inception of the service. Expenses we incur to provide Case Management Service do not reduce the amount of limit available for Expense Reimbursement coverage.
2. Expense Reimbursement coverage is subject to a limit of \$15,000 annual aggregate per "identity recovery insured." Regardless of the number of claims, this limit is the most we will pay for the total of all loss or expense arising out of all "identity thefts" to any one "identity recovery insured" which are first discovered by the "identity recovery insured" during a 12-month period starting with the beginning of the present annual policy period. If an "identity theft" is first discovered in one policy period and continues into other policy periods, all loss and expense arising from such "identity theft" will be subject to the aggregate limit applicable to the policy period when the "identity theft" was first discovered.
  - a. Legal costs as provided under paragraph **d.** of the definition of "identity recovery expenses" are part of, and not in addition to, the Expense Reimbursement coverage limit.
  - b. Lost Wages and Child and Elder Care Expenses as provided under paragraphs **e.** and **f.** of the definition of "identity recovery" are jointly subject to a sublimit of \$250 per day, not to exceed \$5,000 in total. This sublimit is part of, and not in addition to, the Expense Reimbursement coverage limit. Coverage is limited to lost wages and expenses incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".
  - c. Mental Health Counseling as provided under paragraph **g.** of the definition of "identity recovery expenses" is subject to a sublimit of \$1,000. This sublimit is part of, and not in addition to, the Expense Reimbursement coverage limit. Coverage is limited to counseling that takes place within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".

**D. DEDUCTIBLE**

Case Management Service is not subject to a deductible.

Expense Reimbursement coverage is subject to a deductible of \$250. Any one "identity recovery insured" shall be responsible for only one deductible under this Identity Recovery Coverage during any one policy period.

- E. The following additional conditions are added to Section **F.** - Property General Conditions and apply to this coverage:

**CONDITIONS****1. Assistance and Claims**

For assistance, the "identity recovery insured" should call the **Identity Recovery Help Line** at **1-866-989-2905**.

The **Identity Recovery Help Line** can provide the "identity recovery insured" with:

- a. Information and advice for how to respond to a possible "identity theft"; and
- b. Instructions for how to submit a service request for Case Management Service and/or a claim form for Expense Reimbursement Coverage.

In some cases, we may provide Case Management services at our expense to an "identity recovery insured" prior to a determination that a covered "identity theft" has occurred. Our provision of such services is not an admission of liability under the policy. We reserve the right to deny further coverage or service if, after investigation, we determine that a covered "identity theft" has not occurred.

As respects Expense Reimbursement Coverage, the "identity recovery insured" must send to us, within 60 days after our request, receipts, bills or other records that support his or her claim for "identity recovery expenses."

**2. Services**

The following conditions apply as respects any services provided by us or our designees to any "identity recovery insured" under this endorsement:

- a. Our ability to provide helpful services in the event of an "identity theft" depends on the cooperation, permission and assistance of the "identity recovery insured."
- b. All services may not be available or applicable to all individuals. For example, "identity recovery insureds" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in United States and Puerto Rico in accordance with local conditions.
- c. We do not warrant or guarantee that our services will end or eliminate all problems associated with an "identity theft" or prevent future "identity thefts."

- F. With respect to the provisions of this endorsement only, the following definitions are added to Section G. - Property Definitions:

**DEFINITIONS**

1. "Identity Recovery Case Manager" means one or more individuals assigned by us to assist an "identity recovery insured" with communications we deem necessary for re-establishing the integrity of the personal identity of the "identity recovery insured." This includes, with the permission and cooperation of the "identity recovery insured," written and telephone communications with law enforcement authorities, governmental agencies, credit agencies and individual creditors and businesses.
2. "Identity Theft" means the fraudulent use of the social security number or other method of identifying an "identity recovery insured." This includes fraudulently using the personal identity of an "identity recovery insured" to establish credit accounts, secure loans, enter into contracts or commit crimes.  
  
"Identity theft" does not include the fraudulent use of a business name, d/b/a or any other method of identifying a business activity.
3. "Identity Recovery Expenses" means the following when they are reasonable and necessary expenses that are incurred in the United States or Canada as a direct result of an "identity theft":
  - a. Costs for re-filing applications for loans, grants or other credit instruments that are rejected solely as a result of an "identity theft."
  - b. Costs for notarizing affidavits or other similar documents, long distance telephone calls and postage solely as a result of your efforts to report an "identity theft" or amend or rectify records as to your true name or identity as a result of an "identity theft."
  - c. Costs for up to twelve (12) credit reports from established credit bureaus dated within 12 months after your knowledge or discovery of an "identity theft."
  - d. Legal Costs  
Fees and expenses for an attorney approved by us for:
    - (1) Defending any civil suit brought against an "identity recovery insured" by a creditor or collection agency or entity acting on behalf of a creditor for non-payment of goods or services or default on a loan as a result of an "identity theft"; and

- (2) Removing any civil judgment wrongfully entered against an "identity recovery insured" as a result of the "identity theft."

- e. Lost Wages  
Actual lost wages of the "identity recovery insured" for time reasonably and necessarily take away from work and away from the work premises. Time away from work includes partial or whole work days. Actual lost wages may include payment for vacation days, discretionary days, floating holidays and paid personal days. Actual lost wages does not include sick days or any loss arising from time taken away from self employment. Necessary time off does not include time off to do tasks that could reasonably have been done during non-working hours.
- f. Child and Elder Care Expenses  
Actual costs for supervision of children or elderly or infirm relatives or dependents of the "identity recovery insured" during time reasonably and necessarily taken away from such supervision. Such care must be provided by a professional care provider who is not a relative of the "identity recovery insured".
- g. Mental Health Counseling  
Actual costs for counseling from a licensed mental health professional. Such care must be provided by a professional care provider who is not a relative of the "identity recovery insured".
4. "Identity Recovery Insured" means the following:
  - a. A full time employee of the entity insured under this policy; or
  - b. The owner of the entity insured under this policy who meets any of the following criteria:
    - (1) A sole proprietor of the insured entity;
    - (2) A partner in the insured entity; or
    - (3) An individual having an ownership position of 20% or more of the insured entity.

An "identity recovery insured" must always be an individual person. The entity insured under this policy is not an "identity recovery insured."

All other provisions of this policy apply.



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

## **BUILDING LIMIT- AUTOMATIC INCREASE REVISION**

This endorsement modifies insurance provided under the following:

**SPECIAL PROPERTY COVERAGE FORM  
STANDARD PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

**A.** Paragraph **C.5 Building Limit-Automatic Increase** of the **SPECIAL PROPERTY COVERAGE FORM** or **STANDARD PROPERTY COVERAGE FORM** is deleted.

**B.** The following is added to **Additional Coverages**, paragraph **A.5** of the **SPECIAL PROPERTY COVERAGE FORM** or paragraph **A.4.** of the **STANDARD PROPERTY COVERAGE FORM**:

**Building Limit - Automatic Increase**

**a.** If the covered loss or damage to Building property at a "scheduled premises" exceeds the Limit of Insurance stated in the Declarations, the Limit of Insurance available for the covered loss or damage in that occurrence will automatically increase by up to 8%.

**b.** The amount of increase will be:

**(1)** The Limit of Insurance for Buildings that applied on the most recent of the policy inception date, policy anniversary date, or the date of any other policy change amending the Building limit, multiplied by

**(2)** The 8% annualized percentage of Automatic Increase, expressed as a decimal

(08), multiplied by

**(3)** The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance for Buildings, divided by 365.

Example:

The applicable Limit of Insurance for Buildings is \$100,000. The automatic increase percentage is 8%. The number of days since the beginning of the policy period (or last policy change) is 146.

The amount of increase is:

$\$100,000 \times .08 \times 146 \text{ divided by } 365 = \$3,200$



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

## **AMENDMENT - DEFINITION OF INSURED CONTRACT**

This endorsement modifies insurance provided under the following:

### **BUSINESS LIABILITY COVERAGE FORM**

Paragraph **f.** of the definition of "insured contract" in the **Liability And Medical Expenses Definitions** Section is replaced by the following:

- 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.** includes that part of any contract or agreement 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.

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

- (1)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a)** Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports surveys, field orders, change orders, designs 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
- (2)** 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 **(1)** above and supervisory, inspection, architectural or engineering activities.



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

## PERILS SPECIFICALLY EXCEPTED

As used herein, "Peril" means a cause of physical loss or damage to property. It has this meaning whether or not it is called a "Peril" or a "Cause of Loss" in this policy.

Even if any of the terms of this policy might be construed otherwise, the following Perils, as described in Paragraphs A. and B. below, are **SPECIFICALLY EXCEPTED FROM THIS POLICY. WE DO NOT COVER OR INSURE AGAINST LOSS OR DAMAGE DIRECTLY OR INDIRECTLY CAUSED BY, RESULTING FROM, CONTRIBUTED TO OR AGGRAVATED BY, OR WHICH WOULD NOT HAVE OCCURRED BUT FOR, EITHER OF THESE PERILS:**

**A. ACTS, ERRORS OR OMISSIONS** by you or others in:

1. Planning, zoning, developing, surveying, testing or siting property;
2. Establishing or enforcing any building code, or any standard, ordinance or law about the construction, use or repair of any property or materials, or requiring the tearing down of any property, including the removal of its debris;
3. The design, specifications, workmanship, repair, construction, renovation, remodeling, grading or compaction of all or any part of the following:
  - a. Land or buildings or other structures;
  - b. Roads, water or gas mains, sewers, drainage ditches, levees, dams, or other facilities; or
  - c. Other improvements or changes in or additions to land or other property.
4. The furnishing of work, materials, parts or equipment in connection with the design, specifications, workmanship, repair, construction, renovation, remodeling, grading or compaction of any of the above property or facilities; or
5. The maintenance of any of such property or facilities.

This exception A. applies whether or not the property or facilities described above are:

1. Covered under this policy; or
2. On or away from the covered premises.

This exception A. does not reduce the insurance for loss or damage caused directly by a Covered Peril.

As used in this endorsement:

1. If this policy is written to cover the risk of loss from specifically named causes, "Covered Peril" means any Peril specifically named as covered; or
2. If written to cover the risk of loss without specifying specifically named causes, "Covered Peril" means any Peril not described above and not otherwise excluded or excepted from the causes of loss covered by this policy.

**B. COLLAPSE, "CRACKING" OR "SHIFTING"** of buildings, other structures or facilities, or their parts, if the collapse, "cracking" or "shifting":

1. Occurs during "earth movement," "volcanic eruption" or "flood" conditions or within 72 hours after they cease; and
2. Would not have occurred but for "earth movement," "volcanic eruption" or "flood."

But if loss or damage by a covered Peril ensues at the covered premises, we will pay for that ensuing loss or damage.

This exception B. applies whether or not there are other provisions in this policy relating to collapse, "cracking" or "shifting" of buildings, other structures or facilities, or their parts. Any such provision is revised by this endorsement to include this exception.

But if this policy specifically covers (by endorsement or in any other way) loss or damage caused by one or more of the following Perils:

1. Earthquake;
2. Flood;
3. Volcanic action;
4. Volcanic eruption; or
5. Sinkhole collapse,

this exception B. will not reduce that coverage.

As used in this exception B.:

1. "Cracking" means cracking, separating, shrinking, bulging, or expanding;
2. "Shifting" means shifting, rising, settling, sinking, or lateral or other movement;
3. "Earth movement" means any earth movement, including but not limited to "earthquake," landslide, mudflow, erosion, contraction or expansion, subsidence, any movement of earth resulting from water combining with the ground or soil, and any other "shifting" of earth; all whether or not combined with "flood" or "volcanic eruption." It does not include sinkhole collapse if loss by sinkhole collapse is specifically covered in this policy;
4. "Earthquake" means a shaking or trembling of the earth's crust, caused by underground volcanic or tectonic forces or by breaking or "shifting" of rock beneath the surface of the ground from natural causes. An "Earthquake" includes all related shocks and after shocks;
5. "Volcanic eruption" means the eruption, explosion or effusion of a volcano. It does not include volcanic action if loss by volcanic action is specifically covered in this policy;
6. "Flood" means:
  - a. Flood, surface water, waves, tides, tidal water, tidal waves, high water, and overflow of any body of water, or their spray, all whether driven by wind or not;
  - b. Release of water held by a dam, levy or dike or by a water or flood control device;
  - c. Water that backs up from a sewer or drain; or
  - d. Water under the ground surface pressing on, or flowing, leaking or seeping through:
    - (1) Foundations, walls, floors or paved surfaces;
    - (2) Basements, whether paved or not; or
    - (3) Doors, windows or other openings.



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## **EXCLUSION - NUCLEAR ENERGY LIABILITY**

1. This insurance does not apply:
  - a. To any injury or damage:
    - (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
      - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
      - (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - b. Under any Medical Payments or Medical Expenses Coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
  - c. To any injury or damage resulting from the "hazardous properties" of "nuclear material"; if:
    - (1) The "nuclear material":
      - (a) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
      - (b) Has been discharged or dispersed therefrom;
    - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (3) The injury or damage arises out of the furnishing by any insured of any "technology services" in connection with the planning, construction, maintenance, operation or use of any "nuclear facility"; or
  - (4) The injury or damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility"; but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (4) applies only to "property damage" to such "nuclear facility" and any property thereat.
2. As used in this exclusion:
  - a. "Byproduct material", "source material" and "special nuclear material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
  - b. "Computer system and network" means:
    - (1) Leased or owned computer hardware including mobile, networked, and data storage computing equipment;
    - (2) Owned or licensed software;
    - (3) Owned websites;
    - (4) Leased or owned wireless input and output devices; and
    - (5) Electronic backup facilities and data storage repositories employed in conjunction with items 1 through 4 above.
  - c. "Hazardous properties" include radioactive, toxic or explosive properties.
  - d. "Nuclear facility" means:
    - (1) Any "nuclear reactor";
    - (2) Any equipment or device designed or used for:
      - (a) Separating the isotopes of uranium or plutonium;
      - (b) Processing or utilizing "spent fuel"; or
      - (c) Handling, processing or packaging "waste";

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

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

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

- e.** "Nuclear material" means "byproduct material", "source material" or "special nuclear material".
  - f.** "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
  - g.** Injury or damage and "property damage" include all forms of radioactive contamination of property.
  - h.** "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".
  - i.** "Technology services" means:
    - 1.** the following services performed for others:
      - a.** Consulting, analysis, design, installation, training, maintenance, support and repair of or on: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;
- b.** Integration of systems;
- c.** Processing of, management of, mining or warehousing of data;
- d.** Administration, management, operation or hosting of: another party's systems, technology or computer facilities;
- e.** Website development; website hosting;
- f.** Internet access services; intranet, extranet or electronic information connectivity services; software application connectivity services;
- g.** Manufacture, sale, licensing, distribution, or marketing of: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;
- h.** Design and development of: code, software or programming;
- i.** Providing software application: services, rental or leasing;
- j.** Screening, selection, recruitment or placement of candidates for temporary or permanent employment by others as information technology professionals;
- k.** "Telecommunication services"; and
- l.** "Telecommunication products".
- 2.** web-related software and connectivity services performed for others; and
- 3.** activities on the "named insured's" "computer system and network".



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

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

**BUSINESS LIABILITY COVERAGE FORM  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
SPECIAL PROPERTY COVERAGE FORM  
STANDARD PROPERTY COVERAGE FORM  
UMBRELLA LIABILITY PROVISIONS**

### **A. Disclosure Of Federal Share Of Terrorism Losses**

The United States Department of the Treasury will reimburse insurers for a portion of such insured losses, as indicated in the table below that exceeds the applicable insurer deductible:

<b>Calendar Year</b>	<b>Federal Share of Terrorism Losses</b>
<b>2015</b>	<b>85%</b>
<b>2016</b>	<b>84%</b>
<b>2017</b>	<b>83%</b>
<b>2018</b>	<b>82%</b>
<b>2019</b>	<b>81%</b>
<b>2020 or later</b>	<b>80%</b>

However, if aggregate industry insured losses, attributable to "certified acts of terrorism" under the federal Terrorism Risk Insurance Act, as amended (TRIA), exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion. The United States government has not charged any premium for their participation in covering terrorism losses.

### **B. Cap On Insurer Liability for Terrorism Losses**

A "certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of federal Terrorism Risk Insurance Act, to be an act of terrorism under TRIA. The criteria contained in TRIA for a "certified act of terrorism" include the following:

1. The act results in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to TRIA; and

2. The act results in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of an United States mission; and
3. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting 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.

If aggregate industry insured losses attributable to "certified acts of terrorism" under TRIA exceed \$100 billion in a calendar year, and we have met, or will meet, our insurer deductible under TRIA, we shall not be liable for the payment of any portion of the amount of such losses that exceed \$100 billion. In such case, your coverage for terrorism losses may be reduced on a pro-rata basis in accordance with procedures established by the Treasury, based on its estimates of aggregate industry losses and our estimate that we will exceed our insurer deductible. In accordance with the Treasury's procedures, amounts paid for losses may be subject to further adjustments based on differences between actual losses and estimates.

### **C. Application Of Exclusions**

The terms and limitations of any terrorism exclusion, the inapplicability or omission of a terrorism exclusion, or the inclusion of terrorism coverage, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Form or Policy, such as losses excluded by the Pollution Exclusion, Nuclear Hazard Exclusion and the War And Military Action Exclusion.



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

## **LIMITED EXCLUSION - PERSONAL AND ADVERTISING INJURY - LAWYERS**

This endorsement modifies insurance provided under the following:

### **BUSINESS LIABILITY COVERAGE FORM**

- A.** Exclusion **1.j. Professional Services** of Section **B. Exclusions** is changed to replace **1.j.(1)** with the following:
  - j.(1)** Accounting or advertising services;
  
- B.** The following is added to Exclusion **p. "Personal and Advertising Injury"** of Section **B. Exclusions**:

This insurance does not apply to "personal and advertising injury" arising out of the rendering of or failure to render professional services as a lawyer.



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

## **EXCLUSION - UNMANNED AIRCRAFT (LIABILITY)**

This endorsement modifies insurance provided under the following:

### **BUSINESS LIABILITY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

**A.** The following changes are made to Section **B.1., EXCLUSIONS:**

**1.** Paragraph **g., Aircraft, Auto or Watercraft**, is deleted and replaced with the following:

**g. Aircraft, Auto or Watercraft**

**(1) Unmanned Aircraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Paragraph **g.(1)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

**(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Paragraph **g.(2)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or

entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

Paragraph **g.(2)** does not apply to:

- (a)** A watercraft while ashore on premises you own or rent;
- (b)** A watercraft you do not own that is:
  - (i)** Less than 51 feet long; and
  - (ii)** Not being used to carry persons for a charge;
- (c)** Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (d)** Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (e)** "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Section G Liability and Medical Expenses Definitions, Paragraph 15 **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (f)** An aircraft (other than unmanned aircraft) that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

**2.** The following is added to Section **B.1., EXCLUSIONS** Paragraph **p., Personal and Advertising Injury:**

Arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

However, this exclusion does not apply if the only allegation in the claim or "suit" involves an intellectual property right which is limited to:

- (a) Infringement, in your "advertisement", of:
  - (i) Copyright;
  - (ii) Slogan; or
  - (iii) Title of any literary or artistic work; or
- (b) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

**B. The following changes apply to Section G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:**

- 1. The following definition is added:

"Unmanned aircraft" means an aircraft that is not:

  - a. Designed;
  - b. Manufactured; or
  - c. Modified after manufacture

to be controlled directly by a person from within or on the aircraft.



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

## **EXCLUSION - UNMANNED AIRCRAFT (PROPERTY)**

This endorsement modifies insurance provided under the following:

### **SPECIAL PROPERTY COVERAGE FORM**

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

#### **A. COVERAGE**

Paragraph **A.2., Property Not Covered**, Subparagraph **a.** is deleted and replaced with the following:

- a.** Aircraft (including "unmanned aircraft"), automobiles, motor trucks and other vehicles subject to motor vehicle registration.

#### **C. DEFINITIONS**

The following changes are made to Section **G., PROPERTY DEFINITIONS**:

1. The following definition is added:

"Unmanned aircraft" means an aircraft that is not:

- a.** Designed;
- b.** Manufactured; or
- c.** Modified after manufacture

to be controlled directly by a person from within or on the aircraft and which is owned by you or owned by others but in your care, custody, or control.

"Unmanned aircraft" includes equipment designed for and used exclusively with the "unmanned aircraft", provided such equipment is essential for operation of the "unmanned aircraft" or for executing "unmanned aircraft operations".

2. The following definition is added:

"Unmanned aircraft operations" means your business activities in support of the specific operations listed in the Description of Business section of the Declarations.



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

## **EXCLUSION – OFFICE/EXPENSE SHARING**

This endorsement modifies insurance provided under the following:

### **LAWYERS' PROFESSIONAL LIABILITY COVERAGE FORM (CLAIMS MADE)**

The following Exclusion is added to subsection **A.** (SECTION II: EXCLUSIONS):

This insurance does not apply to:

"Claim(s)" arising out of any act, error, omission, or "personal injury" committed or allegedly committed by any entity or individual with whom the "insured" shares or has shared common office space or the "insured's" premises, unless such entity or individual committed such act, error, omission, or "personal injury" while rendering or failing to render "professional services";

1. At the direction of the "named insured" and/or on behalf of the "named insured"; and
2. For a client of the "named insured"; or
3. During a period of time in which such individual was providing substitute coverage to the practice of the "named insured".



## U.S. DEPARTMENT OF THE TREASURY, OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by the United States. **Please read this Notice carefully.**

The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals and Blocked Persons" or "SDNs". Their assets are blocked and U.S. persons are generally prohibited from dealing with them. This list can be located on OFAC's web site at – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is an SDN, as identified by OFAC, the policy is a blocked contract and all dealings with it must involve OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC.



**Named Insured:** THE LAW OFFICE OF

**Policy Number:** 45 SBA UT1411

**Effective Date:** 05/23/19

**Expiration Date:** 05/23/20

**Company Name:** HARTFORD CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### **TRADE OR ECONOMIC SANCTIONS ENDORSEMENT**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.

All other terms and conditions remain unchanged.

# **Exhibit B**

**Executive Order 04.02.20.01 (Apr. 2, 2020)**



# THE STATE OF GEORGIA

## EXECUTIVE ORDER

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BY THE GOVERNOR:

### EXECUTIVE ORDER TO ENSURE A SAFE & HEALTHY GEORGIA

- WHEREAS:** On March 14, 2020, due to the impact of COVID-19 on the State of Georgia, I issued Executive Order No. 03.14.20.01, declaring a Public Health State of Emergency in Georgia; and
- WHEREAS:** The Georgia General Assembly concurred with Executive Order 03.14.20.01 by joint resolution on March 16, 2020; and
- WHEREAS:** The number of COVID-19 cases in Georgia continues to rise; and
- WHEREAS:** The Georgia Department of Public Health has determined that COVID-19 is spreading throughout communities, requiring the implementation of certain restrictions to limit the spread; and
- WHEREAS:** The Centers for Disease Control and Prevention has determined that older adults, people of any age who have serious underlying medical conditions, and certain other people groups may be at higher risk for more serious complications from COVID-19; and
- WHEREAS:** Code Section 38-3-51(c)(4) vests the Governor with the power to perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population; and
- WHEREAS:** Code Section 38-3-51(d)(1) vests the Governor with the power to suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster; and
- WHEREAS:** Code Sections 31-2A-4 and 31-12-4 vests the Department of Public Health with the power to segregate and isolate certain individuals with certain communicable diseases or conditions when said

individuals' exposure to the general population is likely to endanger the health of others; and

**WHEREAS:** In consultation with the Governor's Coronavirus Task Force and health and emergency preparedness officials, I have determined that the following temporary actions are necessary and appropriate to protect the health, safety, and welfare of Georgia's residents and visitors.

**NOW, THEREFORE, PURSUANT TO AFOREMENTIONED GEORGIA LAW AND THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY**

**ORDERED:** All residents and visitors of the State of Georgia shall practice social distancing and sanitation in accordance with this Order and guidelines published by the Centers for Disease Control and Prevention.

**IT IS FURTHER**

**ORDERED:** No business, establishment, corporation, non-profit corporation, organization, or county or municipal government shall allow more than ten (10) persons to be gathered at a single location if such gathering requires persons to stand or to be seated within six (6) feet of any other person. This provision shall not apply to cohabitating persons outside of their homes, family units or roommates residing together in private homes, or entities defined as "Critical Infrastructure" by this Order.

**IT IS FURTHER**

**ORDERED:** That as used in this Order, the term "single location" shall be interpreted to mean a space where all persons gathered cannot maintain at least six (6) feet of distance between themselves and any other person. The term "single location" shall not include private residences.

**IT IS FURTHER**

**ORDERED:** That all residents and visitors of the State of Georgia are required to shelter in place within their homes or places of residence, meaning remaining in their place of residence and taking every possible precaution to limit social interaction to prevent the spread or infection of COVID-19 to themselves or any other person, unless they are:

1. Conducting or participating in Essential Services;

2. Performing Necessary Travel;
3. Are engaged in the performance of, or travel to and from, the performance of Minimum Basic Operations for a business, establishment, corporation, non-profit corporation, or organization not classified as Critical Infrastructure; or
4. Are part of the workforce for Critical Infrastructure and are actively engaged in the performance of, or travel to and from, their respective employment.

**IT IS FURTHER**

**ORDERED:** That Essential Services permitted pursuant to the provisions of this Order are limited to the following:

1. Obtaining necessary supplies and services for family or household members, such as food and supplies for household consumption and use, medical supplies or medication, supplies and equipment needed to work from home, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence. Preference should be given to online ordering, home delivery, and curbside pick-up services wherever possible as opposed to in-store shopping.
2. Engaging in activities essential for the health and safety of family or household members, such as seeking medical, behavioral health, or emergency services.
3. Engaging in outdoor exercise activities so long as a minimum distance of six (6) feet is maintained during such activities between all persons who are not occupants of the same household or residence.

**IT IS FURTHER**

**ORDERED:** That Necessary Travel permitted under this Order is limited to such travel as is required to conduct or participate in Essential Services, Minimum Basic Operations, or Critical Infrastructure as defined by this Order.

**IT IS FURTHER**

**ORDERED:** That Minimum Basic Operations are limited to:

1. The minimum necessary activities to maintain the value of a business, establishment, corporation, non-profit corporation, or organization, provide services, manage inventory, ensure security, process payroll and employee benefits, or for related functions. Such minimum necessary activities include remaining open to the public subject to the restrictions of this Order.

2. The minimum necessary activities to facilitate employees or volunteers being able to work remotely from their residences or members or patrons being able to participate remotely from their residences.
3. Instances where employees are working outdoors without regular contact with other persons, such as delivery services, contractors, landscape businesses, and agricultural industry services.

**IT IS FURTHER**

**ORDERED:**

That all businesses, establishments, corporations, non-profit corporations, or organizations that are *not* Critical Infrastructure shall only engage in Minimum Basic Operations as defined in this Order during the effective dates of this Order. Such entities shall also implement measures which mitigate the exposure and spread of COVID-19 among its workforce. Such measures shall include the following:

1. Screening and evaluating workers who exhibit signs of illness, such as a fever over 100.4 degrees Fahrenheit, cough, or shortness of breath;
2. Requiring workers who exhibit signs of illness to not report to work or to seek medical attention;
3. Enhancing sanitation of the workplace as appropriate;
4. Requiring hand washing or sanitation by workers at appropriate places within the business location;
5. Providing personal protective equipment as available and appropriate to the function and location of the worker within the business location;
6. Prohibiting gatherings of workers during working hours;
7. Permitting workers to take breaks and meals outside, in their office or personal workspace, or in such other areas where proper social distancing is attainable;
8. Implementing teleworking for all possible workers;
9. Implementing staggered shifts for all possible workers;
10. Holding all meetings and conferences virtually, wherever possible;
11. Delivering intangible services remotely wherever possible;
12. Discouraging workers from using other workers' phones, desks, offices, or other work tools and equipment;
13. Prohibiting handshaking and other unnecessary person-to-person contact in the workplace;
14. Placing notices that encourage hand hygiene at the entrance to the workplace and in other workplace areas where they are likely to be seen;
15. Suspending the use of Personal Identification Number ("PIN") pads, PIN entry devices, electronic signature capture,

- and any other credit card receipt signature requirements to the extent such suspension is permitted by agreements with credit card companies and credit agencies;
16. Enforcing social distancing of non-cohabitating persons while present on such entity's leased or owned property;
  17. For retailers and service providers, providing for alternative points of sale outside of buildings, including curbside pick-up or delivery of products and/or services if an alternative point of sale is permitted under Georgia law;
  18. Increasing physical space between workers and customers;
  19. Providing disinfectant and sanitation products for workers to clean their workspace, equipment, and tools;
  20. Increasing physical space between workers' worksites to at least six (6) feet.

**IT IS FURTHER**

**ORDERED:**

The term "Critical Infrastructure" shall refer to businesses, establishments, corporations, non-profit corporations, and organizations as defined by the U.S. Department of Homeland Security as "essential critical infrastructure workforce," in guidance dated March 19, 2020, and revised on March 28, 2020, and those suppliers which provide essential goods and services to the critical infrastructure workforce as well as entities that provide legal services, home hospice, and non-profit corporations or non-profit organizations that offer food distribution or other health or mental health services. The operation of Critical Infrastructure shall not be impeded by county, municipal, or local ordinance.

Critical Infrastructure that continues in-person operation during the effective dates of this Order shall implement measures which mitigate the exposure and spread of COVID-19 among its workforce. Such measures may include, but shall not be limited to:

1. Screening and evaluating workers who exhibit signs of illness, such as a fever over 100.4 degrees Fahrenheit, cough, or shortness of breath;
2. Requiring workers who exhibit signs of illness to not report to work or to seek medical attention;
3. Enhancing sanitation of the workplace as appropriate;
4. Requiring hand washing or sanitation by workers at appropriate places within the business location;
5. Providing personal protective equipment as available and appropriate to the function and location of the worker within the business location;
6. Prohibiting gatherings of workers during working hours;

7. Permitting workers to take breaks and lunch outside, in their office or personal workspace, or in such other areas where proper social distancing is attainable;
8. Implementing teleworking for all possible workers;
9. Implementing staggered shifts for all possible workers;
10. Holding all meetings and conferences virtually, wherever possible;
11. Delivering intangible services remotely wherever possible;
12. Discouraging workers from using other workers' phones, desks, offices, or other work tools and equipment;
13. Providing disinfectant and sanitation products for workers to clean their workspace, equipment, and tools;
14. Prohibiting handshaking and other unnecessary person-to-person contact in the workplace; and
15. Placing notices that encourage hand hygiene at the entrance to the workplace and in other workplace areas where they are likely to be seen; and
16. Suspending the use of Personal Identification Number ("PIN") pads, PIN entry devices, electronic signature capture, and any other credit card receipt signature requirements to the extent such suspension is permitted by agreements with credit card companies and credit agencies.

**IT IS FURTHER**

**ORDERED:** That the Georgia Department of Economic Development is authorized to issue guidance to any business, corporation, organization, or industry trade group regarding its status as Critical Infrastructure. This guidance shall not require a finding of fact but shall be in writing and shall be considered a final agency action for the purpose of proceedings under Code Section 50-13-19.

**IT IS FURTHER**

**ORDERED:** All restaurants and private social clubs shall cease providing dine-in services. Takeout, curbside pick-up, and delivery are permitted in accordance with the provisions of this Order.

This provision shall not limit the operation of dine-in services in hospitals, healthcare facilities, nursing homes, or other long-term care facilities; however, to the extent possible, such facilities should offer in-room dining.

**IT IS FURTHER**

**ORDERED:** That all gyms, fitness centers, bowling alleys, theaters, live performance venues, operators of amusement rides as defined by

Code Section 25-15-51, body art studios permitted pursuant to Code Section 31-40-2, businesses registered pursuant to Code Sections 43-10-11 and 43-10-18, estheticians as defined by Code Section 43-10-1(8), hair designers as defined by Code Section 43-10-1(9), persons licensed to practice massage therapy pursuant to Code Section 43-24A-8, and businesses which possess a license to operate as or otherwise meet the definition of “bar” as defined by Code Section 3-1-2(2.1), shall cease in-person operations and shall close to the public while this Order is in effect.

**IT IS FURTHER**

**ORDERED:** That persons required to shelter in place under any provision of this Order shall not receive visitors, except as follows:

1. Visitors providing medical, behavioral health, or emergency services or medical supplies or medication, including home hospice;
2. Visitors providing support for the person to conduct activities of daily living or instrumental activities of daily living;
3. Visitors providing necessary supplies and services, such as food and supplies for household consumption and use, supplies and equipment needed to work from home, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence; or
4. Visitors received during end-of-life circumstances.

To the extent practicable under the circumstances, visitors shall maintain a minimum distance of six (6) feet between themselves and all other occupants of the person’s home or residence. Any visitors visiting for the sole purpose of delivering medication, supplies, or other tangible goods shall, to the extent practicable, deliver such items in a manner that does not require in-person contact or require the deliverer to enter the person’s home or residence.

**IT IS FURTHER**

**ORDERED:** That the provisions of this Order related to visitors listed in the immediately preceding paragraph shall be strictly enforced against nursing homes or other long-term care facilities, including inpatient hospice, assisted living communities, personal care homes, intermediate care homes, community living arrangements, and community integration homes.

**IT IS FURTHER**

**ORDERED:** That an exception to any shelter-in-place requirement set forth hereunder applies in the event of an emergency. In such cases,

persons are encouraged to leave their homes or residences and shelter in place in accordance with the rules included in this Order at a safe alternate location. Persons experiencing homelessness are urged to obtain shelter and to contact governmental and other entities for assistance.

**IT IS FURTHER**

**ORDERED:** That the Department of Public Health, the Department of Public Safety, or any other state department or state officer deputized by the Governor or the Georgia Emergency Management and Homeland Security Agency are, after providing reasonable notice, authorized to mandate the closure of any business, establishment, corporation, non-profit corporation, or organization not in compliance with this Order for a period not to extend beyond the term of this Order.

**IT IS FURTHER**

**ORDERED:** That the Adjutant General of the Georgia National Guard and the Commissioner of the Department of Public Safety shall provide resources as requested to assist in the enforcement of this Order.

**IT IS FURTHER**

**ORDERED:** That pursuant to Code Section 38-3-51, the powers of counties and cities conveyed in Titles 36 and 38, including those specific powers enumerated in Code Sections 36-5-22.1 and 36-35-3 are hereby suspended to the extent of suspending enforcement of any local ordinance or order adopted or issued since March 1, 2020, with the stated purpose or effect of responding to a public health state of emergency, ordering residents to shelter-in-place, ordering a quarantine, or combatting the spread of coronavirus or COVID-19 that in any way conflicts, varies, or differs from the terms of this Order. Enforcement of all such ordinances and orders is hereby suspended and no county or municipality shall adopt any similar ordinance or order while this Order is in effect, except for such ordinances or orders as are designed to enforce compliance with this Order.

**IT IS FURTHER**

**ORDERED:** That if one or more of the provisions contained in this Order shall conflict with the provisions of any previous Executive Order or Agency Administrative Order, the provisions of this Order shall control. Further, in the event of any conflict, the provisions of any quarantine or isolation Order issued to a specific person by the Department of Public Health shall control.

**IT IS FURTHER**

**ORDERED:** That nothing in this Order shall be construed to suspend or limit the sale, dispensing, or transportation of firearms or ammunition, or any component thereof.

**IT IS FURTHER**

**ORDERED:** That pursuant to Code Section 38-3-7, any person who violates this Order shall be guilty of a misdemeanor. Officials enforcing this Order should take reasonable steps to provide notice prior to issuing a citation or making an arrest.

**IT IS FURTHER**

**ORDERED:** This Order rescinds and replaces Executive Order 03.23.20.01.

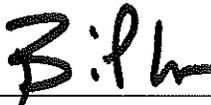
**IT IS FURTHER**

**ORDERED:** That if one or more of the provisions contained in this Order shall be held to be invalid, in violation of the Georgia Constitution, in violation of Georgia law, or unenforceable in any respect, such invalidity, violation, or unenforceability shall not affect any other provisions of this Order, but, in such case, this Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within the Order.

**IT IS FURTHER**

**ORDERED:** All provisions of the Order shall become effective for a period beginning at 6:00 P.M. on Friday, April 3, 2020, and expiring at 11:59 P.M. on Monday, April 13, 2020.

This 2<sup>nd</sup> day of April 2020, at 3:12 P.M.

  
\_\_\_\_\_  
GOVERNOR

# Exhibit C

**Transcript, *Social Life Magazine, Inc. v. Sentinel Insurance Co. Ltd.*, No. 20-cv-3311 (S.D.N.Y. May 14, 2020), ECF No. 24-1**

k5e2SocH

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 SOCIAL LIFE MAGAZINE, INC.,

4 Plaintiff,

New York, N.Y.

5 v.

20 Civ. 3311 (VEC)

6 SENTINEL INSURANCE COMPANY  
7 LIMITED,

8 Defendant.

-----x

9 Teleconference  
Order to Show Cause

10 May 14, 2020  
11 10:00 a.m.

12 Before:

13 HON. VALERIE E. CAPRONI,

14 District Judge

15  
16 APPEARANCES

17  
18 GABRIEL J. FISCHBARG  
Attorney for Plaintiff

19  
20 STEPTOE & JOHNSON, LLP  
Attorneys for Defendant  
21 BY: CHARLES A. MICHAEL  
SARAH D. GORDON  
22  
23  
24  
25

k5e2SocH

1 THE COURT: Good morning, everybody.

2 Do I have a court reporter on the line?

3 THE COURT REPORTER: Good morning, your Honor.

4 Kristen Carannante.

5 THE COURT: Good morning.

6 Okay. Do I have Mr. Fischbarg for the plaintiff?

7 MR. FISCHBARG: Yes, Judge. Hi.

8 THE COURT: Mr. Fischbarg, is anyone else on the line  
9 for the plaintiff?

10 MR. FISCHBARG: Yes. The plaintiff is on a separate  
11 phone available if you need evidence or --

12 THE COURT: The principal of Social Life?

13 MR. FISCHBARG: Yes. He is in my office, you know,  
14 more than six feet away, and --

15 THE COURT: Okay.

16 And who do I have for the defendant?

17 MR. MICHAEL: Good morning, your Honor. This is  
18 Charles Michael, from Steptoe & Johnson, for the defendant.  
19 With me is my partner Sarah Gordon, who was just admitted *pro*  
20 *hac vice*, and who will be doing the presentation today.

21 THE COURT: Terrific.

22 All right --

23 MS. GORDON: Good morning, your Honor.

24 THE COURT: Good morning.

25 Only people who are speaking need to note their

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1 appearances, and I have got those, Mr. Fischbarg and  
2 Ms. Gordon. Everybody else, please mute your telephone.

3 Also, if you hear that sound that sounds like someone  
4 has dropped off the line once we get started, I need you to  
5 stop talking so that I can make sure that I have still got the  
6 court reporter and your adversary on the line.

7 So, Mr. Fischbarg, this is your motion, so you get to  
8 go first.

9 MR. FISCHBARG: Yes. So I submitted a reply  
10 memorandum, you know, in the afternoon yesterday. I was just  
11 wondering if --

12 THE COURT: Yes. I saw that. Thank you.

13 MR. FISCHBARG: Okay, so you were also able to read  
14 it, I suppose?

15 THE COURT: Yes, yes.

16 MR. FISCHBARG: Okay.

17 So I guess the only other thing I want to add that's  
18 not in the papers, and then I don't know if your Honor has any  
19 issues that you want to talk about, is I mentioned that Liberty  
20 Mutual had this exclusion for viruses and it is also evident  
21 that other insurance companies have the same exclusion,  
22 including Travelers Insurance Company, and they filed the --  
23 they actually filed a federal lawsuit for declaratory judgment  
24 in California, Docket No. 20 Civ. 3619, to preempt such claims,  
25 I guess to enforce their exclusion for viruses. So to the

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1 extent that the defendant is claiming some kind of overreach by  
2 the plaintiff here, I don't think it is proper. There are  
3 several insurance companies who are capable of putting in a  
4 virus exclusion in their policies, and in this case there is  
5 none. So --

6 THE COURT: Let me ask you something. First off, I  
7 want to start with basics. Do you agree that New York law  
8 applies?

9 MR. FISCHBARG: Yes.

10 THE COURT: All right. So the -- is it the *Roundabout*  
11 *Theatre* case?

12 MS. GORDON: Yes, your Honor.

13 THE COURT: First Department case?

14 MS. GORDON: Yes, your Honor. This is Ms. Gordon on  
15 behalf of Sentinel.

16 THE COURT: Thank you.

17 Mr. Fischbarg, it would seem to me that the *Roundabout*  
18 case is a real problem for your position.

19 Would you like to explain to me why it doesn't  
20 preclude your claim?

21 MR. FISCHBARG: Yes. That case applies to off-site  
22 property damage rendering the premises at issue inaccessible.  
23 So in this case, you don't have off-site property damage. You  
24 have on-site property damage.

25 THE COURT: What is the damage? There is no damage to

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1 your property.

2 MR. FISCHBARG: Well, the virus exists everywhere.

3 THE COURT: It damages lungs. It doesn't damage  
4 printing presses.

5 MR. FISCHBARG: Right. Well, that's a different  
6 issue, whether or not -- that's a different issue than the  
7 *Roundabout* case that had to do with accessibility. Now we are  
8 jumping to the topic of whether a virus can cause physical  
9 damage to a printing press, as your Honor mentioned. So that's  
10 a separate issue, and there are a lot of cases that we have  
11 cited where this type of material, a virus, does cause physical  
12 damage.

13 THE COURT: What's your best case? What do you think  
14 is your best case under New York law?

15 MR. FISCHBARG: Well, the problem is, under New York  
16 law, there isn't much law. The New Jersey federal court, in  
17 *TRAVCO*, citing other cases, including from other circuits,  
18 where physical damage had a broader interpretation that  
19 includes loss of use and not just, you know, something where  
20 you take a hammer and break an item.

21 THE COURT: With loss of use, I mean, loss of use from  
22 things like mold is different from you not being able to,  
23 quote, use your premises because there is a virus that is  
24 running amuck in the community.

25 MR. FISCHBARG: Okay. I would disagree with that. I

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1 would say virus and mold are equivalent. They are both  
2 physical items which, if they land on a surface or are on a  
3 surface, just like spores that are also listed in the policy,  
4 mold is also listed in the policy. I would say that the virus,  
5 mold spores --

6 THE COURT: Hang on --

7 MR. FISCHBARG: -- anything --

8 THE COURT: A second.

9 Do I still have the court reporter?

10 THE COURT REPORTER: Yes, your Honor.

11 THE COURT: Do I have I still have, Ms. Gordon?

12 MS. GORDON: Yes, your Honor.

13 THE COURT: All right. Go ahead.

14 MR. FISCHBARG: Mold spores, bacteria, virus, all  
15 those are physical items which damage whatever they are on,  
16 whatever they land on. And in this case, the virus, when it  
17 lands on something and you touch it, you could die from it.  
18 So --

19 THE COURT: That damages you. It doesn't damage the  
20 property.

21 MR. FISCHBARG: But you are not able to use the  
22 property because it damages you. So it's a corollary. In  
23 other words, this policy, by the way, mentions the word "virus"  
24 and "bacteria" in it in two places.

25 THE COURT: Where does it mention it?

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1 MR. FISCHBARG: It mentions it in the PDF as well as  
2 Exhibit 9, page 36 and 37, which is page 7 of 25 of the special  
3 property coverage form under additional coverages, section  
4 5(j), where the insured would cover certain law enforcement  
5 orders requiring you to -- requiring remediation. But it  
6 contains an exclusion for bacteria and viruses, and it uses the  
7 word "bacteria" and it uses the word "virus."

8 So what this is really referring to is the *Legionella*  
9 bacteria, which is causes Legionnaires' disease typically.  
10 That's the bacteria. Virus is obviously something else. So  
11 this is obviously referring to when there is a Legionnaires'  
12 outbreak in a building, which could happen in New York pretty  
13 often, every few years, and then the building gets shut down  
14 and they have to do remediation. Either they -- at least as a  
15 bacteria, *Legionella* bacteria only occurs in water or pipes or  
16 in mist. So the building is shut down, and then you might have  
17 to -- and now there is a new code where the buildings have to  
18 test their cooling systems for *Legionella* bacteria. So that's  
19 an example where a bacteria causes property loss, or loss of  
20 use, or damage, physical damage to property. And I would say  
21 the virus is equivalent to that bacteria. So --

22 THE COURT: But it's not. This is different. The  
23 virus is not specifically in your property that is causing  
24 damage. It is everywhere. The Legionnaire example is very  
25 different. Because it's not like Legionnaire is running

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1 rampant throughout the city, and therefore your office building  
2 can get closed. It is that the Legionnaire bacteria is in that  
3 building causing --

4 MR. FISCHBARG: Yes.

5 THE COURT: -- that building to be shut down.

6 MR. FISCHBARG: Yes. Yes.

7 So this virus is everywhere, including this office in  
8 particular, this office. In other words, they just did a  
9 random survey of people going into a grocery store in New York,  
10 and 20 percent tested positive. So, Judge, that's just a  
11 one-sample test. So if the infection rate in New York City is  
12 20 percent, then the virus is literally everywhere. So if  
13 it --

14 THE COURT: That's what --

15 MR. FISCHBARG: -- is --

16 THE COURT: That is what has caused the damage is that  
17 the governor has said you need to stay home. It is not that  
18 there is any particular damage to your specific property.

19 MR. FISCHBARG: Well, okay, that's --

20 THE COURT: You may not even have the virus in your  
21 property.

22 MR. FISCHBARG: Well, okay, that's -- I would  
23 disagree. The virus not just causes -- it lands on equipment,  
24 it lands everywhere. That's why all of these -- all of the  
25 health guidelines from the World Health Organization and

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1 elsewhere talk about wearing gloves, talk about wiping things  
2 down, because it lands on surfaces. It doesn't just get  
3 transmitted through the air. Another way of getting it is  
4 through contact --

5 THE COURT: Right, but what --

6 MR. FISCHBARG: -- when it touches your --

7 THE COURT: What evidence do you have that your  
8 premises are infected with the COVID bug.

9 MR. FISCHBARG: Well, the plaintiff is here. He got  
10 COVID. So that's evidence there.

11 THE COURT: Well, it's not evidence that he got it in  
12 his office.

13 MR. FISCHBARG: Yes, but, okay, it's not -- we're  
14 not -- I don't know what burden of proof we are looking at,  
15 whether it is beyond a reasonable doubt --

16 THE COURT: No, it's --

17 MR. FISCHBARG: -- or more likely than not, more  
18 likely than not, he can testify where he was and more likely  
19 than not he either got it from his office or he got it from his  
20 home. So that's a different burden of proof. If you are  
21 looking for some kind of burden of proof to show that he got it  
22 from his office, I mean, that's an evidentiary question, and we  
23 can get an epidemiologist to testify and get an expert to  
24 testify on that, which I understand is going to happen in the  
25 other lawsuits that have been filed across the country

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1 regarding --

2 THE COURT: Okay.

3 MR. FISCHBARG: -- this issue.

4 THE COURT: Okay.

5 MR. FISCHBARG: So . . .

6 THE COURT: Anything further, Mr. Fischbarg?

7 MR. FISCHBARG: No, I guess that's all for now. Thank  
8 you.

9 THE COURT: Okay. Thanks.

10 Ms. Gordon.

11 MS. GORDON: Thank you, your Honor. This is Sarah  
12 Gordon on behalf of Sentinel, and we agree with your Honor's  
13 thoughts here.

14 The property policy has two distinct requirements  
15 here. There has to be direct physical loss or physical damage  
16 to the property and the cause of the business interruption  
17 damages they are seeking has to be direct physical loss or  
18 damage, and the cause here is not physical damage.

19 We think, you know, as your Honor rightly pointed out,  
20 *Roundabout* controls. It is under New York law. It's a First  
21 Department case from 2002. There are no subsequent decisions  
22 that have disagreed or overturned it here in New York; and, if  
23 anything, it has been confirmed by this . . .

24 THE COURT: Hang on. Did I lose my court reporter?

25 THE COURT REPORTER: No, Judge. I'm here.

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1 THE COURT: Did I lose Mr. Fischbarg?

2 MR. FISCHBARG: No, I'm here.

3 THE COURT: Okay.

4 MS. GORDON: This court, your Honor, in *Newman Myers*,  
5 adopted the exact same rationale for a law firm that was trying  
6 to assert damages where there were no -- business interruption  
7 damages, where there was no physical harm to the property.  
8 And, you know --

9 THE COURT: Let me interrupt you for a second.

10 So Judge Engelmayer in *Newman* went out of his way to  
11 talk about a case where there was a bunch of -- there was a  
12 rock slide which didn't actually hit the house or the premises,  
13 and yet they got coverage and coverage for the invasion of  
14 fumes.

15 MS. GORDON: Yes, your Honor.

16 So for most of the cases, there are a number of them,  
17 there is -- what has happened is something physically has  
18 happened to the property that prevents people from being on the  
19 property. So, for example, in *Gregory Packaging*, in New  
20 Jersey, there was ammonia leaked out and they couldn't be on  
21 the property, so something physically happened. You couldn't  
22 necessarily see it or touch it, but there were fumes and it was  
23 unsafe to be there. The same thing with *Motorists*, where there  
24 was *E. coli* in the well. You couldn't be in that house because  
25 you were exposed to other things that had the *E. coli*.

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1           The property has to be entirely unusable or  
2 uninhabitable for physical loss or damage to constitute a loss  
3 of use. We don't think that's the law in New York in any  
4 circumstance, but even in those other cases, there is nothing  
5 equivalent here. Mr. Fischbarg's client can go to his  
6 premises. There is no ammonia or mold or anything in the air  
7 that's not going to allow him on to the property. In fact, the  
8 governor's orders explicitly allow him to go to the property  
9 and get his mail or do routine business functions. The only  
10 rule is that he has to stay six feet apart from other people.  
11 So those cases are entirely distinguishable.

12           And when a business, a property is allowed to remain  
13 open or people can still occupy the premises, there is no  
14 direct physical loss or damage. That was the case -- that's  
15 what the court said in *Port Authority*, that's what happened in  
16 *Mama Jo's*, where the restaurant was allowed to be open. The  
17 cases where there is direct physical loss or damage, you  
18 literally cannot be on the premises because there is something  
19 there that is making it uninhabitable, and here that just isn't  
20 true.

21           THE COURT: Okay. Mr. Fischbarg I will give you the  
22 last word.

23           MR. FISCHBARG: All right. So I would disagree that  
24 he is allowed to go to the premises. In fact, the opposite is  
25 true. The executive order 202.8 says it requires 100 percent

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1 reduction. So he can't go there, and he is not allowed to go  
2 there, and that is a separate claim. It is the civil authority  
3 claim besides the breach of contract claim.

4 THE COURT: Doesn't the executive order say -- I'm  
5 sorry, which executive order are you talking about?

6 MR. FISCHBARG: It is . . .

7 It is Exhibit 3 of the declaration, and then on page  
8 2, "Each employer shall reduce the in-person workforce at any  
9 work locations by 100 percent no later than March 22 at 8p.m."  
10 And then it says --

11 THE COURT: Right, but that doesn't mean the boss  
12 can't go to the work location.

13 MR. FISCHBARG: I would say he is -- he is an employee  
14 and he can't go. I think it does. In my building here in New  
15 York, there is nobody here. I'm the only one. There is no  
16 bosses in any of the offices.

17 THE COURT: There is nothing about the governor's  
18 order that prohibits a small businessperson or a big  
19 businessperson from going into their office to pick up mail, to  
20 water the plants, to do anything like --

21 MR. FISCHBARG: Your Honor --

22 THE COURT: -- that, including employees that are  
23 working.

24 MR. FISCHBARG: Sorry.

25 MS. GORDON: Your Honor, this is Sarah Gordon. Oh, go

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1 ahead, Mr. Fischbarg.

2 MR. FISCHBARG: Okay.

3 Again, I would disagree. I think the order is pretty  
4 clear that 100 percent means that you are not supposed to go to  
5 work, and that's what people have been doing in New York. They  
6 are not going into the office. And to the extent they are  
7 getting mail, I mean, there is work-arounds where the workers  
8 in the building have been leaving it downstairs for people to  
9 pick up, but the way it's been implemented is that 100 percent  
10 means no one is going to any office.

11 THE COURT: You are in your office.

12 MR. FISCHBARG: Yeah, I'm not -- I'm considered, by  
13 the way -- lawyers are considered essential, and if you are a  
14 sole practitioner, you are considered essential. So I have the  
15 exclusion, and that's why I am here, but otherwise I wouldn't  
16 be here. So . . .

17 MS. GORDON: Your Honor, if I may? We submitted with  
18 Mr. Michael's affidavit, Exhibit D, a printout from the Empire  
19 State Development website. And on question 13, it addresses  
20 exactly this issue. It says, "What if my business is not  
21 essential but a person must pick up mail or perform a similar  
22 routine function each day?" And the answer provided by the  
23 Empire State is, "A single person attending a nonessential  
24 closed business temporarily to perform a specific task is  
25 permitted so long as they will not be in contact with other

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1 people."

2 THE COURT: I thought I had read that somewhere.

3 MS. GORDON: Yes. It is in Mr. Michael's declaration,  
4 and I think it's ECF 18-4, page 304.

5 THE COURT: Okay.

6 MR. FISCHBARG: Right, but I think the executive order  
7 supersedes that is what I would argue.

8 THE COURT: Okay.

9 Mr. Fischbarg, you have got to demonstrate a  
10 probability of success on the merits. I feel bad for your  
11 client. I feel bad for every small business that is having  
12 difficulties during this period of time. But New York law is  
13 clear that this kind of business interruption needs some damage  
14 to the property to prohibit you from going. You get an A for  
15 effort, you get a gold star for creativity, but this is just  
16 not what's covered under these insurance policies.

17 So I will have a more complete order later, but your  
18 motion for preliminary injunction is going to be denied.

19 Anything further for the plaintiff?

20 MR. FISCHBARG: I guess just a housekeeping thing. We  
21 filed an amended complaint. Are we going to deem it served or  
22 does it have to be re-served?

23 THE COURT: Has the defendant -- does the defendant  
24 want to be reserved or will you take the amended complaint?

25 MR. MICHAEL: Your Honor, this is Charles Michael.

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1           We have entered a notice of appearance, and so I think  
2           once they filed it on ECF, that service, we are happy to  
3           consider it served. That's fine. And he does have one  
4           amendment as of right.

5           THE COURT: Correct.

6           MR. MICHAEL: That was within his right to file it.

7           THE COURT: Does defendant plan to move or answer?

8           MR. MICHAEL: Probably to move. We would have to  
9           discuss it with our client, but I believe so.

10          THE COURT: Okay. What are the parties' position on  
11          discovery while the motion to dismiss is pending?

12          MR. FISCHBARG: Well, I would say there are two  
13          motions filed -- there is one in the Eastern District of  
14          Pennsylvania and one in, I think, the Northern District of  
15          Illinois -- for an MDL, multi-district litigation, involving a  
16          lot of lawsuits combining, so I think this might be happening  
17          in each state until that motion is decided, and I think the  
18          briefing schedule is in June --

19          MS. GORDON: We -- your Honor --

20          MR. FISCHBARG: -- so I think --

21          MS. GORDON: Sorry, Mr. Fischbarg.

22          MR. FISCHBARG: So I would say that this case might be  
23          transferred to the multi-district panel at some point.

24          THE COURT: Okay. So, Mr. Fischbarg, what I am  
25          hearing you say is that you are perfectly happy to have the

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1 defendants not move until we find out whether or not your case  
2 is going to get scooped up into the MDL?

3 MR. FISCHBARG: Yes, correct.

4 THE COURT: All right. I presume that the defendants  
5 are perfectly happy to do nothing until you hear back from the  
6 MDL.

7 MS. GORDON: Your Honor, I need to consult with my  
8 client on that. I'm not sure that that's true. We don't think  
9 these cases are appropriate for consolidation in the MDL for  
10 many of the reasons which were evident today, given the  
11 different states' conclusions on these laws. So I need to  
12 consult with my client on the motion practice. We may intend  
13 to want to move in any event.

14 THE COURT: Okay. Well, you could move, but if there  
15 is a likely -- if there is some likelihood that they are going  
16 to get scooped into the MDL, I'm not likely to decide it until  
17 that decision is made. So it is entirely -- I guess from my  
18 perspective I don't really care, but from your client's  
19 perspective, they may be making a motion to dismiss that's  
20 unnecessary. If you are right, and you may well be right, that  
21 they are not going to MDL these kinds of cases, then all that's  
22 happening is this is just being delayed into the summer for you  
23 to incur fees making a motion to dismiss.

24 So why don't you talk to your client, figure out what  
25 you want to do. One way or the other, it does not seem to me

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1 to make sense to proceed with discovery in this matter,  
2 certainly under the circumstances that everyone is in, and  
3 particularly the plaintiff is in, strapped for revenue, until  
4 we figure out whether a lawsuit is going to go forward.

5 So talk to your client, figure out whether -- the  
6 defendant should talk to Sentinel. Figure out whether you are  
7 happy staying this case pending a decision on the MDL or not,  
8 and just write me a letter and let me know.

9 MS. GORDON: Yes, your Honor. Thank you.

10 MR. MICHAEL: Your Honor --

11 THE COURT: Anything further from the plaintiff?

12 MR. MICHAEL: Just one housekeeping matter. This is  
13 Charles Michael, again, for the defendant.

14 THE COURT: Okay.

15 MR. MICHAEL: I just wondered if there was any special  
16 procedures for ordering the transcript or if we go just through  
17 the normal Southern District website? I didn't know, under the  
18 COVID circumstances, if there is something different we should  
19 do.

20 THE COURT: I don't think there is anything different,  
21 but we have got the court reporter on.

22 So, Madam Court Reporter, is there anything different  
23 they need to do?

24 THE COURT REPORTER: At the end of this proceeding, I  
25 am going to email the parties with their instructions.

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1 THE COURT: Okay.

2 MR. MICHAEL: Terrific. Thank you so much.

3 THE COURT: Anything further from the plaintiff,

4 Mr. Fischbarg?

5 MR. FISCHBARG: No. Thank you, Judge.

6 THE COURT: Anything further from the insurance

7 company? Ms. Gordon?

8 MS. GORDON: No. Thank you, your Honor.

9 THE COURT: All right. Thank you, all.

10 MR. FISCHBARG: Okay. Bye, Judge.

11 MR. MICHAEL: Thank you, your Honor.

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# Exhibit D

**Transcript, *Gavrilides Management Co. v. Michigan Insurance Co.*, Case No. 20-258-CB  
(Mich. Cir. Ct., Ingham County, July 1, 2020)**

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

\_\_\_\_\_  
GAVRILIDES MANAGEMENT COMPANY,  
Plaintiff,

vs.

File No. 20-258-CB

MICHIGAN INSURANCE COMPANY,  
Defendant.

\_\_\_\_\_/

DEFENDANTS MOTION FOR SUMMARY DISPOSITION  
BEFORE THE HONORABLE JOYCE DRAGANCHUK, CIRCUIT COURT JUDGE  
LANSING, MICHIGAN - WEDNESDAY, JULY 01, 2020

APPEARANCES:

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Recorded/transcribed by:

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None admitted.

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Lansing, Michigan

Wednesday, July 01, 2020

2:58:57 PM

THE COURT: This is, pardon me if I massacre this, Gavri--, Gavrilides Management Company, et al versus Michigan Insurance Company, docket number 20-258-CB. And this is the time set for Defendant Michigan Insurance Company's Motion for Summary Disposition. And just for the record, could I have your appearances, please?

MR. HEOS: Yes, your Honor. Matthew Heos and Nick Gavrilides is here in the courtroom also with me. He is the owner of the immediate plaintiff company's.

MR EMRICH: Henry Emrich on behalf of Michigan Insurance Company, your Honor and my assistant Cheney Ward.

THE COURT: Okay, thank you. And your motion, Mr. Emrich, if you wish to go ahead.

MR. EMRICH: Thank you, your Honor. I am going to assume that the Court has read all of the pleadings in this case, so I'll try not to belabor some of the points. I think the, the key fact that we need to focus on is that as we've argued is that there's no question here but the policies that insure Mr. Gavrilides properties against, against direct physical loss or damage to the property and contrary, any claim with the policy benefits in question

1 this business income coverage is illusory, the policy in  
2 question here clearly provides that for the business  
3 coverage, the business income coverage to apply and, and  
4 most of the other primary coverages under their policy,  
5 there must be a direct physical loss of or damage to the  
6 insured property in order for it to apply.

7 And I think it's important as we'll discuss  
8 later in our argument depending on what Mr. Heos has to  
9 say, why this is important, we must focus on the fact that  
10 there must be direct physical loss or damage to the  
11 insured property and not direct physical loss of use of or  
12 damage to the property as has been suggested by Mr.  
13 Gavrilides and his attorney in order for the coverage at  
14 issue to apply.

15 While I acknowledge, your Honor, that this is a  
16 somewhat unique, extraordinary if you will, matter to be  
17 filing at this point in the proceedings as our initial  
18 pleading; I think it's important to understand that when  
19 we look at Mr. Gavrilides complaint, it does not contain  
20 one single allegation that this insured property has in  
21 any way been damaged or lost. To the contrary, the  
22 allegations in the complaint affirmatively allege that the  
23 plaintiff business interruption claim is based on the  
24 "Stay at Home" orders of Governor Whitmer. There is no  
25 allegation of any kind that the property in question has

1 in any way been damaged, lost or anything of the sort.

2 Given that this motion has been brought under  
3 2.116(c)(10), plaintiff must produce some evidence to  
4 contradict the uncontroverted facts that have been alleged  
5 not only in the complaint, but in the affidavit submitted  
6 Mr. Gavrilides and in any of the other materials that Mr.  
7 Heos has attached to his response as, as indicated, most  
8 importantly, the affidavit of Mr. Gavrilides that  
9 reiterates the admissions in the complaint that there has  
10 not been any loss of or damage to either of the properties  
11 for which they seek coverage.

12 The insureds property today exists in the very  
13 same condition as it existed the day prior to the  
14 effective date of the "Stay at Home" order. They have not  
15 been lost, they have not been damaged, they have not  
16 required any repairs because of any damage to those  
17 properties. The business operation, its, its operation as  
18 a restaurant today is, is the same as the day prior to the  
19 effective date of the order, albeit with some modifi-  
20 cations that had been required to avoid grouping and to  
21 maintain social distancing in, in a sense improvements to  
22 the real estate. Not repairs, you know, and, and it's  
23 been maintained as a take-out, take-out operation at least  
24 until recently when they resumed the dining operation.  
25 There has been no loss of or damage to either building

1 that has prevented the plaintiff from operating as a  
2 restaurant or entering it for that matter if--, as they  
3 have. If plaintiffs wanted to sell either building today,  
4 they could do so. And while plaintiffs have provided some  
5 speculative evidence about the decreased value of that  
6 property, although, as I read Mr.--, as I read the  
7 materials that Mr. Heos kindly attached to his response,  
8 the fact of the matter is it pointed out in that article  
9 was that while they operation of a commercial property may  
10 get harder, it's not impossible to operate it in the  
11 future under our new normal.

12 Because plaintiffs complaint, the affidavit, the  
13 other information that has been provided to your Honor  
14 provides no evidence of any damage to that property.  
15 Plaintiffs could never prove that either property suffered  
16 any direct physical loss from the imposition of Governor  
17 Whitmer's emergency order. And thus, could never recover  
18 business interruption coverage under this policy based on  
19 the facts that have been presented to the Court. The same  
20 holds true under the business cover, income coverage, if a  
21 civil authority prevents or prohibits access to either  
22 property because of direct physical damage to an adjacent  
23 or nearby property for the very same reason. There has  
24 been no direct physical loss or damage to any adjacent  
25 property that has been alleged, that has been provided to

1 the Court in Mr. Heos response. And frankly, when you look  
2 at the order that they have, that is at issue in this  
3 case, there's nothing there that prevents access to Mr.  
4 Gavrilides properties whatsoever.

5 In summary, your Honor, there are no facts  
6 alleged in the complaint or in any of the materials that  
7 I've looked at, including Mr. Gavrilides affidavit, that  
8 shows there has been direct physical loss of or damage to  
9 the insured property. And for those reasons, your Honor,  
10 we believe that our motion--, for those reasons alone, we  
11 believe our motion for summary disposition should be  
12 granted.

13 I'd just like to make a couple of additional  
14 points before I shut up. I really believe summary  
15 disposition is warranted on this basis alone and I would  
16 turn the Court to the case that we've discussed in our, in  
17 our brief, your Honor, that's referred to Universal  
18 Insurance Production versus Chubb. And that's the decision  
19 of the Eastern District of Michigan involving a claim that  
20 involved insured property. It was damaged by a pervasive  
21 odor that developed in the property as a result of mold  
22 that grew in the property because of some water seepage.  
23 And why that case is important is because it discusses the  
24 Michigan Rules of Contract Interpretation, that still  
25 apply today, policy language is clear and unambiguous on

1 its face, which we believe is clearly the case here that  
2 states that the words and the terms of the policy should  
3 be enforced utilizing plain and commonly understood  
4 meanings.

5 And when I said earlier that that's important  
6 when we talk about what direct physical loss of or damage  
7 to property means, it means we look at those words. We  
8 don't add words such as loss of use, that Mr. Heos and Mr.  
9 Gavrilides have added in order to understand what we're  
10 talking about here. We look at the language in the policy.  
11 Every case that Mr. Heos produced your Honor, says the  
12 very same thing. In Univer--, Universal, like here, the  
13 policy was an 'all-risk' policy that required, like here,  
14 direct physical loss or damage to the insured property in  
15 order to trigger coverage unless that coverage was  
16 excluded.

17 As Universal pointed out, applying a dictionary  
18 meaning of direct and physical as meaning something  
19 immediate or proximate as a premise to something that is  
20 distant or incidental and physical meaning something that  
21 has a material existence meant in the context of a loss  
22 involving a contaminant that, unlike here, per the uncon-  
23 troverted allegations of the complaint and other evidence  
24 produced by plaintiff in response to this motion. That in  
25 order for direct physical loss of the property in this

1 context, the contaminant must actually alter the structure  
2 integrity of the property in order to trigger coverage  
3 under language that is at issue in this case. And it  
4 didn't happen in Universal, as the Court denied coverage  
5 there, granted affirmed summary disposition. And  
6 importantly your Honor, it hasn't even been alleged in  
7 this case. Regardless of any authority to the contrary,  
8 anywhere else in the country, this remains the law in our  
9 courts when interpreting policy terms at issue. There is a  
10 requirement that there be direct physical loss of or  
11 damage to property. And the allegations produced here in  
12 the complaint and the evidence that's been attached have  
13 specifically acknowledged no such contamination and no  
14 such damage to the property as a result of that contami-  
15 nation.

16 As in Universal, your Honor, the mere presence  
17 of odor or even mold was not any evidence of structural or  
18 tangible damage to the insured property. And as such, no  
19 direct physical loss or damage to the property had-, was  
20 occurred. Here, your Honor, we have the very same thing  
21 except that we have not even had any allegations of any  
22 damage to the property caused by this unfortunate, this  
23 horrible virus.

24 Finally, and although we do not believe the  
25 Court even has to get to this point, even if we assume for

1 purposes of this motion that contamination occurred on  
2 each premises and that somehow effected the structural  
3 integrity of either building, again, neither scenario is  
4 alleged. And even if it were, we do not believe under the  
5 circumstances and the science that exists that it would  
6 necessarily constitute direct physical loss over damage to  
7 the property. The buyer's exclusion of the policy, which  
8 clearly and unequivocally states that it applies to all  
9 coverages and endorsement and that the company will not  
10 pay for loss or damages caused by or resulting from any  
11 virus, bacteria or other microorganism that induces or is,  
12 is capable of inducing physical distress, illness or  
13 disease. And Lord knows, that that has certainly been the  
14 case with what's happened with Covid-19 throughout our  
15 country.

16           Clearly, your Honor, that exclusion, again, I  
17 don't believe you even have to get there, but that  
18 exclusion would clearly exclude any claim here even if  
19 plaintiff's could prove direct physical loss of or damage  
20 to the insured property or any nearby property that  
21 resulted in a civil authority issuing an order prohibiting  
22 access to the property. As of eight days ago, your Honor,  
23 they have only been few jurisdictions in this country,  
24 Florida and Pennsylvania, that have discussed and applied  
25 this, a similar exclusion as at issue in this case and in

1 every one of those cases, the Court has enforced that  
2 exclusion as written because it's clear and unambiguous.  
3 Again, your Honor, for all the reasons that we've set  
4 forth here today and the brief that we filed and our  
5 reply, we request that the Court grant our Motion for  
6 Summary Disposition at this time. Thank you.

7 THE COURT: Thank you. Mr. Heos?

8 MR. HEOS: Thank you, your Honor and may it  
9 please the Court. And obviously Mr. Emrich and I have a  
10 different interpretation of direct physical loss of or  
11 damage to covered properties because here the loss comes  
12 from the issue of the executive order restricting use of  
13 property. Physically you cannot use for, for dine-in  
14 services any of the interior of the building for a period  
15 of time. And a complete prohibition isn't contemplated by  
16 the language of the contract, I think a limited  
17 restriction also falls within the coverage. And I think  
18 that if you're gonna accept the defendants argument you  
19 would have to limit the meaning to destruction of the  
20 physical building itself, but we know that the coverage  
21 extends to non-destructive loss, civil authority being  
22 one.

23 I put in example in the brief subterranean  
24 pollution, you can look at asbestos or a computer virus is  
25 something that would occur that there would be no physical

1 destruction to the property itself. The fact of the matter  
2 is that Mr. Gavrilides can't use the covered properties  
3 because of or he's lost rather the use of those properties  
4 because of the order and it looks like that will continue  
5 in some form for a while. So, I think that counsel is  
6 wrong in trying to limit the scope even with the case law  
7 he cited, most of which is persuasive and not binding.  
8 That's number one, Judge.

9 And as for the virus exclusion itself, the only  
10 case law we have relates to person to person transmission  
11 of a virus at the covered property. And I think that fits  
12 more with what's going on. We see in the news that Harpers  
13 in East Lansing and even the Hotcat in Kalamazoo is making  
14 headlines of people contracting Covid there. But, the  
15 impetus of the order was to protect public health and  
16 welfare, which is the governor's duty. It's not caused by  
17 a virus. It would be the same order as with the damn in  
18 Midland being issued to protect public health and welfare.  
19 It wasn't caused by a flood. It was caused by the  
20 Governor's duty to act and protect the people she's  
21 charged with protecting and I think that's what happening.

22 Or it's distinguishable from the case and I  
23 think it's Bowler, the case cited regarding the virus. And  
24 I think that if you go further in accepting defendant's  
25 position, then we get into the illusory promise of well if

1 the government issues an order, we're not gonna cover it  
2 because any decision of a government body or group of  
3 people is excluded. And so then, you get into the circle  
4 in the contract where if you're going to buy into counsels  
5 logic, it would make that provision illusory. And for  
6 those reasons, I think that the motion should actually  
7 roll back on the defendants because the language to  
8 support the claim, to the extent that the Court thinks  
9 there's a deficiency in my pleading and is gonna grant  
10 defendants motion, I'd like Leave to Amend the Complaint.  
11 But, I don't think that's the case here. And with that,  
12 I'll leave it, if the Court would like to ask any  
13 questions, I'm happy to take them.

14 THE COURT: I don't have any. Thank you. I'll  
15 give Mr. Emrich rebuttal time.

16 MR. EMRICH: Thank you, your Honor. Your Honor,  
17 what I would say is that when we talk about these cases  
18 that Mr. Heos has mentioned that might provide coverage in  
19 certain situations, I read those cases a little while ago  
20 and I'm kind of tired reading some of these cases about  
21 insurance coverage. But, the point in every one of those  
22 cases is that the condition she referred to actually  
23 caused damage to the property.

24 In this case, there has not been any such  
25 damage. And if we look at what the coverage for business

1           loss or business--, the business income loss that they're  
2           seeking says, it says that if the business, the coverage  
3           would apply if the business operation is suspended  
4           provided the suspension must be caused by the direct  
5           physical loss of or damage to property. In this case, that  
6           hasn't occurred. Nothing prevents Mr. Gavrillides from  
7           using that property. It has been used as such. The fact  
8           that there may be other coverages that may provide some  
9           limited coverage, they're against what Mr. Heos is arguing  
10          because clearly, if those coverages were covered under  
11          this language, then why have a special coverage that  
12          provides certain conditions for its application.

13                       The point is, in each of those civil authority  
14          cases that he talked about, the property actually  
15          sustained damage. Here it didn't sustain damage. As to his  
16          claim in this case, that he wants an opportunity to amend  
17          his complaint if the Court feels compelled to grant my  
18          motion, what is that going to accomplish? He's already  
19          alleged in his complaint and his client has already signed  
20          an affidavit where he no doubt put his hand up and swore  
21          to the contents of that affidavit in which he said there  
22          has been no damage to that property.

23                       We don't create coverage by-, because somebody  
24          thinks they ought to have coverage. But, that, that, that  
25          whole line of cases Roy versus Continental Insurance and

1 some of the other cases in our, in our brief that we  
2 cited, clearly supports the notion that the reasonable  
3 expectation concept doesn't apply in Michigan. It just  
4 doesn't cut it. There is no coverage here, your Honor.  
5 That exclusion is clear. If the Court feels that there may  
6 be or that there may be a situation that would give rise  
7 to, but again, you have to come forward at the time that  
8 you, that you respond to this motion with some evidence  
9 that suggests that. That hasn't happened here. I mean even  
10 when you look at the response that he's filed, he talks  
11 about scenario's that have absolutely no bearing to this  
12 case.

13 And you know, I'll just make one last point,  
14 your Honor, you know, when I was a young Prosecutor, I had  
15 the benefit of being able to argue a number of cases to  
16 juries that required me to prove the defendant's guilt  
17 beyond a reasonable doubt. And in those cases, I was  
18 trained to listen closely to the defendant's argument and  
19 had been the case where the facts were particularly  
20 egregious, a defense attorney would often not even talk  
21 about those facts and talk about the law. And he talked  
22 about how that law was somehow created this reasonable  
23 doubt in hopes of creating some confusion on the part of  
24 one juror who might then find in his clients favor because  
25 reasonable doubt existed. And, and in those cases, I would

1 make sure that when I got up in rebuttal, just as I have  
2 been given the opportunity to here, I would point that out  
3 to the jury and indicate to them that there's a reason for  
4 that. And that's because they didn't want you to talk  
5 about the facts that clearly supported conviction.

6 On the other hand, if it was a case where the  
7 law, you know, or the facts may have been murky, but the  
8 law was clear, the defense attorney would only focus on,  
9 you know, on those facts and not talk about the law. And  
10 again, I point that out to the jury there. But, in this  
11 case, you know, and there were cases back then to, like  
12 our case here that were neither supported by the facts or  
13 the law. Which I believe is clearly the case in this case.  
14 And the defense attorney would get up and argue something  
15 that to the jury that had absolutely nothing to do with  
16 the case in hopes of confusing them. Just like Mr. Heos  
17 has suggested by talking about these asbestos cases or  
18 some of these other cases that have nothing to do with  
19 this.

20 Well in this case, when you look at his  
21 responsive pleading, he talks about an accident situation  
22 that has absolutely no application here. Nothing to do  
23 with this case. While in his argument, he starts out  
24 talking about a discussion of the virus of racism and as  
25 there, as there, we would point out, if we were in front

1 of a jury, just like I'd point out to them and I'm  
2 pointing out to you, it hasn't got anything to do with  
3 this case. Your Honor, the reason for that and the reason  
4 for the topic of that is that he knows that neither the  
5 facts or the law support his claim and nothing he could  
6 file as an amendment would change that.

7 He is hoping to somehow create this little bit  
8 of possibility, some scintilla that some evidence is gonna  
9 pop up that shows that the property has been damaged in  
10 hopes that he could trigger coverage. And as this Court  
11 knows under the cases we've discussed in our brief, that  
12 is not sufficient to deny summary disposition in a case  
13 that clearly warrants it even at this early stage.

14 Thank you your Honor for your patience. Thank  
15 you Mr. Heos, we've never met. I've heard a lot of good  
16 things about you. Mr. Gavrilides, nice to have met you,  
17 very sorry for the situation you're in. It's just crazy  
18 all the way around. And just like having to argue this  
19 case on TV is really just disconcerting for me. But, in  
20 any event, thank you your Honor for your patience.

21 THE COURT: Thank you. You're on Youtube not TV.  
22 But--

23 MR. EMRICH: I meant screen. Yeah, whatever.

24 THE COURT: Right.

25 MR. EMRICH: The screen.

1 THE COURT: I, I did read the briefs. I studied  
2 them very carefully and I've listened to the argument of  
3 counsel today. And taking all the-, that together I, I  
4 note that the plaintiff speaks of and focuses on arguments  
5 about access to the property, use of the property and  
6 definitions of loss and damage. But, the first inquiry has  
7 to start with a full look, not just isolating some words  
8 or phrases from the policy. But, a full look at the  
9 coverage that's provided under the policy.

10 Coverage is provided for actual loss of business  
11 income sustained during a suspension of operations. The  
12 policy goes on to provide the 'suspension must be caused  
13 by direct physical loss of or damage to property.' And it  
14 also provides 'the loss or damage must be caused by or  
15 result from a covered cause of loss. The causes of loss  
16 special form provides that a covered cause of loss means  
17 risks of direct physical loss.'

18 So, whether we're talking about the cause for  
19 the suspension of the business or the cause for the loss  
20 or the damage, it is clear from the policy coverage  
21 provision only direct physical loss is covered. Under  
22 their common meanings and under federal case law as well,  
23 that the plaintiff has cited that interprets this standard  
24 form of insurance, direct physical loss of or damage to  
25 the property has to be something with material existence.

1           Something that is tangible. Something according to the one  
2           case that the plaintiff has cited from the Eastern  
3           District, that alters the physical integrity of the  
4           property. The complaint here does not allege any physical  
5           loss of or damage to the property. The complaint alleges a  
6           loss of business due to executive orders shutting down the  
7           restaurants for dining, for dining in the restaurant due  
8           to the Covid-19 threat.

9                       But, the complaint also states that a no time  
10           has Covid-19 entered the Soup Spoon or the Bistro through  
11           any employee or customer and in fact, states that it has  
12           never been present in either location. So, there simply  
13           are no allegations of direct physical loss of or damage to  
14           either property. The plaintiff seems to make in the  
15           briefing, at least, two arguments about the language in  
16           the coverage provision and what it means.

17                      The first argument is that the plaintiff says  
18           coverage applies to "direct physical loss or damage to  
19           property." Even if that were the wording of the coverage  
20           provision, it wouldn't save the plaintiff from the  
21           requirement that the loss or damage must be physical and  
22           the analysis could end right there. But, I have to go on  
23           to say that this is not even the wording of the coverage  
24           provision. Coverage according to the policy applies to a  
25           suspension caused by "direct physical loss of or damage to

1 property." So, I'm not going to get into a detailed  
2 analysis of the rules of grammar. But, common rules of  
3 grammar would apply to make that phrase a short-cut way of  
4 saying "direct physical loss of property or direct  
5 physical damage to property." So, again, the plaintiff  
6 just can't avoid the requirement that there has to be  
7 something that physically alters the integrity of the  
8 property. There has to be some tangible, i.e., physical  
9 damage to the property.

10 Then the plaintiff in the briefing, at least,  
11 seems to make a second argument that and this is not 100%  
12 clear, but, it seems like the plaintiff is saying that the  
13 physical requirement is met because people were physically  
14 restricted from dine-in services. But, that argument is  
15 just simply nonsense. And it comes nowhere close to  
16 meeting the requirement that there's some, there has to be  
17 some physical alteration to or physical damage or tangible  
18 damage to the integrity of the building.

19 So, the next argument that the plaintiff makes  
20 is that the virus and bacteria exclusion is vague and  
21 can't apply here. The plaintiff has not adequately  
22 explained how the term virus is vague. And in fact,  
23 supplies a completely workable, understandable, usable  
24 definition of the word virus. The argument in this regard  
25 really seems to be more that the virus exclusion doesn't

1 apply. And it goes something like this as far as I can  
2 tell, first, a virus can't cause physical loss or damage  
3 to property because virus' harm people, not property.  
4 Second, the damage caused here was really caused by  
5 actions of the civil authority to protect public health.  
6 And then third, therefore, coverage for acts of any  
7 person, group, organization or governmental body applies.  
8 But, that argument bring us right back to the direct  
9 physical loss or damage requirement. Again, going back to  
10 the cause of loss special form B, as in boy, exclusions  
11 provides that acts of government are only covered when  
12 they result in a covered cause of loss. A covered cause  
13 of loss, again, is direct physical loss. So, even if the  
14 virus exclusion did not apply, which the plaintiff has not  
15 supported that it doesn't apply, I only argue that it's  
16 vague, which I reject. But, even if it did not apply, it  
17 could only be coverage for governmental actions that  
18 resulted in direct physical loss or damage.

19 And then, finally, the plaintiff argues that the  
20 policy has a contradiction in it that renders it illusory.  
21 So, the plaintiff says that the policy extends coverage  
22 for governmental acts. But, then, it takes it away in the  
23 causes of loss special form. But, that's simply not true.  
24 Coverage is provided for actual loss of business income  
25 sustained during the suspension of operations. However,

1 according to the coverage provision, the suspension must  
2 be caused by direct physical loss of or damage to  
3 property. And governmental acts are likewise covered if  
4 it results in a covered cause of loss, which is again, a  
5 direct physical loss. There is no granting of coverage  
6 and then excluding the same coverage in the policy. As a  
7 matter of fact, the policy is consistent throughout and  
8 consistent with federal law cited by the plaintiff. It  
9 requires physical loss or damage.

10 There is a virus exclusion even if plaintiff was  
11 alleging, was alleging, even if there were allegations in  
12 the complaint alleging actual physical loss or damage,  
13 which the complaint does not do. But, there is a virus  
14 exclusion that would also apply. And governmental action  
15 that results in direct physical loss is covered. But  
16 again, there is no direct physical loss alleged here.

17 Now, I have to address a little bit this, that  
18 it was brought as a (c)(10) motion. The actually the  
19 defendant hasn't provided any support by way of factual  
20 support, depositions, affidavits, et cetera, for a (c)(10)  
21 motion. So, if the defendant doesn't do that, then the  
22 plaintiff has no burden under Maiden versus Rosewood. So,  
23 there's no shifting burden until the moving party first  
24 does it. But, I don't think it properly is labeled a  
25 (c)(10) motion. I think it's a (c)(8) motion. Because this

1 is the motion that can be decided as a matter of law. Take  
2 all the allegations in the complaint as true and examine  
3 nothing more than the contract upon which the complaint is  
4 based, the policy of insurance and as a matter of law, the  
5 plaintiffs complaint cannot be sustained. And although the  
6 plaintiff has requested a chance to amend without any  
7 indication of how they would do that, there actually is no  
8 factual development that could change the fact that the  
9 complaint is complaining about the loss of access or use  
10 of the premises due to executive orders and the Covid-19  
11 virus crisis. So, there's no factual development that  
12 could possibly change that or amendment to the complaint  
13 that could possibly change that those things do not  
14 constitute the direct physical damage or injury that's  
15 required under the policy as I've outlined.

16 So, for those reasons, I am granting the  
17 Defendant's Motion for Summary Disposition. I'm doing it  
18 under MCR 2.116 (c)(8). And Mr.—

19 MR. EMRICH: Thank you, your Honor.

20 THE COURT: Mr. Emrich, will you submit an order?

21 MR. EMRICH: Certainly will, your Honor.

22 THE COURT: Okay.

23 MR. EMRICH: Thank you.

24 THE COURT: Thank you.

25 MR. HEOS: Thank you very much.



# Exhibit E

**Transcript and Order, *It's Nice, Inc. v. State Farm Fire & Casualty Co.*, No. 20 L 547 (Ill. Cir. Ct., Du Page County, Sept. 29, 2020)**

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IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS

IT'S NICE, INC., d/b/a )  
HAROLD'S CHICKEN SHACK #83, an )  
Illinois Corporation, )  
 )  
Plaintiff, )  
 )  
- vs - )  
 )  
STATE FARM FIRE AND CASUALTY )  
CO., )  
 )  
Defendant. )

No. 20 L 547  
2-615 Motion

REPORT OF VIDEOCONFERENCE PROCEEDINGS

had at the hearing of the above-entitled cause, before  
the Honorable BRYAN S. CHAPMAN, DuPage County,  
Illinois, recorded via Zoom and transcribed by  
Kristin M. Barnes, Certified Shorthand Official Court  
Reporter, commencing on the 29th day of September,  
2020.

Kristin M. Barnes, CSR  
Official Court Reporter  
CSR No. 084-004026

~~Cheryl Ann Barone, CSR#84-001503~~

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PRESENT:

FRANKLIN LAW GROUP, by  
MR. RYAN ENDSLEY,

appeared on behalf of the Plaintiff;

SUDEKUM, CASSIDY & SHULRUFF, CHTD., by  
MS. FLORENCE M. SCHUMACHER and  
MR. FREDERICK J. SUDEKUM, III,

appeared on behalf of the Defendant.

1 THE COURT: All right. Good morning, Counsel.

2 MR. ENDSLEY: Good morning, your Honor.

3 THE COURT: All right. This is 20 L 547, It's  
4 Nice, Inc. versus State Farm Fire and Casualty.

5 We come on for a 2-615 motion in connection  
6 with It's Nice's claim for coverage under the policy.

7 I've had a chance to read the motion, the  
8 corresponding briefing, and I know there had been some  
9 motions for leave to file supplemental authority. I  
10 have had a chance to look at those motions.

11 I assume both parties are okay with each side  
12 submitting their respective -- their respective briefs  
13 in support of their -- their respective authority in  
14 support of their positions.

15 Is that a fair characterization?

16 MR. ENDSLEY: Yes, your Honor. For It's Nice, at  
17 least.

18 THE COURT: Sure.

19 MS. SCHUMACHER: State Farm as well, your Honor,  
20 there's no objection.

21 THE COURT: All right. Why don't we go ahead and  
22 have the parties state their names for the record.

23 MS. SCHUMACHER: Sure.

24 Florence Schumacher and Rick Sudekum here on

1       behalf of State Farm.

2               THE COURT: Uh-huh.

3               MR. ENDSLEY: Ryan Endsley on behalf of It's Nice,  
4       Inc.

5               THE COURT: Okay. What I'd like to do here, guys,  
6       I have spent considerable time with the -- with the  
7       courtesy copies. I've got my tabs. Like I said, I've  
8       read the authority. I've read the additional authority  
9       submitted.

10              I don't necessarily need a regurgitation of  
11      the positions already taken in the briefs. I feel like  
12      I have adequately familiarized myself with the parties'  
13      positions.

14              I do want to give the parties a chance to  
15      make their record here. I appreciate the issue and  
16      that it's kind of a fastly moving issue through the  
17      courts right now, and, as a result, I want to give the  
18      parties a chance a make their record.

19              That said, I don't necessarily need, you  
20      know, sort of, your Honor, this is how insurance  
21      policies work. I mean, tell me whatever you want to  
22      tell me. I may have a question or two for the parties,  
23      but I'll let you make your record first.

24              State Farm, it's your motion. I'll let you

1 go ahead if there's anything you want to add.

2 MS. SCHUMACHER: Sure, your Honor.

3 I am going to briefly run through our  
4 argument again, trying to sort of work in some of those  
5 cases that have come in more recently.

6 I understand that the court is familiar with  
7 insurance policies in general, so we won't -- hopefully  
8 won't belabor you with too much elementary insurance  
9 law here.

10 Obviously, the plaintiffs know -- or the  
11 court knows that the plaintiff is seeking to recover  
12 for a business interruption loss resulting from the  
13 COVID-19 pandemic and the executive orders.

14 In our view, there are basically two main  
15 barriers to plaintiffs being able to state a cause of  
16 action. The first is the lack of accidental direct  
17 physical loss and the second is the virus exclusion.

18 The way I look at these, your Honor, it's  
19 sort of like -- the lack of accidental direct physical  
20 loss is like a 10-foot hurdle and the virus exclusion  
21 is like a brick wall. So even if the plaintiffs could  
22 plead accidental direct physical loss, which they  
23 can't, they're going to run right into the virus  
24 exclusion and there's not going to be any coverage for

1 that reason either.

2 THE COURT: That was my -- that was the one thing  
3 I wondered a little bit about in reading your briefing,  
4 more the structure of your brief.

5 MS. SCHUMACHER: Right.

6 THE COURT: You led with the virus exclusion, and,  
7 to my mind, there's an insuring agreement here as a  
8 preliminary matter and we only get to the virus  
9 exclusion if the court finds that there is, in fact,  
10 accidental direct physical loss to the property in the  
11 first instance.

12 You would agree with that?

13 MS. SCHUMACHER: I would, your Honor.

14 THE COURT: Okay.

15 MS. SCHUMACHER: You know, the court is  
16 familiar -- it's the trigger of coverage. I mean, just  
17 like in a life insurance policy, until you have the  
18 death of the insured, there's no coverage to begin  
19 with.

20 It's the same for these policies. They're  
21 property policies, so their triggering coverage is  
22 accidental direct physical loss. You know, you can't  
23 just skip this part. It's the trigger of coverage.  
24 It's something that the plaintiff has the burden of

1 proof on.

2 So, in this case, the covered property is the  
3 restaurant property, so the first question is, where is  
4 the accidental direct physical loss pleaded, and our  
5 response, obviously, is that it isn't.

6 So, you know, just looking briefly at the  
7 complaint, you know, they allege that there was no  
8 virus on the property and their accidental direct  
9 physical loss argument is based on loss and use.

10 But, you know, my first point is, it has to  
11 be accidental direct physical loss, and I think it's  
12 undisputed that there was no difference to this  
13 property physically on the day before these executive  
14 orders were issued than there was on the day after, so  
15 physically the property was exactly the same.

16 So where's the loss? Where's the loss  
17 they're arguing? They're saying that loss of use is  
18 sufficient, that they couldn't use the property in the  
19 same way, and that somehow that constitutes accidental  
20 direct physical loss to the property, and we disagree  
21 with that position.

22 So we believe that the Illinois law and all  
23 these cases that have recently come out correctly hold  
24 that loss of use of property without any physical

1 change to that property cannot constitute accidental  
2 direct physical loss.

3 THE COURT: Mr. Endsley, at the risk of stealing  
4 your thunder, I'm going to ask Ms. Schumacher  
5 why don't you go ahead and respond to the western  
6 district of Missouri cases that were cited by It's Nice  
7 where it looks like some district courts in the western  
8 district have found, you know, sort of a lack of  
9 definition in the policy for physical damage or loss  
10 of -- you know, what are the factual distinctions in  
11 those cases, if any --

12 MS. SCHUMACHER: Right, right.

13 THE COURT: -- as to why the court should not find  
14 those cases persuasive here as opposed to some of the  
15 cases you've cited?

16 MS. SCHUMACHER: Sure.

17 So the first thing I would say, the court  
18 says there are courts in the western district of  
19 Missouri. What we actually have is one court -- it's  
20 the same judge in the two cases -- who has gone  
21 essentially the other way on this accidental direct  
22 physical loss question.

23 Those cases are factually distinguishable on  
24 two main grounds. The first is that the plaintiffs in

1 those cases argue that they had virus on the premises.  
2 So the plaintiff in this case has not even alleged that  
3 there was any virus present.

4 The second distinction is in the policy  
5 language. So the trigger of coverage in those  
6 policies, in the Studio 417 and the other case, were --  
7 I think I've got the exact language here -- accidental  
8 direct -- or accidental physical loss or accidental  
9 physical damage.

10 And so the court in Studio 417 felt that it  
11 had to somehow -- you know, focusing on that  
12 disjunctive *or*, the court found that it had to give  
13 separate meaning to physical loss and physical damage.

14 That's not the case in our policy. There's  
15 one trigger of coverage, which is accidental direct  
16 physical loss to property.

17 We also have a virus exclusion, which wasn't  
18 present in those cases, but I know the court is asking  
19 me about physical loss.

20 So I would say the first and the most  
21 important distinguishing factor is, obviously, the  
22 pleading in this case -- I think it's in paragraphs, I  
23 think, 25 and 36 of the complaint where the plaintiffs  
24 specifically deny that they had any virus present on

1 premises.

2 And, again, I would disagree with Studio 417.  
3 I'm not sure even in their presence a virus is enough.  
4 Other courts have disagreed with that opinion as well,  
5 but I think for our purposes in our complaint we have a  
6 complaint that alleges the absence of the virus. And  
7 then, obviously, we have a policy that doesn't have  
8 that *or* in there that the Studio 417 court seemed to  
9 think was determinative.

10 THE COURT: All right. Anything else you want to  
11 add?

12 MS. SCHUMACHER: Just jumping briefly into the  
13 virus exclusion, your Honor, in case we get there, we  
14 have that anti-concurrent causation language which  
15 broadly excludes coverage when a loss would not have  
16 occurred in the absence of a virus.

17 That language, that anti-concurrent causation  
18 language, has been upheld in Illinois. The virus  
19 exclusion clearly applies in this case. There is no  
20 requirement in that policy language that the virus be  
21 physically present on the property, like plaintiff  
22 alleges. They're just adding language to the exclusion  
23 which isn't present. The exclusion needs to be applied  
24 as written. It unambiguously excludes a broad range of

1 losses. Virus is one of them.

2 Oh, the argument about, you know, the  
3 proliferation issue, that somehow those two  
4 subparagraphs of the virus exclusion need to be read  
5 together, that's just not correct. The virus portion  
6 of that exclusion is separate. It says that loss is  
7 excluded, current virus, bacteria, or other  
8 microorganism.

9 So, again, I think it's -- I don't see how it  
10 could possibly be ambiguous: I mean, this -- clearly  
11 we have a too late chain of causation here. The virus  
12 caused the executive orders which caused the loss and  
13 it's excluded under the virus exclusion.

14 THE COURT: Okay. Mr. Endsley, do you want to  
15 respond to anything that's -- do you want to respond  
16 with anything that's not in your brief? Or if there's  
17 a point or two you want to emphasize, I'm happy to give  
18 you a chance to do so.

19 MR. ENDSLEY: Thank you, your Honor.

20 So I just wanted to highlight a couple of  
21 things. In particular, we -- you know, the Studio 417  
22 case, we have the same situation where State Farm  
23 elected not to define physical loss or damage. And, in  
24 this case, while counsel has pointed out that this

1 policy only says physical loss, that's really the  
2 broader of the two. Physical damage is what's probably  
3 more in line with what State Farm's position is, which  
4 is that a physical loss or damage must be a structural  
5 alteration.

6 And the fact is that I think the Illinois  
7 courts have not limited themselves quite so much to  
8 structural physical alteration as State Farm would like  
9 the court to believe. In particular, it's sort of an  
10 all squares are rectangles argument. They cite cases  
11 which are saying, you know, a change in color or shape  
12 or appearance to the property is a physical loss or  
13 damage, which is true, but that's not the only type of  
14 physical loss.

15 And I think sort of looking at the asbestos  
16 cases really sort of points that out, and State Farm's  
17 position really throughout the briefs has been that  
18 Illinois law requires a physical alteration to the  
19 structure, and that's just not really what Illinois  
20 case law actually says.

21 The other thing I'd sort of like to  
22 highlight -- and this impinges a little bit on both the  
23 virus exclusion and the physical loss or damage -- and  
24 that's sort of the nature of an exclusion. And I know

1 that this is, you know, kind of a basic insurance  
2 issue, but the fact is that an exclusion exists to  
3 exclude coverage which would otherwise be present.

4 A virus cannot cause physical alteration to  
5 the building, as far as I'm aware. If there's a way  
6 that it can be done, State Farm certainly hasn't  
7 articulated it. So at least this policy, as written,  
8 clearly seems to contemplate nonphysical alterations  
9 which would otherwise be covered causes of loss.

10 And that's a problem for the policy in a  
11 couple -- for State Farm in a couple of ways in that  
12 State Farm wants to apply the virus exclusion where it  
13 was not present. Even in the absence of a virus  
14 exclusion, if the governor had never closed the  
15 building, It's Nice could never have made a claim  
16 for -- under this policy because the coronavirus  
17 existed somewhere. You know, even if there is  
18 absolutely no virus exclusion in a different policy  
19 like that, there just wasn't anything affecting It's  
20 Nice's property.

21 And separately, with the physical loss or  
22 use, when you're reading the policy, a number of these  
23 exclusions, including, you know, both the virus  
24 exclusion itself as well as the government closure

1 exclusion, really does contemplate under the policy  
2 exclusions for nonphysical, nonstructural altering  
3 causes of loss.

4 And that, to me, reads -- particularly when  
5 State Farm has elected not to define loss or -- you  
6 know, physical loss, that's a problem for them because  
7 the policies seem to exclude things which wouldn't be  
8 covered anyway under State Farm's interpretation, and  
9 yet there they are.

10 Reading the policy as a whole and  
11 constructing the ambiguities in favor of coverage,  
12 certainly at this point dismissal seems premature.

13 THE COURT: Counsel, do you have a response to the  
14 virus exclusion argument that the -- as I understand  
15 counsel's argument, it's that the virus -- if we were  
16 to take State Farm's proffered definition of physical  
17 as understood in insurance contracts, the virus  
18 exclusion would never fit that definition because it's  
19 never going to alter a physical structure.

20 I'm going to go to paragraph 23 of your  
21 motion, page 10, where State Farm says, In cases  
22 interpreting the word *physical* in insurance contracts,  
23 *physical* is widely held to exclude alleged losses that  
24 are intangible or incorporeal, such as detrimental

1 economic impact, unaccompanied by distinct demonstrable  
2 physical alteration of property.

3 So how is the virus exclusion consistent with  
4 that proffered definition of *physical*?

5 MS. SCHUMACHER: Well, my first response, your  
6 Honor, is I'm not sure we should assume that a virus  
7 could never alter a structure. We're not familiar with  
8 every --

9 THE COURT: Fair enough.

10 MS. SCHUMACHER: -- virus in the world, so I think  
11 that the exclusion -- you know, I look at it as sort of  
12 a belt and suspenders approach. I mean, surely I think  
13 this virus is not causing physical damage, but that  
14 certainly doesn't mean that there's no virus that could  
15 ever develop that doesn't cause physical damage and  
16 bodily injury. We don't know that. So I think, in a  
17 sense, that the insurer clearly wanted to exclude this  
18 kind of loss.

19 I think in the event that there is some  
20 unexpected virus that comes up in the future that could  
21 cause physical damage, I think the insurer is well  
22 within its right to, you know, exclude that in the  
23 event that that might happen some day.

24 It's clearly in the policy. The insured was

1       aware of it. It's a broad exclusion. And, again, I  
2       think their whole question is just based on the  
3       assumption that all viruses are going to be like this  
4       virus, and I just don't think that that's the case.

5               THE COURT: Counsel, Mr. Endsley, let me ask you a  
6       question.

7               One of the things, as I've thought about this  
8       case a little bit, I'm worried a little bit or I'm  
9       concerned at least about, were the court to accept your  
10      argument as to loss of use, I'm concerned about a  
11      limiting principle or lack thereof in terms of what is  
12      the underwritten risk here.

13              And there appears to be, to my mind,  
14      different types of coverage available for loss of use,  
15      whether it is, in fact, civil authority when you think  
16      about the cases right after 9/11 around the World Trade  
17      Center. There's a lot of case law coming down in the  
18      southern district of New York in the second circuit  
19      involving business interruption where civil authority  
20      has retail shops shut down but you've got physical  
21      damage to other property, ingress/egress sorts of  
22      issues.

23              Without the loss of use, sort of, well,  
24      there's physical accidental physical loss to property

1 if I can't access it, that strikes me, when I look at  
2 the policy in its entirety, to be potentially a very  
3 different risk than what may have been contemplated  
4 here.

5 Is that a fair concern?

6 MR. ENDSLEY: So I think that is something of a  
7 concern. But to alleviate that a little bit, we're  
8 dealing with a fairly unique set of circumstances and I  
9 think there sort of still is a principle here.

10 If the governor's orders hadn't actually  
11 required closure, if they, you know, had limited how  
12 many patrons you could have in the restaurant or if  
13 the -- you know, the effect of the general governor's  
14 orders to shelter at home had been to reduce income,  
15 you know, if we were talking about loss of income,  
16 that's not a covered cause of loss.

17 And, in fact, I think some of the cases cited  
18 by State Farm sort of indicate what the -- what the  
19 difference is -- and those would be the Anchor  
20 [phonetic] and Keach [phonetic] cases. And,  
21 particularly, those focused on the difference between  
22 when something is actually completely closed down and  
23 when it's merely suffered, you know, a loss of business  
24 income, and there really is a significant difference

1 here.

2 And the other thing I would sort of add, as  
3 far as a policy situation, is I think the tremendous  
4 number of lawsuits we've seen from this is sort of an  
5 indication that a lot of these insureds thought that  
6 this would have been covered, something like this, and  
7 learned only late in the game that it wasn't or at  
8 least the insurance company thought it wasn't.

9 And I'd just sort of articulate again, you  
10 know, the basic principle that ambiguities in the  
11 policy are construed against the drafter. State Farm  
12 was the one who got to say what this policy looked  
13 like, State Farm was the one who got to draft the  
14 language of the policy, and, frankly, had put a lot  
15 more thought into it than any of their insureds.

16 So I think to say that, you know, this wasn't  
17 in the contemplation of the parties, it was at least a  
18 little bit. State Farm has a number of exclusions  
19 which nearly but do not quite apply. They were able to  
20 draft around this.

21 And, frankly, exclusions exist in certain  
22 policies which do address this specific concern. We've  
23 reviewed a couple of them from client -- from potential  
24 clients who wanted coverage and actually saying that if

1 there's a government closure order because of a  
2 pandemic, no coverage.

3 So there are ways for the insurer to protect  
4 themselves from this, but in this case it's the insured  
5 who really had this dropped on them unexpectedly and is  
6 now having to litigate.

7 THE COURT: Well, certainly, obviously, companies  
8 and businesses around the world and certainly the  
9 country and certainly Illinois are faced with a  
10 remarkable predicament through largely no cause of  
11 their own, if at all, as a result of the pandemic.

12 Let me be very clear. I am not -- when I ask  
13 the question about the limiting principle, I am not  
14 suggesting that the court is trying to ascertain the  
15 intent of the parties at this point. I'm simply trying  
16 to ascertain whether or not there's a reasonable  
17 interpretation on the other side.

18 But wouldn't your argument, Mr. Endsley, be a  
19 bit stronger if the definition or if the insuring  
20 agreement language said insure for all accidental  
21 direct physical loss of covered property as opposed to  
22 to?

23 In other words, it's talking about -- I'm  
24 concerned that we're reading direct physical to

1 property. We're kind of just pretending that it  
2 doesn't say what it -- what it clearly says and we're  
3 kind of saying, well, loss of property or loss to  
4 property, same thing, whatever.

5           Wouldn't you have a stronger argument if it  
6 said loss of property?

7           MR. ENDSLEY: In this case, I'm actually not sure  
8 that we would, your Honor.

9           It's Nice still has the property, but the  
10 property suffered a loss of use and that was a loss to  
11 the property. It's Nice hasn't -- you know, the  
12 property isn't gone. It's Nice has, in fact, recently  
13 resumed business operations --

14           THE COURT: So let me ask you a question.

15           If I said, when I think loss to the property,  
16 I think the roof is blown off; okay? That's what I  
17 think of just -- at the very least, at a superficial  
18 level.

19           If you're telling me a closing of the doors  
20 by executive order is a loss to the property, help me  
21 understand why that's the same thing.

22           MR. ENDSLEY: Well, I think you're certainly  
23 correct that, you know, when we think of -- that is  
24 classic losses.

1 THE COURT: That is, to my mind, closer to a loss  
2 of property. It's a functional loss of property, not  
3 to property.

4 MR. ENDSLEY: I guess the best argument I can sort  
5 of think of, just off the spur of the moment, relates  
6 to the fact that the type of property it is is what  
7 affected the loss and that's -- because it's a  
8 restaurant, this was a different type of loss. If this  
9 was just being used as residential housing, there is no  
10 loss to the property.

11 So State Farm insured a particular type of  
12 business and a particular -- that particular type was a  
13 restaurant which was affected, and that impacted this  
14 property. That was a loss to this specific property  
15 rather than a removal.

16 So to some extent, you know, if it said *loss*  
17 *of property*, that, to me, almost suggests that  
18 something -- a little more of the structural alteration  
19 argument State Farm prefers, which is almost that  
20 something was removed from the property or just ceased  
21 to exist on the property -- because it was burned up or  
22 something -- whereas I think *to property* sort of  
23 suggests that it's anything that affects, you know,  
24 that business property. It wasn't just the -- you

1 know, this wasn't just a title policy or something like  
2 that. This was a business coverage policy.

3 THE COURT: It doesn't say anything is physical;  
4 right?

5 MR. ENDSLEY: It does say physical.

6 THE COURT: I mean, it's not any conceivable way  
7 you're unable to use the property in the way you see  
8 fit. It's got to be direct physical loss. And, I  
9 guess, your view is loss of use, there's a physical  
10 displacement; right? That's --

11 MR. ENDSLEY: Yes.

12 THE COURT: -- your position?

13 Okay. Ms. Schumacher, if there's anything  
14 you want to respond to, I'll give you the last word.

15 MS. SCHUMACHER: Sure. There are many things.  
16 I'm going to try to stick to a couple.

17 I think the Turek court actually discussed  
18 that *physical loss* to concept and I think it held that  
19 *to* implies contact and *physical* implies physical  
20 contact, direct physical loss to property.

21 And I looked in the dictionary. They gave  
22 examples like a right uppercut to the jaw or applying  
23 varnish to a surface. Whatever theory they have about  
24 their loss not being able to use the property, that

1 simply is not physical loss to that property.

2 And I just want to briefly touch on -- the  
3 court is concerned about the breadth of their  
4 interpretation. So the first thing they said is, well,  
5 this is a different situation because the restaurant  
6 was required to be closed.

7 I would point out that in the executive  
8 orders they did not close restaurants. Restaurants  
9 were permitted to stay open for takeout or delivery.  
10 So regardless of whether they chose to close the  
11 restaurant, even under their complaint, they weren't  
12 required to. So this is not a situation where  
13 restaurants were closed.

14 The second and more broad point I would make,  
15 your Honor, is that under their theory of accidental  
16 direct physical loss, let's just say after COVID is  
17 over the restaurant is open until 1:00 a.m. There's an  
18 ordinance that says restaurants have to close at  
19 midnight now. According to their theory, they now have  
20 a loss of income claim because the restaurant has to  
21 close an hour early because, according to them, there  
22 doesn't have to be any physical impact; it just has to  
23 affect the use of their property.

24 So, again, I agree with the court's concern

1 that their interpretation is way too broad and it  
2 brings many more things into coverage than are intended  
3 under a property policy which covers accidental direct  
4 physical loss and then loss of income once that's  
5 happened. But you just can't skip that step.

6 And I think that's all I have. I know the  
7 court is familiar with all of this and there was a lot  
8 that was said, but I'd like to keep it as brief as I  
9 can. So I think unless the court has any additional  
10 questions, I think we've made our point.

11 THE COURT: I think we -- I just want to make sure  
12 all the parties agree that regardless of the coverage  
13 form under the all risk policy, everyone agrees that  
14 direct physical loss is required; right?

15 MR. ENDSLEY: Yes.

16 THE COURT: That phrase, that is an insuring  
17 agreement that attaches to all. You know, sometimes  
18 these all risk policies, there's all these amendments,  
19 you know, there's the general exclusions and then  
20 there's the exclusions within the broad form coverage  
21 and there's exclusions within that and those don't  
22 apply to the general -- you know, so that was my review  
23 of the policy, that there was no separate insuring  
24 agreement, everything goes back to Section 1 property

1 insuring agreements, direct physical loss requirement.

2 MS. SCHUMACHER: Yes.

3 THE COURT: Okay.

4 MR. ENDSLEY: Yeah, I believe there was a little  
5 bit of confusion that we were maybe trying to get  
6 coverage under the civil -- civil authority provision,  
7 but that was --

8 THE COURT: Well, as I understand your argument,  
9 you'll take coverage wherever you can find it; right?

10 MR. ENDSLEY: Yes, that's correct.

11 And that all relates back to the all risk  
12 direct physical loss.

13 THE COURT: Right. Okay. Very good. Thank you.

14 Okay. The court is in a position to rule on  
15 this today. The question presented by a 2-615 motion  
16 to dismiss is whether sufficient facts are contained in  
17 the pleadings that, if proved, would entitle the  
18 plaintiff to relief. That's Evers versus Edwards  
19 Hospital, 247 Ill. App. 3d 717.

20 A motion to dismiss under Section 615 admits  
21 all well-pleaded facts but does not admit conclusions  
22 of law or conclusions of fact not supported by  
23 allegations of specific fact.

24 Exhibits -- I assume the policy was, in fact,

1 attached to the complaint?

2 MS. SCHUMACHER: It was -- your Honor, it was  
3 either attached or filed by agreement.

4 I have two different cases. One they  
5 attached a partial policy and then --

6 MR. ENDSLEY: Yeah, I --

7 MS. SCHUMACHER: Was yours the partial policy?

8 MR. ENDSLEY: Yeah, I believe it was attached by  
9 agreement.

10 MS. SCHUMACHER: Okay.

11 THE COURT: The court is --

12 MR. ENDSLEY: There was --

13 THE COURT: The parties are asking the court to  
14 consider the policy, right --

15 MR. ENDSLEY: Yes.

16 MS. SCHUMACHER: Yes, your Honor.

17 THE COURT: -- for purposes of this motion?

18 All right. So the policy is an exhibit to  
19 the complaint for purposes of this motion.

20 Exhibits are part of the complaint to which  
21 they are attached and the factual allegations contained  
22 within an exhibit attached to a complaint serve to  
23 negate inconsistent allegations of fact contained  
24 within the body of the complaint.

1 I say that because, in some ways, this  
2 operates almost more like a 12(b)(6) than -- most 615's  
3 are sort of, if you haven't pled this element, you  
4 haven't pled that element, and this operates more sort  
5 of a -- whether or not there is a claim upon which  
6 relief can be granted based on the complaint itself.

7 And, for that reason, I point out simply that  
8 the exhibits to the complaint, which, in this case,  
9 includes the policy, the parties have asked the court  
10 to consider that as well.

11 Okay. Having said all of that, the critical  
12 language here, first, is the direct physical loss  
13 language, and the court finds that direct physical loss  
14 unambiguously requires some form of actual physical  
15 damage to the insured premises to trigger coverage.

16 The words *direct* and *physical*, which modify  
17 the word *loss*, ordinarily connote actual demonstrable  
18 harm of some form to the premises itself rather than  
19 force the closure of the premises for reasons  
20 extraneous to the premises itself or adverse business  
21 consequences that flow from such closure.

22 Defense counsel -- I'm sorry, the insurance  
23 counsel points out here that Illinois courts have not  
24 squarely addressed direct physical loss in this

1 context, but I do want to note in cases interpreting  
2 the word *physical* in insurance contracts, *physical* is  
3 widely held to exclude alleged losses that are  
4 intangible or incorporeal in Illinois, such as  
5 detrimental economic impact unaccompanied by a distinct  
6 demonstrable physical alteration of the property.

7 That's One Place Condo, LLC, versus  
8 Travelers, 2015 Westlaw, Northern District of Illinois,  
9 applying Illinois law.

10 The other case here that, I think, is  
11 particularly useful is, in fact, Judge Gettleman's  
12 decision in the northern district of -- I want to get  
13 this right -- Sandy Point Dental v. Cincinnati  
14 Insurance. This is 2020 Westlaw 5360465 dealing with  
15 very similar facts and similar policy language.

16 In this case, the court finds, just as in  
17 that case, plaintiff simply cannot show any such loss  
18 as a result of either inability to access its own  
19 office or the presence of the virus on its physical  
20 surface, the latter of which here plaintiff fails to  
21 allege in its complaint.

22 I don't think that's in dispute. There's no  
23 argument that the coronavirus was, in fact, on the  
24 surface of the property. The plaintiff has not pled

1 any facts showing physical alteration or structural  
2 degradation of the property, which is required to  
3 trigger coverage under this all risks policy.

4 The court wants to note that in addressing  
5 this insuring agreement argument, this holding is  
6 consistent with other courts that have evaluated  
7 whether the coronavirus causes property damage  
8 warranting insurance coverage.

9 Again, I want to reference 20 L -- I'm sorry,  
10 not 20 L. 2020 Westlaw 5360465. That's Sandy Point  
11 Dental versus Cincinnati Insurance.

12 I want to further note that Social Life  
13 Magazine versus Sentinel Insurance Company, denying a  
14 motion for preliminary injunction because the  
15 coronavirus does not cause direct physical loss;  
16 therefore, no coverage was required. The coronavirus,  
17 quote, damages lungs. It doesn't damage printing  
18 presses, close quote.

19 Diesel Barbershop versus State Farm Lloyds,  
20 2020 Westlaw 4724305, Western District of Texas,  
21 August 13, 2020, granting a motion to dismiss because  
22 the coronavirus did not cause a direct physical loss  
23 and, quote, the loss needs to have been a distinct  
24 demonstrable physical alteration of the property, close

1 quote.

2 I further want to direct the parties'  
3 attention to Gavrilides Management versus Michigan  
4 Insurance Company. This is a state court of Michigan  
5 handing down a decision last month that was cited by  
6 State Farm in this case explaining that direct physical  
7 loss to property requires tangible alteration or damage  
8 that impacts the integrity of the property and  
9 dismissing the case because plaintiff failed to allege  
10 that the coronavirus had any impact to the premises.

11 I want to point out that these are not  
12 controlling cases for purposes of an Illinois state  
13 court; however, the court finds that these cases just  
14 cited are, in fact, consistent with Illinois courts  
15 treating of physical damage under insurance policies.

16 And, of course, there are meaningful  
17 differences at times between first and third party  
18 policies and first and third policy claims; however,  
19 the court finds that there is a consistent line of  
20 reasoning by Illinois courts as far as what physical  
21 damage must mean for purposes of insurance coverage in  
22 this case.

23 In essence, to quote Judge Gettleman in the  
24 Sandy Point Dental Case, plaintiff here seeks coverage

1 for financial losses as a result of closure orders.  
2 And I don't think anybody really disagrees with that  
3 here.

4 The coronavirus has not physically altered  
5 the appearance, shape, color, structure, or other  
6 material dimension of the property and, as a result, it  
7 doesn't come within the insuring agreement and, as a  
8 result, plaintiff has failed to plead a direct physical  
9 loss, which is a prerequisite for coverage.

10 However, I do want to point out here that  
11 even if, even if, plaintiff had, in fact, been able to  
12 plead within the insuring agreement -- that this claim  
13 comes within the insuring agreement, the court does  
14 find that the virus exclusion applies.

15 Now, the virus exclusion, which is Exclusion  
16 J under Section 1 of the policy, states as follows --  
17 and there's important, what we'll call, lead-in  
18 language that I want to direct the parties' attention  
19 to. The lead-in language under Section 1 exclusions,  
20 which applies to all coverage forms under this all  
21 risks policy, all coverage forms incorporate Section 1,  
22 the lead-in language states as follows: We do not  
23 insure under any coverage for any loss which would not  
24 have occurred in the absence of one or more of the

1 following excluded events.

2 We do not insure for such loss regardless of,  
3 A, the cause of the excluded event; or, B, other causes  
4 of loss; or, C, whether other causes acted concurrently  
5 or in any sequence with the excluded event to produce  
6 the loss; or, D, whether the event occurred suddenly or  
7 gradually, involves isolated or widespread damage,  
8 arises from natural or external forces, or occurs as a  
9 result of any combination of these, and it begins to  
10 list the exclusions.

11 So the virus exclusion is Exclusion J. The  
12 heading, which does not control, says fungi, virus, or  
13 bacteria. Paragraph 1 states, Growth, proliferation,  
14 spread, or presence of fungi or wet or dry rot or, new  
15 paragraph, 2, Virus, bacteria, or other microorganism  
16 that induces or is capable of inducing physical  
17 distress, illness, and disease.

18 For our purposes, those are the relevant  
19 provisions of the virus exclusion that needs to be  
20 addressed here. First, the court finds that the  
21 growth, proliferation, spread, or presence is not  
22 required for purposes of applying the virus exclusion  
23 because that is in a separate paragraph designed to  
24 address fungus or fungi. There are not just one but

1 two disjunctive *or*'s in between fungus and virus  
2 because it goes fungus -- or states fungus or wet or  
3 dry rot or and then a new paragraph starting with the  
4 word *virus* enumerated as number two.

5 So the court finds that it doesn't have to  
6 establish a growth of a virus, just simply the idea of  
7 a virus, the fact that a virus that is capable of  
8 inducing physical distress, illness, or disease.

9 Even if -- if, in fact, this was some kind of  
10 physical -- accidental physical damage, physical loss  
11 coming within the insuring agreement, the virus  
12 exclusion applies because Subsection C of the lead-in  
13 language says this virus exclusion applies whether  
14 other causes, executive orders, acted concurrently or  
15 in any sequence with the excluded event to produce the  
16 loss.

17 Here, I think everyone would agree absent the  
18 virus, absent the virus, there would be no executive  
19 orders, and so because C says this exclusion would  
20 apply even where the sequence of the ordering with  
21 other causes isn't entirely known or isn't entirely  
22 clear or happens one two or two one, it still applies.

23 Furthermore, whether or not a virus could, in  
24 fact, alter the physical structure, I think that's a

1 much -- that's not entirely clear at all that a virus  
2 could.

3 And that's plaintiff's -- or I'm sorry,  
4 insured's argument is the virus exclusion doesn't make  
5 any sense for a sort of physical alteration requirement  
6 of physical damage -- or a loss of, I should say --  
7 physical loss because a virus would never alter the  
8 physical structure.

9 The court doesn't agree with that. Virus,  
10 bacteria, and microorganisms can exist in, in fact, a  
11 meaningful way, and I think there's a strain of thought  
12 out there that at one time was dominant -- it still may  
13 be true to a certain extent -- that this virus can  
14 exist on surfaces.

15 So even if the loss of use because of  
16 coronavirus could constitute, the virus exclusion would  
17 still apply -- could constitute physical -- accidental  
18 physical loss, direct physical loss, I should say --  
19 the virus exclusion applies.

20 And so for those reasons, the court is going  
21 to grant the motion to dismiss.

22 I want to point out -- or I do want to  
23 address the authority provided by Harold's Chicken --  
24 It's Nice, Inc., d/b/a Harold's Chicken. A couple

1 things, I think, are worth pointing out.

2 One is the State Farm language here -- not  
3 only are those cases from the western district and, as  
4 a result, they're not controlling, the court believes  
5 or is of the opinion that the cases relied upon for its  
6 ruling today are more consistent with Illinois law as  
7 it exists with respect to this issue.

8 Furthermore, the policy language was  
9 different in those western district cases. And that's  
10 not to say that the result would be different if you  
11 had identical language, but I do think that's different  
12 language.

13 And, moreover, and perhaps importantly, the  
14 court was evaluating a 12(b)(6) motion in which the  
15 insureds in that case allege the presence of COVID on  
16 the property. And, to the court's mind, that is a --  
17 that's a meaningful distinction here.

18 And, again, there's no virus exclusion in  
19 that policy that the court would have had to have  
20 considered as well and we don't know what the court  
21 would have done in that case.

22 But I do think, at least for purposes of the  
23 insuring agreement argument, those cases are  
24 distinguishable without regarding -- without, you know,

1       advising as to what the result would be in this court.  
2       But I do think those are different cases and they need  
3       to be treated differently as such.

4               And so, for those reasons, the court is going  
5       to go ahead and grant the motion both with respect to  
6       the insuring agreement argument as well as with respect  
7       to the virus exclusion.

8               I do want to point out, for the record, the  
9       insured does not seem to argue -- kind of seems to have  
10      one foot in and one foot out on civil authority.  
11      They're happy to find civil authority coverage if it  
12      exists, but they're not specifically asking for it.

13              But I want to point out, for the record,  
14      that, as noted above, the policy's civil authority  
15      coverage applies only if there is a covered cause of  
16      loss, meaning direct physical loss, again, going back  
17      to direct physical loss to property other than the  
18      plaintiff's property.

19              Just as the coronavirus did not cause direct  
20      physical loss to plaintiff's property here, the  
21      complaint has not and likely could not allege that the  
22      coronavirus caused direct physical loss to other  
23      property. By the policy's own terms, the civil  
24      authority coverage then does not apply.

1           So with that having been said, I'm granting  
2           the motion. You know, I'm kind of -- do the parties  
3           want a dismissal with prejudice?

4           MS. SCHUMACHER: Your Honor, we are asking for a  
5           dismissal with prejudice, the reason being their claim  
6           is for the loss of income due to the executive orders  
7           which is caused by the virus, and without alleging a  
8           completely different kind of claim, there's no set of  
9           facts that they're going to be able to allege that's  
10          going to avoid that result.

11          The executive orders are full of references  
12          to the virus. The chain of causation is strong. The  
13          virus exclusion is present. And, again, the same thing  
14          with the physical damage issue. There's no claim that  
15          there was any structural alteration to the property.

16          So I think in this case, your Honor, on that  
17          basis, I don't think there's any way they're going to  
18          be able to plead around either of those issues, and so  
19          we are asking for a dismissal with prejudice.

20          THE COURT: Mr. Endsley, any response to that or  
21          are you in agreement that this is time for other minds  
22          to evaluate this claim?

23          MR. ENDSLEY: Yeah, your Honor, that's probably  
24          correct. I don't think we can change the pleading such

1 that -- to get around the issues that you're finding  
2 are insurmountable.

3 THE COURT: I don't disagree. It is a 615, and so  
4 I do want to just at least give the parties the  
5 opportunity to request without -- whether or not I give  
6 that is a different issue, but it sounds like the  
7 parties are of one mind and the court is in agreement  
8 that this dismissal for this type of a 615 motion is  
9 and should be with prejudice, and the court will enter  
10 such an order.

11 MS. SCHUMACHER: Thank you, your Honor.

12 THE COURT: Okay.

13 MR. ENDSLEY: Thank you, your Honor.

14 THE COURT: Thank you, guys. Thank you very much  
15 for your time and energy on this. I want to commend  
16 the parties. I know this is a very interesting issue  
17 under very -- a very unique set of facts.

18 MS. SCHUMACHER: Thank you, your Honor.

19 MR. ENDSLEY: Thank you, your Honor.

20 THE COURT: Thank you.

21 (Which were all the proceedings had at  
22 the hearing of the above-entitled  
23 cause, this date.)  
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IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS

I, KRISTIN M. BARNES, do hereby certify that the foregoing Report of Proceedings, consisting of Pages 1 to 39, inclusive, was reported in shorthand by me via Zoom videoconferencing, and the said Report of Proceedings is a true, correct and complete transcript of my shorthand notes so taken at the time and place hereinabove set forth.

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Official Court Reporter  
Eighteenth Judicial Circuit of Illinois  
DuPage County  
CSR License No. 084-004026

ORDER

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

ITS NICE INC

-VS-

STATE FARM FIRE AND CASUALTY CO

2020L000547  
CASE NUMBER

**FILED**

20 Sep 29 PM 01: 07

*Chris Kachirobas*

CLERK OF THE  
18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

ORDER

For the reasons stated on the record, Defendant State Farm's 2-615 motion to dismiss is granted, with prejudice, with respect to both Count I and Count II of Plaintiff's complaint.

Submitted by: JUDGE BRYAN CHAPMAN

DuPage Attorney Number:

Attorney for:

Address:

City/State/Zip:

Phone number:

*Bryan Chapman*  
File Date: 09/29/2020

Entered:

JUDGE BRYAN CHAPMAN

Validation ID : DP-09292020-0107-11175

Date: 09/29/2020

# **Exhibit F**

**Public Notice Regarding Court Operations  
During COVID-19 Outbreak (Mar. 12, 2020),  
[https://www.ganb.uscourts.gov/news/public -  
notice-regarding-court-operations-during-  
covid-19-outbreak](https://www.ganb.uscourts.gov/news/public-notice-regarding-court-operations-during-covid-19-outbreak)**

# Public Notice Regarding Court Operations During COVID-19 Outbreak

*Thursday, March 12, 2020*

Please review the Public Notice Regarding Court Operations During COVID-19 Outbreak for information regarding scheduled court hearings beginning the week of March 16, 2020 and other important matters.

In light of the developing issues with the Covid-19 virus and the recommendations of the Centers for Disease Control and other public health officials, the Bankruptcy Court for the Northern District of Georgia will cease all in person hearings at the conclusion of the day, March 13, 2020.

**BEGINNING, MONDAY MARCH 16, 2020, ALL HEARINGS NOTICED FOR THE BANKRUPTCY COURT IN THE NORTHERN DISTRICT OF GEORGIA WILL BE HELD TELEPHONICALLY ONLY UNLESS ARRANGEMENTS HAVE BEEN MADE OTHERWISE WITH CHAMBERS. THIS APPLIES TO THE ATLANTA, GAINESVILLE, ROME AND NEWNAN DIVISIONS.** The hearings will be held via AT&T call in numbers. You can find the dial in number and passcode on each "Judges' Information" tab and on each judge's webpage at [www.ganb.uscourts.gov](http://www.ganb.uscourts.gov). When scheduling future hearings, please continue to schedule them for in person hearings, but add the following to the hearing notice: "Given the current public health crisis, hearings may be telephonic only. Please check the ["Important Information Regarding Court Operations During COVID-19 Outbreak"](#) tab at the top of the GANB Website prior to the hearing for instructions on whether to appear in person or by phone."

The Court will continue to be open and staff will continue to be present. We are prepared to handle any emergencies that may arise in our cases.

This Notice does NOT apply to §341 meetings of creditors or any other requirements of the United States Trustee and does not apply to any court other than the Bankruptcy Court for the Northern District of Georgia.

We recognize this is an unusual step, but it is an unusual time. We ask all parties to be patient as we work through this new procedure. You can each facilitate the telephonic hearings by contacting your opposing counsel and interested parties well in advance of hearings to resolve any issues that can be resolved. We also encourage you to use the Voluntary Notice Procedures set out in [General Order 24-2018](#)) to avoid the need for hearings.

If you have questions about a specific case, please contact the appropriate judge's chambers. If you have questions about the Clerk's office or of a general nature, please email: [info@ganb.uscourts.gov](mailto:info@ganb.uscourts.gov).

Thank you for your cooperation.

Wendy L. Hagenau, Chief United States Bankruptcy Judge

M. Regina Thomas, Clerk of Court

3.12.2020

## Archive

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