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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. George M. McFaddin, Jr.
Presiding Circuit Court Judge

Appellate No. 2023 – 001845
Civil Action No.: 2022 – CP – 25 – 00269

Daniel A. Speights . . . . . Appellant,

vs.

Chubb Limited d/b/a Chubb National Insurance Company, Auto-Owners Insurance Company, and Bankers Standard Insurance Company . . . . . Defendants,

Of Whom Auto-Owners Insurance Company is the . . . . . Respondent.

RESPONDENT AUTO-OWNER'S REPLY TO APPELLANT'S MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE MATTER AND EXCLUDE MATTER FROM RECORD ON APPEAL

Respondent Auto-Owners Insurance Company ("Auto-Owners") hereby submits this Reply to Appellant Daniel A. Speights's ("Speights") Memorandum in Opposition to Auto-Owners' Motion ("Memorandum") to strike certain arguments presented in Speights's Initial Brief as well as excluding the Letter from Algernon Gibson Solomons, III to the Honorable George M. McFaddin (the "Letter"), the Plaintiff's Motion to Reconsider (the "Motion"), and the Affidavit of Daniel A. Speights (the "Affidavit") (hereinafter, collectively "Matters") from the record on appeal.

A hearing on Auto-Owners' motion for summary judgment was held on September 25, 2023. [Ex. A; *See generally*, Transcript of Hearing on Motion for Summary Judgment.]. Speights did not make any filings, memorandum, exhibits, nor did he share any other documents with the Circuit Court prior to the motion for summary judgment. Neither during nor immediately after the hearing did Speights offer to submit anything to the Circuit Court and there never was an invitation for nor discussion of further submissions to the Circuit Court. [Ex. A; Id.]. Thus, the sole filing for the record with the Circuit Court relating to summary judgment made by any party prior to the Circuit Court's order for summary judgment was Auto-Owners' motion. Two days after the hearing, the Circuit Court submitted a letter to both parties providing its ruling granting summary judgment. [Ex. B; Circuit Court Ruling Letter.]. Following that letter but prior to an order being filed, Speights first notified the Circuit Court and counsel for Auto-Owners that it had prepared a "summary of argument with exhibits" that "laid out arguments presented" but did not state that he ever intended to file it. [Ex. C; Email Correspondence from Counsel for Speights.]. Speights submitted the Letter via email and USPS to the Circuit Court but never filed it. [Ex. D; *See generally*, Letter from Algernon Gibson Solomons, III.]. Speights did not submit this as a formal memorandum in opposition to summary judgment before or after the hearing but titled the Letter "Summary of Plaintiff's Argument in Opposition to Auto-Owners Insurance Company's Motion for Summary Judgment." [Ex. D; Id. at 2.]. Pursuant to its correspondence on its ruling, the Circuit Court granted summary judgment. [Ex E; *See generally*, Order Granting Summary Judgment.]. Speights filed his motion for reconsideration and raised new arguments which he did not argue during the hearing. [Ex. F; *See generally*, Speights Motion for Reconsideration.]. The Circuit Court denied that motion based on the same analysis it used to grant summary judgment as well as Rule

59(e), South Carolina Rules of Civil Procedure, which prohibit new arguments from being raised in such a motion. [Ex. G; *See generally*, Order Denying Reconsideration.]. Despite these arguments being rejected by the Circuit Court per to Rule 59(e), Speights still included them in his Initial Brief. [Ex. H; *See generally*, Speights Initial Brief.]. A party cannot use Rule 59(e), S.C.R.C.P., to present to the lower court an issue the party could have raised prior to judgment but did not. Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009). Rule 59(e) motions are not vehicles for bringing new theories or arguments, nor can a party use a Rule 59(e) motion to present to the lower court an issue the party could have raised prior to the judgment but did not. See Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (citing Natural Resources Defense Council v. U.S. E.P.A., 705 F. Supp. 698, 701 (D.D.C. 1989)). "It is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Speights should be barred from presenting new matters that were not properly presented before the order granting summary judgment was filed. [*See generally*, Ex. I; Auto-Owners Motion to Strike & Ex. E; Order Granting Summ. J.].[1]

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[1] Speights also, for the first time, cites CIM, LLC v. Series Protected Cell 1, A Seres of Oxford Ins. Co. TN, 2023 WL 7115564 (M.D. Tenn. 2023), in its reply to this motion and reply brief. This was not included in his opening brief and constitutes a sur-reply as Auto-Owners had no opportunity to address it. Again, like much of Speights appeal, because it was not raised previously, it remains improper. Regardless, the case is distinguishable on its face and has nothing to do with the matter before the Court on this motion. The opinion does not provide the exact policy language at issue to which this Court could compare to the Policy language involved in this action. The opinion addressed a motion for judgment on the pleadings, as opposed to a motion for summary judgment. Further, that Court noted that it could rely on rules of construction in the interpretation of a clear and unambiguous insurance contract to resolve the claimed ambiguity, but "neither of the parties offered clear rules other than lengthy citations to other courts' decisions." Id. at *2. That Court ultimately ruled that it was "not declaring that the disputed terms of the Policy are ambiguous as a matter of law" nor is it "resolving [a] factual

I. Demonstrate a Need for Further Discovery

Speights argues a need for further discovery, particularly the deposition of Daniel A. Speights, but does not demonstrate how further discovery would make a difference. [Ex. J; Speights Initial Brief, pgs. 10, 12-13.]. During the summary judgment hearing, Speights stated that discovery was ongoing, but did not demonstrate a need for further discovery nor what it would lead to. [Ex. A; *See generally*, Hearing Transcript.]. Speights only spoke of the state of discovery twice during the hearing. He stated in the beginning of his argument that "discovery is still ongoing" but did not argue further as to how that affected the case in anyway or hampered his ability to oppose the motion. [Ex. A; Id. at 6:14.]. Speights ended his arguments by requesting the Circuit Court to "wait until the full termination of all discovery before we would decide that, because discovery is ongoing." [Ex. A; Id. at 11:05-09.]. At no point during the hearing does Speights argue that the deposition of Daniel A. Speights has not been taken (or a need for it to be taken), call for further discovery, demonstrate a need for further discovery, nor attempt to speculate to the Circuit Court what further discovery would reveal. [Ex. A; *See generally*, Hearing Transcript.]. Speights presented no case law or affidavit to assist his position or demonstrate a need for further discovery. [Ex. A; Id.].

Notwithstanding the arguments herein that the Letter should be excluded from the record on appeal and that it was never properly included in or submitted to the record before the Circuit Court, the Letter also does not demonstrate a need for further discovery. The Letter mentions discovery once in requesting a "full determination of all facts (once discovery is complete)." [Ex.

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dispute about ambiguities," but only that the insurer had not established that it was entitled to judgment on the pleadings. Id. Thus, the case is of no moment.

D; Letter pg. 4.]. It goes no further to describe the state of discovery but proposes that Speights's vague inference "leaves more questions" without describing what those questions are. [Ex. D; Id. pg. 3.]. There is also no explanation of what was or wasn't at issue before the Circuit Court that would have been resolved by further discovery. Speights presented no case law or affidavit to assist his position or demonstrate a need for further discovery. [Ex. D; *See generally*, Id.]. Speights was required to demonstrate the likelihood that further discovery would uncover additional relevant evidence and that Speights was "not merely engaged in a 'fishing expedition." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); see also, Merchant v. Prince George's County M.D., 436 Fed.Appx. 218, 219-20 (4th Cir. 2011) (holding that "nonspecific requests for discovery in [an] opposition memorandum did not serve as a 'functional equivalent' of a Rule 56(d) affidavit").

II. The Dictionary Definition of Voluntary Parting

Speights never raised the definition of the word voluntary during the hearing on summary judgment. [Ex. A; *See generally*, Hearing Transcript.]. The only time that Speights mentioned the word voluntary was to suggest that "a jury should be allowed to decide whether we voluntarily gave $250,000 to somebody in Hong Kong." [Ex. A; Id. at 7:13-14.]. Speights does not suggest a definition for voluntary parting in the Letter either. [Ex. D; *See generally*, Letter.]. Again, Speights only suggests that it is a factual dispute without support. [Ex. D; Id. pgs. 2-3.]. Thus, Speights first proposed the definition of voluntary in the Motion to Reconsider. [Ex. F; Motion for Reconsideration pg. 6.].

Speights's allusion to the definition of voluntary within the policy is contrary to well established South Carolina law that the construction of a contract of insurance is a question of law

for the Court, and not for a jury. "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." State Farm Mut. Auto. Ins. Co. v. Goyeneche, 429 S.C. 211, 217, 837 S.E.2d 910, 913 (Ct. App. 2019) (quoting Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011). The Policy was sold to a South Carolina entity through a South Carolina agent; thus, South Carolina law applies to its interpretation. S.C. CODE ANN. § 38 – 61 – 10. "Insurance policies are subject to the general rules of contract construction." M and M Corp. of S.C. v. Auto-Owners Ins. Co., 701 S.E.2d 33, 35 (S.C. 2010) (citations omitted). "The construction of a clear and unambiguous contract is a question of law for the court." BLG Enterprises, Inc. v. First Financial Ins. Co., 491 S.E.2d. 695, 697 (S.C. Ct. App. 1997). Courts will interpret policy language in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. Id. "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977). When construing the provisions of an insurance policy, the Court must examine the policy as a whole and adopt a construction that gives effect to the entire instrument and each of its various parts and provisions. Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 349 (1976). "[T]he meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract." Id. at 593, 225 S.E.2d at 349; see also MGC Mgmt. of Charleston, Inc. v. Kinghorn Ins. Agency, 336 S.C. 542, 548, 520 S.E.2d 820, 823 (Ct. App. 1999) ("[T]he law is clear that, in construing an insurance contract, all of its provisions must

be considered together."). Importantly, "[e]ach exclusion in the policy must be read and applied independently of every other exclusion." Auto-Owners Ins. Co. v. Newman, 684 S.E.2d 541 (S.C. 2009).

Speights attempts to create a conflict within the Policy language by suggesting that his proposed definition of voluntary conflicts with other provisions in the Policy, but Speights never cites any two Policy provisions together to explain the conflict. Although Speights cites some of the Policy language in his motion to reconsider and the Initial Brief, Speights never juxtaposes two separate Policy sections together and explains that they are in conflict with each other. [*See generally* Ex. F; Motion for Reconsideration & Ex. H; Initial Brief.]. Speights did not raise his argument as to the definition of voluntary or how it could conflict with the Policy language prior to the order for summary judgment.

III. The Letter

The Letter should be excluded from matter from record on appeal because it was never properly presented to the Circuit Court or filed, and it provides arguments which were not raised during the hearing on summary judgment. The Letter was never offered nor introduced into any record, either as an exhibit or filed with the Circuit Court as Speights's formal opposition to Auto-Owners' Motion for Summary Judgment. [Ex. D; *See generally* Letter.]. The Letter was sent on September 26, 2023, after the September 25, 2023 hearing on summary judgment had concluded, where both parties had an opportunity to argue for or against summary judgment and during which the Circuit Court did not ask for any submissions. [Ex. A; *See generally* Hearing Transcript.].

IV. The Affidavit

Speights first submitted the affidavit of Daniel A. Speights as an exhibit to the Motion for Reconsideration and it is dated October 12, 2023. [Ex. J; *See generally*, Affidavit.]. The Affidavit was not presented before the October 5, 2023 order granting summary judgment. Speights's Memorandum admits that the Affidavit was first presented to accompany its Motion for Reconsideration. [Ex. K; Memorandum pg. 3.]. As it was not properly raised to the Court prior to the order granting summary judgment, the Affidavit should be excluded from the record on appeal.

V. The McManus Deposition

Speights incorrectly characterizes the deposition of Joe McManus ("McManus") as that of a corporate representative of Auto-Owners as means to artificially create conflict in the Policy language. He describes the McManus deposition as that of the "corporate representative" of Auto-Owners or the "Auto-Owners representative." [Ex. K; Memorandum, pgs. 1 & 2.]. This is a misstatement.

McManus was deposed as a fact witness and not deposed, nor was he noticed to be deposed, as a 30(b)(6) representative of Auto-Owners. [Ex. L; *See generally*, Deposition of McManus.]. At the time of the deposition, McManus was a field claim representative. [Ex. L; Id. at 7:20-25.]. In that position, McManus had no one that reported to him and there were numerous positions above him. [Ex. L; Id. at 7:17-9:10.]. For the deposition, McManus did not speak with any superiors or others with Auto-Owners; he only reviewed the file on Speights's claim. [Ex. L; Id. at 11:08-12:05.]. Having only reviewed the file, been employed as a filed claims representative for six years, and not designated as a representative of Auto-Owners, McManus was only qualified as fact witness and was not charged with the responsibility of knowing all Auto-Owners matters.

Speights statement that this "was the first time Auto-Owners had excluded a claim based on the voluntary parting language" is incorrect. [Ex. K; Memorandum, pg. 2.]. Speights never addressed nor distinguished the Midlothian case presented by Auto-Owners in its motion for summary judgment which addressed the voluntary parting exclusion in an Auto-Owners policy. [Ex. K; *See generally*, Memorandum.]. In Midlothian, a Federal Court in Virginia ruled that there was no coverage because a voluntary parting exclusion in an Auto-Owners Policy barred coverage after a similar email scheme. 439 F.Supp.3d 737 (E.D. Va. 2020). The Midlothian case proves that this was not a novel issue as Speights suggests.

CONCLUSION

Based on the foregoing, Respondent Auto-Owners Insurance Company respectfully requests that this Honorable Court issue an Order striking the new arguments included in the Appellant Daniel A. Speights's Initial Brief and excluding the Letter, Motion, and Affidavit from the record on appeal.

Dated this 19th day of April, 2024.

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EXHIBIT A

STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
COUNTY OF HAMPTON	*	TRANSCRIPT OF RECORD
DANIEL A. SPEIGHTS, Plaintiff,	*	
vs.	*	Case No. 2022-CP-25-00269
CHUBB LIMITED, et al., Defendant.	*	

September 25, 2023

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

B E F O R E:

The Honorable George M. McFaddin, Jr., Presiding Judge

A P P E A R A N C E S:

Gibson Solomons, III, Esq.
Attorney for the Plaintiff

Morgan Templeton, Esq.
Attorney for the Defendant

Recorded by: Webex Courtroom

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

Rec'd
DEC 6 2023

EXHIBIT A

I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

EXHIBIT A

P R O C E E D I N G S

THE COURT: I wrote on the top of the file yesterday: Matter under advisement because it's thick, and they require more than just a few minutes.

So this is Defendant's motion for summary judgment?

MR. TEMPLETON: Your Honor, this is the Speights versus Auto Owners case you're calling?

THE COURT: Yes, sir.

MR. TEMPLETON: Okay. Morgan Templeton on behalf of the defendant, Auto Owners. It was breaking up, I guess, when you were introducing the case. So I'm happy to speak to you if you're ready.

THE COURT: I'm ready.

MR. TEMPLETON: Okay. Thank you, sir.

Morgan Templeton on behalf of Auto Owners Insurance Company. This is a bad faith breach of contract suit that's been brought by a man named Daniel Speights. The first thing I want to lead off with is that it's important for the Court to understand who the insured is in this case. The insured of Auto Owners is Speights and Solomons Law Firm, not Daniel Speights in his individual capacity.

The facts of the case are fairly straightforward. On September 25th, 2019, the bookkeeper for Speights and Solomons Law Firm received an email that she believed was coming from Daniel Speights. Within that email, the

request is for the bookkeeper, who has full signatory authority on Mr. Speights' personal accounts, to wire the sum of $250,000 to an entity in China. There's an exchange between the bookkeeper and who she believed to be Mr. Speights confirming that it was to come from the personal account; that the funds were to go from Palmetto State Bank to this entity in China. That occurred on the same day of the request.

As it turns out, this was not Mr. Speights who had initiated the email but, rather, it was one of these phishing items that occurs in our country these days.

A claim was submitted thereafter to the law firm's business property insurance company, which was Auto Owners, and the claim was denied. And the denial was based on essentially two fundamental premises. One, Mr. Speights, in his individual capacity, is not the insured under the Auto Owners policy; rather, the law firm is. The secondary basis for it is that there are two exclusions within the policy. One specifically excludes from the property coverage form -- covered property does not include bullion, money, or securities. And the secondary exclusion is that "we will not pay for damage or loss caused directly or indirectly for any of the following: False pretense, which is defined as 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."

Now, South Carolina courts have not addressed that exclusion, but several courts across the country have, most particularly the Midlothian opinion -- it's a reported decision out of Virginia in the Fourth Circuit -- saying essentially that, yes, we understand that this was a fraudulent scheme and trick and the employee didn't intend to do this, but it doesn't change the fact that it was a voluntary decision on the employee's part to transfer the funds.

Other courts across the country, including New York, Ohio, and the state of Washington have agreed with that type of analysis. They were prior to Midlothian opinion, but the general genesis of the conclusion is the same. Most of those cases are involving law firms. Most of those cases are involving situations where the law firm actually lost money, whether it be client funds or whether it have been operating funds from the firm.

Here, of course, the distinction that we -- the similar distinction we have here is this has nothing to do with the law firm itself. It was Mr. Speights' personal funds that were transferred voluntarily by the bookkeeper per what she thought to be the request. Even though it was a scheme or a trick, it doesn't change the fact that

EXHIBIT A

it was a voluntary decision on her part.

With that, Your Honor, I'll answer any questions the Court may have.

THE COURT: My next question: Is there any opposition to your motion today?

MR. TEMPLETON: I believe that Mr. Gibson Solomons, who is representing the plaintiff opposes the motion.

THE COURT: All right. Mr. Solomons?

MR. SOLOMONS: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. SOLOMONS: I'll try and be brief.

First of all, let me set the context with which we come to this, the motion for summary judgment. In this matter, discovery is still ongoing. And the second aspect of the context is the issue before the Court is a novel issue in South Carolina, as evidenced by the fact that the only law supporting the defendant's motion is out-of-state law. However, even in that -- and by the way, it is not only novel legally, it's novel factually, because I deposed the representative of the defendant, and I asked them, "This claim -- the clause, when it came in, this was the first of its type that you're aware of that was excluded as a result of the false pretense clause?"

His answer was, "I believe so, yes."

That's on page 23 and 24 of his deposition taken

July 28th of this year.

So factually novel. Legally novel. Then we get to the facts. First of all, Your Honor, as to the distinction being drawn between Mr. Speights and Speights and Solomons Law Firm, which he founded and is an owner, in the limited liability company policy language that was provided to us by Auto Owners, it says, "Who is an insured?" And they say, "The previous language is deleted and replaced by the following: A limited liability. You are insured. Your members are also insured but only with respect to the conduct of your business."

So let me go to that. Your Honor, what happened here -- I think a jury should be allowed to decide whether we voluntarily gave $250,000 to somebody in Hong Kong for nothing, but what happened here is some bad actor broke into our email. This is following some events where -- well, it doesn't matter for the basis and why we got targeted, but we were targeted. They broke into our email.

They then began to control the email of Mr. Speights. So it wasn't like they took our name and it almost looked like. It was -- it was Dan Speights' email. And they were controlling his email. So as the bookkeeper would send him, "Are you sure?" or "I'm about to send," whoever took over would say, "Yes," and then delete that

email so Mr. Speights, if he ever looked at his email, he wouldn't actually see any of this. But they were controlling the exchange in between Mr. Speights and his bookkeeper.

So then we do -- we do what -- our bookkeeper does what she believes is a directive of our senior partner, and -- but she did it based upon an invoice that was sent not to Mr. Speights but to the law firm. So the invoice itself -- and that is documents that have been produced to the defendant -- the invoice itself is an invoice to the law firm, not to Mr. Speights.

Mr. Speights, because of his role in the law firm, he provides personal funds to cover the cost of the law firm, and so he does that or she -- the bookkeeper thinks he's doing that because that was the normal course of conduct.

So let me get to the policy itself. Those are the facts underlying the policy. The policy itself. When we went and bought our policy, our normal way of saying things is, "Hey, if we can get coverage, we want coverage."

So, in this particular policy -- and I don't know about the Midlothian policy that is the -- the Virginia policy that's the basis for the defendant's motion for summary judgment, but our policy provides additional

coverage for multiple things, including money in securities and including forgery and alteration. When I deposed the defendant's representative, I asked them specifically about that additional coverage. And in those questions, I asked -- these are questions asked during the defendant's representative's depo:

"There is an identity recovery coverage that we purchased, annual -- if someone is impersonating Mr. Speights and having $250,000 sent in a wire, is that potentially covered under identity recovery?"

ANSWER: "I'm not sure."

That's pages 26 and 27 of the July 28, 2023, depo.

Later on, I say, "There's optional coverage here against -- does, in fact, grant you in circumstances some coverage for" -- oh, I'm sorry. This is an answer.

I said, "Is there optional coverage for money securities?"

The answer, "You have an optional coverage here. You know, again, it does, in fact, grant you, in certain circumstances, coverage for money and securities."

That's a concession on an additional coverage.

I asked, "Is there coverage -- is there an amount for forgery and alterations that also seems to be included? Is that correct?"

"Yes, there is coverage here for forgery and

alterations."

And then I asked later in the same page -- I'm now on page 29, "Could what described to Mr. Speights be -- could what happened to Mr. Speights be described as forged?"

"I believe that" -- and then I cut him off; I didn't let him answer.

I said, "Mr. Speights' electronic signature on that email, was that a forgery of his electronic signature?"

His answer, "Essentially, it could be."

So, first of all, on the first instance, as far as the distinction being drawn between Mr. Speights and the law firm, their own policy language makes that a nullity.

I also think, if it didn't, Your Honor, because of the nature of a limited liability company and Mr. Speights' role as in this particular limited liability company, that would not be probative of the claim being brought by Mr. Speights against Auto Owners.

As far as the summary judgment being based or being brought pursuant to the false pretense clause which, when I deposed the individual on behalf -- that was appearing on behalf of the defendant, Auto Owners, I asked them is the basis for this denial false pretense clause, and they said yes, that's it. That's why we're denying this claim.

So as far as that being the basis for the denial, I

believe there are ample ambiguities or contradicting clauses inside the claim that make summary judgment not appropriate. And if Your Honor were so inclined to even think, "No, Mr. Templeton's argument is still forthcoming," then I would just urge the Court to wait until the full termination of all discovery before we would decide that, because discovery is still ongoing.

So I don't think I have anything else. I don't think -- well, I think that's it, Judge.

MR. TEMPLETON: Your Honor, briefly in reply?

THE COURT: Yes, sir.

MR. TEMPLETON: Two things. One, the language that was quoted to you about the LLC and the operating -- operations of this policy, the key distinction is that it relates to the business. Relates to the business -- he would be an insured if it was related to the business. There's nothing before the Court that shows an affidavit or admissible testimony showing that this thing had anything to do other than the loss of his personal funds.

Number two, with respect to the novel issue argument, South Carolina has plenty of case law talking about rules of construction and what the Court is to do in applying the plain and ordinary terms of the policy and draw its own distinction and own conclusion to whether or not the exclusion in the language applies.

There's a host of cases that are cited in my brief from South Carolina about that. This Court can use its own judgment in applying those plain and ordinary terms and decide whether or not the false pretense exclusion applies.

These other cases that are cited in the brief from around the country are completely analogous to this. Are they controlling on this Court? No, they are not. But the rules of construction are. And what I would respectfully submit is that the language of the policy is plain, clear, and unambiguous; shows that a false pretense occurred here. It's an unfortunate set of circumstances, but it's not covered under this policy, and no amount of discovery is going to change that argument in terms of this -- this language applying.

Respectfully, we believe the motion for summary judgment is appropriate and should be granted.

THE COURT: Gentlemen, as I said at the outset, I had a strong feeling I would take this one under consideration, and I do ask for your patience. You have been good so far, and I thank you for that, and you will hear from me as soon as I can get to it.

MR. TEMPLETON: Thank you, Your Honor.

MR. SOLOMONS: Thank you, Your Honor.

THE COURT: Thank y'all.

(The above matter concluded.)

EXHIBIT A

CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: Speights v. Chubb Limited

2022-CP-25-00269

DATE OF HEARING: 9/25/23

COURT REPORTER/MONITOR: Webex Courtroom

****

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 12/5/23

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EXHIBIT B

State of South Carolina
Circuit Court Judge, At-Large, Seat 1

GEORGE M. MCFADDIN, Jr.
JUDGE

215 N. HARVIN STREET
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DATE: **27 SEPTEMBER 2023**

TO: **ALGERNON GIBSON SOLOMONS, III, ESQ.**
MORGAN S. TEMPLETON, ESQ.

FROM: **GEORGE M. McFADDIN, JR.**

RE: **DANIEL A. SPEIGHTS v. CHUBB LIMITED, ET AL**
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
2022-CP-25-00269

Inasmuch as I find many rulings I am called upon to make bereft of pleasure, as they should be in terms of emotions, I find that summary judgment here is proper. I could recite the law as given by both of you, and good and plenty it is and was. My ruling turns upon the fact that the funds transferred were private funds, not law firm funds. Thusly, beyond the coverage of the policy. I know full well, and do expect, my ruling will be appealed. And, as South Carolina jurisprudence has not yet visited this issue, perhaps we can expect guidance under the "making law" concept. If I have erred, I will stand corrected, chastened and rebuked.

I ask please that Mr. Templeton prepare an order thoroughly addressing the parties' arguments to include the case law related to this ruling.

Respectfully submitted.

/GMMJR

EXHIBIT C

From: Gibson Solomons <gsolomons@speightsandsolomons.com>
Sent: Wednesday, September 27, 2023 12:44 PM
To: McFaddin, George M. Secretary (Andrea Morris) <GMcfaddinSC@sccourts.org>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>
Cc: McFaddin, George M. Law Clerk (John Baker, Jr.) <gmcfaddinlc@sccourts.org>
Subject: Re: Daniel Speights v. Chubb Limited, et al Ruling.docx

I do want the Court to be aware that yesterday, before receiving this ruling, I prepared a summary of argument with exhibits that laid out the arguments presented and the supporting documents that were mentioned. I sent this to the Court by mailing a hard copy. I mentioned to Morgan on Monday that I was doing as much and sent a copy to him by hard mail also. I did not want the Court to receive this and believe that I was arguing the primary argument after receiving this email. I didn't want the correspondence to be received without that explanation.

SPEIGHTS & SOLOMONS, LLC

Advocacy For a Better Tomorrow

From: McFaddin, George M. Secretary (Andrea Morris) <GMcfaddinSC@sccourts.org>
Date: Wednesday, September 27, 2023 at 11:55 AM
To: Gibson Solomons <gsolomons@speightsandsolomons.com>, morgan.templeton@walltempleton.com <morgan.templeton@walltempleton.com>
Cc: McFaddin, George M. Law Clerk (John Baker, Jr.) <gmcfaddinlc@sccourts.org>
Subject: Daniel Speights v. Chubb Limited, et al Ruling.docx

> You don't often get email from gmcfaddinsc@sccourts.org. Learn why this is important

Mr. Solomons and Mr. Templeton,

Good morning. Please see the attached ruling in the matter noted above.

Kind regards,

Andrea M. Morris
Administrative Assistant to

EXHIBIT C

The Honorable George M. McFaddin, Jr.
215 N. Harvin St.
Sumter, SC 29150
(803) 436-2373
(803) 774-6159 (FAX)

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

EXHIBIT D

SPEIGHTS & SOLOMONS, LLC
ATTORNEYS AT LAW
100 OAK STREET EAST
POST OFFICE BOX 685
HAMPTON, SOUTH CAROLINA 29924
(803) 943-4444

A. GIBSON SOLOMONS, III
GSOLOMONS@SPEIGHTSANDSOLOMONS.COM

FACSIMILE (803) 943-4599

September 26, 2023

Via US Mail
The Honorable George M. McFaddin, Jr.
Circuit Court Judge
Sumter County Judicial Center
215 North Harvin Street
Sumter, South Carolina 29150

Re: Daniel A. Speights v. Chubb Limited, et al., Civil Action No. 2022CP2500269

Dear Judge McFaddin:

Enclosed please find Plaintiff's Summary of Argument in the above-referenced action.

Please accept my kind regards.

Sincerely,

A. Gibson Solomons, III

A. Gibson Solomons, III

AGS/ts
Enclosure

cc: Morgan S. Templeton (Counsel of Auto-Owners)
John I. Malone, Jr. (Counsel for Bankers Standard)

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO. 2022-CP-25-00269
DANIEL A. SPEIGHTS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**SUMMARY OF PLAINTIFF'S ARGUMENT**
	)	**IN OPPOSITION TO AUTO-OWNERS**
CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY, AUTO-OWNERS INSURANCE COMPANY, and BANKERS STANDARD INSURANCE COMPANY,	)	**INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**
	)	
Defendants.	)	

On September 25, 2023, the Court heard argument on the Motion for Summary Judgment brought by Defendant Auto-Owners Insurance Company. At the conclusion of the argument, the Court advised the parties that it would take the matter under advisement. The Plaintiff is aware of the volume of matters that come before this Court and provides the following summary of the argument presented for reference.

For context, this matter stems from a theft by forgery and forced entry into an email server that occurred in September of 2019. A thief broke into Speights & Solomons, LLC's email server. The thief deleted certain emails and created emails. The thief, forging the electronic signature of Dan Speights, requested the firm's bookkeeper to transfer $250,000.00, ostensibly to address an invoice made out to the firm of Speights & Solomons for investment distributions and professional services. The bookkeeper asked questions of what she believed to be Speights and then acted pursuant to the thief's altered and forged emails. The bookkeeper, acting in reliance upon the

forgery, instructed the firm's bank to transfer the funds. Because of the forced entry and capture of his emails, the theft was only discovered when Speights physically entered the office and was asked a question by the bookkeeper. The exchange alerted Plaintiff and the bookkeeper that a theft had occurred. Attempts were made to pull back the funds. Following these unsuccessful attempts, the Plaintiff instructed his insurance agent to inform the applicable insurance companies of the loss. The Defendant denied the claim. Plaintiff then brought this lawsuit.

The Defendant, through counsel, first raised the issue of whether Plaintiff could bring a claim as an insured. Defendant contends that because the named policy holder is Speights & Solomons, LLC as opposed to Dan Speights, the Plaintiff, Speights, cannot bring this claim as an insured. Plaintiff responded to this challenge by stating that the law will allow a member and owner of an LLC to assert matters in their capacity as an individual and as a member but more specifically pointing the Court to the language found in the policy at issue which states that "[a] limited liability company, you are insured. Your members are also insured, but only with respect to the conduct of your business. (Page DAS000083, Exhibit A). As a side, the sheer volume of the policies and endorsements (Pages DAS000013 through DAS000152, Exhibit A) nearly guarantee confusion.

The Defendant, in rebuttal responded by conceding that while members are also insureds, that is only with respect to conduct of the LLC's business. The Plaintiff pointed out that the triggering invoice was issued to Speights & Solomons LLC. (DAS 000003, Exhibit A).

The Defendant's remaining basis for requesting summary judgment was that the "false pretense" clause prohibits the Plaintiff from recovering under the policy. In the deposition of the Defendant (Exhibit B), the Defendant testified that the basis for the denial of this claim is that the "false pretenses clause" would categorize the Plaintiff's actions as voluntary. Notwithstanding the

factual dispute of whether the Plaintiff would voluntarily surrender $250,000.00 to a stranger on the other side of the world, Plaintiff argues that the argument is not a proper basis for summary judgment for a number of reasons. The first reason is that this issue is both factually and legally novel. While the mere fact that a legal issue is novel, does not by itself render a case inappropriate for summary judgment, the fact that an issue is both legally and factually novel leaves a fact finder unable to render a decision in an established context. This, if this were the only issue and it is not, makes the case more appropriate for a full determination of all facts (once discovery is complete) by a jury. The fact that the issue is factually novel is established in the deposition of the Defendant's representative who admitted that the Defendant had never used the false pretense basis to deny a claim prior to the Plaintiff's claim. This leaves more questions. In the deposition of Joseph William McManus, Jr. taken on July 28, 2023, the Defendant stated that this claim "was the first of its type, that you're aware of, that was excluded as a result of the false pretense clause? A. I believe so. Yes." (Exhibit B Deposition of McManus, p.23 line 25- p.24 line 3). Furthermore, the Defendant conceded in its brief that there is no South Carolina law on this point. The Defendant relies upon a smattering of out of state cases with loose similarities to this case without an examination if any of these cases had the same endorsements or policy language as the current matter.

This brings us to the next point, the Defendant drafted the policy; A point that was conceded in the Defendant's deposition. (See Exhibit B, p.21 lines 22-25). In this voluminous policy, the Defendant stated that it did not cover money damages and then stated that it did cover money damages. The terms under additional optional coverages states:

> **"We will pay for loss of money or securities used in your business** while at a bank or savings institution, within your living quarters or the living quarters of your partners or employees having use and custody of the property, at the described premises, or in transit between any of these

places **resulting directly from: (1) Theft, meaning any act of stealing**."
(See Page 17 of 21 to the incomplete policy attached as Defendant's
Exhibit A, emphasis added)

When asked about the additional coverage in deposition, the Defendant conceded that the Plaintiff had purchased additional coverage for money and securities. (Exhibit B p.28 lines 19-22).

The Defendant also conceded that there was additional coverage purchased for forgery and alteration. (Exhibit B p.29 lines 4-5). The forgery endorsement states explicitly that the Defendant will pay for any forgery of any promise in money. (Exhibit A DAS000021). The Defendant further conceded that Mr. Speights electronic signature on an email "[e]ssentially, could be" forgery. (Exhibit B, lines 19-22). The Defendant conceded that a policy was in place Exhibit B p. 13 lines 15-18), that Plaintiff suffered the loss (Exhibit B p. 17 lines 9-10) and conceded that coverage in addition to that noted above could apply as well. (Exhibit B p.27 lines 1-3).

The Plaintiff has provided this as a reference summary of the Plaintiff's argument today. The Plaintiff would be happy to prepare additional briefings on the law if this would assist the Court in rendering its decision.

Respectfully submitted,

/s/ A. Gibson Solomons, III
A. Gibson Solomons, III, Esq.
Speights & Solomons, LLC
100 Oak Street, East
Post Office Box 685
Hampton, South Carolina, 29924
(803) 943-4444
gsolomons@speightsandsolomons.com
Attorneys for Plaintiff

September 26, 2023
Hampton, South Carolina

EXHIBIT E

ELECTRONICALLY FILED - 2023 Oct 05 1:38 PM - HAMPTON - COMMON PLEAS - CASE#2022CP2500269

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON DANIEL A. SPEIGHTS, Plaintiff, vs. CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A NO.: 2022-CP-25-00269 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT**

This matter is before the Court upon Defendant, Auto-Owners Insurance Company ("Owners") motion for summary judgment as to all claims asserted by Plaintiff, Daniel A. Speights. A hearing on Owners' motion was held on September 25, 2023, via WebEx before the Honorable George M. McFaddin, Jr. Morgan S. Templeton appeared on behalf of Owners and A. Gibson Solomons, III, on behalf of Plaintiff. After due deliberation and consideration of the materials submitted and arguments of counsel, judgment shall be entered in favor of Owners in accordance with the findings of fact and conclusions of law set forth below.

I. Material Facts

On September 25, 2019, the bookkeeper for Speights & Solomon, L.L.C. (hereinafter, the "Law Firm") was sent an email purportedly from Plaintiff, Daniel A. Speights's (hereinafter, "Plaintiff" or "Speights") email address directing her to wire money to a specified bank account. The email asked for $250,000.00 to be sent by wire transfer to an account with the Bank of China in Hong Kong. See Amended Complaint, ¶ 6. In a reply email, the bookkeeper asked, "Is this DAS Personal?" to ascertain whether it was a personal account from which the funds should be

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transferred. Id., ¶ 7. Believing that it was Plaintiff who had sent the email, the bookkeeper requested a wire transfer in the amount of $250,000.00 to be sent out of the Plaintiff's *personal account* with Palmetto State Bank to a bank account in China. Id., ¶ 9 (emphasis added). Unbeknownst to the bookkeeper, the Plaintiff's email account had been hacked by a third party with the purpose of acquiring money. This scam was not discovered until after the money had been successfully transferred.

Owners provided the Law Firm with a policy of insurance bearing policy number 51-639377-00 (hereinafter, the "Policy"). The Policy was issued to the Law Firm as an entity and not to the Plaintiff as an individual. The relevant sections of the policy are as follows:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

2. Property Not Covered
Covered Property does not include:
b. Bullion, money or securities;

3. Covered Causes of Loss

RISKS OF DIRECT PHYSICAL LOSS unless the loss is:
a. Excluded in Section B., Exclusions;

5. Additional Coverages

b. Personal Property Off Premises
You may extend the insurance that applies to Business Personal Property to apply to covered Business Personal Property, other than money and securities, while it is in course of transit or temporarily at a premises you do not own, lease or operate. The most we will pay for loss or damage under this Extension is $1,000.

f. Business Income
We will pay for the actual loss of Business Income you sustained due to the necessary suspension of your "operations" during the "period of

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restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from any Covered Cause of Loss.

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.

h. 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. OPTIONAL COVERAGES

If shown as applicable in the Declarations, the following Optional Coverages also apply. These coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

3. Money and Securities

a. We will pay for loss of money and securities used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:

(1) Theft, meaning any act of stealing;
(2) Disappearance; or
(3) Destruction.

b. In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:

(1) Resulting from accounting or arithmetical errors or omissions;
(2) Due to the giving or surrendering of property in any exchange or purchase; or
(3) Of property contained in any money operated device unless the amount of money deposited in it is recorded by a continuous recording instrument in the device.

See Policy pgs. 117 – 133. The Policy provided coverage of "direct physical loss of or damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss." Id. at 117. Covered property did not include "bullion, money, or securities." Id. at 118. Additional coverage included

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personal property off premises and business income. Personal property off premises compromised "covered Business Personal Property . . . in the course of transit or temporarily at a premises you do not own, lease, or operate" but this excluded money and securities. Id. at 119 – 120. Business income compromised "actual loss . . . sustained due to necessary suspension" caused by "direct physical loss of or damage to property at the described premises." Id. at 120.

The Policy did provide coverage for money and securities, albeit in a limited manner. The loss of money and securities "used in your business" were covered "while at a bank or savings institution" or "in transit between any of these places" as a direct result from "theft, meaning any act of stealing," "[d]isappearance," or "[d]estruction." The Policy further excluded coverage for any loss resulting from "accounting or arithmetical errors or omissions" or "the giving or surrounding or property in any exchange or purchase." Id. at 133.

The Policy has one notable exclusion from coverage: false pretense. Loss due to a false pretense was excluded "regardless of any other cause or event that contributes concurrently or in any sequence to the loss." Id. at 122. The Policy defines a false pretense as "[v]oluntary 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." Id at 125.

The Policy did not provide coverage for money or securities nor a loss due to false pretenses and had limited coverage for property off premises. Any loss of business income would be covered only if it were a result of a suspension of operations from a covered cause of loss. An exclusion to coverage in the policy included a loss resulting from false pretenses. Here, Owners denied coverage for the Plaintiff's claim because it was a voluntary parting of funds through false pretenses. Plaintiff brought this suit seeking coverage for his loss from this incident and alleging

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breach of contract, negligence, and bad faith or breach of implied covenant of good faith and fair dealing against this Defendant.

II. Summary Judgment Standard

"Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland Sch. Dist. One, 534 S.E.2d 275, 277 (S.C. 2000); see Rule 56(c), SCRCP. "The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., 499 S.E.2d 822, 824–25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility "may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case." Id. at 825.

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008). The Supreme Court of South Carolina has recently held the "mere scintilla of evidence" standard is inapplicable overruling Hancock v. Mid-South Mgmt. Co., 673 S.E.2d 801, 803 (S.C. 2009). Kitchen Planners, LLC v. Friedman, 2023 WL 5420401 (S.C. August 23, 2023). To withstand summary judgment, there must be a "genuine issue of material fact." Id. "A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror." Jackson v. Bermuda Sands, Inc., 677 S.E.2d 612, 616 (S.C. Ct. App. 2009). "However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." Id. "It is not sufficient that one create an inference which is not reasonable or

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an issue of fact that is not genuine." Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

III. Law & Analysis

The Policy was sold to a South Carolina entity through a South Carolina agent; thus, South Carolina law applies to its interpretation. S.C. CODE ANN. § 38-61-10. "Insurance policies are subject to the general rules of contract construction." M and M Corp. of S.C. v. Auto-Owners Ins. Co., 701 S.E.2d 33, 35 (S.C. 2010) (citations omitted). Courts will interpret policy language in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. Id. "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977). When construing the provisions of an insurance policy, the court must examine the policy as a whole and adopt a construction that gives effect to the entire instrument and each of its various parts and provisions. Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 349 (1976). "[T]he meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract." Id. at 593, 225 S.E.2d at 349; see also MGC Mgmt. of Charleston, Inc. v. Kinghorn Ins. Agency, 336 S.C. 542, 548, 520 S.E.2d 820, 823 (Ct. App. 1999) ("[T]he law is clear that, in construing an insurance contract, all of its provisions must be considered together."). The burden of proof is on the insured to show that a claim falls within the coverage of an insurance contract. Gamble v. Travelers Ins. Co., 160 S.E.2d 523, 525 (S.C. 1979). The insurer bears the burden of establishing exclusions to coverage. Sunex Int'l Inc. v. Travelers, 185 F. Supp.2d 614, 617 (D.S.C. 2001).

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A. The Insured Issue

The Policy was sold to Speights & Solomons, LLC. The Policy lists Speights & Solomons, LLC as the named insured. The Policy is called a "Businessowners Special Property Coverage Form". It says "[t]hroughout this policy the words 'you' and 'your' refer to the Named Insured shown in the Declarations." That is to mean Speights & Solomons, LLC. Daniel A. Speights is not the Named Insured under the Policy. It is undisputed that the funds lost were from Mr. Speights personal account. Indeed, the Complaint alleges directly in Paragraph 9, that the "bookkeeper . . . requested that a wire transfer in the amount of $250,000 be sent to HK Shining Transport Co Limited out of Plaintiff's **personal account** with Palmetto State Bank. Compl. at ¶ 9 (emphasis added).

Plaintiff argues that Plaintiff qualifies as an insured under the Policy by virtue of his status as a member of Speights & Solomons, LLC. In support of that contention, Plaintiff points to the Limited Liability Company Businessowners Policy. However, this form pertains to the "Businessowners Liability Coverage Form" not the "Businessowners Special Property Coverage Form" which is what the claim has been presented. If this were a liability claim, Plaintiff could qualify as an insured related to the "conduct of your business." Here, a first party property claim for the loss of property/money is presented, not a liability claim. Thus, the Court finds that Plaintiff is not insured under the Policy for purposes of his own personal property. Thus, Owners is entitled to summary judgment on this issue.

B. The Voluntary Parting Exclusion

Alternatively, even if Plaintiff were considered an insured under the Policy for purposes of the property loss claim, the "voluntary parting exclusion" is a bar to his claim applying the plain

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and ordinary language of the Policy. The Plaintiff argues that no court in South Carolina has addressed the exclusion and that the Policy should be deemed ambiguous.

As to the first argument, the Court disagrees that the Policy is ambiguous. Sloan Constr., 269 S.C. at 185, 236 S.E.2d at 819. The Court finds the Policy language addressing losses by "False Pretense" unambiguous. It plainly excludes losses from "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." Here, that is exactly what occurred. The Law Firm's employee was tricked into wiring Plaintiff's personal funds to a bank in China after receiving an email that was believed to have come from Mr. Speights. It is, however, undisputed that the bookkeeper wired the money of her own volition as opposed to an outside person or entity hacking into an account and taking the money.

As to the second argument, both Plaintiff and Owners concede that no South Carolina court has weighed in on this exclusion, there are several courts that have addressed the matter which are persuasive. In Midlothian Enterprises, Inc. v. Owners Insurance Company, 439 F.Supp.3d 737 (E.D. Va. 2020), a Federal Court in Virginia ruled that there was no coverage because a voluntary parting exclusion barred coverage after a similar email scheme caused an insured to wire money. In Midlothian, an employee mistakenly wired money from a Midlothian company account because of a fraudulent email. The employee believed her employer sent her an email instructing her to do so, but the email was sent by a hacker. The claim was denied due to a voluntary parting exclusion in Midlothian's policy. The Court ruled that, although it was not the actual employer who sent the email and wire request, the scheme did "not change the voluntariness of the transfer itself." Id. at 742 (quoting Martin, Shudt, Wallace, Dilorenzo & Johnson v. Travelers Indem. Co. of Conn., 2014 WL 460045, at *3 (N.D.N.Y. Feb. 5, 2014) (collecting cases and concluding that the fact "[t]hat

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[the] [p]laintiff wired the money in reliance on misrepresentations or false pretenses does not alter the voluntariness of that parting"). The Midlothian court went further to describe the voluntariness of the transfer, as the employee "had the authority to make these types of transfers" based on normal business practices and she "freely transferred the money once she believed she had received instructions to do so." Id. That the email was fraudulent did "not negate the voluntariness of the transfer or the authority." Id. at 743. Here, it is undisputed that the bookkeeper had authority to initiate the wire transfer for Plaintiff as per the bookkeeper's testimony.

Like Midlothian, the Law Firm's employee had the authority to transfer money from the Plaintiff's personal account and did so voluntarily. The bookkeeper received an email from the Plaintiff's email address with the Law Firm asking her to make a transfer from his personal account to the account in China. See Amend. Compl. ¶ 6. It was not unusual for the Plaintiff to ask the bookkeeper to wire money from his personal account and to communicate with her solely through email. Depo. of L. Herndon, June 23, 2023, at 18:19-25, 19:1-6, 12-18. Through the email exchange with the Plaintiff's email address with the Law Firm, the bookkeeper "thought he was authorizing it" and at all times believed that she was under Plaintiff's direction to wire the funds. Id. at 37:1-9. Unfortunately, the Plaintiff's Law Firm email address had been hacked and the email was only purportedly from the Plaintiff. See Amend. Compl ¶12. Although the email and request were fraudulent, much like in Midlothian, that does not negate voluntariness of the act nor that the bookkeeper had authority to make such a transfer. The scheme to which the bookkeeper fell victim did not alter the voluntary nature of her actions. The bookkeeper had the authority to make the transfer on the Plaintiff's behalf based on her understanding of the emails. The email exchange and transfer were also a part of the normal business practice within her role at the Law Firm and for the Plaintiff. As the transfer by the bookkeeper was voluntary, it was not covered by Owners

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and excluded from the policy. An exclusion in the Policy includes a loss due to a false pretense. The Policy defines a false pretense as a "[v]oluntary 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." See Policy at 125. As the bookkeeper had the authority to make the transfer and did so voluntarily due to a fraudulent scheme, trick, or false pretense, the Plaintiff's loss is excluded from coverage under the Policy.

Additionally, and as explained above, the account involved in this incident did not belong to the Firm but was the personal account of the Defendant. After confirming via email that the account to be used was "DAS Personal," the bookkeeper transferred the funds from Plaintiff's personal account to the account in China. See Complaint, ¶¶ 7-9. Although this exchange occurred over the Law Firm's emails, it was not unusual for Plaintiff to email the bookkeeper to ask her to transfer funds from his personal account and for other investments that Plaintiff made. (Depo. of L. Herndon 19:19-25, 20:1-6, 25:16-18). The Policy covered the Law Firm and even though the email exchange was between the bookkeeper and Plaintiff's Law Firm accounts, the nature of the loss being from the Plaintiff's personal account instead of a Law Firm account place it outside the policy's coverage.

There are other cases which have dealt with this same issue. In Schmidt v. Travelers, 101 F. Supp.3d 768 (S.D. Ohio 2015) (applying Ohio law), a law firm sued the carrier for refusing to pay claims where it lost money due to a fraudulent check scheme. The facts are very similar in that the firm wired money following a settlement to the client. Only after the wire occurred did they learn that the cashier's checks were fraudulent. In granting summary judgment to the insurer, the court relied upon the voluntary parting exclusion. That policy excluded "voluntary parting with any property by you or anyone else to whom you have entrusted the property." Plaintiffs

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argued that the fraud made exclusion inapplicable because the voluntary decision to part with the money was shrouded in fraud. The court held that while the scheme was fraudulent it "does not alter the voluntariness of the parting" of the money. The court relied heavily on another case involving similar facts, Martin, Shudt, Wallace, DiLorenzo & Johnson v. Travelers, 2014 WL 460045 (N.D.N.Y. 2014) (applying New York law). In Martin, the court held the voluntary parting exclusion unambiguous where the firm wired money to a foreign client only to learn thereafter the cashier's check was fraudulent. As the court explained, "that Plaintiff wired the money in reliance on misrepresentations or false pretenses does not alter the voluntariness of that parting." Id. at *4.

In Washington, a court held that a law firm transferring funds to a client after being provided a fraudulent check was not entitled to coverage because it was a voluntary parting of money. Schweet Linde & Coulson v. Travelers, 2015 WL 3447242 (W.D. Wash 2015) (applying Washington law). The policy holder argued this was tantamount to a theft and should be covered. The court held the exclusion clear and unambiguous and even though the lawyers had an obligation to transfer the funds when demanded, it did not change the voluntary nature of the act.

Based upon the above, I find that Owners did not breach its contract of insurance considering the analysis set forth above. Indeed, Owners had no insurance contract with Plaintiff. "To recover for a breach of contract, the plaintiff must prove: (1) a binding contract entered into by the parties; (2) a breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach." Fung Lin Wah Enter. Ltd. v. East Bay Import Co., 465 F. Supp.2d 536, 542 (D.S.C. 2006) (quotations omitted). The contract at issue is between Owners and Speights and Solomons LLC not Plaintiff and Owners. Owners is entitled to summary judgment on both the breach of contract and bad faith/negligence claims because it did not insure the Plaintiff and because no benefits were due and payable under the contract of

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insurance and no breach of duty occurred. See Tadlock Painting v. Maryland Cas. Co., 322 S.C. 498, 500-01, 473 S.E.2d 52, 53 (1996) ("The elements of an action for bad faith refusal to pay benefits under an insurance contract include: (1) the existence of a mutually binding contract of insurance *between the plaintiff and the defendant*; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.").

Lastly, the Court has considered the Plaintiffs argument that the adjuster who was deposed in this case, Joe McManus, discussed the fact that "optional coverages" were contained in the policy and "could be a forgery or alteration". This does not, however, displace the fact that 1) Plaintiff is not insured under the contract for the loss of property; and 2) the analysis of an unambiguous insurance contract is a question of law for the Court. "An insurance contract is read as a whole document so that 'one may not, by pointing out a single sentence or clause, create an ambiguity.'" Schulmeyer v. State Farm Fire & Cas. Co., 579 S.E.2d 132, 134 (S.C. 2003) (citations omitted). "The meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract." Id. "[P]arties have a right to make their own contract and it is not the function of this Court to rewrite it or torture the meaning of a policy to extend coverage never intended by the parties." Torrington Co. v. Aetna Cas. & Sur. Co., 216 S.E.2d 547, 550 (S.C. 1975). Owners is entitled to summary judgment.

IV. Conclusion

Based upon the above, Owners Insurance Company is granted summary judgment in all respects and this matter is ended as to Owners Insurance Company.

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IT IS SO ORDERED.

_____

The Honorable George M. McFaddin, Jr.
Presiding Judge, Fourteenth Judicial Circuit

Dated this ___ day of September 2023.

Sumter, South Carolina

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Hampton Common Pleas

Case Caption: Daniel A. Speights VS Chubb Limited , defendant, et al

Case Number: 2022CP2500269

Type: Order/Summary Judgment

So Ordered

S/George M. McFaddin, Jr., #2759

EXHIBIT F

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	CIVIL ACTION NO. 2022-CP-25-00269
DANIEL A. SPEIGHTS,)	
)	
Plaintiff,)	
)	
vs.)	**PLAINTIFF'S MOTION TO RECONSIDER**
CHUBB LIMITED d/b/a CHUBB)	
NATIONAL INSURANCE)	
COMPANY, AUTO-OWNERS)	
INSURANCE COMPANY, and)	
BANKERS STANDARD)	
INSURANCE COMPANY,)	
)	
Defendants.)	
)	

On September 25, 2023, the Court heard argument on the Motion for Summary Judgment brought by Defendant Auto-Owners Insurance Company. At the conclusion of the argument, the Court advised the parties that it would take the matter under advisement. Prior to the Court filing the Order, Plaintiff provided a summary of argument and attached the documents referenced in argument. On October 5, the Court filed its Order granting partial summary judgment. The Court divided the support for its ruling into two issues, "The Insured Issue" and the "Voluntary Parting Exclusion". For the following reasons, the Court should reconsider the ruling and deny the Defendant's request for Partial Summary Judgment.

Background

For context, this matter stems from a theft by forgery and forced entry into an email server that occurred in September of 2019. A thief broke into Speights & Solomons, LLC's email server. The thief deleted certain emails and created emails. The thief, forging the electronic signature of Dan Speights ("Plaintiff"), requested the firm's bookkeeper to pay $250,000.00, ostensibly to

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address an invoice made out to the firm of Speights & Solomons for investment distributions and professional services. The bookkeeper, through the use of Speights & Solomons email accounts, posed questions concerning the fraudulent invoice to whom she believed to be the Plaintiff. The firm's bookkeeper then acted pursuant to the thief's altered and forged emails. The bookkeeper, acting in reliance upon the forgery, instructed the firm's bank to transfer the funds. The bank then wired the funds to the account provided on the invoice to Speights & Solomons, the named insured. Because of the undetected hack and capture of the insured's email system, the theft was only discovered when Plaintiff physically entered the office and was asked a question by the bookkeeper. The exchange alerted Plaintiff and the bookkeeper that a theft had occurred. Attempts were made to pull back the funds. Following these unsuccessful attempts, the Plaintiff instructed his insurance agent to inform the applicable insurance companies of the loss. The Defendant denied the claim. Plaintiff then brought this lawsuit.

The Insured Issue

It is not disputed that the issue at bar concerns a theft that began with the receipt of a forged email and fraudulent invoice ("the invoice"). (DAS 000003, Exhibit A). The invoice was not addressed to Dan Speights individually. The invoice was addressed to the named policy holder Speights & Solomons, LLC. It is also not disputed that the theft was initiated through the firm's bookkeeper who was following firm protocol by contacting the Plaintiff concerning the invoice and by using the funds of the Plaintiff to satisfy the invoice that was addressed to the insured.

Plaintiff's counsel began oral argument by explaining that Defendant's summary judgment motion is made prior to the conclusion of discovery and that the Plaintiff's deposition has not been taken. The Defendant's Motion was filed only six days after the Plaintiff had taken its first deposition of Defendant representatives and written discovery is still outstanding. This matter was

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filed less than a year prior to the filing of the summary judgment motion and had not been placed on a trial roster. See Rule 40 SCRCP.

Summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003);*Baril v. Aiken Reg'l Med. Ctrs*., 352 S.C. 271, 573 S.E.2d 830 (Ct.App. 2002); *Trivelas v. South Carolina Dep't of Transp*., 348 S.C. 125, 558 S.E.2d 271 (Ct.App. 2001); *Murray v. Holnam, Inc*., 344 S.C. 129, 542 S.E.2d 743 (Ct.App. 2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998). Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a "full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999*); Baughman v. American Tel. Tel. Co*., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333; *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999); *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835;*Trivelas*, 348 S.C. at 130, 558 S.E.2d at 273; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App. 2002); *Hedgepath v. American Tel. Tel. Co*., 348 S.C. 340, 559 S.E.2d 327 (Ct.App. 2001); *Bayle*

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v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App. 2001); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct.App. 1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct.App. 1995). "Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App. 1989).

The Defendant acknowledged that the Plaintiff was the owner of the firm in deposition. (Exhibit B Deposition of McManus, p.15 line 23- p.16 line 2). It certainly can be inferred that the personal money lost was being used as the insured's. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656;*Glasscock, Inc. v. United States Fid. Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct.App. 2001); *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct.App. 2000); see also *Laurens Emergency Med. Specialists v. M.S. Bailey Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

Had the Plaintiff's deposition been taken, the Plaintiff would have explained that he covers the expenses of the firm out of his own funds. The Plaintiff would have explained that as an owner and founder of the firm, his personal funds were regularly used to address financial needs of the insured. (See Exhibit C, Affidavit of Plaintiff).

Notwithstanding the above, (the amalgamation of funds and funding between Plaintiff and the named inured as a factual matter), the policy itself blurs the lines of distinction being used as

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the basis for denial of coverage. The policy at issue states that "[a] limited liability company, you are insured. Your members are also insured, but only with respect to the conduct of your business. (Page DAS000083, Exhibit A). It is at least an issue of fact of whether the payment of an invoice addressed to the business is acting "with respect to the conduct of your business". The Court's order notes that the portion of the policy that contains this language is found in the "Businessowners Liability Coverage Form" as opposed to the "Businessowners Special Property Coverage Form". However, the policy is silent as to the definition in the "Businessowners Special Property Form". To grant summary judgment on this basis, the Court must come to the conclusion that in one form for businessowners, there is a definition that explicitly covers the Plaintiff as an insured, but in the other portion of the same policy for the same businessowners, there is no definition so the Court must choose to ignore other explicit definitions in the policy and narrowly construe an elsewhere defined term to prohibit coverage.

Furthermore, the law provides that members of an LLC have certain legal standing as it relates to the affairs of the LLC. Each member of a LLC has presumptive authority and agency to pursue contractual and legal rights of the LLC, especially those which inure to the members' benefit. S.C. Code § 33-44-301(a)(1). South Carolina's statutory law states that members of an LLC may sign "any instrument" that affects the company's interest without limitation. Plaintiff may be bringing this lawsuit on behalf of himself but also as the most appropriate member of the firm to protect the amalgamated funds. See S.C. Code § 33-44-301 "any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property."

Lastly, The Courts have found that an ownership interest provides standing to sue. *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 154 (S.C. 1992) ("Further, unlike the

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property regime in *Queen's Grant*, CJF has an ownership interest in the Mall. We hold CJV had standing to sue on behalf of Belks, Thalhimers and Sears."). The Defendant does not contest that Plaintiff is the owner of the insured.

An analysis of where these lines are drawn factually circles back to the factual issue of what the funds were. The theft is not purely a theft of the Plaintiff and the theft does not have purely effects on solely the named insured. The funds and the entity itself have blurred lines. Does this amalgamation require that this action should also be brought in the derivative? No such suggestion has been made by the Defendant.

Voluntary Parting

It stands to reason that if an insured chose to give away, ("voluntarily part") with $250,000.00, that same insured after gifting the money could not then turn around and claim the gifting or voluntarily parting as a loss to be covered under a policy. That is not what happens here and given the word voluntary the plain and ordinary meaning, no one could call this a voluntary parting.

Critically, Webster's Dictionary breaks out the definitions of the word voluntary under the law.

> **a:** done by design or intention **: INTENTIONAL**
> was convicted of *voluntary* manslaughter
> **b:** acting or done of one's own free will without valuable consideration or legal obligation
> a *voluntary* conveyance

There is no evidence, much less contradicting evidence, that the bookkeeper of the insured intended to allow a thief to make away with $250,000.00. The Plaintiff certainly had no intention to part ways with this money without valuable consideration. If the Court gives the word voluntary

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its normal legal meaning (the intentional parting made with design without consideration or legal obligation), there is at least an issue of fact as to whether the act is voluntary.

In the deposition of the Defendant (Exhibit B), the Defendant testified that the basis for the denial of this claim is that the "false pretenses clause" would categorize the Plaintiff's actions as voluntary.

The application of summary judgment in the exclusion of a policy for a "voluntary parting" in South Carolina is both factually and legally novel. While the mere fact that a legal issue is novel, does not by itself render a case inappropriate for summary judgment, the fact that an issue is both legally and factually novel leaves a fact finder unable to render a decision in an established context. The novelty makes the application of the exclusion more appropriate for a full determination of all facts (once discovery is complete) by a jury. *Schmidt v. Courtney*, 357 S.C. 310, 318 (S.C. Ct. App. 2003) ("We find it extremely troubling this case was resolved on a summary judgment basis, especially considering the injury to Schmidt and the novel issue involved in this case.")

In the deposition of the Defendant's representative, it was admitted that the Defendant had never used the false pretense basis to deny a claim prior to the Plaintiff's claim. On July 28, 2023, in the deposition of Joseph William McManus, Jr., the Defendant stated that this claim "was the first of its type, that you're aware of, that was excluded as a result of the false pretense clause? A. I believe so. Yes." (Exhibit B Deposition of McManus, p.23 line 25- p.24 line 3).

An analysis of other state's insurance law and the application of exclusions of coverage is not an appropriate basis for summary judgment. Nor is the law cited to Court by Defendant and repeated in the Order by any means universal. Court's looking at the exact same policy dispute in the exact same factual scenario have come to opposite conclusions.

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> [T]he Forgery and Alteration Endorsement and the False Pretense Exclusion function to define the scope of coverage and, thus, serve the same purpose and function….Where the language of an insurance policy is ambiguous, as it is in the context of the Forgery and Alteration Endorsement and the False Pretense Exclusion being read in tandem, the contract should be interpreted in favor of the insured because the insurer is in control of the process of articulating the terms. *See Oglesby,* 695 A.2d at 1149–50; *Axis Reinsurance,* 993 A.2d at 1062.

Morris James LLP v. Continental Casualty Co., 928 F. Supp. 2d 816, 825 (D. Del. 2013)[1]

South Carolina law states "conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *Lyons v. Fid. Nat'l Title Ins. Co.*, 415 S.C. 115, 129 (S.C. Ct. App. 2015). ""Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Auto-Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144 (S.C. Ct. App. 2015) citing *Owners Ins. Co. v. Clayton,* 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005)." The policy at issue has multiple types of coverage which all conflict with the "false pretense" or "voluntary parting" exclusion: a point that was conceded in the Defendant's deposition. (See Exhibit B, p.21 lines 22-25). In this voluminous policy, the Defendant stated that it did not cover money damages and then stated that it did cover money damages. The terms under additional optional coverages states:

> **"We will pay for loss of money or securities used in your business** while at a bank or savings institution, within your living quarters or the living quarters of your partners or employees having use and custody of the property, at the described premises, or in transit between any of these places **resulting directly from: (1) Theft, <u>meaning any act of stealing</u>."** (See Page 17 of 21 to the incomplete policy attached as Defendant's Exhibit A, emphasis added)

[1] See Also *Cent. Mut. Ins. Co. v. Reliance Prop. Mgmt., Inc.,* No. 05-21-00071-CV, 2022 WL 1657031, at *6 (Tex. App. May 25, 2022) (ruling that voluntary parting exclusion "cannot be reconciled" with "endorsement's express coverage of loss for fraud-based crimes")

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When asked about the additional coverage in deposition, the Defendant conceded that the Plaintiff had purchased additional coverage for money and securities. (Exhibit B p.28 lines 19-22). The normal rule of policy interpretation is that endorsements supersede any limitations in the policy.

The Defendant also conceded that there was additional coverage purchased for forgery and alteration. (Exhibit B p.29 lines 4-5). The forgery endorsement states explicitly that the Defendant will pay for any forgery of any promise in money. (Exhibit A DAS000021). The Defendant further conceded that Plaintiff's electronic signature on an email "[e]ssentially, could be" forgery. (Exhibit B, lines 19-22). The Defendant conceded that a policy was in place (Exhibit B p. 13 lines 15-18), that Plaintiff suffered the loss (Exhibit B p. 17 lines 9-10) and conceded that coverage in addition to that noted above could apply as well. (Exhibit B p.27 lines 1-3).

The Defendant concedes that coverages apply while at the same time arguing that exclusions apply. This is precisely the conflict noted in other jurisdictions and the exact type of conflict that longstanding law in South Carolina construes in favor of the insured.

Conclusion

At a minimum, there are conclusions and inferences to be drawn from the facts that remain open as to whether the funds lost were being employed for and on behalf of the insured. At a minimum, there are admitted conflicting policy terms creating ambiguity. As a matter of procedure, this matter still has open discovery.

For all of the foregoing reasons, the Plaintiff requests that the Court reconsider its October 5 ruling and deny the Defendant's Motion for Summary Judgment without prejudice to renew the motion upon completion of discovery.

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Respectfully submitted,

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Attorneys for Plaintiff

October 12, 2023
Hampton, South Carolina

EXHIBIT G

ELECTRONICALLY FILED - 2023 Nov 10 10:14 AM - HAMPTON - COMMON PLEAS - CASE#2022CP2500269

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON DANIEL A. SPEIGHTS, Plaintiff, vs. CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. No.: 2022-CP-25-00269 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

THIS MATTER is before the Court upon Plaintiff's motion to reconsider the Court's Order of October 5, 2023, granting Defendant, Auto-Owners Insurance Company's ("Owners") Motion for Summary Judgment as to all claims asserted by Plaintiff, Daniel A. Speights. Plaintiff filed a motion to reconsider on October 12, 2023, and Owners filed a memorandum opposing the motion on October 20, 2023. In the Court's discretion, I find that an oral argument is unnecessary on this motion pursuant to Rule 59(e). After due deliberation and consideration of the evidence, the briefs, and the materials that were properly before the Court, the motion to reconsider is respectfully denied in accordance with the findings of fact and conclusions of law set forth below.

I. New Arguments raised in a Motion to Reconsider are improper.

The South Carolina Rules of Civil Procedure contemplate two situations in which a party should consider filing a Rule 59(e) motion. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004). A party may wish to file such a motion when the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. Id. A party must file such a motion when an

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issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Id. A party cannot use Rule 59(e), SCRCP, to present to the lower court an issue the party could have raised prior to judgment but did not. Gartside v. Gartside 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009). Here, neither situation is present.

Rule 59(e) motions are not vehicles for bringing new theories or arguments, nor can a party use a Rule 59(e) motion to present to the court an issue the party could have raised prior to the judgment but did not. See Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (citing Natural Resources Defense Council v. U.S. E.P.A., 705 F. Supp. 698, 701 (D.D.C. 1989)). Here, Plaintiff did not provide a memorandum or other filings in opposition prior to the hearing on Auto-Owners' Motion, nor did Plaintiff file any affidavits with the court prior to the hearing.

Plaintiff cites S.C. Code § 33-44-301 *et seq.*, which allows any member of an LLC to act and have standing to sue on behalf of the LLC, as a new argument. Even if considered, it does not alter the Court's decision because Owners has not argued a lack of standing. Instead, Owners has argued, and the Court agrees, that Plaintiff is not insured for the loss of *his own personal property*. Plaintiff does not provide any authority holding that a LLC's member(s) under an LLC's insurance policy are covered for their personal losses. Plaintiff's Affidavit filed with the Motion to Reconsider further confirms that the money transferred was from Plaintiff's *personal account*.

Plaintiff's additional argument that he has commingled his assets with those of his law firm does not alter the outcome of this case either. Plaintiff's assertion that that he "has historically and frequently provided funds to the firm for the continuation of the firm's business" (Exhibit C to Plaintiff's Motion to Reconsider) does not convert his personal accounts to the property of the law firm. Plaintiff offers no authority that supports this position. It is undisputed that the Complaint,

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the Affidavit of Daniel A. Speights, the testimony of L. Herdon (the bookkeeper), and the entirety of the Record before this Court that the funds transferred to China were Plaintiff's personal funds from his personal account. Plaintiff is not insured under the Owners policy for purposes of his personal property.

Next, Plaintiff seeks to add a new argument related to the definition of "voluntary" to be considered when construing the insurance policy advancing the theory the word is ambiguous. This tactic is new, but even if considered, the approach violates South Carolina's long-standing rules of construction pertaining to insurance policies. "An insurance contract is read as a whole document so that 'one may not, by pointing out a single sentence or clause, create an ambiguity.'" Schulmeyer v. State Farm Fire & Cas. Co., 579 S.E.2d 132, 134 (2003) (citations omitted). "The meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract." Id. "[P]arties have a right to make their own contract and it is not the function of this Court to rewrite it or torture the meaning of a policy to extend coverage never intended by the parties." Torrington Co. v. Aetna Cas. & Sur. Co., 216 S.E.2d 547, 550 (1975). Plaintiff's attempt to "torture" the language to create an ambiguity is improper. Regardless, it does not change the fact that Ms. Herdon, while tricked, voluntarily executed the wire transfer.

Plaintiff did not raise these arguments prior to the Court's ruling and cannot now raise them in a Rule 59(e) motion. The Court should deny the Plaintiff's Moton to Reconsider. Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 844 (2005); Hickman, 392 S.E.2d at 482. However, even if considered, the same does not alter the Court's opinion in this matter and summary judgment remains appropriate.

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II. Plaintiff argues that further discovery prevents Summary Judgment.

First, a motion for summary judgment can be filed "at any time" by a defending party pursuant to Rule 56(b). There is no requirement that discovery be completed. At no time did Plaintiff argue an inability to oppose the Motion for Summary Judgment pursuant to Rule 56(f) and cite a need for discovery on a particular topic. Even if Plaintiff had done so, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.'" Dawkins v. Fields 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56 to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law. Garrett v. Reese, 262 S.C. 327, 329, 204 S.E.2d 432, 433 (1974). Humana Hosp.-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins, at 69, 580 S.E.2d at 438 (citing George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Indeed, the Supreme Court of South Carolina has recently clarified the "mere scintilla of evidence" standard is inapplicable overruling Hancock v. Mid-South Mgmt. Co., 673 S.E.2d 801, 803 (S.C. 2009). Kitchen Planners, LLC v. Friedman, 2023 WL 5420401 (S.C. August 23, 2023). To withstand summary judgment, there must be a "genuine issue of material fact." Id.

It is undisputed, and in fact the Complaint alleges, that the funds transferred to China were from Plaintiff's own personal account. This was confirmed by Ms. Herdon's testimony and is further confirmed by Plaintiff's Affidavit filed in support of reconsideration. No amount of discovery will change this undisputed fact. Summary Judgment was properly granted.

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III. Novel Issues have no bearing on Summary Judgment.

Plaintiff argues that this case contains both novel issues of fact and law and should therefore not be decided on Summary Judgment. Plaintiff cites Schmidt v. Courtney, a case involving a novel issue of law in South Carolina at the time, as "no South Carolina cases discuss the issue of personal injury from the impact of errant golf shots." 357 S.C. 310, 318, 592 S.E.2d 326, 331 (Ct. App. 2003). Particularly, the injury was not novel but the application of law to the facts was in dispute and thus novel. The Court thought Summary Judgment was premature because there was a genuine issue of material fact that could only be determined by further discovery. Specifically, the Court looked to the Affidavit of the Plaintiff's attorney submitted during the hearing on the Motion for Summary Judgment, which clearly demonstrated that expert testimony was necessary to ascertain a genuine issue of material fact and requested that discovery continue so that the Plaintiff could hire an expert. Here, no such request was made. Even still had it been made, it does not supplant the fact that it is up to the Court to decide whether a contract of insurance is ambiguous. "The construction of a clear and unambiguous contract is a question of law for the court." BLG Enterprises, Inc. v. First Financial Ins. Co., 491 S.E.2d. 695, 697 (S.C. Ct. App. 1997). "Insurance policies are subject to the general rules of contract construction." M and M Corp. of S.C. v. Auto-Owners Ins. Co., 701 S.E.2d 33, 35 (S.C. 2010) (citations omitted). Courts will interpret policy language in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. Id. "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

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Although this case addresses a novel issue of South Carolina law, that does not mean that the Court is precluded from deciding the case on summary judgment. The mere fact that a case involves a novel issue does not render summary judgment inappropriate. Houck v. State Farm Fire Cas. Ins. Co., 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005) (citing The Medical University of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E2d 747 (2004). As discussed, the Court ruled appropriately on a matter of law as there was no genuine issue of material fact, regardless of whether there was established case law on the issue in South Carolina. The Court was provided and considered numerous cases from other jurisdictions on the issue. Further, at this point, Plaintiff has yet to cite a single case standing for the proposition that Plaintiff qualifies as an insured under the Law Firm's insurance policy for the *loss of his personal property*. Again, the Court ruled, as a matter of law, that the Plaintiff was not insured, individually, under the contract for the loss of property. "To recover for a breach of contract, the plaintiff must prove: (1) a binding contract entered into by the parties; (2) a breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach." Fung Lin Wah Enter. Ltd. v. East Bay Import Co., 465 F. Supp.2d 536, 542 (D.S.C. 2006). The Court's ruling was proper as the Plaintiff was not covered by the Policy. While Plaintiff may have standing to bring the suit, standing does not determine that he qualifies as an insured under the insurance policy.

IV. The Court correctly decided the Voluntary Parting issue.

Plaintiff's focus on the "loss of money or securities" language in the optional coverages provision (Plaintiff's Memo at p. 8) ignores the key language "used in your business". Here, the funds transferred were from the Plaintiff's personal account. To accept Plaintiff's argument would mean that an insurance policy that insures a business is converted to insure all that business's

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employee's personal property (money) as well. If the funds had been transferred from his personal account to a firm account and then to China from that firm account, the argument *might* have some validity. Here, the argument cannot displace the undisputed fact that the funds were transferred from a personal account – not a firm account. Furthermore, the "loss of money and securities used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises or in transit between any of these places, resulting directly from: theft, meaning any act of stealing . . ." is not applicable, because the money was not stolen at the bank or stolen while in transit to the bank. Instead, it was voluntarily wired to China. Plaintiff wants the Court to ignore the Supreme Court of South Carolina's mandate that "[e]ach exclusion in the policy must be read and applied independently of every other exclusion." Auto-Owners Ins. Co. v. Newman, 684 S.E.2d 541 (S.C. 2009). The voluntary parting exclusion applies and operates to exclude this loss.

V. Conclusion

Based upon the above, Plaintiff's motion for reconsideration is denied.

IT IS SO ORDERED.

_____
The Honorable George M. McFaddin, Jr.
Presiding Judge, Fourteenth Judicial Circuit.

Dated this ___ day of November 2023.
Sumter, South Carolina

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Hampton Common Pleas

Case Caption: Daniel A. Speights VS Chubb Limited , defendant, et al

Case Number: 2022CP2500269

Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759

EXHIBIT H
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appeal No. 2023-001845
Case No. 2022-CP-25-00269

Daniel A. Speights,

Appellant,

vs.

Chubb Limited d/b/a Chubb National Insurance Company; Auto-Owners Insurance Company; and Bankers Standard Insurance Company,

Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. The Circuit Court erred in in granting summary judgment to the insurer on an insurance contract when conflicts exist in the policy language.

2. The Circuit Court erred in granting summary judgment to the insurer when the insurer admitted that certain coverages under the policy could apply.

3. The Circuit Court erred in finding that there was no issue of material fact as to whether Dan Speights's loss could be covered under the policy.

4. The Circuit Court erred in finding that there was no issue of material fact when it was admitted that discovery was ongoing and the issue presented a novel application of the terms of the policy.

Statement of the Case

This matter comes before the Court by way of an appeal of a granting of summary judgment to the insurance company Auto-Owners in an action brought by the appellant.[1] On September 25,2023 the Circuit Court heard arguments via Webex on Auto-Owners Motion for Summary Judgment [Hearing Transcript 9/25/23]. On October 5, 2023, the Circuit Court entered an order granting Auto-Owners' Motion for Summary Judgment [Order 10/25/23]. On October 12, 2023, Speights filed a Motion to Reconsider the Order granting Auto-Owners' Motion for Summary Judgment [Motion to Reconsider 10/12/23]. On November 9, 2023, the Circuit Court denied Speights Motion to Reconsider [Order 11/9/23]. On November 27, 2023, Speights filed this appeal [Notice of Appeal 11/27/23].

Factual Background

On September 25, 2019, the bookkeeper for the firm Speights & Solomons, LLC received an email on her work email address which attached an invoice to the firm Speights & Solomons.

[1]Auto-Owners is the only remaining Respondent/Defendant. Dan Speights has resolved his claims with the other parties.

[Exhibit A to Motion to Reconsider, DAS000001-000009]. On that day, both lawyers in the firm were engaged out of town. The invoice purported to be for services rendered to the firm and asked for payment by way of wire transport. The invoice was for $250,000.00. The bookkeeper thought she was corresponding with Speights, with whom she has worked for four decades in an exchange and a request that was not unusual. [Herndon Deposition at 18, lines 19-23].[2] She did not know she was corresponding with a thief.

Unbeknownst to anyone at the firm at the time, this bad actor had used phishing malware to get into the firm's email server and was presenting the bookkeeper with forged emails and fraudulent invoices. The hacker then sent emails from the stolen email account of Speights, forging the electronic signature of Dan Speights and requesting the firm's bookkeeper to pay $250,000.00, ostensibly to address the invoice made out to the firm for investment distributions and professional services. The bookkeeper posed questions concerning the fraudulent invoice to whom she believed to be Speights. The thief would then forge responses to the questions and delete the email exchange from Speights' email account so that he would not see it and be alerted to what was occurring. Acting in reliance upon the forgery, the bookkeeper instructed the firm's bank to transfer the funds to pay the invoice. The bank wired the funds to the account provided on the invoice to Speights & Solomons.

Because of the undetected hack and capture of the firm's email system, the theft was only discovered when on September 27, two days later, Speights physically entered the office and a statement was made in passing by the bookkeeper to Speights concerning a second attempted transfer. Speights was first confused, then shocked by the statement. He alerted everyone in the

[2] "You've been working for Mr. Speights for a long time. I guess nearly 40 years. Has he ever sent you e-mails like this in the past asking you to wire money? Yes, sir. It's not unusual."

office that a theft had occurred and ordered an immediate lockdown of accounts and the email server.[3] The realization of a theft prompted a flurry of action including immediate calls to the bank by Speights. Attempts were made by the bank to stop the transfer of the $250,000 or to pull back the funds but none of these attempts were successful.

Shortly after these unsuccessful attempts, Speights instructed his insurance agent to inform the applicable insurance companies of the loss. Auto-Owners issued a policy to Speights & Solomons for the applicable period. [Auto-Owners Policy, Exhibit A to Motion to Reconsider, DAS000013-000152]. The policy allows an insured to aggregate coverages and has an aggregate limit of $4,000,000.00. (*Id.*) The policy and its various riders cover 140 pages of material. (*Id*). Included in the policy are coverages for, *inter alia*, business personal property, business income, forgery and alterations, theft, money and securities inside premises, money and securities outside premises, electrical disturbance, and personal effects and property of others. There are additional riders purchased with the policy that include bailees coverage which covers the property of others and identity theft [Auto-Owners Policy, Exhibit A at DAS000056, DAS000102]. In the policy package, Auto-Owners places a heading that states Limited Liability Company, Businessowners Policy [Policy, Exhibit A at DAS000083]. Auto-Owners then defines in the Businessowners Policy who is an insured under the liability policy and that definition states "your members are also insureds, but only with respect to the conduct of your business". There is no other definition elsewhere in the policy.

Auto-Owners denied the claim stating that that the losses were excluded by false pretense language found in the policy package [Policy, Exhibit A at DAS000122]. Auto-Owners does not

[3] Firm IT personnel spent days combing through data to find the point of entry for the thief. [Herndon Deposition at 38].

dispute the loss occurred. The false pretense basis has never been litigated and the Defendant's representative, when deposed could not remember a previous time of using this as basis to deny a claim [McManus Deposition at 20, lines 14-21].

After the claim was denied, Speights brought this lawsuit. During the lawsuit, Auto-Owners also has stated that an additional basis for denial of the claim was that the funds came out of an account owned by Speights, not the firm. The name of the policy purchased which contains a definition of the false pretense exclusion is "Businessowners Special Property Coverage Form". (Policy, DAS000114). Speights is the business owner.[4]

The bookkeeper, when deposed, confirmed that the account the firm's bookkeeper used to pay the firm's invoice was a personal account of Speights. Questions remain concerning the normal practice of the use of certain "personal" accounts which are employed for what is a firm use and there is no factual clarification whether this was a firm action or a personal action.

Standard of Review

Because it is "a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Accordingly, summary judgment should be granted only where the moving party has shown there is no genuine issue as to any material fact and it is therefore entitled to a judgment as a matter of law. Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the

[4] While Speights makes several arguments as to why this controversy does in fact concern the business of the insured, Speights does not concede that a distinction between himself and an LLC owned by him can be relevant as it relates to an insurance policy titled a business owners policy which includes owners in the definition of insured.

nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009).

Argument

The context of this appeal underscores the impropriety of the circuit court's decision. In a state with a long history and a sound policy basis for narrow interpretation of policy limitations and exclusions as Court's interpret insurance policies, the appealed decision grants judgment as a matter of law before discovery was complete on grounds that, at a minimum, have material issues of fact unresolved.

1. **The Circuit Court erred in granting summary judgment to the insurer on an insurance contract when conflicts exist in the policy language.**

As stated above, the policy sold by Auto-Owners covers 140 pages. The policy is a maze of redundant language, replacement language, riders, and exclusions. The policy specifically states that loss from fraud is covered. The policy specifically states that loss from forgery is covered. The policy specifically states that loss from identity theft is covered. The policy specifically states that theft is covered. While the Defendant did not attach the entire policy to its Motion for Summary Judgment, leaving as an open question for the Court the content of omitted portions, the terms under additional optional coverages in the portion provided state:

> **"We will pay for loss of money or securities used in your business** while at a bank or savings institution, within your living quarters or the living quarters of your partners or employees having use and custody of the property, at the described premises, or in transit between any of these places **resulting directly from: (1) Theft, meaning any act of stealing."** [Policy, Exhibit A at DAS000013, emphasis added].

However, after multiple affirmations of coverage, on page 110 of a 140 page package, in a document titled Business Owners Special Property Coverage Form, Section 2 purports to list areas that Auto Owners will not pay for loss and item (h) lists as an uncovered area: "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 ." [Policy, Exhibit A at DAS000122].

As a first matter, something is not voluntary if one is unaware of what one is doing. If an insured chose to give away, ("voluntarily part") with $250,000.00, that same insured should not be allowed to claim the gifting or voluntarily parting as a loss to be covered under a policy. That is not what happened. No one could call this a voluntary parting.

Webster's Dictionary delineates application of definitions of the word voluntary and includes a definition of the word under the law.

> **a:** done by design or intention **: INTENTIONAL**
> was convicted of *voluntary* manslaughter
> **b:** acting or done of one's own free will without valuable consideration or legal obligation
> a *voluntary* conveyance

Auto-Owners representative Joseph McManus testified that the basis for the denial of this claim is that the "false pretenses" language would categorize the Plaintiff's actions as voluntary [McManus Deposition at 18, line 17 through 19, line 11]. There is no evidence, much less contradicting evidence, that the bookkeeper of the insured intentionally allowed a thief to make away with $250,000.00. Speights or the bookkeeper certainly had no intention to part ways with this money without valuable consideration. There is a conundrum. If the Court gives the words inside the contract written by Auto-Owners their plain and ordinary meaning, the attempted exclusion becomes nonsensical. Someone cannot be intentionally defrauded. "A contract should receive sensible and reasonable construction and not such construction as will lead to absurd consequences or unjust results." *Holden v. Alice Manufacturing, Inc.*, 317 S.C. 215, 221 (S.C. Ct. App. 1994). The granting of the Motion for Summary Judgment ignores that the wording of the

insurance contract is patently conflicting with itself and the result is unjust.

Even if this Court did not see a conflict in the words employed within the exclusion, the application of the exclusion creates conflict throughout the remainder of the document on multiple levels. It is a conflict creating an ambiguity for a policy to expressly cover losses from theft, fraud, and forgery and then attempt to exclude the exact same loss. "An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts." *Williams v. Gov't Emps. Ins. Co.*, 762 S.E.2d 705, 709 (S.C. 2014). A basic rule of good faith in contract is that a party may not procure payment for a thing and then employ fine print boilerplate to excuse themselves from providing the very essence of the bargain[5]. An insurer cannot expressly sell a policy that states it covers fraud and then exclude the same coverage later in the policy.[6] There is no South Carolina law directly on point. Other Court's looking at the same policy dispute in the same factual scenario have recognized the inherent conflict.

> [T]he Forgery and Alteration Endorsement and the False Pretense Exclusion function to define the scope of coverage and, thus, serve the same purpose and function….Where the language of an insurance policy is ambiguous, as it is in the context of the Forgery and Alteration Endorsement and the False Pretense Exclusion being read in tandem, the contract should be interpreted in favor of the insured because the insurer is in control of the process of articulating the terms. *See Oglesby,* 695 A.2d at 1149–50; *Axis Reinsurance,* 993 A.2d at 1062.

[5] When deposed, Auto-Owners representative also testified that he was unaware of any type of coverage that could have been purchased at the time that would have avoided the harsh results of this improper exclusion. [McManus Deposition at 24, lines 4-7].

[6] See in other insurance context *Nationwide Mut. Fire Ins. Co. v. Walls*, 433 S.C. 206, 211 (S.C. 2021) ("More specifically, the court of appeals noted that the *Williams* decision interpreted section 38-77-142(C) to prohibit provisions that reduced the contracted-for coverage to the mandatory minimum limit when "the policy's declaration page purport[ed] to provide a higher amount of coverage to a certain class of insureds."")

Morris James LLP v. Continental Casualty Co., 928 F. Supp. 2d 816, 825 (D. Del. 2013)[7]

Protecting the insured has been a constant emphasis throughout the development of South Carolina's common law. South Carolina law states "conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *Lyons v. Fid. Nat'l Title Ins. Co.*, 415 S.C. 115, 129 (S.C. Ct. App. 2015). "Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Auto-Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144 (S.C. Ct. App. 2015) citing *Owners Ins. Co. v. Clayton,* 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005)." The policy at issue has multiple types of coverage which all conflict with the "false pretense" or "voluntary parting" exclusion. To ignore this conflict to the detriment of the insured is contrary to South Carolina's well developed law of both contract and insurance.

2. The Circuit Court erred in granting summary judgment to the insurer when the insurer admitted that certain coverages under the policy could apply.

In this case, Auto-Owners has flatly denied the claim and taken the position that no coverage can be triggered. The Circuit Court agreed with Auto-Owners, finding that there is no issue of material fact that exists or could be discovered that could trigger any applicable coverage. Yet, Auto-Owners adjuster admitted in deposition that several forms of coverage could be applicable. Auto-Owners conceded that the Plaintiff purchased additional coverage for money and securities. [McManus Deposition at 28 lines 19-22].

Auto-Owners also conceded that there was additional coverage purchased for forgery and alteration. [McManus Deposition at 29 lines 4-5]. The forgery endorsement providing coverage

[7] See Also *Cent. Mut. Ins. Co. v. Reliance Prop. Mgmt., Inc.,* No. 05-21-00071-CV, 2022 WL 1657031, at *6 (Tex. App. May 25, 2022) (ruling that voluntary parting exclusion "cannot be reconciled" with "endorsement's express coverage of loss for fraud-based crimes")

states explicitly that Auto-Owners will pay for any forgery of any promise in money. [Policy, Exhibit A at DAS000021]. Auto-Owners further conceded that Speights' electronic signature on an email "[e]ssentially, could be" forgery. [McManus Deposition at 29, lines 19-22]. Auto-Owners conceded that a policy was in place [McManus Deposition at 13, lines 15-18], that Speights suffered the loss [McManus Deposition at 17, lines 9-10] and conceded that coverage in addition to that noted above could apply as well. [McManus Deposition at 27, lines 1-3].

It would seem apodictic that there is a material issue of fact as to whether coverage exists for a loss when a representative of the insurance policy is conceding that coverage could exist for the loss.

3. The Circuit Court erred in finding that there was no issue of material fact as to whether Dan Speights's loss could be covered under the policy.

It is not disputed that the issue at bar concerns a theft that began with the receipt of a forged email and fraudulent invoice ("the invoice"). [Motion to Reconsider, Exhibit A at DAS000003]. The invoice was not addressed to Dan Speights individually. The invoice was addressed to the named policy holder Speights & Solomons, LLC. The theft was initiated through the firm's bookkeeper who was following firm protocol by contacting the business owner concerning the invoice and by using the funds of Speights to satisfy the invoice that was addressed to the insured. In sum, this controversy concerns a communication, initiated through the insured's email server, effectuated by the insured's employees in furtherance of the insured's business, addressing and paying an invoice that is made out to the insured, and resulted in a payment from an account of a member, owner and regular financier of the insured. The insurance policy at issue is named the "businessowners" policy. But the lower Court has ruled there is no material fact which could exist that could trigger coverage for the insured because the name on the account from which the money was wired is not the firm's name but the owner of the firm's name.

Auto-Owners acknowledged that the Speights was an owner of the firm in deposition. [McManus Deposition at 15, line 23 through 16, line 2]. It certainly can be inferred that the personal money lost was being used as the insured's. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656; *Glasscock, Inc. v. United States Fid. Guar. Co*., 348 S.C. 76, 557 S.E.2d 689 (Ct.App. 2001); *Stewart v. State Farm Mut. Auto. Ins. Co*., 341 S.C. 143, 533 S.E.2d 597 (Ct.App. 2000); see also *Laurens Emergency Med. Specialists v. M.S. Bailey Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

As discussed later, discovery was ongoing. Speights explained by affidavit that as an owner and founder of the firm, his personal funds were regularly used to address financial needs of the insured. [Speights Affidavit 10/12/23, Exhibit C to Motion to Reconsider]. Relying on a tight technicality concerning an alleged distinction between Speights and Speights & Solomons seems odd given the factual context that Speights himself was not a part of the underlying acts; rather it was only the employee of Speights & Solomons serving in her capacity.

Notwithstanding the above, (the factual amalgamation of funds and funding between Speights and the firm), the language in the policy which defines insured blurs the lines of distinction being used as the basis for denial of coverage. The policy at issue states that "[a] limited liability company, you are insured. Your members are also insureds, but only with respect to the conduct of your business." [Policy, Exhibit A at DAS 000083]. It is at least an issue of fact of whether the payment of an invoice addressed to the business is acting "with respect to the

conduct of your business". The Circuit Court's order notes that the portion of the policy that contains this language is found in the "Businessowners Liability Coverage Form" as opposed to the "Businessowners Special Property Coverage Form". However, the policy is silent as to the definition in the "Businessowners Special Property Form". To grant summary judgment on this basis, the Court must come to the conclusion that in one form for businessowners, there is a definition that explicitly covers Speights as an insured, but in the other portion of the same policy for the same businessowners, there is no definition so the Court must choose to ignore other explicit definitions in the policy and narrowly construe an elsewhere defined term to prohibit coverage. This type of blind inference by absence to expand an exclusion stands in sharp contrast to the rules of interpretation employed by South Carolina's common law.

Furthermore, the law provides that members of an LLC have certain legal standing as it relates to the affairs of the LLC. Each member of a LLC has presumptive authority and agency to pursue contractual and legal rights of the LLC, especially those which inure to the members' benefit. S.C. Code § 33-44-301(a)(1). South Carolina's statutory law states that members of an LLC may sign "any instrument" that affects the company's interest without limitation. Speights may be bringing this lawsuit on behalf of himself but also as the most appropriate member of the firm to protect the amalgamated funds. See S.C. Code § 33-44-301 "any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property."

Lastly, South Carolina courts have found that an ownership interest provides standing to sue. *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 154 (S.C. 1992) ("Further, unlike the property regime in *Queen's Grant*, CJF has an ownership interest in the Mall. We hold CJV had standing to sue on behalf of Belks, Thalhimers and Sears.").

It is not plausible to oppose that the money was intended for and absconded during the course of and through the means of business operations. There are material facts unresolved about the what the funds were. The invoice, on its face, exhibits it was sent to the insured. The theft is not purely a theft of Speights and the theft does not solely have effects on the named insured. It would seem, at a minimum, these blurred lines create material issues of fact to determine whether the policy applies.

4. The Circuit Court erred in finding that there was no issue of material fact when it was admitted that discovery was ongoing and the issue presented a novel application of the terms of the policy.

Auto-Owners has testified that, as far it was aware, this claim was the first claim that was denied on the application of the voluntary parting exclusion.[8] The facts and application of the facts are novel to parties. Additionally, South Carolina courts have not examined the application of this exclusion for the parties or others. The case presents a novel application of the law. While the mere fact that a legal issue is novel, does not by itself render a case inappropriate for summary judgment, the fact that an issue is both legally and factually novel leaves a fact finder unable to render a decision in an established context. The novelty makes the application of the exclusion more appropriate for a full determination of all facts (once discovery is complete) by a jury. *Schmidt v. Courtney*, 357 S.C. 310, 318 (S.C. Ct. App. 2003) ("We find it extremely troubling this case was resolved on a summary judgment basis, especially considering the injury to Schmidt and the novel issue involved in this case.").

Speights counsel began oral argument by telling the Circuit Court that Auto-Owner's summary judgment motion is made prior to the conclusion of discovery and that the Speights

[8] Auto-Owners representative stated that this claim "was the first of its type, that you're aware of……? A. I believe so. Yes." [McManus Deposition at 23, line 25 through 24, line 3].

deposition has not been taken. The motion was filed only six days after Speights had taken his first deposition of the Auto-Owners representatives and written discovery is still outstanding. This matter was filed less than a year prior to the filing of the summary judgment motion and had not been placed on a trial roster. See Rule 40 SCRCP.

Summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003); *Baril v. Aiken Reg'l Med. Ctrs*., 352 S.C. 271, 573 S.E.2d 830 (Ct.App. 2002); *Trivelas v. South Carolina Dep't of Transp*., 348 S.C. 125, 558 S.E.2d 271 (Ct.App. 2001); *Murray v. Holnam, Inc*., 344 S.C. 129, 542 S.E.2d 743 (Ct.App. 2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998). Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a "full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Baughman v. American Tel. Tel. Co*., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333; *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999); *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at

835;*Trivelas*, 348 S.C. at 130, 558 S.E.2d at 273; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App. 2002); *Hedgepath v. American Tel. Tel. Co*., 348 S.C. 340, 559 S.E.2d 327 (Ct.App. 2001); *Bayle v. South Carolina Dep't of Transp*., 344 S.C. 115, 542 S.E.2d 736 (Ct.App. 2001); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp*., 336 S.C. 53, 518 S.E.2d 301 (Ct.App. 1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct.App. 1995). "Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App. 1989).

Conclusion

For the foregoing reasons, the Order and Judgment below should be reversed.

By: s/ A. Gibson Solomons, III
A. Gibson Solomons, III (SC Bar #68291)
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ATTORNEYS FOR THE APPELLANT

March 6, 2024
Hampton, South Carolina

EXHIBIT H

RECEIVED
Mar 06 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE
COUNTY OF HAMPTON)

RE: Daniel A. Speights vs. Chubb Limited d/b/a Chubb National Insurance Company; Auto-Owners Insurance Company; and Bankers Standard Insurance Company
(Appeal No. 2023-001845 /Case No. 2022-CVP-25-00269)

PERSONALLY APPEARED before me, Susan T. Murdaugh, who being duly sworn, deposes and says: that she is employed in the office of Speights & Solomons, LLC, attorneys for the Appellant in the above-referenced action; that she served the foregoing Appellant's Initial Brief this 6th day of March, 2024, via electronic email to the attorney(s) listed below:

Morgan S. Templeton. Esquire
W. Richards Hundly, Esquire
WALL TEMPLETON & HALDRUP, P.A.
Post Office Box 1200
Charleston, South Carolina 29402
Attorneys for Defendant Auto-Owners Insurance Company

Susan T. Murdaugh
SUSAN T. MURDAUGH

SWORN TO before me this 6th
day of March, 2024

Rosemarie Lightsey (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/15/2032

EXHIBIT I
RECEIVED
Apr 03 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. George M. McFaddin, Jr.
Presiding Circuit Court Judge

Appellate No. 2023 – 001845
Civil Action No.: 2022 – CP – 25 – 00269

Daniel A. Speights . . . . . Appellant,

vs.

Chubb Limited d/b/a Chubb National Insurance Company, Auto-Owners Insurance Company, and Bankers Standard Insurance Company . . . . . Defendants,

Of Whom Auto-Owners Insurance Company is the . . . . . Respondent.

RESPONDENT AUTO-OWNERS INSURANCE COMPANY'S MOTION TO STRIKE MATTER AND EXCLUDE MATTER FROM RECORD ON APPEAL

Respondent Auto-Owners Insurance Company ("Auto-Owners") hereby moves this Honorable Court for an Order striking certain arguments presented in Appellant Daniel A. Speights's ("Speights") Initial Brief as well as excluding the Letter from Algernon Gibson Solomons, III to the Honorable George M. McFaddin, Jr.(the "Letter"), the Plaintiff's Motion to Reconsider ("Motion"), and the Affidavit of Daniel A. Speights (the "Affidavit") from the record on appeal.

Speights's arguments set forth in Sections 1 and 3 of his Initial Brief were not preserved for appeal as Speights failed to raise these arguments prior to or during the hearing on Auto-

Owners' motion for summary judgment hearing and presented them as new arguments in his motion to reconsider pursuant to Rule 59(e), S.C.R.C.P. Specifically, Speights makes three new arguments in his motion and includes them in his Initial Brief:

1.) Demonstrate a need for further discovery;

2.) The dictionary definition of voluntary parting; and

3.) Speights's standing to bring suit.

[R. __; *See generally* Speights Initial Brief.]. Speights alludes to a need for further discovery, particularly a deposition of Daniel A. Speights, but does not demonstrate how further discovery would make a difference. [R. __; Id. at 10, 12-13.]. Speights also offers the Affidavit in furtherance of this argument. [R. __; Id. at 10.]. Second, Speights presents the dictionary definition of 'voluntary' for the voluntary parting exclusion. [R. __; Id. at 6.]. Finally, Speights presents limited liability law as providing standing to sue. [R. __; Id. at 11.]. These arguments were not presented to the Circuit Court prior to its granting of summary judgment. [R. __; *See generally* Transcript of Hearing on Summary Judgment.]. Speights first raised these arguments in his Motion for Reconsideration. [R. __; *See generally* Speights Motion for Reconsideration.]. The Circuit Court properly identified these new arguments and denied Speights's motion for reconsideration because they were not raised prior to its ruling on summary judgement. [R. __; Order Denying Motion for Reconsideration, § I.].

A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004). A party cannot use Rule 59(e), S.C.R.C.P, to present to the lower court an issue the party could have raised prior to judgment but did not. Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009). Rule 59(e) motions are not vehicles for bringing

new theories or arguments, nor can a party use a Rule 59(e) motion to present to the lower court an issue the party could have raised prior to the judgment but did not. See Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (citing Natural Resources Defense Council v. U.S. E.P.A., 705 F. Supp. 698, 701 (D.D.C. 1989)). "It is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Therefore, these issues were not preserved and are not properly before the Court for consideration.

Additionally, Speights includes in his Designation of Matter to be Included in the Record on Appeal the Letter, Affidavit, and Motion. All are not proper matters for inclusion in the record on appeal. The Letter was never offered nor introduced into any record, either as an exhibit or filed with the Circuit Court as Speights's formal opposition to Auto-Owners' Motion for Summary Judgment. [R. __; *See generally* Solomons Letter to Hon. McFaddin.]. The Letter was sent on September 26, 2023, after the September 25, 2023 hearing on summary judgment had concluded, where both parties had an opportunity to argue for or against summary judgment and during which the Circuit Court did not ask for any submissions. [R. __; *See generally* Transcript of Hearing.]. Speights did not make the Circuit Court aware that he would submit further arguments after the hearing. [R. __; Id.]. After receiving the Circuit Court's ruling but prior to a formal order being filed, Speights notified the Court and counsel for Auto-Owners that it had mailed the letter to the Circuit Court. [R. __; Email from Solomons to Hon. McFaddin.]. This Letter was not mentioned during the hearing, never filed with the Circuit Court, and otherwise never made a part of any record until Speights's Designation of Matter to be included in the Record, and therefore should be excluded from the record on appeal.

Speights also includes the Motion and Affidavit in his Designation of Matter to be Included in the Record on Appeal. As discussed above, the Motion raised new arguments that were not made prior to the Circuit Court's granting of summary judgment and thus were improperly argued in the Motion. Speights did not present these arguments during the hearing. [R. __; *See generally* Transcript of Hearing.]. Speights did not raise these arguments in the Letter he sent after the hearing, which should also be struck from the record on appeal as discussed above. [R. __; *See generally* Letter.]. To accompany his new argument that a deposition of Daniel A. Speights is necessary for further discovery, Speights included as an exhibit to the Motion the Affidavit. [R. __; *See generally* Affidavit of Daniel A. Speights.]. The Affidavit was not offered nor introduced into evidence prior to the Circuit Court's granting of summary judgment but was first presented as an exhibit to Speights's Motion for Reconsideration. [R. __; *See generally* Affidavit & R. __; Speights Motion, pg. 4.]. Thus, the Motion and Affidavit should be excluded from the record on appeal because Speights used the Motion and Affidavit to improperly raised new arguments for the first time on a motion to reconsider.

Based upon the foregoing, Respondent Auto-Owners Insurance Company respectfully requests that this Honorable Court issue an Order striking the new arguments included in Appellant Daniel A. Speights's Initial Brief and excluding the Letter, Motion, and Affidavit from the record on appeal.

[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

EXHIBIT I

Dated this 3rd day of April, 2024.

Respectfully submitted,

Morgan S. Templeton (S.C. Bar No. 15456)
W. Richards Hundley (S.C. Bar No. 104165)
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Attorneys for Respondent Auto-Owners Insurance Company

EXHIBIT J

ELECTRONICALLY FILED - 2023 Oct 12 3:46 PM - HAMPTON - COMMON PLEAS - CASE#2022CP2500269

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON DANIEL A. SPEIGHTS, Plaintiff, vs. CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Civil Action No. 2022-CP-25-00269

AFFIDAVIT OF DANIEL A. SPEIGHTS

1. My name is Daniel A. Speights.
2. I am the Plaintiff in the above captioned action. I have personal knowledge of facts pertinent to this action. This affidavit only provides a portion of the pertinent facts for the above captioned case of which I have personal knowledge. My deposition has not been taken.
3. I am a founder of Speights & Solomons and the senior partner of the firm.
4. I have historically and frequently provided funds to the firm for the continuation of the firm's business practices.
5. On September 25, 2019, an invoice addressed to Speights & Solomons was received by the firm's bookkeeper.
6. At the time of the bookkeeper's receipt of the invoice, I had no knowledge of the invoice.
7. The bookkeeper sent an email that was intercepted by a thief and I never received the email. The thief, forging my electronic signature, asked the that the invoice be paid.
8. In continuation of the standard practice, as referenced in Paragraph 3, above, my private funds of $250,000 were forwarded as payment of the invoice.

EXHIBIT J

FURTHER, THE AFFIANT SAYETH NOT.

DANIEL A. SPEIGHTS

Sworn to before me this 12th day
of October 2023.

Susan D. Murdaugh
Notary for the State of South Carolina
My Commission Expires: June 5, 2025

ELECTRONICALLY FILED - 2023 Oct 12 3:46 PM - HAMPTON - COMMON PLEAS - CASE#2022CP2500269

EXHIBIT K
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Apr 15 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Appeal No. 2023-001845
Case No. 2022-CP-25-00269

Daniel A. Speights,

Appellant,

vs.

Chubb Limited d/b/a Chubb National Insurance Company; Auto-Owners Insurance Company; and Bankers Standard Insurance Company,

Respondents.

APPELLANT'S MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE MATTER AND EXCLUDE MATTER FROM RECORD ON APPEAL

Dan Speights ("Speights") files this Memorandum in Opposition to Auto-Owners Insurance Company's ("Auto-Owners") request that this Court strike from the record and ignore matters that have been present since the first argument in the lower Court. Auto-Owners filed the Motion nearly immediately (six days) after Speights deposed its corporate representative. The hearing on September 25, 2023, was conducted by Zoom. A review of the hearing transcript of the initial argument plainly shows:

1. Speights opened and closed his opposition to the Motion for Summary Judgment by

arguing it was inappropriate because discovery was ongoing and the relevant facts which could bear on the claim were not yet established.

2. Speights next pointed out immediately that the issue presented was both factually novel (this was the first time Auto-Owners had excluded a claim based on the voluntary parting language) and legally novel (the Courts in South Carolina had not assessed the application of such an exclusion and that first time should be done on a full record).
3. Speights argued that the distinction between the firm and Speights, the standing of the two were blurred and created issues of material fact that were best answered by a jury.
4. Speights cited multiple quotes from the deposition taken of Auto-Owners representative taken only days prior in which the representative conceded certain coverages could apply.
5. Speights cited contradictions in the policy language that created ambiguity concerning coverage that should be construed in favor of the insured. [Ex. 1 Transcript of Hearing].

Because the hearing was conducted by Zoom, the very next day Speights counsel mailed hard copies to the Court and opposing counsel a number of documents referenced in argument that would have been simply passed up in person as well as a summary of argument. [Ex. 2 Opposition to Motion for Summary Judgment]. Included in the documents were an entire copy of the policy (the policy submitted by Auto-Owners was only a partial copy), the deposition transcript that was cited in argument, the emails referenced in argument, and the invoice referenced in argument.

Although the Court did not receive the hard copy prior to its indication of which way it intended to rule and instructions to opposing counsel to draft an Order, the documents were received by opposing counsel and the Court prior to an Order being filed.

Following the filing of the Court's Order, which was written more expansively than the

argument, Speights filed a Motion to Reconsider in which he restated and reissued all of the arguments he had just raised to the Court. [Ex. 3 Motion to Reconsider]. To exemplify the harm done by granting summary judgment in the midst of discovery (as he had already raised twice in the initial argument) Speights submitted his own affidavit which detailed issues already raised. [Ex. 4 Affidavit]. Speights also buttressed the argument he had previously made that the words used in the policy were in conflict with one another by stating the definition of the word voluntary, a point made by other courts in interpreting the same word. For example, the federal District Court in Nashville, Tennessee recently reasoned:

> Specifically, as the Court understands CIM's proposed interpretation, the exclusion of coverage found in Exclusion R based on "voluntary parting" - which CIM concedes occurred in the Complaint - would render meaningless coverage in the crime provision for "electronic funds transfer fraud" because, by definition, fraud involves a "perversion of truth in order to induce another to part with something of value or to surrender a legal right." (Doc. No. 25 at 20 (quoting Merriam Webster)). Put another way, fraud necessarily involves a voluntary parting of property and the crime provision provides coverage for actions by a "third party" that involves "takings accomplished by... electronic funds transfer fraud."

CIM, LLC v. Series Protected Cell 1, A Series of Oxford Ins. Co. TN, LLC, 3:23-cv-00479, at *3 (M.D. Tenn. Oct. 27, 2023)

A review of the definition of voluntary, a word the meaning of which is critical to the interpretation of the policy, is not a new argument raised for the first time on the Motion to Reconsider. The normal definition and the distortion of the same is a necessary part of the examination of Speights argument raised in the first instance, that the policy contained contradictions that created ambiguities. A litigant is not bound, not should the litigant, simply restate the exact same words raised earlier in a Motion to Reconsider. To do this would be both redundant and futile. The purpose of the Motion to Reconsider is to afford the lower Court an opportunity to reconsider its initial opinion by placing before the Court all of the matters necessarily encompassed by the original argument on the merits.

EXHIBIT K

All of these issues were properly placed before the lower court with references to specific documents made and the lower Court was provided an opportunity to review and assess prior to the appeal of this matter. Speights is not attempting to spring new issues before this Court but rather the Motion to Strike is attempting to artificially narrow this Court's ability to assess whether summary judgment was appropriate. The Motion to Strike is without merit and should be denied.

Respectfully submitted,



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Attorneys for the Appellant

April 15, 2024

EXHIBIT
1

EXHIBIT K

STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
COUNTY OF HAMPTON	*	TRANSCRIPT OF RECORD
DANIEL A. SPEIGHTS, Plaintiff,	*	
vs.	*	Case No. 2022-CP-25-00269
CHUBB LIMITED, et al., Defendant.	*	

September 25, 2023

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

B E F O R E:

The Honorable George M. McFaddin, Jr., Presiding Judge

A P P E A R A N C E S:

Gibson Solomons, III, Esq.
Attorney for the Plaintiff

Morgan Templeton, Esq.
Attorney for the Defendant

Recorded by: Webex Courtroom

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

Rec'd
DEC 6 2023

EXHIBIT K

I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

EXHIBIT K

P R O C E E D I N G S

THE COURT: I wrote on the top of the file yesterday: Matter under advisement because it's thick, and they require more than just a few minutes.

So this is Defendant's motion for summary judgment?

MR. TEMPLETON: Your Honor, this is the Speights versus Auto Owners case you're calling?

THE COURT: Yes, sir.

MR. TEMPLETON: Okay. Morgan Templeton on behalf of the defendant, Auto Owners. It was breaking up, I guess, when you were introducing the case. So I'm happy to speak to you if you're ready.

THE COURT: I'm ready.

MR. TEMPLETON: Okay. Thank you, sir.

Morgan Templeton on behalf of Auto Owners Insurance Company. This is a bad faith breach of contract suit that's been brought by a man named Daniel Speights. The first thing I want to lead off with is that it's important for the Court to understand who the insured is in this case. The insured of Auto Owners is Speights and Solomons Law Firm, not Daniel Speights in his individual capacity.

The facts of the case are fairly straightforward. On September 25th, 2019, the bookkeeper for Speights and Solomons Law Firm received an email that she believed was coming from Daniel Speights. Within that email, the

request is for the bookkeeper, who has full signatory authority on Mr. Speights' personal accounts, to wire the sum of $250,000 to an entity in China. There's an exchange between the bookkeeper and who she believed to be Mr. Speights confirming that it was to come from the personal account; that the funds were to go from Palmetto State Bank to this entity in China. That occurred on the same day of the request.

As it turns out, this was not Mr. Speights who had initiated the email but, rather, it was one of these phishing items that occurs in our country these days.

A claim was submitted thereafter to the law firm's business property insurance company, which was Auto Owners, and the claim was denied. And the denial was based on essentially two fundamental premises. One, Mr. Speights, in his individual capacity, is not the insured under the Auto Owners policy; rather, the law firm is. The secondary basis for it is that there are two exclusions within the policy. One specifically excludes from the property coverage form -- covered property does not include bullion, money, or securities. And the secondary exclusion is that "we will not pay for damage or loss caused directly or indirectly for any of the following: False pretense, which is defined as 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."

Now, South Carolina courts have not addressed that exclusion, but several courts across the country have, most particularly the Midlothian opinion -- it's a reported decision out of Virginia in the Fourth Circuit -- saying essentially that, yes, we understand that this was a fraudulent scheme and trick and the employee didn't intend to do this, but it doesn't change the fact that it was a voluntary decision on the employee's part to transfer the funds.

Other courts across the country, including New York, Ohio, and the state of Washington have agreed with that type of analysis. They were prior to Midlothian opinion, but the general genesis of the conclusion is the same. Most of those cases are involving law firms. Most of those cases are involving situations where the law firm actually lost money, whether it be client funds or whether it have been operating funds from the firm.

Here, of course, the distinction that we -- the similar distinction we have here is this has nothing to do with the law firm itself. It was Mr. Speights' personal funds that were transferred voluntarily by the bookkeeper per what she thought to be the request. Even though it was a scheme or a trick, it doesn't change the fact that

it was a voluntary decision on her part.

With that, Your Honor, I'll answer any questions the Court may have.

THE COURT: My next question: Is there any opposition to your motion today?

MR. TEMPLETON: I believe that Mr. Gibson Solomons, who is representing the plaintiff opposes the motion.

THE COURT: All right. Mr. Solomons?

MR. SOLOMONS: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. SOLOMONS: I'll try and be brief.

First of all, let me set the context with which we come to this, the motion for summary judgment. In this matter, discovery is still ongoing. And the second aspect of the context is the issue before the Court is a novel issue in South Carolina, as evidenced by the fact that the only law supporting the defendant's motion is out-of-state law. However, even in that -- and by the way, it is not only novel legally, it's novel factually, because I deposed the representative of the defendant, and I asked them, "This claim -- the clause, when it came in, this was the first of its type that you're aware of that was excluded as a result of the false pretense clause?"

His answer was, "I believe so, yes."

That's on page 23 and 24 of his deposition taken

July 28th of this year.

So factually novel. Legally novel. Then we get to the facts. First of all, Your Honor, as to the distinction being drawn between Mr. Speights and Speights and Solomons Law Firm, which he founded and is an owner, in the limited liability company policy language that was provided to us by Auto Owners, it says, "Who is an insured?" And they say, "The previous language is deleted and replaced by the following: A limited liability. You are insured. Your members are also insured but only with respect to the conduct of your business."

So let me go to that. Your Honor, what happened here -- I think a jury should be allowed to decide whether we voluntarily gave $250,000 to somebody in Hong Kong for nothing, but what happened here is some bad actor broke into our email. This is following some events where -- well, it doesn't matter for the basis and why we got targeted, but we were targeted. They broke into our email.

They then began to control the email of Mr. Speights. So it wasn't like they took our name and it almost looked like. It was -- it was Dan Speights' email. And they were controlling his email. So as the bookkeeper would send him, "Are you sure?" or "I'm about to send," whoever took over would say, "Yes," and then delete that

email so Mr. Speights, if he ever looked at his email, he wouldn't actually see any of this. But they were controlling the exchange in between Mr. Speights and his bookkeeper.

So then we do -- we do what -- our bookkeeper does what she believes is a directive of our senior partner, and -- but she did it based upon an invoice that was sent not to Mr. Speights but to the law firm. So the invoice itself -- and that is documents that have been produced to the defendant -- the invoice itself is an invoice to the law firm, not to Mr. Speights.

Mr. Speights, because of his role in the law firm, he provides personal funds to cover the cost of the law firm, and so he does that or she -- the bookkeeper thinks he's doing that because that was the normal course of conduct.

So let me get to the policy itself. Those are the facts underlying the policy. The policy itself. When we went and bought our policy, our normal way of saying things is, "Hey, if we can get coverage, we want coverage."

So, in this particular policy -- and I don't know about the Midlothian policy that is the -- the Virginia policy that's the basis for the defendant's motion for summary judgment, but our policy provides additional

coverage for multiple things, including money in securities and including forgery and alteration. When I deposed the defendant's representative, I asked them specifically about that additional coverage. And in those questions, I asked -- these are questions asked during the defendant's representative's depo:

"There is an identity recovery coverage that we purchased, annual -- if someone is impersonating Mr. Speights and having $250,000 sent in a wire, is that potentially covered under identity recovery?"

ANSWER: "I'm not sure."

That's pages 26 and 27 of the July 28, 2023, depo.

Later on, I say, "There's optional coverage here against -- does, in fact, grant you in circumstances some coverage for" -- oh, I'm sorry. This is an answer.

I said, "Is there optional coverage for money securities?"

The answer, "You have an optional coverage here. You know, again, it does, in fact, grant you, in certain circumstances, coverage for money and securities."

That's a concession on an additional coverage.

I asked, "Is there coverage -- is there an amount for forgery and alterations that also seems to be included? Is that correct?"

"Yes, there is coverage here for forgery and

EXHIBIT K

alterations."

And then I asked later in the same page -- I'm now on page 29, "Could what described to Mr. Speights be -- could what happened to Mr. Speights be described as forged?"

"I believe that" -- and then I cut him off; I didn't let him answer.

I said, "Mr. Speights' electronic signature on that email, was that a forgery of his electronic signature?"

His answer, "Essentially, it could be."

So, first of all, on the first instance, as far as the distinction being drawn between Mr. Speights and the law firm, their own policy language makes that a nullity.

I also think, if it didn't, Your Honor, because of the nature of a limited liability company and Mr. Speights' role as in this particular limited liability company, that would not be probative of the claim being brought by Mr. Speights against Auto Owners.

As far as the summary judgment being based or being brought pursuant to the false pretense clause which, when I deposed the individual on behalf -- that was appearing on behalf of the defendant, Auto Owners, I asked them is the basis for this denial false pretense clause, and they said yes, that's it. That's why we're denying this claim.

So as far as that being the basis for the denial, I

EXHIBIT K

believe there are ample ambiguities or contradicting clauses inside the claim that make summary judgment not appropriate. And if Your Honor were so inclined to even think, "No, Mr. Templeton's argument is still forthcoming," then I would just urge the Court to wait until the full termination of all discovery before we would decide that, because discovery is still ongoing.

So I don't think I have anything else. I don't think -- well, I think that's it, Judge.

MR. TEMPLETON: Your Honor, briefly in reply?

THE COURT: Yes, sir.

MR. TEMPLETON: Two things. One, the language that was quoted to you about the LLC and the operating -- operations of this policy, the key distinction is that it relates to the business. Relates to the business -- he would be an insured if it was related to the business. There's nothing before the Court that shows an affidavit or admissible testimony showing that this thing had anything to do other than the loss of his personal funds.

Number two, with respect to the novel issue argument, South Carolina has plenty of case law talking about rules of construction and what the Court is to do in applying the plain and ordinary terms of the policy and draw its own distinction and own conclusion to whether or not the exclusion in the language applies.

There's a host of cases that are cited in my brief from South Carolina about that. This Court can use its own judgment in applying those plain and ordinary terms and decide whether or not the false pretense exclusion applies.

These other cases that are cited in the brief from around the country are completely analogous to this. Are they controlling on this Court? No, they are not. But the rules of construction are. And what I would respectfully submit is that the language of the policy is plain, clear, and unambiguous; shows that a false pretense occurred here. It's an unfortunate set of circumstances, but it's not covered under this policy, and no amount of discovery is going to change that argument in terms of this -- this language applying.

Respectfully, we believe the motion for summary judgment is appropriate and should be granted.

THE COURT: Gentlemen, as I said at the outset, I had a strong feeling I would take this one under consideration, and I do ask for your patience. You have been good so far, and I thank you for that, and you will hear from me as soon as I can get to it.

MR. TEMPLETON: Thank you, Your Honor.

MR. SOLOMONS: Thank you, Your Honor.

THE COURT: Thank y'all.

(The above matter concluded.)

EXHIBIT K

CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: Speights v. Chubb Limited

2022-CP-25-00269

DATE OF HEARING: 9/25/23

COURT REPORTER/MONITOR: Webex Courtroom

****

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

_/s/ Bobbi Fisher_____

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 12/5/23

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

EXHIBIT
2

EXHIBIT K

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO. 2022-CP-25-00269
DANIEL A. SPEIGHTS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**SUMMARY OF PLAINTIFF'S ARGUMENT**
	)	**IN OPPOSITION TO AUTO-OWNERS**
CHUBB LIMITED d/b/a CHUBB	)	**INSURANCE COMPANY'S MOTION FOR**
NATIONAL INSURANCE	)	**SUMMARY JUDGMENT**
COMPANY, AUTO-OWNERS	)	
INSURANCE COMPANY, and	)	
BANKERS STANDARD	)	
INSURANCE COMPANY,	)	
	)	
Defendants.	)	
	)	

On September 25, 2023, the Court heard argument on the Motion for Summary Judgment brought by Defendant Auto-Owners Insurance Company. At the conclusion of the argument, the Court advised the parties that it would take the matter under advisement. The Plaintiff is aware of the volume of matters that come before this Court and provides the following summary of the argument presented for reference.

For context, this matter stems from a theft by forgery and forced entry into an email server that occurred in September of 2019. A thief broke into Speights & Solomons, LLC's email server. The thief deleted certain emails and created emails. The thief, forging the electronic signature of Dan Speights, requested the firm's bookkeeper to transfer $250,000.00, ostensibly to address an invoice made out to the firm of Speights & Solomons for investment distributions and professional services. The bookkeeper asked questions of what she believed to be Speights and then acted pursuant to the thief's altered and forged emails. The bookkeeper, acting in reliance upon the

forgery, instructed the firm's bank to transfer the funds. Because of the forced entry and capture of his emails, the theft was only discovered when Speights physically entered the office and was asked a question by the bookkeeper. The exchange alerted Plaintiff and the bookkeeper that a theft had occurred. Attempts were made to pull back the funds. Following these unsuccessful attempts, the Plaintiff instructed his insurance agent to inform the applicable insurance companies of the loss. The Defendant denied the claim. Plaintiff then brought this lawsuit.

The Defendant, through counsel, first raised the issue of whether Plaintiff could bring a claim as an insured. Defendant contends that because the named policy holder is Speights & Solomons, LLC as opposed to Dan Speights, the Plaintiff, Speights, cannot bring this claim as an insured. Plaintiff responded to this challenge by stating that the law will allow a member and owner of an LLC to assert matters in their capacity as an individual and as a member but more specifically pointing the Court to the language found in the policy at issue which states that "[a] limited liability company, you are insured. Your members are also insured, but only with respect to the conduct of your business. (Page DAS000083, Exhibit A). As a side, the sheer volume of the policies and endorsements (Pages DAS000013 through DAS000152, Exhibit A) nearly guarantee confusion.

The Defendant, in rebuttal responded by conceding that while members are also insureds, that is only with respect to conduct of the LLC's business. The Plaintiff pointed out that the triggering invoice was issued to Speights & Solomons LLC. (DAS 000003, Exhibit A).

The Defendant's remaining basis for requesting summary judgment was that the "false pretense" clause prohibits the Plaintiff from recovering under the policy. In the deposition of the Defendant (Exhibit B), the Defendant testified that the basis for the denial of this claim is that the "false pretenses clause" would categorize the Plaintiff's actions as voluntary. Notwithstanding the

factual dispute of whether the Plaintiff would voluntarily surrender $250,000.00 to a stranger on the other side of the world, Plaintiff argues that the argument is not a proper basis for summary judgment for a number of reasons. The first reason is that this issue is both factually and legally novel. While the mere fact that a legal issue is novel, does not by itself render a case inappropriate for summary judgment, the fact that an issue is both legally and factually novel leaves a fact finder unable to render a decision in an established context. This, if this were the only issue and it is not, makes the case more appropriate for a full determination of all facts (once discovery is complete) by a jury. The fact that the issue is factually novel is established in the deposition of the Defendant's representative who admitted that the Defendant had never used the false pretense basis to deny a claim prior to the Plaintiff's claim. This leaves more questions. In the deposition of Joseph William McManus, Jr. taken on July 28, 2023, the Defendant stated that this claim "was the first of its type, that you're aware of, that was excluded as a result of the false pretense clause? A. I believe so. Yes." (Exhibit B Deposition of McManus, p.23 line 25- p.24 line 3). Furthermore, the Defendant conceded in its brief that there is no South Carolina law on this point. The Defendant relies upon a smattering of out of state cases with loose similarities to this case without an examination if any of these cases had the same endorsements or policy language as the current matter.

This brings us to the next point, the Defendant drafted the policy; A point that was conceded in the Defendant's deposition. (See Exhibit B, p.21 lines 22-25). In this voluminous policy, the Defendant stated that it did not cover money damages and then stated that it did cover money damages. The terms under additional optional coverages states:

> **"We will pay for loss of money or securities used in your business** while at a bank or savings institution, within your living quarters or the living quarters of your partners or employees having use and custody of the property, at the described premises, or in transit between any of these

places **resulting directly from: (1) Theft, meaning any act of stealing**."
(See Page 17 of 21 to the incomplete policy attached as Defendant's
Exhibit A, emphasis added)

When asked about the additional coverage in deposition, the Defendant conceded that the Plaintiff had purchased additional coverage for money and securities. (Exhibit B p.28 lines 19-22).

The Defendant also conceded that there was additional coverage purchased for forgery and alteration. (Exhibit B p.29 lines 4-5). The forgery endorsement states explicitly that the Defendant will pay for any forgery of any promise in money. (Exhibit A DAS000021). The Defendant further conceded that Mr. Speights electronic signature on an email "[e]ssentially, could be" forgery. (Exhibit B, lines 19-22). The Defendant conceded that a policy was in place Exhibit B p. 13 lines 15-18), that Plaintiff suffered the loss (Exhibit B p. 17 lines 9-10) and conceded that coverage in addition to that noted above could apply as well. (Exhibit B p.27 lines 1-3).

The Plaintiff has provided this as a reference summary of the Plaintiff's argument today. The Plaintiff would be happy to prepare additional briefings on the law if this would assist the Court in rendering its decision.

Respectfully submitted,

/s/ A. Gibson Solomons, III
A. Gibson Solomons, III, Esq.
Speights & Solomons, LLC
100 Oak Street, East
Post Office Box 685
Hampton, South Carolina, 29924
(803) 943-4444
gsolomons@speightsandsolomons.com
Attorneys for Plaintiff

September 26, 2023
Hampton, South Carolina

EXHIBIT A

EXHIBIT K

Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED
Date: Wednesday, September 25, 2019 at 3:00:34 PM Eastern Daylight Time
From: Dan Speights
To: Linda Herndon

Thank you

From: Linda Herndon <lherndon@speightsandsolomons.com>
Sent: Wednesday, September 25, 2019 2:46 PM
To: Dan Speights <dspeights@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Palmetto State Bank has the wiring instructions and information. International wires are sent to Bluffton to be actually sent. PSB in Bluffton was supposed to send me a confirmation # when the wire was actually sent which I have not received.

Attached is the International wire request provided to me by PSB in Hampton. When I get the confirmation # I'll send to you.

From: Dan Speights <dspeights@speightsandsolomons.com>
Date: Wednesday, September 25, 2019 at 2:12 PM
To: Linda Herndon <lherndon@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Did you send the wire out ? I need you to email me the wire confirmation when done.

From: Dan Speights <dspeights@speightsandsolomons.com>
Sent: Wednesday, September 25, 2019 1:00 PM
To: Linda Herndon <lherndon@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Yes, let me know when done.

From: Linda Herndon <lherndon@speightsandsolomons.com>
Sent: Wednesday, September 25, 2019 12:57 PM
To: Dan Speights <dspeights@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Is this DAS Personal?

From: Dan Speights <dspeights@speightsandsolomons.com>
Date: Wednesday, September 25, 2019 at 12:54 PM
To: Linda Herndon <lherndon@speightsandsolomons.com>
Subject: Invoice from HK SHINING TRANSPORT CO LIMITED

Linda, Please i need you to pay attached invoice today and email me the wire confirmation to send to vendor when done.

dan

EXHIBIT K

1st Wire

HONG KONG SHINING TRANSPORT CO LIMITED

109 Queen's Road
Central Hong Kong
Hong Kong

To:

Speights & Solomons LLC **09/26/2019**
100 Oak Street
Hampton, S.C. 29924

INVOICE NUMBER:1077820

Description: **Total:**

Investment Distributions &
\Professional services rendered

USD $250,000.00

Payment Info:

By Wire Transfer
Beneficiary Bank Name: BANK OF CHINA HK LTD
Beneficiary Bank Address: TOWER 1 GRAND ROAD HONG KONG

Beneficiary Account Name: HONG KONG SHINING TRANSPORT CO LIMITED

Beneficiary Account Number: 012-594-2-005524-6
Swift Code: BKCHHKHH

Subject: Wire sent to Hong Kong from Daniel A. Speights
Date: Wednesday, September 25, 2019 at 3:51:15 PM Eastern Daylight Time
From: Linda Herndon
To: Thumbert@Palmettostatebank.com

Hello, Tracey,

Do you have a Confirmation # for a wire that was sent today to Hong Kong Shining Transport Co. Limited in Hong Kong from Daniel A. Speights? Please let me know if there was a problem with sending the Wire.

Thanks,

Linda S. Herndon
Speights & Solomons, LLC
P. O. Box 685
100 Oak Street E
Hampton, SC 29924

Subject: Re: Wire sent to Hong Kong from Daniel A. Speights
Date: Wednesday, September 25, 2019 at 4:41:19 PM Eastern Daylight Time
From: Linda Herndon
To: Tracey Humbert

Thanks Tracey.

From: Tracey Humbert <thumbert@palmettostatebank.com>
Date: Wednesday, September 25, 2019 at 4:40 PM
To: Linda Herndon <lherndon@speightsandsolomons.com>
Subject: RE: Wire sent to Hong Kong from Daniel A. Speights

Hi Linda,

I hope you are well. I will send you a confirmation.

Thanks,

Tracey

Tracey W. Humbert
Vice President
Palmetto State Bank
NMLS ID# 797947

From: Linda Herndon <lherndon@speightsandsolomons.com>
Sent: Wednesday, September 25, 2019 3:51 PM
To: Tracey Humbert <thumbert@palmettostatebank.com>
Subject: Wire sent to Hong Kong from Daniel A. Speights

Hello, Tracey,

Do you have a Confirmation # for a wire that was sent today to Hong Kong Shining Transport Co. Limited in Hong Kong from Daniel A. Speights? Please let me know if there was a problem with sending the Wire.

Thanks,

Linda S. Herndon
Speights & Solomons, LLC
P. O. Box 685
100 Oak Street E
Hampton, SC 29924

EXHIBIT K

Monday, February 13, 2023 at 12:02:13 Eastern Standard Time

Subject: wire confirmation
Date: Wednesday, September 25, 2019 at 5:05:52 PM Eastern Daylight Time
From: Tracey Humbert
To: Linda Herndon
Attachments: image001.png, pst_.pdf

Have a great evening.

Thanks,

Tracey

Tracey W. Humbert
Vice President
Palmetto State Bank
194 Bluffton Road
Bluffton, SC 29910
(843) 757-3747 Work
www.palmettostatebank.com
NMLS ID# 797947

Palmetto
STATE BANK

CONFIDENTIALITY NOTICE: This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication represents the originator's personal views and opinions, which do not necessarily reflect those of Palmetto State Bank. If you are not the original recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this email in error, and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you received this email in error, please reply back to sender.

EXHIBIT K

PALMETTO STATE BANK

601 1st Street West • Hampton, SC 29924-2541

INTERNATIONAL WIRE TRANSFER NOTICE

for DANIEL A SPEIGHTS

Date Posted	09/25/2019
Date Entered	09/25/2019
Processing Reference No.	1151847 2162580526
Swift UETR	f8829f59-ffef-4ef4-930a-b0b612a19687
Internal I.D.	DANIEL SPEIGHTS
Amount (USD)	250,000.00
Foreign Amount	250,000.00 USD

Beneficiary
HONG KONG SHINING TRANSPORT CO LIMITED 109 QUEEN'S ROAD CENTRAL HONG KONG HONG KONG

Beneficiary Bank
BANK OF CHINA (HONG KONG) LIMITED BANK OF CHINA CENTER OLYMPIAN C FLOOR 19 11 HOI FAI ROAD HONG KONG HONG KONG

Subject: Re: WIRE CONFIRMATION to HK SHINING TRANSPORT CO LIMITED
Date: Thursday, September 26, 2019 at 9:18:27 AM Eastern Daylight Time
From: Linda Herndon
To: Dan Speights
Attachments: DAS - Wire confirmation to Hong Kong.pdf

Attached is the wire confirmation for the Wire sent yesterday to Hong Kong Shining Transport Co.

From: Dan Speights <dspeights@speightsandsolomons.com>
Date: Wednesday, September 25, 2019 at 3:00 PM
To: Linda Herndon <lherndon@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Thank you

From: Linda Herndon <lherndon@speightsandsolomons.com>
Sent: Wednesday, September 25, 2019 2:46 PM
To: Dan Speights <dspeights@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Palmetto State Bank has the wiring instructions and information. International wires are sent to Bluffton to be actually sent. PSB in Bluffton was supposed to send me a confirmation # when the wire was actually sent which I have not received.

Attached is the International wire request provided to me by PSB in Hampton. When I get the confirmation # I'll send to you.

From: Dan Speights <dspeights@speightsandsolomons.com>
Date: Wednesday, September 25, 2019 at 2:12 PM
To: Linda Herndon <lherndon@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Did you send the wire out ? I need you to email me the wire confirmation when done.

From: Dan Speights <dspeights@speightsandsolomons.com>
Sent: Wednesday, September 25, 2019 1:00 PM
To: Linda Herndon <lherndon@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Yes, let me know when done.

From: Linda Herndon <lherndon@speightsandsolomons.com>
Sent: Wednesday, September 25, 2019 12:57 PM
To: Dan Speights <dspeights@speightsandsolomons.com>
Subject: Re: Invoice from HK SHINING TRANSPORT CO LIMITED

Is this DAS Personal?

EXHIBIT K

PALMETTO STATE BANK

601 1st Street West • Hampton, SC 29924-2541

INTERNATIONAL WIRE TRANSFER NOTICE

for DANIEL A SPEIGHTS

Date Posted	09/25/2019
Date Entered	09/25/2019
Processing Reference No.	1151847 2162580526
Swift UETR	f8829f59-ffef-4ef4-930a-b0b612a19687
Internal I.D.	DANIEL SPEIGHTS
Amount (USD)	250,000.00
Foreign Amount	250,000.00 USD

Beneficiary
HONG KONG SHINING TRANSPORT CO LIMITED 109 QUEEN'S ROAD CENTRAL HONG KONG HONG KONG

Beneficiary Bank
BANK OF CHINA (HONG KONG) LIMITED BANK OF CHINA CENTER OLYMPIAN C FLOOR 19 11 HOI FAI ROAD HONG KONG HONG KONG

Monday, February 13, 2023 at 12:15:12 Eastern Standard Time

Subject: Invoice from HONG KONG XINDIII LIMITED
Date: Friday, September 27, 2019 at 8:46:09 AM Eastern Daylight Time
From: Dan Speights
To: Linda Herndon
Attachments: Invoice from HONG KONG XINDIII LIMITED.pdf

Linda, Pay attached invoice today and i need you to please keep an eye on the $250,000 because the vendor is yet to receive the funds.
Let me know when done.

dan

EXHIBIT K

HONG KONG XINDIII LIMITED
774 NATHAN ROAD CENTRAL
HONG KONG

Date	Invoice #
09/27/2019	00020619

Bill To:

Speights & Solomons LLC
100 Oak Street
Hampton, S.C. 29924

DESCRIPTION	AMOUNT
BUSINESS DEVELOPMENT PROJECT plus ADMIN Services	$200,000.00
Balance Due	**$200,000.00**
***CURRENCY:* USD**	

We only accept wire transfer

Beneficiary Bank Name: BANK OF CHINA HK LTD
Beneficiary Bank Address: TOWER 1 GRAND ROAD HONG KONG
Beneficiary Account Name: HONG KONG XINDIII LIMITED
Beneficiary Account Number: 012-611-2-012708-6
Swift Code: BKCHHKHH
Reference: Speights & Solomons LLC

EXHIBIT K

Palmetto State Bank
International Wire Request

Sender Information Date: 09/27/2019

Name: DANIEL A SPEIGHTS Account : 6925 4284 (Account to be Debited)

Physical Address: 100 OAK ST E (No PO Box)

City: HAMPTON State: SC Zip: 29924

Phone: 803-943-4444 Email: H RND N@SPEIGHTSANDSOLOMONNS COM

Receiving Bank Information

Bank Name: BANK OF CHINA HK LTD Swift#: BKCHHKHH Bank Code: _____

Physical Address: 774 NATHAN ROAD CENTRAL (No PO Box)

City: _____ State: ____ Country: HONG KONG

Beneficiary Information

Name: HONG KONG XINDIII LIMITED Acct#/IBAN : 012-611-2-012708-6

Physical Address: TOWER 1 GRAND ROAD HONG KONG (No PO Box)

City: _____ State: ____ Country: HONG KONG

Further Credit To: _____

Special Instructions: REFERENCE: SPEIGHTS & SOLOMONS LLC

Payment Information

Amount:	200,000.00	US Dollars:	OFAC:
Fee:	45 00	Foreign Type:	Entries:
Total:	200,045.00	Foreign Amt:	PCBB:
			Verified:

Authorizations

Request Received Via: LINDA HERNDON IN PERSON Sender Identified Via: NDA HERNDON IN PERSON

Sender Signature: Linda L Herndon

Authorized Employee Signature: _____

Bank Officer Signature: _____ (Required only if over $5,000.00)

International Wire Revised 12/01/16

EXHIBIT K

AGENCY 16-0311-00 POLICY 51-639-377-00

13642 (10-06)

ELLIS REALTY AND INSURANCE AGENCY INC
701 FIRST ST W
HAMPTON SC 29924

01-08-2019

Auto-Owners Insurance
Life Home Car Business
The "No Problem" People®

Your agency's phone number is (803) 943-2911

P.O. BOX 30660, LANSING, MICHIGAN 48909-8160 • 517-323-1200
AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-OWNERS INSURANCE COMPANY

SPEIGHTS & SOLOMONS LLC
PO BOX 685
HAMPTON SC 29924-0685

You may view your policy online at www.auto-owners.com. To enroll, use the policy number 51-639-377-00 and Personal ID code 4G7 K98 A9C . Once enrolled, you may choose to stop receiving the paper policy in the mail.

Thank you for allowing Auto-Owners to handle your insurance needs.

Auto-Owners Insurance Group is financially sound with sufficient reserves to be ranked among the leaders in the industry for financial security. Our A + (Superior) rating by the A.M. Best Company signifies that we have the financial strength to provide the insurance protection you need.

Feel free to contact your independent Auto-Owners agent with questions you may have about any of your insurance needs.

Auto-Owners Insurance - The "No Problem" People ®

Pay your premium in full, by the due date, and you will receive a discount as shown below

Total Policy Premium	$2,459.52
Paid In Full Discount	-244.44
Total Policy Premium If Paid In Full	$2,215.08

* * * * * * * **THIS IS NOT A BILL.** * * * * * * *

Please pay any unpaid bills. Your bill will be mailed separately from Lansing, Michigan on or about February 2, 2019.

~ *Serving Our Policyholders and Agents Since 1916* ~

EXHIBIT K

Auto-Owners

54643 (01-90)
Issued 01-08-2019

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

BUSINESSOWNERS POLICY DECLARATIONS

Renewal Effective 02-22-2019

AGENCY ELLIS REALTY AND INSURANCE AGENCY INC
16-0311-00 MKT TERR 081 (803) 943-2911

POLICY NUMBER 51-639-377-00

INSURED SPEIGHTS & SOLOMONS LLC

Company Use 36-57-SC-1802

ADDRESS PO BOX 685
HAMPTON SC 29924-0685

Company Bill

POLICY TERM	
12:01 a.m.	12:01 a.m.
02-22-2019	to 02-22-2020

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR WINDSTORM OR HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF- POCKET EXPENSES TO YOU. THE ENCLOSED EXAMPLE ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.

WINDSTORM OR HAIL DEDUCTIBLE

IN ANY ONE OCCURRENCE OF WINDSTORM OR HAIL, THE TOTAL DEDUCTIBLE FOR ALL COVERED WINDSTORM OR HAIL LOSSES WILL BE A MINIMUM OF $2,500. PLEASE SEE ATTACHED FORM FOR ADDITIONAL DEDUCTIBLE INFORMATION.

ENTITY: Limited Liability Company

PROPERTY COVERAGES - ALL DESCRIBED LOCATIONS	DED	LIMITS	PREMIUM
Special Coverage Form			
Employee Dishonesty	$250	$50,000	Included
TERRORISM - CERTIFIED ACTS			$15.22

BUSINESS LIABILITY PROTECTION	LIMITS	PREMIUM
COVERAGES		
Aggregate Limit (Other than Products-Completed Operations)	$4,000,000	$465.37
Products-Completed Operations Aggregate	2,000,000	Included
Liability and Medical Expense	2,000,000	Included
Medical Expense - Per Person	5,000	Included
Personal Injury	Excluded	
Tenants Fire Legal - Any One Fire	50,000	Included
Hired Auto & Non-Owned Auto Liability	2,000,000	40.74
Employee Benefits - Aggregate	2,000,000	407.40
Employee Benefits - Each Employee	2,000,000	Included
TERRORISM - CERTIFIED ACTS		9.13

EXHIBIT K

Auto-Owners

54643 (01-90)
Issued 01-08-2019

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

BUSINESSOWNERS POLICY DECLARATIONS

Renewal Effective 02-22-2019

AGENCY ELLIS REALTY AND INSURANCE AGENCY INC
16-0311-00 MKT TERR 081 (803) 943-2911

POLICY NUMBER 51-639-377-00

INSURED SPEIGHTS & SOLOMONS LLC

Company Use 36-57-SC-1802

ADDRESS PO BOX 685
HAMPTON SC 29924-0685

Company Bill

POLICY TERM
12:01 a.m. to 12:01 a.m.
02-22-2019 02-22-2020

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

IDENTITY RECOVERY COVERAGE

The limit of insurance for any coverage indicated below applies to all covered loss as defined in the Identity Recovery Coverage form.

IDENTITY RECOVERY COVERAGE:
Annual Aggregate $15,000 provides:

- Lost Wages and Child/Elder Care - Up to a maximum of $5,000
- Mental Health Counseling - Up to a maximum of $1,000
- Miscellaneous Expenses - Up to a maximum of $1,000
- Case Management Services
- Expense Reimbursement

COVERAGE	DEDUCTIBLE	PREMIUM
Identity Recovery	$250	$15.00

FORMS THAT APPLY TO ALL LOCATIONS:
54961 (11-11) BP0009 (01-87) 54510 (08-09) BP0002 (01-87) BP0006 (01-87)
54319 (07-06) 54867 (03-08) 54679 (06-92) 54709 (04-10) 54098 (05-07)
64728 (02-14) 64776 (01-16) 54656 (08-91) 54734 (08-95) 54088 (09-09)
54889 (01-09) 54621 (07-88) 54663 (01-03) 54685 (09-09)

EXHIBIT K

Auto-Owners INSURANCE

54643 (01-90)
Issued 01-08-2019

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

BUSINESSOWNERS POLICY DECLARATIONS

Renewal Effective 02-22-2019

AGENCY ELLIS REALTY AND INSURANCE AGENCY INC
16-0311-00 MKT TERR 081 (803) 943-2911

POLICY NUMBER 51-639-377-00

INSURED SPEIGHTS & SOLOMONS LLC

Company Use 36-57-SC-1802

ADDRESS PO BOX 685
HAMPTON SC 29924-0685

Company Bill

POLICY TERM
12:01 a.m. 02-22-2019 to 12:01 a.m. 02-22-2020

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

LOCATION 001

LOCATION: 100 OAK ST E HAMPTON SC 29924-3520

COVERAGES	DED	LIMITS	PREMIUM
TERRORISM - CERTIFIED ACTS SEE FORM(S) 59350 (01-15), 54313 (07-08), 59390 (01-15)			INCLUDED

ADDITIONAL FORMS FOR THIS LOCATION:
54094 (03-07) 54238 (12-01) 54244 (05-07)
54313 (07-08) 54382 (03-14) 54400 (04-12) 54584 (06-08) 54605 (11-88)
54661 (08-91) 54853 (09-07) 54971 (07-11) 59350 (01-15)

LOC 001 BLDG 0001 Attorney's Office

COVERAGES	DED	LIMITS	PREMIUM
Business Personal Property - REPL. COST		$229,050	$753.77
Special Coverage Form Deductible	$2,500	Included	
Windstorm or Hail Percentage Ded	1%	Included	
Adjusted Value Factor 0.0250			
Business Income And Extra Expense		12 Months	Included
Limitation of Coverage for Fungi, Mold, Dry Rot, Wet Rot and Bacteria		See Form	Included
COVERAGE PACKAGE: Property Plus -Premier			165.83
Accounts Receivable	2,500	200,000	Included
Arson Reward		7,500	Included
Bailees Coverage		15,000	Included
Building Glass Coverage	250	10,000 Per Item See Form	Included
Business Personal Property - Expanded Coverage	2,500	Up To 1,000 Ft	Included
Business Personal Property At Fairs Or Exhibitions	2,500	5,000	Included
Business Personal Property At Newly Acquired Premises	2,500	500,000/90Days	Included
Business Personal Property In Transit	2,500	100,000	Included
Business Personal Property Off Premises	2,500	100,000	Included
Debris Removal		100,000	Included
Electronic Equipment			
Equipment - Unscheduled	1,000	100,000	Included
Electrical Disturbance	See Form	100,000	Included
Mechanical Breakdown	2,500	100,000	Included
Media		100,000	Included
Transportation		100,000	Included
Business Income And Extra Expense		100,000	Included
Fine Arts, Collectibles, And Memorabilia		50,000/ 10,000 Per Item	Included
Fire Department Service Charge		25,000	Included
Fire Extinguisher And Fire Suppression System Recharge		10,000	Included
Forgery And Alterations	2,500	50,000	Included
Money & Securities Inside Premises	250	50,000	Included
Money & Securities Outside Premises	250	50,000	Included
Newly Acquired Or Constructed Property	2,500	1,000,000/	Included

EXHIBIT K

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

BUSINESSOWNERS POLICY DECLARATIONS

Renewal Effective 02-22-2019

AGENCY ELLIS REALTY AND INSURANCE AGENCY INC
16-0311-00 MKT TERR 081 (803) 943-2911

POLICY NUMBER 51-639-377-00

INSURED SPEIGHTS & SOLOMONS LLC

Company Use 36-57-SC-1802

ADDRESS PO BOX 685
HAMPTON SC 29924-0685

Company Bill

POLICY TERM
12:01 a.m. 02-22-2019 to 12:01 a.m. 02-22-2020

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

Off-Premises Utility Service Failure	2,500	90 Days 150,000	Included	
Ordinance Or Law Coverage A, B And C Combined		150,000	Included	
Outdoor Property	2,500	20,000	Included	
Trees, Shrubs Or Plants	2,500	1,000 Per Item	Included	
Outdoor Signs	250	15,000	Included	
Personal Effects And Property Of Others	2,500	50,000	Included	
Pollutant Clean Up And Removal		100,000	Included	
Refrigerated Products	2,500	25,000	Included	
Rekeying Of Locks		1,000	Included	
Salesperson's Samples		25,000		
Valuable Papers And Records	2,500	150,000	Included	
Water Back-Up From Sewers Or Drains	2,500	50,000	Included	
Equipment Breakdown	2,500	See Form	31.27	

ADDITIONAL FORMS FOR THIS BUILDING:

54069	(08-00)	54340	(04-13)	54841	(03-17)	54499	(04-13)	54500	(04-13)		
54226	(08-00)	54752	(08-00)	54743	(08-00)	54750	(08-00)	54073	(08-00)		
54708	(01-07)	54062	(08-00)	54064	(08-00)	54072	(04-14)	54067	(08-00)		
54066	(08-00)	54065	(08-00)	54071	(03-05)	54070	(02-05)	54745	(08-00)		
54063	(03-13)	54227	(08-00)	54668	(04-07)	54749	(08-10)	54068	(08-00)		
				54341	(03-13)	54748	(08-00)	54228	(04-13)		

SECURED INTERESTED PARTIES: None

RATING INFORMATION

Occupancy: Attorneys Office Tenant Occupied
Class Code: 65121
Program: Office
Liability Rate Number: 00
Burglary Rate Group: 00
Construction Year: 1909
Const: Frame, Non-Sprinklered
Protection Class: 03
Territory: 014 Hampton County

LOCATION 002

LOCATION: 1307 ELM ST W HAMPTON SC 29924-2011

COVERAGES	DED	LIMITS	PREMIUM
TERRORISM - CERTIFIED ACTS SEE FORM(S) 59350 (01-15), 54313 (07-08), 59390 (01-15)			INCLUDED

ADDITIONAL FORMS FOR THIS LOCATION:

54313	(07-08)	54362	(03-14)	54094	(03-07)	54238	(12-01)	54244	(05-07)		
54661	(08-91)	54853	(09-07)	54400	(04-12)	54584	(06-08)	54605	(11-88)		
				54971	(07-11)	59350	(01-15)				

EXHIBIT K

Auto-Owners

54643 (01-90)
Issued 01-08-2019

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

BUSINESSOWNERS POLICY DECLARATIONS

Renewal Effective 02-22-2019

AGENCY ELLIS REALTY AND INSURANCE AGENCY INC
16-0311-00 MKT TERR 081 (803) 943-2911

POLICY NUMBER 51-639-377-00

INSURED SPEIGHTS & SOLOMONS LLC

Company Use 36-57-SC-1802

ADDRESS PO BOX 685
HAMPTON SC 29924-0685

Company Bill

POLICY TERM
12:01 a.m. 02-22-2019 to 12:01 a.m. 02-22-2020

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

LOC 002 BLDG 0001 Storage

COVERAGES	DED	LIMITS	PREMIUM
Business Personal Property - REPL. COST		$127,250	$440.58
Special Coverage Form Deductible	$2,500	Included	
Windstorm or Hail Percentage Ded	1%	Included	
Adjusted Value Factor 0.0250			
Business Income And Extra Expense		12 Months	Included
Limitation of Coverage for Fungi, Mold, Dry Rot, Wet Rot and Bacteria		See Form	Included
COVERAGE PACKAGE: Property Plus -Premier			96.93
Accounts Receivable	2,500	200,000	Included
Arson Reward		7,500	Included
Bailees Coverage		15,000	Included
		10,000 Per Item	
Building Glass Coverage	250	See Form	Included
Business Personal Property - Expanded Coverage	2,500	Up To 1,000 Ft	Included
Business Personal Property At Fairs Or Exhibitions	2,500	5,000	Included
Business Personal Property At Newly Acquired Premises	2,500	500,000/90Days	Included
Business Personal Property In Transit	2,500	100,000	Included
Business Personal Property Off Premises	2,500	100,000	Included
Debris Removal		100,000	Included
Electronic Equipment			
Equipment - Unscheduled	1,000	100,000	Included
Electrical Disturbance	See Form	100,000	Included
Mechanical Breakdown	2,500	100,000	Included
Media		100,000	Included
Transportation		100,000	Included
Business Income And Extra Expense		100,000	Included
Fine Arts, Collectibles, And Memorabilia		50,000/ 10,000 Per Item	Included
Fire Department Service Charge		25,000	Included
Fire Extinguisher And Fire Suppression System Recharge		10,000	Included
Forgery And Alterations	2,500	50,000	Included
Money & Securities Inside Premises	250	50,000	Included
Money & Securities Outside Premises	250	50,000	Included
Newly Acquired Or Constructed Property	2,500	1,000,000/ 90 Days	Included
Off-Premises Utility Service Failure	2,500	150,000	Included
Ordinance Or Law Coverage A, B And C Combined		150,000	Included
Outdoor Property	2,500	20,000	Included
Trees, Shrubs Or Plants	2,500	1,000 Per Item	Included
Outdoor Signs	250	15,000	Included
Personal Effects And Property Of Others	2,500	50,000	Included
Pollutant Clean Up And Removal		100,000	Included
Refrigerated Products	2,500	25,000	Included

EXHIBIT K

Auto-Owners

54643 (01-90)
Issued 01-08-2019

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

BUSINESSOWNERS POLICY DECLARATIONS

Renewal Effective 02-22-2019

AGENCY ELLIS REALTY AND INSURANCE AGENCY INC
16-0311-00 MKT TERR 081 (803) 943-2911

POLICY NUMBER 51-639-377-00

INSURED SPEIGHTS & SOLOMONS LLC

Company Use 36-57-SC-1802

ADDRESS PO BOX 685
HAMPTON SC 29924-0685

Company Bill

POLICY TERM
12:01 a.m. 12:01 a.m.
to
02-22-2019 02-22-2020

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

Rekeying Of Locks		1,000	Included
Salesperson's Samples		25,000	
Valuable Papers And Records	2,500	150,000	Included
Water Back-Up From Sewers Or Drains	2,500	50,000	Included
Equipment Breakdown	2,500	See Form	18.28

ADDITIONAL FORMS FOR THIS BUILDING:

54069	(08-00)	54340	(04-13)	54743	(08-00)	54750	(08-00)	54073	(08-00)
54226	(08-00)	54752	(08-00)	54064	(08-00)	54072	(04-14)	54067	(08-00)
54708	(01-07)	54062	(08-00)	54071	(03-05)	54070	(02-05)	54746	(08-00)
54066	(08-00)	54065	(08-00)	54658	(04-07)	54749	(08-10)	54068	(08-00)
54063	(03-13)	54227	(08-00)	54341	(03-13)	54748	(08-00)	54228	(04-13)

SECURED INTERESTED PARTIES: None

RATING INFORMATION

Occupancy: Attorneys Office Tenant Occupied
Class Code: 65121 Const: Non-Combustible, Non-Sprinklered
Program: Office Protection Class: 03
Liability Rate Number: 00 Territory: 014 Hampton County
Burglary Rate Group: 00
Construction Year: 1990

	TERM
TOTAL POLICY PREMIUM	$2,459.52
PAID IN FULL DISCOUNT	-244.44
TOTAL POLICY PREMIUM IF PAID IN FULL	$2,215.08

Paid In Full does not apply to fixed fees, statutory charges, or minimum premium.
Paid In Full Discount is available.

Merit Rating Discount of 3% Applies

EXHIBIT K

Agency Code 16-0311-00 Policy Number 51-639-377-00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. 54621 (7 88)

SUNTANNING DEVICE EXCLUSION

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE BUSINESSOWNERS LIABILITY COVERAGE FORM.

It is agreed:

No coverage is provided by this policy for any claim, suit, action or proceeding against the insured arising out of the ownership, operation, maintenance or use of a suntanning device.

EXHIBIT K

54062 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FORGERY AND ALTERATION

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 5. Additional Coverages,** the following Additional Coverage is added:

   Forgery And Alteration

   a. We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money", that you or your agent has issued, or that was issued by someone who impersonates you or your agent.

   b. If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.

   c. The most we will pay for any loss, including legal expenses, under this Additional Coverage is the Limit of Insurance shown in the Declarations for FORGERY AND ALTERATION.

2. Under **H. PROPERTY DEFINITIONS,** the following definition is added and applies only to the coverage afforded by the Additional Coverage, Forgery And Alteration.

   "Money" means:

   a. Currency, coins and bank notes in current use and having a face value; and

   b. Travelers checks, register checks and money orders held for sale to the public.

All other policy terms and conditions apply.

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54063 (3-13)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SALESPERSON'S SAMPLES

This endorsement modifies insurance under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

1. Under the **A. COVERAGE 5. Additional Coverages**, the following Additional Coverage is added:

   Salesperson's Samples
   We will pay for direct physical loss of or damage to samples of merchandise which are:
   1. Owned by you while in your care, custody or control;
   2. Owned by you and in the care, custody or control of your salesperson and/or agents; or
   3. While in transit, except by parcel post, between your premises and the salesperson and/or agent

   caused by or resulting from any Covered Cause of Loss.

   This coverage does not apply to:
   1. Jewelry, furs or articles consisting principally of fur;
   2. Property located in or on the building described in the Declarations or in the open (or in a vehicle) within the distance shown in the Declarations, under BUSINESS PERSONAL PROPERTY - EXPANDED COVERAGE, from the described premises;
   3. Property at or on the premises of your salespersons and/or agents; or
   4. Merchandise intended for sale, which may be sold and shipped by you to others, or which has been purchased by you from others.

   Our payment for any one loss shall not exceed the Limit of Insurance shown in the Declarations for SALESPERSON'S SAMPLES.

2. Under SECTION B. EXCLUSIONS the following exclusions are added to apply only to this Additional Coverage.

   a. Breakage, marring, scratching, tearing or denting, unless caused by: fire or lightning; aircraft; theft and/or attempted theft; earthquake; flood; explosion; malicious damage or collision; derailment or overturn of a transporting conveyance.
   b. Mysterious or unexplained disappearance or from shortage disclosed by taking inventory.
   c. Theft from any vehicle, unless at the time of the theft there is actually in or upon such vehicle your salesperson, representative or a permanent employee, or a person whose sole duty it is to attend the vehicle. This exclusion shall not apply to property in the custody of a common carrier.

3. In addition to the conditions of this coverage form, the following conditions apply only to this Additional Coverage.

   1. **PAIR OR SET**
      In case of loss of or damage to any part of a pair or set, we may:
      (a) repair or replace any part of the pair or set to restore it to its value before the loss; or
      (b) pay the difference between the actual cash value of the property before and after the loss.
   2. **PARTS**
      In case of loss or damage to any part of property covered, consisting of several parts when complete, we shall pay only for the value of the part lost or damaged.

All other policy terms and conditions apply.

EXHIBIT K

54064 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEBRIS REMOVAL

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

Under **A. COVERAGE, 5. Additional Coverages, a. Debris Removal,** paragraph **(4)** is deleted and replaced by the following:

(4) If:

(a) The sum of loss or damage and debris removal expense exceeds the Limit of Insurance, or

(b) The debris removal expense exceeds the amount payable under the 25% Debris Removal coverage limitation in paragraph (2) above;

we will pay up to the Limit of Insurance shown in the Declarations for DEBRIS REMOVAL.

All other policy terms and conditions apply.

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EXHIBIT K

54065 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLLUTANT CLEAN UP AND REMOVAL

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

Under **A. COVERAGE, 5. Additional Coverages, h. Pollutant Clean Up and Removal** is deleted and replaced by the following:

h. Pollutant Clean Up and Removal

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

(1) The date of direct physical loss or damage; or

(2) The end of the policy period.

The most we will pay under this Additional Coverage at each described premises for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy is the Limit of Insurance shown in the Declarations for POLLUTANT CLEAN UP AND REMOVAL.

All other policy terms and conditions apply.

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EXHIBIT K

54068 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL EFFECTS AND PROPERTY OF OTHERS

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE**, **5. Additional Coverages**, the following Additional Coverage is added:

   Personal Effects and Property of Others

   We shall pay for direct physical loss or damage to:

   (1) Personal effects owned by you, your officers, your partners or your employees caused by or resulting from any Covered Cause of Loss except loss or damage by theft.

   (2) Personal property of others in your care, custody or control caused by or resulting from any Covered Cause of Loss.

   Our payment for any one loss at any described premises shall not exceed the Limit of Insurance shown in the Declarations for PERSONAL EFFECTS AND PROPERTY OF OTHERS. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property. This coverage is excess over any other coverage provided by this policy.

All other policy terms and conditions apply.

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EXHIBIT K

54067 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FIRE DEPARTMENT SERVICE CHARGE

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

Under **A. COVERAGE, 5. Additional Coverages, c. Fire Department Service Charge** is deleted and replaced by the following:

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to the Limit of Insurance shown in the Declarations for FIRE DEPARTMENT SERVICE CHARGE for your liability for fire department service charges:

(1) Assumed by contract or agreement prior to loss; or

(2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

All other policy terms and conditions apply

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EXHIBIT K

54068 (6-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REKEYING OF LOCKS

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

Rekeying of Locks

We will pay reasonable necessary expenses you incur to rekey locks on doors of the building described in the Declarations, provided the keys to such locks are a part of a theft loss covered by this policy. The most we will pay is the Limit of Insurance shown in the Declarations for REKEYING OF LOCKS. This an additional amount of insurance. No Deductible applies to this Additional Coverage.

All other policy terms and conditions apply.

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EXHIBIT K

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. 54069 (8-00)

ARSON REWARD

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

Arson Reward

We will pay for information which leads to a conviction for arson in connection with a fire loss to Covered Property insured by this policy. The most we will pay is the Limit of Insurance shown in the Declarations for ARSON REWARD regardless of the number of persons who provide information. This payment shall be in addition to the amount of insurance applying to the Covered Property. No Deductible applies to this Additional Coverage.

All other policy terms and conditions apply.

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54070 (2-05)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ORDINANCE OR LAW

This endorsement modifies insurance under the following:

BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM
BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

Ordinance or Law

A. Coverage

1. **Coverage A - Coverage For Loss to the Undamaged Portion of the Building.**

   If a Covered Cause of Loss occurs to Covered Building Property and a Limit of Insurance is shown in the Declarations under:

   a. ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED; or

   b. ORDINANCE OR LAW - COVERAGE A

   we will pay for loss to the undamaged portion of the building caused by enforcement of any ordinance or law that:

   a. Requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;

   b. Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and

   c. Is in force at the time of loss.

   When ORDINANCE OR LAW - COVERAGE A is shown in the Declarations, Coverage A is included within the Limit of Insurance applicable to the Covered Building Property shown in the Declarations.

   This is not an additional amount of insurance.

2. **Coverage B - Demolition Cost Coverage.**

   If a Covered Cause of Loss occurs to Covered Building Property and a Limit of Insurance is shown in the Declarations under:

   a. ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED; or

   b. ORDINANCE OR LAW - COVERAGE B

   we will pay the cost to demolish and clear the site of undamaged parts of the property caused by enforcement of building, zoning or land use ordinance or law in force at the time of the loss.

3. **Coverage C - Increased Cost of Construction Coverage.**

   If a Covered Cause of Loss occurs to Covered Building Property and a Limit of Insurance is shown in the Declarations under:

   a. ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED; or

   b. ORDINANCE OR LAW - COVERAGE C

   we will pay for the increased cost to repair, rebuild or construct the property caused by enforcement of building, zoning or land use ordinance or law in force at the time of the loss. If the property is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by zoning or land use ordinance or law in force at the time of the loss.

   However, we will not pay for the increased cost of construction if the building is not repaired or replaced.

B. Exclusion

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EXHIBIT K

The following exclusion applies only to the coverage provided by this endorsement.

We will not pay, under this endorsement for:

a. Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread of any activity of "fungi", wet rot, dry rot or bacteria; 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", "fungi", wet rot, dry rot or bacteria.

C. Limit of Insurance

When a Limit of Insurance is shown in the Declarations for:

1. ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED, the most we shall pay for the total of all covered loss caused by the enforcement of any ordinance or law under Coverage A, Coverage B and Coverage C combined, is such limit.

2. a. ORDINANCE OR LAW - COVERAGE A;

   b. ORDINANCE OR LAW - COVERAGE B; or

   c. ORDINANCE OR LAW - COVERAGE C

   the most we shall pay for covered loss caused by the enforcement of any ordinance or law under each coverage is the applicable limit shown.

Subject to **C.1** and **C.2** above the following loss payment provisions apply.

1. **Under Coverage A - Coverage for Loss to the Undamaged Portion of the Building:**

   a. If the Replacement Cost option applies and the property is repaired or replaced, on the same or another premises, we will not pay more for loss or damage to Covered Building Property caused by enforcement of an ordinance or law, than the lesser of:

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

      (2) The Limit of Insurance applicable to the Covered Building Property.

   b. If the Replacement Cost option applies and the property is not repaired or replaced or if the Replacement Cost option does not apply, we will not pay more for loss or damage to Covered Building Property caused by enforcement of an ordinance or law, than the lesser of:

      (1) The actual cash value of the building at the time of loss;

      (2) The Limit of Insurance shown in the Declarations under:

         (a) ORDINANCE OR LAW - COVERAGE A;

         (b) ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED; or

         (c) ORDINANCE OR LAW - COVERAGE A and ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED;

      (3) The Limit of Insurance applicable to the Covered Building Property.

2. **Coverage B - Demolition Cost Coverage**

   We will not pay more under Coverage B - Demolition Cost Coverage than the lesser of the following:

   a. The amount you actually spend to demolish and clear the site of the described premises; or

   b. The Limit of Insurance shown in the Declarations under:

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(a) ORDINANCE OR LAW - COVERAGE B;

(b) ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED; or

(c) ORDINANCE OR LAW - COVERAGE B and ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED.

3. **Coverage C - Increased Cost of Construction Coverage**

a. We will not pay under Coverage C - Increased Cost of Construction Coverage:

(1) Until the property is actually repaired or replaced, at the same or another premises; and

(2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may, at our option, 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 under Coverage C is the lesser of:

(1) The increased cost of construction at the same premises; or

(2) The Limit of Insurance shown in the Declarations under:

(a) ORDINANCE OR LAW - COVERAGE C;

(b) ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED; or

(c) ORDINANCE OR LAW - COVERAGE C and ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED.

c. If the ordinance or law requires relocation to another premises, the most we will pay under Coverage C is the lesser of:

(1) The increased cost of construction at the new premises; or

(2) The Limit of Insurance shown in the Declarations under:

(a) ORDINANCE OR LAW - COVERAGE C;

(b) ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED; or

(c) ORDINANCE OR LAW - COVERAGE C and ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED.

4. When a Limit of Insurance is shown in the Declarations for ORDINANCE OR LAW - COVERAGE A, B AND C COMBINED and in the event the total amount paid under Coverage A, Coverage B and Coverage C combined does not exceed such Limit of Insurance, you may at your option, apply the remainder of such Limit of Insurance to your actual loss of Business Income or necessary Extra Expense, if any, subject to the terms and conditions of the BUSINESS INCOME AND EXTRA EXPENSE endorsement.

D. Under SECTION B., EXCLUSIONS, 1. a. does not apply to the coverage provided by this endorsement only.

E. When a covered Cause of Loss occurs to Covered Building Property shown in the Declarations and coverage is subsequently provided by this endorsement, the definition of "Period of Restoration" contained in SECTION H. PROPERTY DEFINITIONS is deleted and replaced by the following.

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

1. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

2. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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"Period of restoration" does not include any increased period required due to the enforcement of any law that 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".

F. The terms of this endorsement apply separately to each building to which this endorsement applies.

G. Under **H. PROPERTY DEFINITIONS**, the following definition is added:

"Fungi" means any type or form of fungus, including but not limited to mold, mildew, mycotoxins, spores, scents or byproducts produced or released by any type or form of fungus.

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54071 (3-05)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OFF-PREMISES UTILITY SERVICE FAILURE - WITHOUT BUSINESS INCOME OR EXTRA EXPENSE

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE**, **5. Additional Coverages**, the following Additional Coverage is added:

   Off-Premises Utility Service Failure

   In the event of the interruption of utility service to the premises described in the Declarations, we shall pay for loss of or damage to Covered Property. The interruption must result from direct physical damage by a Covered Cause of Loss to property of your "local utility service".

2. The most we shall pay for all loss or damage to Covered Property, in any one loss is the Limit of Insurance shown in the Declarations for OFF-PREMISES UTILITY SERVICE FAILURE.

3. **Exclusions**

   The following exclusions apply only to this endorsement:

   a. **Perishable Stock**

      We will not pay for loss or damage to "perishable stock".

   b. **Power or Other Utility Grid Failure**

      Under **B. EXCLUSIONS**, **1.e. Power Failure**, is deleted and replaced by the following exclusion for this endorsement only:

      We shall not pay for loss or damage caused by or resulting from the failure to supply "communication supply services", "power supply services" or "water supply services" from any regional or national grid.

4. **Definitions**

   The following definitions apply only to this Additional Coverage:

   a. **"Communication Supply Services"**, meaning property supplying communication services, including telephone, radio, microwave or television services, to the described premises, that are not located on a described premises and not rented, leased or owned by any insured, such as:

      (1) Communication transmission lines, including optic fiber transmission lines;

      (2) Coaxial cables; and

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(3) Microwave radio relays except satellites.

b. **"Local Utility Service"**, means your billing entity, repair entity or service entity directly supplying your "communication supply services", "power supply services" or "water supply services" to the premises described in the Declarations.

c. **"Perishable Stock"**, means merchandise held in storage or for sale that is refrigerated for preservation and is susceptible to loss or damage if the refrigeration fails.

d. **"Power Supply Services"**, means the following types of property supplying electricity, steam or gas to the described premises, that are located on a described premises and not rented, leased or owned by any insured:

(1) Utility generating plants;

(2) Switching stations;

(3) Substations;

(4) Transformers; and

(5) Transmission lines.

e. **"Water Supply Services"**, means the following types of property supplying water to the described premises, that are not located on a described premises and not rented, leased or owned by any insured:

(1) Pumping stations; and

(2) Water mains.

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PROPERTY PLUS COVERAGE PACKAGE AMENDATORY ENDORSEMENT

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

Under **C. LIMITS OF INSURANCE**, the following provision is added:

The corresponding Limit of Insurance for any one coverage, which is part of the PROPERTY PLUS COVERAGE PACKAGE, applies only to loss of or damage to covered property at each building and at each location designated in the Declarations regardless of the number of buildings or locations shown in the Declarations.

All other policy terms and conditions apply.

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EXHIBIT K

54073 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS PERSONAL PROPERTY - EXPANDED COVERAGE

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

Under **A COVERAGE**, **1. Covered Property**, **b. Business Personal Property**, the phrase ". . .within 100 feet of the described premises. . ." is deleted and replaced by ". . .within the distance, shown in the Declarations for BUSINESS PERSONAL PROPERTY - EXPANDED COVERAGE, from the described premises. . .".

All other policy terms and conditions apply.

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

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

The following exclusion is added to **B. EXCLUSIONS, 1. Applicable to Business Liability Coverage**:

Recording And Distribution Of Material Or Information In Violation Of Law

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

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

2. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

3. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

4. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

All other policy terms and conditions apply.

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54094 (3-07)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGES - WATER DAMAGE EXCLUSION

This endorsement modifies insured provided under the following:

BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM
BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

Under **B. EXCLUSIONS, g. Water** is deleted and replaced by the following:

g. Water

(1) Regardless of the cause, flood, surface water, waves, tides, tidal waves, storm surge, overflow of any body of water, or their spray, all whether driven by wind or not;

(2) Mudslide or mudflow;

(3) Water that backs up 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 loss or damage.

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54098 (5-07)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADJUSTED VALUE FACTOR INFLATION GUARD COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM
BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

Under **C. LIMITS OF INSURANCE**, **4. Building Limit-Automatic Increase**, is deleted and replaced by the following:

4. Building and Business Personal Property - Adjusted Value Inflation Guard Coverage

a. Building Limit

(1) The Limit of Insurance for Buildings will automatically increase by the adjusted value factor shown in the Declarations for Building.

(2) The amount of the increase will be:

(a) The Building limit that applied on the most recent of the following:

1) The policy inception date;

2) The policy anniversary date; or

3) The date of any other policy change amending the Building limit, times

(b) The adjusted value factor shown in the Declarations, times

(c) The number of days since the applicable date in **(2)(a)** immediately above divided by 365 days.

(3) The Limit of Insurance for Buildings will be rounded to the nearest $100 at each renewal.

b. Business Personal Property Limit

(1) The Limit of Insurance for Business Personal Property will automatically increase by the adjusted value factor shown in the Declarations for Business Personal Property.

(2) The amount of the increase will be:

(a) The Business Personal Property limit that applied on the most recent of the following:

1) The policy inception date;

2) The policy anniversary date; or

3) Any other policy change amending the Business Personal Property limit, times

(b) The adjusted value factor shown in the Declarations, times

(c) The number of days since the applicable date in **(2)(a)** immediately above divided by 365 days.

(3) The Limit of Insurance for Business Personal Property will be rounded to the nearest $10 at each renewal.

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EXHIBIT K

54226 (8-00)

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BUSINESS PERSONAL PROPERTY IN TRANSIT

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 6. Coverage Extensions, b. Personal Property Off Premises** is deleted.

2. Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

   Business Personal Property In Transit

   a. We will pay for direct physical loss of or damage to your Business Personal Property (other than property in the care, custody or control of your salespersons) in transit beyond the distance shown in the Declarations, under BUSINESS PERSONAL PROPERTY - EXPANDED COVERAGE, from the described premises caused by or resulting from any Covered Cause of Loss.

   b. Property must be in or upon a motor vehicle you own, lease or operate.

   c. Our payment for any one loss shall not exceed the Limit of Insurance shown in the Declarations for BUSINESS PERSONAL PROPERTY IN TRANSIT.

All other policy terms and conditions apply.

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EXHIBIT K

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BUSINESS INCOME AND EXTRA EXPENSE

This endorsement modifies insurance provided under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 5. Additional Coverages, f. Business Income and g. Extra Expense** are deleted and replaced by the following:

   f. Business Income

   Subject to the Limit of Insurance provisions of this endorsement, we will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises, including personal property in the open (or in a vehicle) within the distance shown in the Declarations under BUSINESS PERSONAL PROPERTY - EXPANDED COVERAGE, caused by or resulting from any Covered Cause of Loss.

   Business Income means the:

   (1) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and

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

   g. Extra Expense

   Subject to the Limit of Insurance provisions of this endorsement, we will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises, including personal property in the open (or in a vehicle) within the distance shown in the Declarations under BUSINESS PERSONAL PROPERTY - EXPANDED COVERAGE, caused by or resulting from a Covered Cause of Loss.

   Extra Expense means expense incurred:

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

      (a) At the described premises; or

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

         1) Relocation expenses; and

         2) Costs to equip and operate the replacement or temporary locations.

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

   (3) (a) To repair or replace any property; or

      (b) 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 the Additional Coverage, f. Business Income.

2. **Limit of Insurance**

   Under **C. LIMITS OF INSURANCE**, the following provisions are added and apply only to the Additional Coverages, Business Income and Extra Expense.

   a. In the event of loss or damage to Covered Property which is covered by the following Additional Coverages:

      (1) WATER BACK-UP FROM SEWERS OR DRAINS;
      (2) REFRIGERATED PRODUCTS;
      (3) OFF-PREMISES UTILITY SERVICE FAILURE; or
      (4) ORDINANCE OR LAW;

   and you sustain actual loss of Business Income due to the necessary suspension of you "operations" during the "period of restoration" or incur necessary Extra Expense during the "period of restoration", we shall not pay more

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than the applicable Limit of Insurance shown in the Declarations for:

(1) WATER BACK-UP FROM SEWERS OR DRAINS;
(2) REFRIGERATED PRODUCTS;
(3) OFF-PREMISES UTILITY SERVICE FAILURE; or
(4) ORDINANCE OR LAW;

for all loss or damage including Business Income and Extra Expense.

This provision does not apply to the Additional Coverage, ORDINANCE OR LAW, only when a Limit of Insurance is shown in the Declarations for one or more of the following:

(1) ORDINANCE OR LAW - COVERAGE A;
(2) ORDINANCE OR LAW - COVERAGE B; or
(3) ORDINANCE OR LAW - COVERAGE C.

b. In the event loss of or damage to Covered Property is not covered by the following Additional Coverages:

(1) WATER BACK-UP FROM SEWERS OR DRAINS;
(2) REFRIGERATED PRODUCTS;
(3) OFF-PREMISES UTILITY SERVICE FAILURE; or
(4) ORDINANCE OR LAW;

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

All other policy terms and conditions apply.

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ELECTRONIC EQUIPMENT

This endorsement modifies insurance under the following:

BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM
BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

It is agreed:

Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

Electronic Equipment

1. **COVERAGE**
   Covered Property
   (1) Scheduled Equipment
   When scheduled in the Declarations, we will pay for direct physical loss of or damage to:
   (a) Electronic equipment, component parts of such equipment and air conditioning equipment necessary for the operation of the electronic equipment which you own, which is leased or rented to you, or which is in your care, custody or control while located at the premises described in the Declarations.
   (b) "Laptop computers", component parts of such equipment and "media" designated for use with a covered "laptop computer" which you own, which is leased or rented to you or which is in your care, custody or control.
   Direct physical loss of or damage to Covered Property must be caused by a Covered Cause of Loss.
   (2) Unscheduled Equipment
   (a) When a limit of insurance is shown in the Declarations under ELECTRONIC EQUIPMENT, EQUIPMENT-UNSCHEDULED, for unscheduled equipment, we will pay for direct physical loss of or damage to electronic equipment, component parts of such equipment and air conditioning equipment necessary for the operation of the electronic equipment which you own, which is leased or rented to you or which is in your care, custody or control while located at the premises described in the Declarations.

   We do not cover unscheduled laptop computers.

   (b) When a limit of insurance is shown in the Declarations under ELECTRONIC EQUIPMENT, MEDIA, we will pay for direct physical loss of or damage to "media" which you own, which is leased or rented to you or which is in your care, custody or control while located at the premises described in the Declarations. We will pay for your costs to research, replace or restore information on "media" which has incurred direct physical loss or damage by a Covered Cause of Loss.

   Direct physical loss of or damage to Covered Property must be caused by a Covered Cause of Loss.
2. **EXCLUSIONS**
   Under B. EXCLUSIONS, of the COVERAGE FORM, the following exclusions are added to apply to this Additional Coverage.
   a. Wear and tear, inherent vice, hidden or latent defect, gradual deterioration, insects, vermin, rodents, depreciation, or by processing or any work on the property. We will cover accidental direct physical loss from fire or explosion which is caused by any of these.
   b. Loss or damage caused by:
   (1) Corrosion or rusting;

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(2) Dryness or dampness of atmosphere; or
(3) Extremes of temperature
unless directly resulting from accidental direct physical damage to the electronic equipment system's air conditioning equipment caused by a peril not excluded by this endorsement.

c. Any dishonest, fraudulent or criminal act by:
(1) You;
(2) Your partners; or
(3) Any of your officers, directors or trustees
whether acting alone or in collusion with others.

d. "Electrical disturbance" unless caused by lightning.

e. Loss or damage caused by:
(1) Data processing "media" failure; or
(2) Breakdown or malfunction of the data processing equipment and component parts
while the "media" is being run through the system. We will cover loss, damage or expense caused directly by ensuing fire or explosion.

f. Actual work upon, installation or testing of Covered Property. We will cover loss caused by ensuing fire or explosion.

g. Faulty construction or error in the design of the Covered Property. We will cover loss, damage or expense caused directly by ensuing fire or explosion.

h. Delay or loss of market.

i. Loss or damage caused by or resulting from improper operation of Covered Property.

j. Breakage, marring, scratching, tearing or denting of any "laptop computer" unless caused by: fire or lightning; aircraft; theft and/or attempted theft; earthquake; flood; explosion; malicious damage or collision, derailment or overturn of a transporting conveyance.

k. Loss or damage to any "laptop computer" not scheduled in the Declarations.

3. **LIMIT OF INSURANCE**

Accidental direct physical loss of or damage to Covered Property shall be adjusted on the basis of:
a. Actual cash value; or
b. Replacement cost
whichever is indicated in the Declarations as applying to the damaged Covered Property. Actual cash value includes deduction for depreciation.

a. When loss to Covered Property is settled at the actual cash value of the property at the time of loss, we shall pay no more than the lesser of the following:
(1) The cost to repair or replace the damaged Covered Property with property of like kind and quality; or
(2) The Limit of Insurance shown in the Declarations for the Covered Property.

b. When loss to Covered Property is settled at replacement cost of the Covered Property at the time of loss, we shall pay no more than the lesser of the following:
(1) The full cost to repair the Covered Property;
(2) The full cost to replace the Covered Property with property of like kind and quality even if the property has technological advantages, provided such Covered Property is capable of performing the same function as the equipment being replaced; or
(3) The Limit of Insurance shown in the Declarations for the Covered Property.

c. We shall pay no more for "media" than the lesser of the following:
(1) The actual cost to repair, replace or reproduce the "media";
(2) If the "media" is not repaired, replaced or reproduced, the value of blank "media" of the same type; or
(3) The Limit of Insurance shown in the Declarations for "media".

The Limit of Insurance shown in the Declarations for Covered Property is the total limit of our liability for loss or damage to all Covered Property in any one occurrence at one location. With respect to Covered Property you do not own, we will pay no more than the amount for which you are legally liable.

4. **COVERAGE EXTENSIONS**

a. **Property At Newly Acquired Or Temporary Locations**
We will pay for accidental direct physical loss or damage to Covered Property caused by a Covered Cause of Loss at:
(1) Any location you acquire for similar occupancy or warehousing purposes; or

(2) Any temporary location, other than fairs or exhibitions, you acquire for similar occupancy or warehousing purposes
other than at the premises shown in the Declarations, but within territorial limits.

The most we will pay for loss or damage under this extension is the Limit of Insurance shown in the Declarations under ELECTRONIC EQUIPMENT, EQUIPMENT - UNSCHEDULED.

This coverage extension will stop:
(1) 60 days from your acquisition of such property; or
(2) On the date values of Covered Property at such locations are reported to us; or
(3) On the expiration date of the policy
whichever comes first.

Additional premium for the values reported shall be due and payable from the date the property arrives at such locations.

b. Newly Acquired Property

We will pay for accidental direct physical loss or damage, caused by a Covered Cause of Loss, to additional property you acquire of the same type as the Covered Property described in a. COVERED PROPERTY above while at any one location.

The most we will pay for loss or damage under this extension is the Limit of Insurance shown in the Declarations under ELECTRONIC EQUIPMENT, EQUIPMENT - UNSCHEDULED.

This coverage extension will stop:
(1) 60 days from your acquisition of such property; or
(2) On the date values of such property are reported to us; or
(3) On the expiration date of the policy
whichever comes first.

Additional premium for the values reported shall be due and payable from the date the property is acquired.

5. ADDITIONAL COVERAGES

a. Transportation

We will pay for accidental direct physical loss of or damage to Covered Property caused by:
(1) Fire, lightning, explosion, smoke, riot and civil commotion, and vandalism and malicious mischief;
(2) The overturning, upset or collision of the vehicle, transporting the covered property, with another vehicle or object other than the road bed; or
(3) Theft of an entire case or package from a vehicle:
(a) While such property is in a fully enclosed and securely locked body or compartment; and
(b) Theft results from forcible entry, evidenced by visible marks
that occurs during transportation by motor vehicles you own, lease or operate.

We do not cover property held as samples, held for rental or sale, or that you rent to others while in the care, custody or control of salespersons.

Our liability in any one occurrence shall not exceed the Limit of Insurance shown in the Declarations under ELECTRONIC EQUIPMENT, TRANSPORTATION.

b. Business Income and Extra Expense

(1) Business Income

(a) We will pay for the actual loss of Business Income you sustain due to the necessary, suspension of your "operations" during the "period of restoration". The suspension must be the direct result of interruption of your business caused by accidental direct physical loss of or damage to:
1) The electronic equipment or "media" covered by this Additional Coverage;
2) The building housing the electronic equipment or "media" that prevents access to and use of the electronic equipment or "media"; or

3) The air conditioning or electrical systems that are required to operate the electronic equipment, provided such damage or destruction is inside the building or outside within 100 feet of the building

caused by the perils insured against and subject to (4) EXCLUSIONS below.

(b) We will also pay expenses you incur to reduce the covered loss. We will not pay for expenses:
1) You incur to extinguish a fire; or
2) Expenses that exceed the amount by which the covered loss is reduced.

Business Income means the:
(a) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
(b) Continuing normal operating expenses incurred, including payroll.

(2) Extra Expense

(a) We will pay necessary Extra Expense, other than loss of Business Income, you incur during the "period of restoration" that you would not have incurred following accidental direct physical loss of or damage to:
1) The electronic equipment or "media" covered by this Additional Coverage;
2) The building housing the electronic equipment or "media" that prevents access to and use of the equipment or "media"; or
3) The air conditioning or electrical systems that are required to operate the electronic equipment, provided such damage or destruction is inside the building or outside within 100 feet of the building

caused by the perils insured against and subject to (4) EXCLUSIONS below.

(b) We will also cover the cost to repair, replace or restore:
1) Books of accounts, abstracts, drawings;
2) Card index systems; or
3) Other records or data such as film, tape, disks, drum, cell or other magnetic storage or recording "media" for electronic data processing

that have been damaged or destroyed by perils we insure against, if such cost:
1) Exceeds the normal cost for such repair, replacement or restoration; and
2) Was incurred to reduce loss under this Additional Coverage.

However, we will cover no more of such excess cost than the amount by which the total extra expense payable under this coverage was reduced.

Extra Expense means expense incurred to avoid or minimize the suspension of business and continue "operations":
(a) At the described premises; or
(b) At replacement premises or at temporary locations, including:
1) Relocation expenses.
2) Costs to equip and operate the replacement or temporary locations.
3) Costs to minimize the suspension of business if you cannot continue "operations".
4) (a) Costs to expedite repair or replace any Covered Property; or
(b) Costs to expedite 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 the Additional Coverage, Business Income, of this endorsement.

(3) Coverage Extension

We extend Business Income and Extra Expense to include the actual loss or damage sustained by you which is a direct result of an interruption of the business covered by this policy because access to the described business premises is prohibited by order of civil authority because of damage or destruction of property adjacent to the described premises by the perils insured against. Coverage applies while access is denied, but no longer than two consecutive weeks.

(4) Exclusions

The following exclusions apply only to the Business Income and Extra Expense provisions of this Additional Coverage above, in addition to those contained in B. EXCLUSIONS:

(a) We will not pay for any Extra Expense or increase of Business Income loss, caused by any of the following, whether or not any other cause or happening contributes concurrently or in any sequence to the loss or damage:
1) Enforcement of any local or state ordinance or law regulating construction, repair or demolition of buildings or structures;

2) Interference at the described premises by strikers or other persons with:
   a) Rebuilding, repairing or replacing the property; or
   b) Resumption or continuation of business; or
3) The suspension, lapse, or cancellation of any lease, license, contract or order beyond the "period of restoration".

(b) We will not cover loss or damage caused directly or indirectly by any of the following, whether or not any other cause or happening contributes concurrently or in any sequence to the loss or damage:
1) Theft of any property, which is not an integral part of a building or structure at the time of loss. We will cover direct loss that ensues from a peril not excluded in this policy. We will cover direct loss by pillage and looting which occurs during and at the immediate place of riot or civil commotion.
2) Any other consequential or remote loss.

(5) Limit of Insurance

(a) Business Income
Subject to (c) below, we will pay only for loss of your business income that occurs during the "period of restoration", but not exceeding 12 consecutive months after the date of accidental direct physical loss of or damage to Covered Property, resulting from a Covered Cause of Loss.

(b) Extra Expense
Subject to (c) below, we will pay only for necessary extra expense during the "period of restoration" starting with the date of damage or destruction. Payments under this coverage shall not be limited by the expiration of the policy.

(c) Our total payment for both Business Income and Extra Expense for any one occurrence shall not exceed the Limit of Insurance shown in the Declarations under ELECTRONIC EQUIPMENT, BUSINESS INCOME and EXTRA EXPENSE.

(6) Loss Determination

(a) The amount of Business Income loss will be determined based on:
1) The Net Income of the business if no loss or damage occurred;
2) The continuing normal operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
3) Other relevant sources of information, including:
   a) Your financial records and accounting procedures;
   b) Bills, invoices and other vouchers; and
   c) Deeds, liens or contracts.

(b) The amount of Extra Expense will be determined based on:
1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
   a) The salvage value that remains of any property bought for temporary use during the "period of restoration" once "operations" are resumed; and
   b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
2) All necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

(c) Resumption Of Operations
We will reduce the amount of your:
1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations," in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

(d) 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.

(7) Loss Payment - Business Income and Extra Expense

We will pay for covered loss within 30 days after we receive the sworn proof 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.

6. **DEDUCTIBLE**
We will not pay for loss or damage to Covered Property in any one occurrence until the loss or damage exceeds the deductible shown in the Declarations. We will then pay the amount of loss that exceeds the deductible. This deductible applies only once per occurrence regardless of the number of buildings in which covered property is located.

7. **OTHER INSURANCE**
The insurance provided by this endorsement is primary. If there is other insurance provided on a primary basis, we will pay only our share. Our share will be the ratio of the amount of this insurance to the total amount of insurance.

8. **OPTIONAL COVERAGES**
   a. Mechanical Breakdown Coverage
      (1) When a Limit of Insurance for MECHANICAL BREAKDOWN is shown in the Declarations under Electronic Equipment, we will pay loss or damage to covered property caused by "mechanical breakdown". This provision supersedes any other policy provision that may exclude loss or damage caused by or resulting from "mechanical breakdown".
      (2) Under 2. EXCLUSIONS above exclusion e. is deleted and replaced by the following:
         e. Loss or damage caused by data processing "media" failure while the "media" is being run through the system. We will cover loss, damage or expense caused directly by ensuing fire or explosion.
      (3) We will not pay for loss or damage to Covered Property in any one occurrence until the loss or damage exceeds the deductible shown in the Declarations. We will then pay the amount of loss that exceeds the deductible. This deductible applies only once per occurrence.
   b. Electrical Disturbance Coverage
      (1) When a limit of insurance for ELECTRICAL DISTURBANCE is shown in the Declarations under Electronic Equipment, we will pay for loss or damage to Covered Property caused by:
         (a) "Electrical disturbance"; or
         (b "Power supply disturbance".
      (2) Under 2. EXCLUSIONS above, exclusion d. does not apply.
      (3) The deductible for this coverage shall be:
         (a) $1,000; or
         (b) 5% of the combined unscheduled equipment and scheduled equipment limits shown in the Declarations whichever is greater.

9. **DEFINITIONS**
   a. "Electrical disturbance" means electrical or magnetic damage, disturbance or erasure of electronic recordings.
   b. "Laptop computer" means portable data collectors, notebook (laptop) computers, subnote book computers, palmtop computers, handheld computers and portable or any similar computer. "Laptop computer" does not mean cellular phone, wireless phone or pager.
   c. "Mechanical breakdown" means component failure or mechanical malfunction, breakdown or failure.
   d. "Media" means materials on which information is recorded such as film, magnetic tape, paper tape, disks, drums, and cards. "Media" includes computer software and reproduction of data contained on covered media.
   e. "Power Supply Disturbance" means blackout, brownout, power surge or interruption of power supply.

All other policy terms and conditions apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY 54238 (12-01)

AMENDMENT OF POLLUTION EXCLUSION - EXCEPTION FOR BUILDING HEATING EQUIPMENT

This endorsement modifies insurance provided under the BUSINESSOWNERS LIABILITY COVERAGE FORM.

It is agreed:

Under **B. EXCLUSIONS, 1. f.,** subparagraph **(1) (a)** is deleted and replaced by the following:

This insurance does not apply to:

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

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph, **(a)**, does not apply to "bodily injury" if sustained within a building at such premises, site or location and caused by smoke, fumes, vapor or soot from equipment used to heat a building at such premises, site or location.

All other policy terms and conditions apply.

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AMENDMENT OF LIABILITY INSURING AGREEMENT - KNOWN INJURY OR DAMAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

It is agreed:

Under **A. COVERAGES**, **1. Business Liability**, is deleted and replaced by the following:

1. Business Liability.

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements or medical expenses.

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 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.

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(2) To "personal injury" 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 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. **Coverage Extension - Supplementary Payments**

In addition to the Limit of Insurance, we will pay, with respect to any claim or "suit" we defend:

(1) All expenses we incur.

(2) Up to $250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.

(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 $100 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 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 our Limit of Insurance.

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54313 (7-08)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONDITIONAL EXCLUSION OF TERRORISM INVOLVING NUCLEAR, BIOLOGICAL OR CHEMICAL TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

A. Applicability Of This Endorsement

1. The provisions of this endorsement will apply if and when one of the following situations occurs:

a. The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act of 2002 (including ensuing Congressional actions pursuant to the Act), terminates; or

b. The Program is renewed, extended or otherwise continued in effect:

(1) With revisions that increase insurers' statutory percentage deductible or decrease the federal government's statutory percentage share in potential terrorism losses above such deductible, or that results in a change in the level or terms or conditions of coverage; and

(2) We are not required by the Program to make terrorism coverage available to you and elect not to do so.

2. When this endorsement becomes applicable in accordance with the terms of A.1.a. or A.1.b., above, it supersedes any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism".

3. If this endorsement does NOT become applicable, then any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism", will remain in effect. However, if the Program is renewed, extended or otherwise continued in effect with revisions that change the level or terms or conditions of coverage, and we are required to offer you the revised coverage or to provide revised coverage to those who previously accepted coverage under the Program, then we will take the appropriate steps in response to the federal requirements.

B. The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
   a. Use or threat of force or violence; or
   b. Commission or threat of a dangerous act; or

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c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

2. When one or both of the following applies:

a. The effect is to intimidate or coerce a government or the civilian population or any segments thereof, or to disrupt any segment of the economy; or

b. It appears that the intent is to intimidate or coerce a government or the civilian population, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

C. If the BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM or the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM is included in this policy, then under **B. EXCLUSIONS**, the following exclusion is added:

Exclusion Of "Terrorism"

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism"**:

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination;

2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material;

3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

D. Under the BUSINESSOWNERS LIABILITY COVERAGE FORM, the following exclusion is added:

We will not pay for "bodily injury", "property damage", "personal injury" or "advertising injury" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". All "bodily injury", "property damage", "personal injury" or "advertising injury" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism"**:

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination;

2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material;

3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

E. Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, regardless of whether this endorsement was in effect during the entirety of that time period or not.

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LIMITED FUNGI OR BACTERIA COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

A. Under **A. COVERAGE, 4. Additional Coverages**, the following coverage is added:

Limited Coverage For "Fungi" And Bacteria

(1) The coverage described in paragraphs (2) and (6) immediately below, only applies when the "fungi", wet rot, dry rot or bacteria are the result of a "specified cause of loss" other than fire or lightning that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

(2) We will pay for loss or damage by "fungi", wet rot, dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

(a) Direct physical loss or damage to Covered Property caused by "fungi", wet rot, dry rot or bacteria including the cost of removal of the "fungi", wet rot, dry rot or bacteria;

(b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot, dry rot or bacteria; and

(c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet rot, dry rot or bacteria are present.

(3) The coverage described under this Limited Coverage is limited to 10% of the building or business personal property limit of insurance, whichever is greater, subject to a maximum of $100,000 and a minimum of $15,000. This is the most we shall pay for the total of all loss or damage arising out of all occurrences of a "specified cause of loss" (other than fire or lightning) which take place in a 12-month period (starting with the beginning of the present annual policy period) regardless of the number of locations covered by this policy or claims made. With respect to a particular occurrence of loss which results in "fungi", wet rot, dry rot or bacteria, we will not pay more than this limit even if "fungi", wet rot, dry rot or bacteria continue to be present or active, or recurs, in a later policy period.

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

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

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(5) The terms of this Limited Coverage do not increase or reduce the coverage provided under the Water Damage Additional Coverage.

(6) The following applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the suspension of "operations" satisfies all the terms and conditions of the applicable Business Income and/or Extra Expense Additional Coverage.

(a) If the loss which resulted in "fungi", wet rot, dry rot or bacteria does not in itself necessitate a suspension of "operations", but such suspension is necessary due to loss or damage to property caused by "fungi", wet rot, dry rot or bacteria, then our payment under the Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 45 days. The days need not be consecutive.

(b) If a covered suspension of "operations" was caused by loss or damage other than "fungi", wet rot, dry rot or bacteria, but remediation of "fungi", wet rot, dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 45 days. The days need not be consecutive.

B. Under **B. EXCLUSIONS**, **2.d.(2)**, is deleted and replaced by the following:

(2) Rust, corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage itself;

C. Under **B. EXCLUSIONS**, the following exclusion is added:

"Fungi" Or Bacteria

Presence, growth, proliferation, spread or any activity of "fungi", wet rot, dry rot or bacteria. This exclusion does not apply to loss or damage to covered property:

(1) If "fungi", wet rot or dry rot results from fire or lightning;

(2) If the ensuing loss not otherwise excluded results directly or indirectly from "fungi", wet rot or dry rot; or

(3) As provided under the Additional Coverage, **Limited Coverage For "Fungi" And Bacteria**.

D. Under **H. PROPERTY DEFINITIONS**, the following definition is added:

"Fungi" means any type or form of fungus, including but not limited to, any mold, mildew mycotoxins, spores, scents or byproducts produced or released by any type or form of fungus.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BAILEES COVERAGE

This endorsement modifies insurance under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

1. Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:
   Bailees Coverage
   a. We will pay for direct physical loss or damage to the property of others that:
      (1) Is in your possession or in the possession of any of your employees; or
      (2) Is being transported by you, any of your employees, a public carrier or mail service.
   b. We will also cover your actual incurred cost for labor and materials.
   c. We do not cover the following properties:
      (1) Property held for storage or for which a storage charge is made. If you do not have instructions from the owner of the goods to store goods held by you, such goods are not considered stored.
      (2) Property while in the possession of any person, company or corporation other than you, your employees, a public carrier or mail service.
      (3) Any land motor vehicle.
      (4) Watercraft.
      (5) Aircraft including objects falling from aircraft.
      (6) Accounts, bills, currency, deeds, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities.
      (7) Contraband or property in the course of illegal transportation or trade.
   d. In addition to other policy exclusions, we will not pay for loss or damage caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
      (1) Misappropriation, secretion, conversion, infidelity or any dishonest act by you or others or the employees or agents of either to whom the covered property may be entrusted. This exclusion does not apply to carriers for hire.
      (2) Delay.
      (3) Vandalism or malicious mischief.
      (4) Burglary of property left in your delivery vehicles overnight unless locked and in your building which you occupy.
   e. We will pay no more than the smallest of either:
      (1) The cost to replace damaged property with new property of similar quality and features reduced by the amount of decrease in value because of age, wear, obsolescence or market value applicable to the damaged property immediately prior to the loss; or
      (2) The Limit of Insurance shown in the Declarations for BAILEES COVERAGE.
      This is an additional amount of insurance.
      Our payment for loss of or damage to property of others will only be for the account of the owner of the property.
   f. No deductible applies to this Additional Coverage.

2. Under **E. PROPERTY LOSS CONDITIONS, 6. Loss Payment, d. (3)** the following is added:
   All property covered under Bailees Coverage.

All other policy terms and conditions apply.

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FINE ARTS, COLLECTIBLES AND MEMORABILIA - BLANKET COVERAGE

This endorsement modifies insurance under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

1. Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

   Fine Arts, Collectibles and Memorabilia - Blanket Coverage

   a. Coverage

   We will pay for direct physical loss or damage to fine arts, collectibles and memorabilia owned by you while located within the United States of America and Canada.

   b. Exclusions

   Under **B. EXCLUSIONS**, the following exclusions are added to apply only to this Additional Coverage.

   (1) An action committed by you or at your direction with the intent to cause loss or damage.
   (2) Damage caused by any repairing, restoration or retouching process.
   (3) Breakage of art glass windows, statuary, marble, glassware, bric-a-brac, porcelains and similar fragile articles unless caused by:
   (a) Fire or lightning;
   (b) Aircraft;
   (c) Theft or attempted theft;
   (d) Earthquake;
   (e) Flood or storm surge;
   (f) Malicious damage; or
   (g) Collision, derailment or overturn of conveyance;
   except as we may state otherwise.

   (4) Loss to fine arts, collectibles or memorabilia on exhibition at any premises other than described in the Declarations.
   (5) Mysterious disappearance unless the loss is a direct result of a forcible entry of which there is visible evidence.

   c. Limit Of Insurance

   We will pay no more than the smallest of either:
   (1) The cost to replace damaged property with new property of similar quality and features reduced by the amount of decrease in value because of age, wear, obsolescence or market value applicable to the damaged property immediately prior to the loss; or
   (2) The Limit of Insurance shown in the Declarations for FINE ARTS, COLLECTIBLES OR MEMORABILIA - BLANKET INSURANCE.

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In no event shall our payment for all items in any one loss exceed the Limit of Insurance shown in the Declarations for FINE ARTS, COLLECTIBLES OR MEMORABILIA - BLANKET INSURANCE.

This is an additional amount of insurance.

d. Deductible

No deductible applies to this Additional Coverage.

e. Conditions

(1) In case of loss of or damage to any part of a pair or set, we may:
(a) repair or replace any part of the pair or set to restore it to its value before the loss; or
(b) pay the difference between the actual cash value of the property before and after the loss.
(2) In case of loss or damage to any part of property covered, consisting of several parts when complete, we shall pay only for the value of the part loss or damaged.

2. Under **A. COVERAGE, b. Business Personal Property, 2. Property Not Covered**, the following property is added:

Fine arts, collectibles and memorabilia.

3. Under **4. LIMITATIONS**, paragraph **c.** does not apply to this Additional Coverage.

4. The following **Definitions** apply to this endorsement only:
a. Fine arts mean paintings, etchings, pictures, tapestries, art glass windows and other bona fide works of art of rarity, historical value or artistic merit.
b. Collectibles mean objects collected as a hobby, for display or as an investment whose value may appreciate.
c. Memorabilia means objects valued for their connection to historical events, culture, entertainment or experiences worthy of remembrance.

All other policy terms and conditions apply.

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EXHIBIT K

54356 (2-07)

NOTICE TO POLICYHOLDER
CHANGES - WATER DAMAGE EXCLUSION

Dear Policyholder:

Your policy now contains endorsement 54094, "Changes - Water Damage Exclusion". This endorsement clarifies the water damage exclusion in the Standard or Special Property Coverage Form, whichever is included in the policy. The endorsement provides, in part, that regardless of the cause, flood, surface water, waves, tides, tidal waves, storm surge, overflow of any body of water, or their spray, all whether driven by wind or not are excluded.

This notice is for informational purposes only.

Please review the new endorsement and your policy carefully. If you have questions concerning your renewal, please contact your Auto-Owners agency.

Thank you for the opportunity to provide insurance coverage for your commercial business.

South Carolina

EXAMPLE - WINDSTORM OR HAIL PERCENTAGE DEDUCTIBLE

THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR WINDSTORM OR HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE ENCLOSED EXAMPLE ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.

EXAMPLE - APPLICATION OF DEDUCTIBLE:

The Windstorm or Hail Percentage Deductible on the building is 2% and the Windstorm or Hail Percentage Deductible on the business personal property is 2%.

A windstorm causes a covered loss to a building in the amount of $50,000 and a covered loss to business personal property in the amount of $25,000.

The Limits of Insurance on the damaged property are $100,000 on the building and $50,000 on the business personal property.

Building

Step **(1)**: $100,000 X 2% = $2,000

Step **(2)**: $50,000 - $2,000 = $48,000

Business Personal Property

Step **(1)**: $50,000 X 2% = $1,000

Step **(2)**: $25,000 - $1,000 = $24,000

In this example, the most we will pay is $72,000. That portion of the loss not covered due to application of the deductible is $3,000.

The preceding example is provided, in accordance with South Carolina law, to illustrate the operation of the Windstorm or Hail Percentage Deductible applicable to this policy. This deductible only applies in the event of loss or damage to covered property caused directly or indirectly by Windstorm or Hail. This example is for informational purposes only. It does not change, replace or alter policy language in any way. The policy language shall control in any actual loss scenario.

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EXHIBIT K

54367 (7-09)

NOTICE TO POLICYHOLDER

Adjusted Value Factor Inflation Guard Coverage

Dear Policyholder:

This notice is for informational purposes only.

Effective upon the renewal of your policy, form 54239, BUILDING AND BUSINESS PERSONAL PROPERTY - AUTOMATIC INCREASE, will be replaced with form 54098, ADJUSTED VALUE FACTOR INFLATION GUARD COVERAGE. Form 54098 will continue to automatically increase your Building and Business Personal Property coverages throughout the policy period based on inflation.

This change may result in a reduction of the amount by which your coverage limits will increase on an annual basis. Please review this new endorsement and your policy carefully. If you have questions concerning your renewal, please contact your Auto-Owners agency.

Thank you for the opportunity to provide insurance coverage for your commercial business.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEGAL ACTION AGAINST US AMENDATORY ENDORSEMENT - SOUTH CAROLINA

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM
BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

Under **E. PROPERTY LOSS CONDITIONS, 4. Legal Action Against Us** is deleted and replaced by the following:

No one may bring 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 3 years after the date on which the direct physical loss or damage occurred.

All other policy terms and conditions apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACCOUNTS RECEIVABLE COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

SCHEDULE*

Prem. No.	Bldg. No.	Additional Premium	Limit of Insurance

If additional premium for Accounts Receivable is shown in the Declarations or in the Schedule above, the following coverage applies. This coverage is subject to the provisions applicable to the Businessowners Property Coverage Form of this policy including the deductible, except as provided below.

A. COVERAGE

Under Businessowners Special Property Coverage Form, subparts **1.**; **2.**; **4.**; **5.**; and **6.** are deleted as applied to this endorsement and replaced by the following:

1. We will pay:
   a. All amounts due from your customers that you are unable to collect;
   b. Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
   c. Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
   d. Other reasonable expenses that you incur to re-establish your records of accounts receivable

   that result from direct physical loss or damage by any Covered Causes of Loss to your records of accounts receivable.

2. **PROPERTY NOT COVERED**
   Covered property does not include contraband, or property in the course of illegal transportation or trade.

3. **COVERAGE EXTENSION**
   Removal

   If you give us written notice within 10 days of removal of your records of accounts receivable because of imminent danger of loss or damage, we will pay for loss or damage while they are:
   a. At a safe place away from the described premises; or
   b. Being taken to and returned from that place.

   This Coverage Extension is included within the Limit of Insurance applicable to the premises from which the Covered Property is removed.

4. **EXCLUSIONS**
   Under Section B. EXCLUSIONS, the following exclusions are added to apply only to this endorsement:
   a. We will not pay for loss or damage caused by or resulting from any of the following:
      (1) Dishonest acts by you, anyone else with an interest in the property, or your or their employees or authorized representatives, or anyone entrusted with the property, whether or not acting alone or in collusion with other persons or occurring during the hours of employment.

      But this exclusion does not apply to a carrier for hire.

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EXHIBIT K

(2) 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.

(3) Bookkeeping, accounting or billing errors or omissions.

(4) Electrical or magnetic injury, disturbance or erasure of electronic recordings. But we will pay for direct loss or damage caused by lightning.

(5) 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.

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

b. We will not pay for loss or damage that requires any audit of records or any inventory computation to prove its factual existence.

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

(1) Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph a.(1), (2) or (3) above to produce the loss or damage.

(2) Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

(3) Faulty, inadequate or defective:

(a) Planning, zoning, development, surveying, siting;

(b) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(c) Materials used in repair, construction, renovation or remodeling; or

(d) Maintenance of part or all of any property on or off the described premises.

B. LIMIT OF INSURANCE

This section is replaced by the following:

The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for accounts receivable shown in the Schedule above or in the Declarations.

For accounts receivable not at the described premises, the most we will pay is:

1. $2,500; or
2. 25% of the accounts receivable limit

whichever is less.

C. ADDITIONAL CONDITIONS

The following is added to paragraph E.6.d. of the Loss Payment Condition:

1. If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage, the following method will be used:
   a. Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
   b. Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.
2. The following will be deducted from the total amount of accounts receivable, however that amount is established:
   a. The amount of the accounts for which there is no loss or damage;
   b. The amount of the accounts that you are able to re-establish or collect;
   c. An amount to allow for probable bad debts that you are normally unable to collect; and
   d. All unearned interest and service charges.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VALUABLE PAPERS AND RECORDS COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

SCHEDULE

Prem. No.	Bldg. No.	Additional Premium	Limit of Insurance

If additional premium for Valuable Papers and Records is shown in the Declarations or in the Schedule above, the following coverage applies. This coverage is subject to the provisions applicable to the Businessowners Property Coverage Form of this policy including the deductible, except as provided below.

A. COVERAGE

Under Businessowners Special Property Coverage Form, subparts 1.; 2.; 4.; 5.; and 6. are deleted as applied to this endorsement and replaced by the following:

1. **COVERED PROPERTY**, as used in this endorsement, means the following type of property that is your property or property of others in your care, custody or control.

   Valuable papers and records, meaning inscribed, printed or written:
   a. Documents;
   b. Manuscripts; and
   c. Records

   including abstracts, books, deeds, drawings, films, maps, or mortgages.

   But valuable papers and records does not mean:
   i. "Money" or "Securities";
   ii. Converted Data;
   iii. Programs or instructions used in your data processing operations, including the materials on which the data is recorded.

2. **PROPERTY NOT COVERED**

   Covered Property does not include:
   a. Property held as samples or for delivery after sale;
   b. Property in storage away from the premises shown in the Declarations or in the Schedule; or
   c. Contraband, or property in the course of illegal transportation or trade.

3. **COVERAGE EXTENSION**

   Removal

   If you give us written notice within 10 days of removal of your valuable papers and records because of imminent danger of loss or damage, we will pay for loss or damage while it is:
   a. At a safe place away from the described premises; or
   b. Being taken to and returned from that place.

   This Coverage Extension is included within the Limits of Insurance applicable to the premises from which the Covered Property is removed.

4. The VALUABLE PAPERS AND RECORDS Coverage Extension in the Businessowners Property Coverage Form does not apply at any premises where this endorsement applies.

5. The PERSONAL PROPERTY OFF PREMISES Coverage Extension in the Businessowners Property Coverage Form does not apply to valuable papers and records.

EXHIBIT K

B. EXCLUSIONS

Under Section B. EXCLUSIONS, the following exclusions are added to apply only to this endorsement:

1. We will not pay for loss or damage caused by or resulting from any of the following:
   a. Dishonest acts by you, anyone else with an interest in the property, or your or their employees or authorized representatives, or anyone entrusted with the property, whether or not acting alone or in collusion with other persons or occurring during the hours of employment.
      But this exclusion does not apply to a carrier for hire.
   b. Errors or omissions in processing or copying.
      But we will pay for direct loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this endorsement.
   c. Electrical or magnetic injury, disturbance or erasure of electronic recordings.
      But we will pay for direct loss or damage caused by lightning.
   d. 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.
   e. Unauthorized instructions to transfer property to any person or to any place.

2. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.
   a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1.a., 1.b. and 1.c. above to produce the loss or damage.
   b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
   c. Faulty, inadequate or defective:
      (1) Planning, zoning, development, surveying, siting;
      (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
      (3) Materials used in repair, construction, renovation or remodeling; or
      (4) Maintenance

      of part or all of any property on or off the described premises.

C. LIMIT OF INSURANCE

This section is replaced by the following:

The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for valuable papers and records shown in the Schedule above or in the Declarations.

For valuable papers and records not at the described premises, the most we will pay is:

1. $2,500; or
2. 25% of the valuable papers and records limit

whichever is less.

D. PROPERTY LOSS CONDITIONS

Paragraph d.(6) of the LOSS PAYMENT Loss Condition does not apply to valuable papers and records that are actually replaced or restored.

E. ADDITIONAL DEFINITIONS

1. "Money" means:
   a. Currency, coins and bank notes whether or not in current use; and
   b. Travelers checks, register checks and money orders held for sale to the public.
2. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or other property and includes:
   a. Tokens, tickets, revenue and other stamps whether or not in current use; and
   b. Evidences of debt issued in connection with credit or charge cards, which are not of your own issue

   but does not include "money".

54584 (6-08)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WINDSTORM OR HAIL PERCENTAGE DEDUCTIBLE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

The Windstorm or Hail Deductible, as shown in the Declarations, applies to loss or damage to Covered Property caused directly or indirectly by Windstorm or Hail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage. If loss or damage from a covered weather condition other than Windstorm or Hail occurs, and that loss or damage would not have occurred but for Windstorm or Hail, such loss or damage shall be considered to be caused by Windstorm or Hail and therefore part of a Windstorm or Hail occurrence.

With respect to Covered Property at a premises identified in the Declarations, no other deductible applies to Windstorm or Hail.

The Windstorm or Hail Deductible applies whenever there is an occurrence of Windstorm or Hail.

WINDSTORM OR HAIL DEDUCTIBLE CLAUSE

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the percentage (as shown in the Declarations) of the Limit(s) of Insurance applicable to the property that has sustained loss or damage. This Deductible is calculated separately for, and applies separately to:

1. Each building that sustains covered loss or damage; and

2. Personal Property in or on the building or in the open (or in a vehicle) within 100 feet of the described premises that sustains covered loss or damage.

If there is damage to both a building and personal property in that building, separate deductibles apply to the building and to the personal property.

We will not pay for loss or damage until the amount of covered loss or damage exceeds the Deductible. We will then pay the amount of covered loss or damage in excess of the Deductible, up to the applicable Limit(s) of Insurance.

When property is covered under the Coverage Extension for Newly Acquired Property: In determining the amount, if any, that we will pay for covered loss or damage, we will deduct an amount equal to a percentage of the value(s) of the property at the time of loss. The applicable percentage for Newly Acquired Property is the highest percentage shown in the Declarations for any described premises.

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EXHIBIT K

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. 54605 (11-88)

CONDITIONAL AMENDATORY ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE BUSINESSOWNERS POLICY.

Unless indicated in the Declarations, the following coverages are deleted under:

1. PROPERTY COVERAGE FORMS STANDARD OR SPECIAL:
   Additional coverages - Business Income and Extra Expense.

2. BUSINESSOWNERS LIABILITY COVERAGE FORM:
   Personal Injury - Damages because of personal injury as afforded under Business Liability.

   Druggist Liability - Bodily injury or property damage arising out of practice of pharmacy as afforded under Business Liability by Exception to Exclusion j(9).

EXHIBIT K

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. 54656 (8-91)

POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE PART

Exclusion f. under COVERAGE A is replaced by the following:

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

(a) At or from premises you own, rent or occupy;

(b) At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste;

(c) That are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for you or any person or organization for whom you may be legally responsible; or

(d) At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations:

(i) If the pollutants are brought on or to the site or location in connection with such operations; or

(ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

(2) Any loss, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

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.

Subparagraphs (a) and (d)(i) of paragraph (1) of this exclusion do not apply to "bodily injury", "property damage" or "personal injury" caused by heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

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54658 (4-07)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUILDING GLASS COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. **BUILDING GLASS COVERAGE**

   a. If the Declarations indicates Building Glass applies, we will pay for direct physical loss or damage to your interior and exterior building glass, including all lettering and ornamentation.

   b. We will also pay for necessary:

      (1) Expenses incurred to put up temporary plates or board up openings;

      (2) Repair or replacement of encasing frames; and

      (3) Expenses incurred to remove or replace obstructions.

   c. **SECTION A.3., Covered Causes of Loss** and **SECTION B., EXCLUSIONS**, do not apply to this coverage, except for:

      (1) Paragraph **B.1.c., Governmental Action**;

      (2) Paragraph **B.1.d., Nuclear Hazard**; and

      (3) Paragraph **B.1.f., War and Military Action**.

   d. We will not pay for loss or damage:

      Caused by or resulting from:

      (1) Wear and tear;
      (2) Hidden or latent defect;
      (3) Corrosion; or
      (4) Rust.

2. **SECTION A.4., LIMITATIONS**, paragraph **b.** does not apply to this coverage.

3. **SECTION C., LIMITS OF INSURANCE**, paragraph 1. is deleted and replaced by:

   1. The Limit of Insurance shown in the Declarations for:

      a. The building is the most we will pay for all loss or damage to that building including interior and exterior glass, in any one occurrence; or

      b. If no Limit of Insurance is shown for a building, the Limit of Insurance for business personal property is the most we will pay for all loss or damage to the business personal property, including interior and exterior glass, in any one occurrence.

4. **SECTION D. DEDUCTIBLES** is revised as follows:

   a. Paragraph **2.c.** is deleted.

   b. Paragraph **4.** is added:

      4. We will not pay for loss or damage to building glass in any one occurrence until the amount of loss or damage exceeds the glass deductible shown in the Declarations. We will then pay the amount of loss that exceeds the deductible. This deductible applies only once per occurrence regardless of the number of insured buildings or the amount business personal property sustaining covered loss or damage. The glass deductible will be used toward satisfying the requirements of the PROPERTY COVERAGES deductible in the Declarations.

5. **SECTION G. OPTIONAL COVERAGES**, paragraph **2. Exterior Grade Floor Glass** is deleted.

All other policy terms and conditions apply.

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EXHIBIT K

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. 54661 (8-91)

ABSOLUTE ASBESTOS EXCLUSION ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE BUSINESSOWNERS LIABILITY COVERAGE FORM.

No coverage is provided by this coverage form for any claim, suit, action or proceeding against the insured arising out of the discharge, dispersal, release, escape or inhalation of any asbestos related particle, dust, irritant, contaminant, pollutant, toxic element or material.

All other policy terms and conditions apply.

54663 (1 03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTO AND NON-OWNED AUTO LIABILITY

This endorsement modifies insurance provided under the BUSINESSOWNERS POLICY.

A. Insurance is provided only for those coverages for which a specific premium charge is shown in the Declarations.

1. HIRED AUTO LIABILITY

The insurance provided under the Businessowners Liability Coverage Form, Paragraph A.1. Business Liability, applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your employees in the course of your business.

2. NON-OWNED AUTO LIABILITY

The insurance provided under the Businessowners Liability Coverage Form, Paragraph A.1. Business Liability, applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person.

B. For insurance provided by this endorsement only:

1. The exclusions, under the Businessowners Liability Coverage Form, Paragraph B.1. Applicable to Business Liability Coverages, other than exclusions a., b., d., f. and i. and the Nuclear Energy Liability Exclusion, are deleted and replaced by the following:

   "Bodily injury":

   a. To an employee of the insured arising out of and in the course of employment by the insured; or
   b. To the spouse, child, parent, brother or sister of that employee as a consequence of **a.** above.

   This exclusion applies:

   a. Whether the insured may be liable as an employee or in any other capacity; and
   b. To any obligation to share damages with or repay someone else who must pay damages because of injury.

   This exclusion does not apply to:

   a. Liability assumed by the insured under an "insured contract"; or
   b. "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

   "Property damage" to:

   a. Property owned or being transported by, or rented or loaned to the insured; or
   b. Property in the care, custody or control of the insured.

2. With respect to only the coverage extended by this endorsement, WHO IS AN INSURED in the Businessowners Liability Coverage Form, Paragraph C, is replaced by the following:

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

   a. You.

   b. Your partners if you are designated in the Declarations as a partnership or a joint venture.

   c. Your members if you are designated in the Declarations as a limited liability company.

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d. Your executive officers if you are designated in the Declarations as an organization other than a partnership, joint venture or limited liability company.

e. Any person using the "auto" and any person or organization legally responsible for the use of an "auto" not owned by such person or organization, provided the actual use is with your permission.

None of the following is an insured:

a. Any person engaged in the business of his or her employer for "bodily injury" to any co-employee of such person injured in the course of employment;
b. Any partner or executive officer for any "auto" owned by such partner or officer or a member of his or her household;
c. Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;
d. the owner or lessee (of whom you are a sublessee) of a hired auto or the owner of a "non-owned auto" or any agent or employee of any such owner or lessee;
e. Any person or organization for the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

3. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE in the Businessowners Liability Coverage Form, Paragraph D, is replaced by the following:

a. The Limits of Insurance shown in the Declarations and the rule below fix the most we will pay regardless of the number of:

(1) Insureds;
(2) Claims made or "suits" brought; or
(3) Persons or organizations making claims or bringing "suits".

b. The most we will pay for the sum of all damages because of "bodily injury" and "property damage" arising out of any one "occurrence" is the Hired Auto and Non-Owned Auto Liability Limit shown in the Declarations.

C. The following additional definitions apply:

1. **"Auto Business"** means the business or occupation of selling, repairing, servicing, storing or parking "autos".

2. **"Hired Auto"** means any "auto" you:

a. lease or rent for ninety consecutive days or less;
b. hire; or
c. borrow;

which is used in connection with your business. This does not include any "auto" you lease, rent, hire or borrow from any of your employees or members of their households, or from any partner or executive officer.

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

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EXHIBIT K

COMMUNICABLE DISEASES EXCLUSION
Businessowners Policy

54679 (6-92)

It is agreed:

1. The following exclusion is added and applies to:

   a. Business Liability Coverage; and

   b. Medical Expenses Coverage.

2. **EXCLUSION**

   This policy does not apply to "bodily injury", "personal injury" or medical expenses for "bodily injury" arising out of or resulting from the transmission of any communicable disease by any "insured".

All other policy terms and conditions apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE BENEFITS LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

A. Under A. COVERAGES, the following coverage is added:

EMPLOYEE BENEFITS LIABILITY INSURANCE

Insuring Agreement

a. We will pay those sums the insured becomes legally obligated to pay as damages to:

(1) An "employee", their beneficiaries or legal representative; or

(2) A former "employee" their beneficiaries or legal representative

because of any act, error or omission:

(1) Of the insured; or

(2) Of any other person for whose acts the insured is legally liable

to which this insurance applies.

We will have the right and duty to defend the insured against any "suit" seeking those damages. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in paragraph **D.** of this endorsement; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance for this coverage in the payment of judgments or settlements.

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

b. This insurance applies to damages only if:

(1) The act, error or omission is negligently committed in the "administration" of your "employee benefit program";

(2) The act, error or omission takes place in the "coverage territory"; and

(3) The act, error or omission occurs during the policy period. All "claims" for damages made by an "employee", former "employee", or their beneficiaries or legal representative because of more than one act, error or omission, will be deemed to have been made at the time the first act, error or omission occurred.

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

(1) All references to Supplementary Payments are replaced by Supplementary

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Payments and Employee Benefits Liability.

(2) Paragraph e.(2), COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS does not apply to the coverage provided by this endorsement.

B. Under B. EXCLUSIONS, the following exclusions are added:

Applicable to Employee Benefits Liability Insurance only. The coverage provided by this endorsement does not apply to:

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

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

c. Damages arising out of failure of performance of a contract by any insurer, including failure of an "employee benefit program".

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

e. Any "claim" based upon:

(1) Failure of any investment to perform;

(2) Errors in providing information on past performance of investment vehicles; or

(3) Advice given to any person with respect to that person's decision to participate in any plan included in the "employee benefit program".

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

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

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

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

j. Damages arising out of any actual or alleged:

(1) Wrongful dismissal, discharge or termination (either actual or constructive), including breach of an implied contract;

(2) Harassment of any kind;

(3) Discrimination of any type;

(4) Retaliatory acts alleged to be in response to the actual or attempted exercise by an "employee" or former "employee" of any right that such "employee" or former "employee" has under the law;

(5) Employment-related libel, slander, humiliation, mental anguish, infliction of emotional distress, defamation or invasion of privacy;

(6) Wrongful failure to employ or promote;

(7) Wrongful deprivation of career opportunity, wrongful demotion or negligent "employee" evaluation, including the giving of negative or defamatory

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statements in connection with an "employee" reference;

(8) Wrongful imposition of discipline; and

(9) Violation of an individual's civil rights relating to any of the above.

k. Damages for any related acts, errors or omissions if the first act, error or omission occurred prior to the policy period. Acts, errors or omissions are deemed to be related if they involve the same "employees" or former "employees" regardless of the number of "employees" or former "employees" or the number of acts, errors or omissions committed.

C. For the purposes of the coverage provided by this endorsement only, Paragraph 2. of WHO IS AN INSURED, is deleted and replaced by the following:

2. Each of the following is also an insured:

a. Each of your "employees" who is or was authorized to administer your "employee benefit program".

b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until legal representation is appointed.

c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this endorsement.

D. For the purposes of the coverage provided by this endorsement only, D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE is deleted and replaced by the following:

D. LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and rules below fix the most we will pay regardless of the number of:

a. "Insureds";

b. "Claims" made or "suits" brought;

c. Persons or organizations making "claims" or bringing "suits";

d. Acts, errors or omissions; or

e. Benefits included in your "employee benefit program".

2. The Employee Benefits Liability Aggregate Limit is the most we will pay for all damages during any one policy period because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program", subject to paragraph 3. immediately below.

3. Subject to the Employee Benefits Liability Aggregate Limit, the Employee Benefits Liability Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

a. An act, error or omission; or

b. A series of related acts, errors or omissions

negligently committed in the "administration" of your "employee benefit program".

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

The Limits of Insurance of this endorsement apply separately to each consecutive annual period of less than 12 months starting with the beginning of the policy period shown in the Declarations of the policy to which this endorsement is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that

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case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

E. For the purposes of the coverage provided by this endorsement only, the following provision is added:

Deductible

1. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of $1,000 as applicable to Each Employee. The Limits of Insurance shall not be reduced by the amount of this deductible.

2. The $1,000 deductible applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

3. The terms of this insurance, including those with respect to:

   a. Our rights and duty to defend any "suits" seeking those damages; and

   b. Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim"

   apply irrespective of the application of the deductible amount.

4. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

F. For the purposes of the coverage provided by this endorsement only, Condition 2. of E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS is deleted and replaced by the following:

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

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

      (1) What the act, error or omission was and when it occurred; and

      (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

   b. If a "claim" or "suit" is brought against any insured, you must:

      (1) Immediately record the specifics of the "claim" or "suit" and the date received; and

      (2) Notify us as soon as practicable.

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

   c. You and any other involved insured must.

      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";

      (2) Authorize us to obtain records and other information;

      (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and

      (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

   d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our written consent.

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G. For the purposes of this endorsement only, H. OTHER INSURANCE of the BUSINESSOWNERS COMMON POLICY CONDITIONS is deleted and replaced by the following:

H. OTHER INSURANCE

This insurance is primary. If any other insurance is also primary, then we will share with that other insurance by the method described below.

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

H. F. LIABILITY AND MEDICAL EXPENSES - DEFINITIONS is amended as follows as it applies to this endorsement only:

a. The definition **13.** "Suit" is deleted and replaced by the following:

13. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

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

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

b. The following definitions are added:

(1) "Administration" means:

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

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

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

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

(2) "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pretax dollars.

(3) "Claim" means any demand, or "suit", made by an "employee" or an "employees" dependents and beneficiaries, for damages as the result of an act, error or omission.

(4) "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes 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. "Employee" does not include a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

(5) "Employee benefit program" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

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EXHIBIT K

a) Group life insurance, group accident or health insurance, dental, vision and hearing plans, and flexible spending accounts, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;

b) Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

c) Unemployment insurance, social security benefits, workers compensation and disability benefits;

d) Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family and civil leave; tuition assistance plans; transportation and health club subsidies; and

e) Any other similar benefits designated in the Declarations or by endorsement.

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54708 (1-07)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FIRE EXTINGUISHER AND FIRE SUPPRESSION SYSTEM RECHARGE

This endorsement modifies insurance under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

Fire Extinguisher And Fire Suppression System Recharge

We shall pay for the recharging of fire extinguishers and fire suppression systems that you own that have been discharged to control a fire at a premises described in the Declarations.

The most we shall pay to recharge your fire extinguishers and fire suppression systems in any one occurrence is the Limit of Insurance shown in the Declarations for FIRE EXTINGUISHER AND FIRE SUPPRESSION SYSTEM RECHARGE.

No Deductible applies to this Additional Coverage.

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EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

The following exclusions apply in addition to those contained in **B. EXCLUSIONS, 1. Applicable to Business Liability Coverage.**

"Bodily injury", "personal injury" or "advertising injury":
(1) Arising out of any:
- **(a)** Refusal to employ;
- **(b)** Termination of employment;
- **(c)** Employment-related practice, policy, act or omission, including but not limited to coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at a person; or
- **(d)** Criminal or civil action brought against a person by or at the direction of the insured directly or indirectly related to any offense described in **(a)**, **(b)** or **(c)** above; or

(2) To anyone as a consequence of "bodily injury", "personal injury" or "advertising injury" to a person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, **(c)** or **(d)** above is directed.

This exclusion applies:
(1) Whether the insured may be liable as an employer or in any other capacity;
(2) Whether the offense is alleged to arise out of the employment during the course or scope of employment, outside the course or scope of employment or after termination of employment;
(3) Whether directly or indirectly related to a person's prospective, current or past employment; or
(4) To any obligation to share damages with or repay someone else who may pay damages because of the injury.

All other policy terms and conditions apply.

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EXHIBIT K

LIMITED LIABILITY COMPANY
Businessowners Policy

54734 (8-95)

This endorsement modifies insurance provided under the **BUSINESSOWNERS LIABILITY COVERAGE FORM**.

It is agreed:

1. Under **C. WHO IS AN INSURED**, 1.c. is deleted and replaced by the following:

   c. A limited liability company, you are 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.

2. Under **C. WHO IS AN INSURED**, 1.d. is added as follows:

   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.

3. Under **C. WHO IS AN INSURED**, 2.a. is deleted and replaced by the following:

   a. Your employees, other than either your executive officers (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these employees is an insured for:

      (1) "Bodily injury" or "personal injury" to you, to your partners or members (if you are a partnership or joint venture) to your members (if you are a limited liability company), or to a co-employee while that co-employee is either in the course of his or her employment or performing duties related to the conduct of your business;

      (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or

      (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, any of your partners or members (if you are a partnership or joint venture) or any member (if you are a limited liability company).

4. Under **C. WHO IS AN INSURED**, the last paragraph is deleted and replaced by the following:

   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.

All other policy terms and conditions apply.

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EXHIBIT K

54743 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS PERSONAL PROPERTY AT FAIRS OR EXHIBITIONS

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 6. Coverage Extensions, b. PERSONAL PROPERTY OFF PREMISES** is deleted.

2. Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

   Business Personal Property at Fairs or Exhibitions

   We will pay for direct physical loss of or damage to Business Personal Property while it is temporarily at any fair or exhibition caused by or resulting from any Covered Cause of Loss. This Additional Coverage shall apply for a period not to exceed 15 days at any one fair or exhibition. This coverage does not apply to Covered Property in or on a vehicle.

   Our payment for any one loss at any one fair or exhibition shall not exceed the Limit of Insurance shown in Declarations for BUSINESS PERSONAL PROPERTY AT FAIRS OR EXHIBITIONS.

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EXHIBIT K

54745 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OUTDOOR PROPERTY

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 6. Coverage Extensions, c. Outdoor Property** is deleted.

2. Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

   Outdoor Property

   We shall pay for direct physical loss or damage to your outdoor fences, radio and television antennas, trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss:

   (1) Fire;

   (2) Lightning;

   (3) Explosion;

   (4) Riot or Civil Commotion; or

   (5) Aircraft.

   The most we will pay for loss of or damage to:

   (1) all trees, shrubs or plants (other than "stock" of trees, shrubs or plants) and all covered outdoor property is the Limit of Insurance shown in the Declarations for OUTDOOR PROPERTY.
   (2) any one tree, shrub or plant (other than "stock" of trees, shrubs or plants) is the Limit of Insurance per item shown in the Declarations under TREES, SHRUBS OR PLANTS.

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EXHIBIT K

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. 54748 (8-C0)

WATER BACK-UP FROM SEWERS OR DRAINS

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 5. Additional Coverages, f. Business Income** and **g. Extra Expense** do not apply to the coverage provided by this endorsement.

2. Subject to the provisions of paragraph **3.** below, under **B. EXCLUSIONS, g. Water** subparagraph **(3)** is deleted.

3. Under C. LIMITS OF INSURANCE, the following limitation is added:

   The most we shall pay for all loss of or damage to Covered Property caused directly by water back-up from sewers or drains in any one loss is the Limit of Insurance shown in the Declarations for WATER BACK-UP FROM SEWERS OR DRAINS. In the event the amount of loss of or damage to Covered Property does not exceed the Limit of Insurance shown in Declarations for WATER BACK-UP FROM SEWERS OR DRAINS, you may at your option, apply the remainder of such Limit of Insurance to your actual loss Business Income or necessary Extra Expense, if any, subject to the terms and conditions of the BUSINESS INCOME AND EXTRA EXPENSE endorsement.

All other policy terms and conditions apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REFRIGERATED PRODUCTS

This endorsement modifies insurance under the following:

BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 5. Additional Coverages, f. Business Income** and **g. Extra Expense** do not apply to the coverage provided by this Additional Coverage.

2. Under **A. COVERAGE, 5. Additional Coverages,** the following Additional Coverage is added:
   Refrigerated Products
   We shall pay for loss of or damage to "perishable stock" caused directly by any of the following:
   a. Mechanical breakdown of the refrigeration system; or
   b. The interruption of electrical services to the refrigeration system caused by direct physical damage to the electrical generating or transmission equipment of your "local utility service".

   You must exercise diligence in inspecting and maintaining refrigeration equipment. If interruption of electrical service or mechanical or electrical breakdown is known, you must use all reasonable means to protect the covered property from further damage.

3. Under **C. LIMITS OF INSURANCE**, the following limitation is added:
   The most we shall pay for all loss or damage caused directly by mechanical or electrical breakdown of the refrigeration system or the interruption of electrical service to the refrigeration system caused by direct physical damage by a Covered Cause of Loss to the electrical generating or transmission equipment of your "local utility service" in any one loss is the Limit of Insurance shown in the Declarations for REFRIGERATED PRODUCTS. In the event the amount of loss of or damage to "perishable stock" does not exceed the Limit of Insurance shown in the Declarations for REFRIGERATED PRODUCTS, you may at your option, apply the remainder of such Limit of Insurance to your actual loss Business Income or necessary Extra Expense, if any, subject to the terms and conditions of the BUSINESS INCOME AND EXTRA EXPENSE endorsement.

4. Under **SECTION B. EXCLUSIONS**:
   a. exclusion **1.e. Power Failure** is deleted and replaced by the following exclusion.
      e. Off-Premises Services
      We shall not pay for loss or damage caused by or resulting from the failure to supply "power supply services" from any regional or national grid.
   b. Exclusion **2.d.(6)** is deleted and replaced by the following exclusion for this Additional Coverage only:
      (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. However, this does not apply to any resulting loss or damage caused by elevator collision or mechanical breakdown of refrigeration systems.

5. **Definitions**
   The following definitions apply only to this Additional Coverage:

   "Local Utility Service" means your billing entity, repair entity or service entity directly providing "power supply services" to the premises described in the Declarations.

   "Perishable stock" means merchandise held in storage or for sale that is refrigerated for preservation and is susceptible to loss or damage if the refrigeration fails.

   "Power Supply Services" means the following types of property supplying electricity to the described premises that are not located on a described premises and not rented, leased or owned by any insured:
   (1) Utility generating plants;
   (2) Switching stations;
   (3) Substations;
   (4) Transformers; and
   (5) Transmission lines.

All other policy terms and conditions apply.

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EXHIBIT K

54750 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEWLY ACQUIRED OR CONSTRUCTED PROPERTY

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 6. Coverage Extensions, a. Personal Property at Newly Acquired Premises**, is deleted.

2. Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

   Newly Acquired or Constructed Property

   a. We will pay for direct physical loss or damage to:

      (1) Your new buildings while being built on the described premises; and

      (2) Buildings you acquire at locations, other than the described premises, intended for:

         (a) Similar use as the building described in the Declarations; or

         (b) Use as a warehouse.

      The most we will pay for loss or damage is the Limit of Insurance shown in the Declarations for NEWLY ACQUIRED OR CONSTRUCTED PROPERTY.

   b. We will pay for direct physical loss of or damage to Business Personal Property at any location you acquire other than at fairs or exhibitions.

      The most we will pay for loss or damage is the Limit of Insurance shown in the Declarations for BUSINESS PERSONAL PROPERTY AT NEWLY ACQUIRED PREMISES at each building.

   c. Coverage for each newly acquired or constructed property will end when any of the following first occurs.

      (1) This policy expires.

      (2) The number of days shown in the Declarations under:

         (a) NEWLY ACQUIRED OR CONSTRUCTED PROPERTY at new premises; or

         (b) BUSINESS PERSONAL PROPERTY AT NEWLY ACQUIRED PREMISES;

         expire after you acquire or begin to construct the property.

      (3) You report values to us.

      (4) You secure other insurance for such property.

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

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EXHIBIT K

54752 (8-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS PERSONAL PROPERTY OFF PREMISES

This endorsement modifies insurance under the BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM.

1. Under **A. COVERAGE, 6. Coverage Extensions, b. Personal Property Off Premises** is deleted.

2. Under **A. COVERAGE, 5. Additional Coverages**, the following Additional Coverage is added:

   Business Personal Property Off Premises

   We shall pay for direct physical loss of or damage to your Business Personal Property:

   a. That is temporarily at a location you do not own, lease or operate; and

   b. Caused by or resulting from any Covered Cause of Loss.

   This Coverage does not apply to Covered Property:

   a. In or on a vehicle;

   b. In the care, custody or control of your salespersons; or

   c. At any fair or exhibition.

   Our payment for any one loss shall not exceed the Limit of Insurance shown in the Declarations for BUSINESS PERSONAL PROPERTY OFF PREMISES.

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EQUIPMENT BREAKDOWN COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM
BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM

1. **A. COVERAGE** is amended.
   a. BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM, **4. Limitations**, paragraph **a.** is amended. Subparagraphs **(1)** and **(2)** are deleted and replaced by the following for purposes of this endorsement only.
      (1) Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. However, we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
      (2) Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
   b. **Additional Coverages** is amended.
      (1) Pollutant Clean Up and Removal is deleted and replaced by the following for purposes of this endorsement only.
      Pollutant Clean Up and Removal
      We will pay for the pollutant clean up, removal, repair or replacement of damaged Covered Property resulting from an "Equipment Breakdown". The amount we pay is subject to the Limits of Insurance section of this endorsement. This coverage does not include contamination of perishable stock by a refrigerant.
      (2) The following **Additional Coverages** are added.
      (a) Expediting Expenses
      We will pay for the expediting expense loss resulting from an "Equipment Breakdown" with respect to your damaged Covered Property. We will pay the "reasonable extra cost" to:
      1) Make temporary repairs;
      2) Expedite permanent repairs; or
      3) Expedite permanent replacement.
      "Reasonable extra cost" shall mean "the extra cost of temporary repair and of expediting the repair of such damaged equipment of the insured, including overtime and the extra cost of express or other rapid means of transportation". The amount we pay is subject to the Limits of Insurance section of this endorsement.
      (b) Refrigerant Contamination
      We will pay for loss to your Covered Property that is damaged by contamination by a refrigerant used in refrigerating, cooling or humidity control equipment at the described premises as a result of an "Equipment Breakdown". The amount we pay is subject to the Limits of Insurance section of this endorsement.
      (c) Spoilage Coverage
      1) We will pay for loss of "perishable goods" caused by spoilage resulting from lack of power, light, heat, steam or refrigeration caused by an "Equipment Breakdown" to types of property covered by this policy, that are:
      a) Located on or within 1,000 feet of your described premises; and
      b) Owned by you, the building owner (if you are a tenant), or owned by a public utility, or other supplier with whom you have a contract to supply you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas,

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compressed air, water, steam, internet access, telecommunications services, wide area networks or data transmission.

2) However, we will not pay for any physical loss or damage caused by or resulting from any of the causes of loss listed below, unless loss or damage not otherwise excluded results, then we will pay for such resulting damage:
   a) Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water damage, earth movement; or
   b) Flood, unless an "Equipment Breakdown" ensues.

Our payment will be based upon the actual replacement cost of the "perishable goods" at the time of loss. The amount we pay is subject to the Limits of Insurance section of this endorsement.

(d) CFC Refrigerants

We will pay for the "additional costs" to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances.

"Additional costs" mean those in excess of what would have been required to repair or replace Covered Property, had no CFC refrigerant been involved. We will also pay for additional loss as described under Spoilage Coverage or loss of Business Income Coverage provided by this endorsement, caused by the presence of a refrigerant containing CFC substances.

We will pay no more than the least of the following:

1) The cost to repair the damaged property and replace any lost CFC refrigerant;
2) The cost to repair the damaged property, retrofit the system to accept a non-CFC refrigerant, and charge the system with a non-CFC refrigerant; or
3) The cost to replace the system with one using a non-CFC refrigerant.

The amount we pay is subject to the Limits of Insurance section of this endorsement.

(e) Computer Equipment

We will pay for direct physical loss or damage to your computers as a result of an "Equipment Breakdown". The amount we pay is subject to the Limits of Insurance section of this endorsement.

(f) Business Interruption, Extra Expense, Data Restoration and Service Interruption

Any insurance provided for Business Income, Extra Expense or Data Restoration is extended to apply to your loss, damage or expense caused by an "Equipment Breakdown" to equipment that is owned by a utility, landlord or other supplier with whom you have a contract to supply you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks, data transmission or "cloud computing". The equipment must meet the definition of "Equipment Breakdown" except that it is not Covered Property.

We will pay:

1) Your actual loss sustained from a total or partial interruption of business; and
2) The reasonable extra expense you sustain to run your business during the interruption, caused solely by an "Equipment Breakdown", including an "Equipment Breakdown" to any transformer, electrical apparatus, or any covered equipment that is:
   a) Located on or within 1,000 feet of your described premises;
   b) Owned by you, the building owner (if you are a tenant), or owned by a public utility company; and
   c) Used to supply electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks or data transmission.

The amount we pay is subject to the Limits of Insurance section of this endorsement.

(g) Data Restoration

We will pay for your reasonable and necessary cost to research, replace and restore the lost information on electronic media and records as a result of an "Equipment Breakdown". The amount we pay is subject to the Limits of Insurance section of this endorsement.

(h) Temperature Fluctuation

We will pay for loss of "perishable goods" only caused by or resulting from any condition or event to Covered Property that can be resolved by calibrating, resetting, tightening, adjusting or cleaning.

However, we will not pay for loss of "perishable goods" as a result of resetting the power supply to the Covered Property containing the "perishable goods".

The amount we pay is subject to the Limits of Insurance section of this endorsement.

(i) Unauthorized Instruction

We will pay for loss or damage to your "computer equipment" caused by an "unauthorized instruction" which results in an "Equipment Breakdown".

"Computer equipment" means Covered Property that is electronic computer or other data processing equipment, including peripherals used in conjunction with such equipment and electronic media and records.

"Unauthorized instruction" means a virus, harmful code or similar instruction introduced into or enacted on a computer system or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation.

The amount we pay is subject to the Limits of Insurance section of this endorsement.

(j) Risk Improvement

If Covered Property suffers direct physical loss or damage caused by an "Equipment Breakdown", we will pay for the insured to improve the "power quality" of the electrical system or equipment at the loss location where the "Equipment Breakdown" occurred. "Power quality" means the conditions that allow the electrical systems or equipment to operate as intended by limiting voltage fluctuations and other power influences that would adversely affect the operational performance and/or reduce the reliability, or the life span of the electrical system.

We will pay the reasonable extra cost to improve "power quality" for the following electrical systems and/or equipment improvements:

1) Installation of surge protection devices (SPD's) which are installed at the loss location's line disconnect, load disconnect, or on specific pieces of equipment and that are certified by Underwriter Laboratories (UL) or has an equivalent certification.

   However SPD's do not include any SPD's which are cord-connected surge strips, direct plug-in SPD's or receptacle SPD's;
2) An upgrade and/or replacement of electrical panels, switchgear and/or circuit breakers; or
3) Electrical wire and wiring improvements which include installation of flexible conduit, junction boxes and/or ground wiring.

An invoice for implementation of this Additional Coverage must be sent to us within 180 days after the payment of the loss is received.

The amount we pay is subject to the Limits of Insurance section of this endorsement.

(k) Off-Premises Coverage

We will pay for loss or damage to Covered Property resulting from a covered "Equipment Breakdown" while temporarily at a premises or location that is not a described premises.

The amount we pay is subject to the Limits of Insurance section of this endorsement.

(3) The following provision is added to **Coverage Extensions.**

Replacement Cost Coverage

We will pay you the amount you actually spend to repair or replace your damaged property with new property of like kind, capacity, size and quality, whichever is less except for the following.

If any damaged property is not repaired or replaced, then we will pay only the actual

cash value at the time of the "Equipment Breakdown".

2. **EXCLUSIONS** is amended.
BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM is amended. The following exclusions are deleted for purposes of this endorsement only.
   a. **Electrical Apparatus:**
   Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires. But if loss or damage by fire results, we will pay for that resulting loss or damage.
   d. **Steam Apparatus:**
   Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if loss or damage by fire or combustion explosion results, we will pay for that resulting loss or damage.
   e. **Mechanical Breakdown:**
   Mechanical Breakdown, including rupture or bursting caused by centrifugal force. But if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.

   BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM is amended. The following exclusions are deleted for purposes of this endorsement only.
   a. **Electrical Apparatus:**
   Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires. But if loss or damage by fire results, we will pay for that resulting loss or damage.
   d. **(6)** Mechanical breakdown, including rupture or bursting caused by centrifugal force; or
   e. **Steam Apparatus:**
   Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if loss or damage by fire or combustion explosion results, we will pay for that resulting loss or damage. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fire vessel or within the flues or passages through which the gases of combustion pass.
3. **C. LIMITS OF INSURANCE** is deleted and replaced by the following for purposes of this endorsement only.
   C. LIMITS OF INSURANCE
   1. The most we will pay for "Equipment Breakdown" for one or more coverages in any one occurrence at any one location is the amount equal to the "total insured value" at each location where "Equipment Breakdown" is shown in the Declarations. This provision does not apply to paragraph **C.4.**
   2. The limit of insurance for **Pollutant Clean Up and Removal, Refrigerant Contamination, Spoilage Coverage, Data Restoration, Temperature Fluctuation, Risk Improvement** and **Off-Premises Coverage** are not additional limits of insurance, but are included in the "total insured value". We will pay the lesser of "total insured value" or:
      a. For Pollutant Clean Up and Removal, the greater of $250,000 or the limit shown in an endorsement that is attached to the property form;
      b. For Refrigerant Contamination, up to $750,000 for loss or damage;
      c. For Spoilage Coverage, up to $750,000 for loss or damage;
      d. For Data Restoration, up to $100,000 for loss, damage or expense including actual loss of Business Income you sustain and necessary Extra Expense you incur;
      e. For Temperature Fluctuation, up to $5,000 for loss including actual loss of Business Income you sustain and necessary Extra Expense you incur;
      f. For Risk Improvement, 10% of the loss amount paid, up to a maximum limit of $10,000; and
      g. For Off-Premises Coverage, up to $25,000 for loss or damage.
   3. In no event will we pay more than the "total insured value" for each location where "Equipment Breakdown" is shown in the Declarations.
   4. As regards Business Interruption, Extra Expense and Service Interruption, our limit of liability for any one "Equipment Breakdown" is equal to twelve (12) consecutive months of actual loss sustained for a total or partial interruption of your business. The twelve (12) consecutive months begin on the date of the "Equipment Breakdown".
4. **PROPERTY GENERAL CONDITIONS** is amended. The following conditions are added for purposes of this endorsement only.
   a. **Suspension**
   Whenever Covered Property is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss to that Covered Property for the perils covered by this endorsement. Coverage can be suspended and possibly

reinstated by delivering or mailing a written notice of suspension or coverage reinstatement to:
(1) Your last known address; or
(2) The address where the property is located.
If we suspend your insurance, you will get a pro rata refund of premium. However, the suspension will be effective even if we have not yet made or offered a refund.

b. **Jurisdictional Inspections**
If any Covered Property under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf. We do not warrant that conditions are safe or healthful.

c. **Environmental, Safety and Efficiency Improvements**
If Covered Property requires replacement caused by an "Equipment Breakdown", we will pay your additional cost to replace with equipment that is better for the environment, safer, or more efficient than the equipment being replaced.
However, we will not pay more than 150% of what the cost would have been to repair or replace with like kind and quality. This condition does not apply to any property to which Actual Cash Value applies.

d. **Green Environmental and Efficiency Improvements**
(1) If Covered Property requires repair or replacement caused by an "Equipment Breakdown", we will pay:
(a) The lessor of the reasonable and necessary additional cost incurred by you to repair or replace physically damaged Covered Property with equipment of like kind and quality which qualifies as "Green". Like kind and quality includes similar size and capacity.
(b) The additional reasonable and necessary fees incurred by you for an accredited professional certified by a "Green Authority" to participate in the repair or replacement of physically damaged Covered Property as "Green".
(c) The additional reasonable and necessary cost incurred by you for certification or recertification of the repaired or replaced Covered Property as "Green".
(d) The additional reasonable and necessary cost incurred by you for "Green" in the removal, disposal or recycling of damaged Covered Property.
(e) The business interruption (if coverage is provided by the policy to which this endorsement is attached) loss during the additional time required for repair or replacement of Covered Property, consistent with "Green", in the coverages above.
We will not pay more than 150%, up to a maximum limit of $100,000, of what the cost would have been to repair or replace with equipment of like kind and quality inclusive of fees, costs and any business interruption loss incurred as stated above.
(2) **Green Environmental and Efficiency Improvements** does not cover any of the following:
(a) Covered Property does not include stock, raw materials, finished goods, "production machinery", merchandise, electronic data processing equipment not used in the functional support of the real property, process water, molds and dies, property in the open, property of others for which you are legally liable, or personal property of others.
(b) Any loss adjusted on any valuation basis other than a repair or replacement cost basis as per E. PROPERTY LOSS CONDITIONS, **6. Loss Payment**.
(c) Any loss covered under any other section of this policy.
(d) Any cost incurred because of any law or ordinance with which you were legally obligated to comply with prior to the time of the "Equipment Breakdown".

e. **Other Insurance Issued By Us**
If this policy provides coverage for Data Processing Equipment Coverages, Electronic Data Processing Equipment, Refrigerated Products or Mechanical Breakdown where two or more of this policy's coverages apply to the same loss or damage, the Coverage of this endorsement shall supersede any coverages provided outside of this endorsement for the loss or damage that arises out of an "Equipment Breakdown" loss. This Condition supersedes any similar Condition when provided by us in this policy.

5. **G. OPTIONAL COVERAGES** is amended.
a. **1.c.(5)** Mechanical breakdown is deleted for purposes of this endorsement only.
b. The provisions of this endorsement supersede **G.** OPTIONAL COVERAGES, **5. Mechanical Breakdown.**

6. **H. PROPERTY DEFINITIONS** is amended.
a. BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM, "Specified Causes of Loss" is amended to include "Equipment Breakdown" for purposes of this endorsement only.

EXHIBIT K

b. BUSINESSOWNERS SPECIAL PROPERTY COVERAGE FORM and BUSINESSOWNERS STANDARD PROPERTY COVERAGE FORM are amended. The following definitions are added for purposes of this endorsement only.

"Cloud computing" means on-demand network access to a shared pool of computing resources via networks, servers, storage, applications and services provided by an organization with whom you have a contract with using the following service models: Software as a Service (SaaS), Platform as a Service (PaaS) and Infrastructure as a Service (IaaS) on the following deployment models: public cloud, community cloud, hybrid cloud and private cloud.

"Electronic equipment" means devices which operate using many small electrical parts such as, but not limited to, microchips, transistors or circuits.

"Electronic equipment deficiency" means the quality or condition inside of "electronic equipment" which renders this equipment unexpectedly inoperable and which is operable again once a piece of "electronic equipment" has been replaced.

However, "electronic equipment deficiency" will not include replacement of "electronic equipment" for any condition that could have been resolved without replacement of the "electronic equipment" including but not limited to "computer equipment" maintenance or the reinstallation or incompatibility of software.

"Equipment Breakdown" means:

(1) Physical loss or damage both originating within:
   (a) Boilers, fired or unfired pressure vessels, vacuum vessels, and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:
      1) Waste disposal piping;
      2) Any piping forming part of a fire protective system;
      3) Furnaces; and
      4) Any water piping other than:
         a) Boiler feed water piping between the feed pump and the boiler;
         b) Boiler condensate return piping; or
         c) Water piping forming part of a refrigerating or air conditioning system.
   (b) All mechanical, electrical, "electronic equipment" or fiber optic equipment; and

(2) Caused by, resulting from, or consisting of:
   (a) Mechanical breakdown;
   (b) Electrical or electronic breakdown and "electronic equipment deficiency"; or
   (c) Rupture, bursting, bulging, implosion, or steam explosion.

(3) However, "Equipment Breakdown" does not mean:

Physical loss or damage caused by or resulting from any of the following; however, if loss or damage not otherwise excluded results, then we will pay for such resulting damage:
   (a) Wear and tear;
   (b) Rust or other corrosion, decay, deterioration, hidden or latent defect, "fungi", wet rot, dry rot, bacteria or any other quality in property that causes it to damage or destroy itself;
   (c) Smog;
   (d) Settling, cracking, shrinking or expansion;
   (e) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
   (f) Any accident, loss, damage, cost, claim, or expense, whether preventive, remedial, or otherwise, directly or indirectly arising out of or relating to the recognition, interpretation, calculation, comparison, differentiation, sequencing, or processing of data by any computer system including any hardware, programs or software;
   (g) Scratching or marring; and
   (h) Loss, damage, cost or expense directly caused by, contributed to by, resulting from or arising out of the following causes of loss:
      1) Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water damage, earth movement; or
      2) Flood, unless an "Equipment Breakdown" ensues.

"Total Insured value" means:

The sum of the limits for the following coverages if shown at the location where "Equipment Breakdown" is shown in the Declarations:

(1) Building;
(2) Business Personal Property;
(3) Stock;

(4) Personal Property of Others;
(5) Tenants Improvements and Betterments;
(6) Improvements and Alterations;
(7) Furniture;
(8) Fixtures;
(9) Machinery and Equipment;
(10) Personal Property in the Open;
(11) Legal Liability Real Property;
(12) Business Income and Extra Expense (when Business Income and Extra Expense - 12 months - Actual Loss Sustained is shown, Business Income and Extra Expense applies at 25% of the sum of the building and business personal property limits at that location);
(13) Business Income (Without Extra Expense); and
(14) Extra Expense.

"Green" means products, materials, methods and processes certified by a "Green Authority" that conserve natural resources, reduce energy or water consumption, avoid toxic or other polluting emissions or otherwise minimize environmental impact.

"Green Authority" means an authority on "Green" buildings, products, materials, methods or processes certified and accepted by Leadership in Energy and Environmental Design (LEED®), "Green" Building Initiative Green Globes®, Energy Star Rating System or any other recognized "Green" rating system.

"Perishable goods" means stock preserved and maintained under controlled conditions and susceptible to loss or damage if the controlled conditions change.

"Production machinery" means any machine which processes, forms, shapes, or transports raw materials, materials in process, waste materials or finished products.

All other policy terms and conditions apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA CHANGES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

SCHEDULE

Prem. No.	Bldg. No.	Agreed Value Of Building	Total Amount Of Insurance To Be Carried
Information required to complete Schedule, if not shown above, will be shown in the Declarations.			

A. Paragraphs **2.** and **3.** of **A. CANCELLATION** of the **BUSINESSOWNERS COMMON POLICY CONDITIONS** are deleted and replaced by the following:

2. We may cancel this policy by mailing or delivering to the first Named Insured and the agent, if any, written notice of cancellation at least:

   a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

   b. 30 days before the effective date of cancellation if we cancel for any other reason.

3. We will mail or deliver our notice to the first Named Insured's and agent's addresses shown in the Declarations.

B. The following is added to **A. CANCELLATION** of the **BUSINESSOWNERS COMMON POLICY CONDITIONS**:

CANCELLATION OF POLICIES IN EFFECT FOR LESS THAN 120 DAYS

If this policy has been in effect for less than 120 days and is not a renewal, we may cancel for any reason.

CANCELLATION OF POLICIES IN EFFECT FOR 120 DAYS OR MORE

If this policy has been in effect for 120 days or more, or is a renewal, we may cancel only for one or more of the following reasons:

a. Nonpayment of premium;

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b. Material misrepresentation of fact which, if known to us, would have caused us not to issue the policy;

c. Substantial change in the risk assumed, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing the policy;

d. Substantial breaches of contractual duties, conditions or warranties; or

e. Loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of South Carolina. Prior to cancellation for reasons permitted in this item **e.**, we shall notify the director or his or her designee, in writing, at least 60 days prior to such cancellation and the director or his or her designee shall, within 30 days of such notification, approve or disapprove such action.

Any notice of cancellation will state the precise reason for cancellation.

C. The following is added and supersedes any provisions to the contrary:

NONRENEWAL

If we decide not to renew this policy, we will mail or deliver written notice stating the precise reason for nonrenewal to the first Named Insured's and agent's addresses shown in the Declarations. This notice shall be mailed or delivered at least:

a. 60 days prior to the expiration of this policy for any nonrenewal that would be effective between November 1 and May 31; or

b. 90 days prior to the expiration of this policy for any nonrenewal that would be effective between June 1 and October 31.

D. The following is added to **6. Loss Payment** of **E. PROPERTY LOSS CONDITIONS**:

For loss or damage to buildings caused by or resulting from fire or lightning, you and we agree that:

1. The value of buildings described in this policy; and

2. The total amount of insurance to be carried on the buildings, including this policy; are the amounts shown in the Schedule.

E. Paragraph **1.c.** of **EXCLUSIONS** in the **BUSINESSOWNERS LIABILITY COVERAGE FORM** is replaced by the following:

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

(1) The furnishing of alcoholic beverages to a person under the legal drinking age; or

(2) 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.

All other policy terms and conditions apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AGGREGATE LIMITS AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

Under **D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE, 4. Aggregate Limits** is deleted and replaced by the following

4. Aggregate Limits

The most we will pay for:

a. Injury or damage under the "products/completed operations hazard" arising from all "occurrences" during the policy period is the Products-Completed Operations Aggregate limit shown in the Declarations; and

b. All other injury or damage, including medical expenses, arising from all "occurrences" during the policy period is the Aggregate Limit (Other than Products-Completed Operations) shown in the Declarations. This limitation does not apply to "property damage" to premises rented to you arising out of fire or explosion.

All other policy terms and conditions apply.

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EXHIBIT K

54878 (5-08)

SOUTH CAROLINA - IMPORTANT NOTICE OF PREMIUM DISCOUNTS

COMMERCIAL PROPERTY COVERAGE PART
BUSINESSOWNERS POLICY

This notice provides information on the availability of premium discounts for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. Listed below is a brief description of the mitigation measures that must be taken in order to receive a discount. The amount of the discounts, if any, may vary depending on specific features and conditions of the insured property. Please contact your agent for more specific information.

Description Of Mitigation Measure
Roof Covering and Roof Covering Attachment • South Carolina Building Code (SCBC) Equivalent: Roof covering and attachments in compliance with the SCBC.
Roof Deck and Roof Deck Attachment • Plywood/Oriented Strand Board with nails 2 1/2-inches long spaced at 6 inches from the edge of the plywood and 12 inches in the field on 24-inch truss spacing; • Plywood/Oriented Strand Board with nails 2 1/2-inches long spaced at 6 inches from the edge of the plywood and 6 inches in the field on 24-inch truss spacing; • Dimensional Lumber and Tongue and Groove Decks composed of 3/4-inch thick boards with nominal widths of 4 inches or more; or • Reinforced Concrete Roof Deck.
Roof-To-Wall Connection (Roof Anchorage) • Clips: Pieces of metal are nailed into the side of the rafter/truss and into the side of the top plate or wall stud. The metal does not wrap around the top of the rafter/truss, and the clip is only located on one side of the connection; • Hurricane Ties- Single Wraps: A single strap that is attached to the side and/or bottom of the top plate and is nailed to the rafter/truss; or • Hurricane Ties - Double Wraps: Straps that are wrapped on both sides, are attached to the side and/or bottom of the top plate, and are nailed to the rafter/truss.

Roof Shapes • Gable: Roof has vertical walls that extend all the way to the top of the inverted V. Gable roof must be braced to qualify for a discount; or • Hip: Roof has sloping ends and sloping sides down to the roof eaves line.
Secondary Water Resistance • Self-adhering modified bitumen tape to the plywood joints of the roof; or • Foamed polyurethane structural adhesive from inside the attic to the joints between all plywood sheets of the roof.
Door Strength • Reinforced Single-Width Doors.
Opening Protection • Tempered, Heat-Strengthened or Laminated Glass or Insulating Glass Units with no Engineered Shutters; or • Hurricane Engineered Shutters: All openings protected to meet the requirements of the SCBC.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IDENTITY RECOVERY COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
BUSINESSOWNERS POLICY

IDENTITY RECOVERY COVERAGE

1. Coverage under this endorsement applies only if all of the following conditions are met:

   a. There has been an "identity theft" involving the personal identity of an "identity recovery insured" under this policy; and
   b. Such "identity theft" is first discovered by the "identity recovery insured" during the policy period for which this Identity Recovery Coverage is applicable; and
   c. Such "identity theft" is reported to us within 60 days after it is first discovered by the "identity recovery insured".

2. If all three of the requirements listed above have been met, then we will provide the following to the "identity recovery insured":

   a. **Case Management Service**

      Services of an "identity recovery case manager" as needed to respond to the "identity theft". Some Case Management Services may be provided 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; and

   b. **Expense Reimbursement**

      Reimbursement of necessary and reasonable "identity recovery expenses" incurred as a direct result of the "identity theft".

   This coverage is additional insurance.

3. **EXCLUSIONS**

   The following exclusions apply to this coverage:

   We do not cover loss or expense arising from any of the following:

   a. The theft of a professional or business identity.
   b. 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 "identity recovery insured" who has no knowledge of or involvement in such fraud, dishonesty or criminal act.
   c. An "identity theft" that is not reported in writing to the police.

4. **LIMITS**

   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.

   Expense Reimbursement coverage is subject to an annual aggregate limit per "identity recovery insured" as shown in the Declarations. Regard-

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less 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.

Legal costs as provided under item (4) of the definition of "identity recovery expenses" are part of, and not in addition to, the Expense Reimbursement coverage limit.

Item (5) and item (6) of the definition of "identity recovery expenses" are jointly subject to the limit shown in the Declarations. This limit is part of, and not in addition to, the Expense Reimbursement coverage limit. Coverage is limited to wages lost and expenses incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".

Item (7) of the definition of "identity recovery expenses" is subject to the limit shown in the Declarations. This limit 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".

Item (8) of the definition of "identity recovery expenses" is subject to the limit shown in the Declarations. This limit is part of, and not in addition to, the Expense Reimbursement coverage limit. Coverage is limited to costs incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".

5. DEDUCTIBLE

Case Management Service is not subject to a deductible.

Expense Reimbursement coverage is subject to a deductible shown in the Declarations. Any one "identity recovery insured" shall be responsible for only one deductible under this Identity Recovery Coverage during any one policy period.

6. CONDITIONS

The following conditions apply only to this endorsement:

a. Expense Reimbursement

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".

b. Services

The following conditions apply as respects any services provided by us or our designees to any "identity recovery insured" under this endorsement:

(1) 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".
(2) 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 the United States and Puerto Rico in accordance with local conditions.
(3) 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".

We reserve the right to deny coverage or service if, after investigation, we determine that a covered "identity theft" has not occurred.

7. DEFINITIONS

With respect to the provisions of this endorsement only, the following definitions are added:

a. "Identity Recovery Case Manager" means one or more individuals assigned by us to assist

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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.

b. **"Identity Recovery Expenses"** mean the following when they are reasonable and necessary expenses that are incurred as a direct result of an "identity theft":

(1) Costs for refiling applications for loans, grants or other credit instruments that are rejected solely as a result of an "identity theft".

(2) 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".

(3) Costs for credit reports from established credit bureaus.

(4) Fees and expenses for an attorney approved by us for the following:

(a) The defense of any civil suit brought against an "identity recovery insured".

(b) The removal of any civil suit judgment wrongfully entered against an "insured".

(c) Legal assistance for an "identity recovery insured" at an audit or hearing by a governmental agency.

(d) Legal assistance in challenging the accuracy of the "identity recovery insured's" consumer credit report.

(e) The defense of any criminal charges brought against an "identity recovery insured" arising from the actions of a third party using the personal identity of the "identity recovery insured".

(5) Actual lost wages of the "identity recovery insured" for time reasonably and necessarily taken 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.

(6) 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".

(7) 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".

(8) Any other reasonable costs necessarily incurred by an "insured" as a direct result of the "ID theft". Such costs include:

(a) Costs by the "insured" to recover control over his or her personal identity.

(b) Deductibles or service fees from financial institutions.

Such costs do not include:

(a) Costs to avoid, prevent or detect "ID theft" or other loss.

(b) Monies lost or stolen.

(c) Costs that are restricted or excluded elsewhere in this endorsement or policy.

c. **"Identity Recovery Insured"** means the following:

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(1) When the entity insured under this policy is a sole proprietorship, the "identity recovery insured" is the individual person who is the sole proprietor of the insured entity.
(2) When the entity insured under this policy is a partnership, the "identity recovery insureds" are the current partners.
(3) When the entity insured under this policy is a corporation or other organization, the "identity recovery insureds" are all individuals having an ownership position of 20% or more of the insured entity. However, if and only if there is no one who has such an ownership position, then the "identity recovery insured" shall be:

(a) The chief executive of the insured entity; or
(b) As respects a religious institution, the senior ministerial employee.

An "identity recovery insured" must always be an individual person. The entity insured under this policy is not an "identity recovery insured".

d. **"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.

All other policy terms and conditions apply.

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NOTICE TO POLICYHOLDER
PROPERTY PLUS - REFRIGERATED PRODUCTS

Dear Policyholder,

Your policy previously included the Refrigerated Products endorsement, 54749 (8-00). Effective with this renewal, 54749 (8-00) has been replaced by a new edition of the Refrigerated Products endorsement, 54749 (8-10).

The new edition of the Refrigerated Products endorsement limits coverage for loss or damage to perishable stock resulting from interruption of electrical services to the refrigeration system caused by direct physical damage by a Covered Cause of Loss to the electrical generating or transmission equipment of your local electrical service.

This notice is for informational purposes only. Your policy contains the specific terms and conditions of coverage.

If you have any questions regarding your policy or this notice, please contact your Auto-Owners agent.

NOTICE TO POLICYHOLDER
Employment-Related Practices Exclusion

Dear Policyholder,

Effective with this renewal, coverage under the Businessowners Liability Coverage Form has been reduced through amendments to the Employment-Related Practices Exclusion form 54709 (4-10). These amendments further clarify that this exclusion applies after the termination of any employee and to employment-related practices whether inside or outside the course and scope of employment.

This notice is for informational purposes only. Your policy contains the specific terms and conditions of coverage.

If you have any questions concerning your policy or this notice, please contact your Auto-Owners agent.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYER'S LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

1. Under **B. EXCLUSIONS, 1. Applicable to Business Liability Coverage**, exclusion **e.** is deleted and replaced by the following exclusion.
   e. "Bodily injury" to:
   (1) An employee of any insured arising out of and in the course of employment by any insured; or
   (2) The spouse, child, parent, brother or sister of that employee as a consequence of Paragraph (1) above.
   This exclusion applies:
   (1) Whether any 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 any insured under an "insured contract".
2. **C. WHO IS AN INSURED** is amended as follows.
   Paragraph **1.** is deleted and replaced by the following.
   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 business which you are the sole owner.
   b. A partnership or joint venture, you are an insured. Your members, your partner, and their spouses are also insureds, but only with respect to the conduct of your business.
   c. A limited liability company, you are insured. Your members are also insureds, but only with respect to the conduct of your business.
   d. An organization other than a partnership or joint venture, 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.

   However, with respect to paragraphs **1. a.** through **1. d.** above, no person is an insured for "bodily injury" or "personal injury":
   a. To:
   (1) You and your spouse if the Named Insured is an individual;
   (2) Your members, your partners, and their spouses if the Named Insured is a partnership or joint venture;
   (3) Your members if the Named Insured is a Limited Liability Company; or
   (4) Your executive officers and directors if the Named Insured is other than a partnership, joint venture or limited liability company.
   b. To an employee of any insured while in the course of his or her employment or performing duties related to the conduct of any insured's business.
   c. To the spouse, child, parent, brother or sister of any employee as a consequence of Paragraph **b.** immediately above.
   d. For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **a.** and **b.** immediately above.
   e. Arising out of his or her providing or failing to provide professional health care services.

All other policy terms and conditions apply.

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SOUTH CAROLINA CHANGES - DEFINITION OF OCCURRENCE

This endorsement modifies insurance under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

Under F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS, 9. "Occurrence" is deleted and replaced by the following definition.

9. **"Occurrence"** means:

a. An accident, including continuous or repeated exposure to substantially the same generally harmful conditions; or

b. "Property damage" or "bodily injury" resulting from faulty workmanship exclusive of the faulty workmanship itself within the meaning of South Carolina Code Section 38-61-70.

All other policy terms and conditions apply.

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CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM AND IMPORTANT INFORMATION REGARDING TERRORISM RISK INSURANCE COVERAGE

It is agreed:

1. With respect to any one or more certified acts of terrorism, we will not pay any amounts for which we are not responsible because of the application of any provision which results in a cap on our liability for payments for terrorism losses in accordance with the terms of the federal Terrorism Risk Insurance Act of 2002 (including ensuing Congressional actions pursuant to the Act).

2. Certified act of terrorism means any act certified by the Secretary of the Treasury, in consultation with:

   a. the Secretary of Homeland Security; and
   b. the Attorney General of the United States

   to be an act of terrorism as defined and in accordance with the federal Terrorism Risk Insurance Act of 2002 (including ensuing Congressional actions pursuant to the Act).

3. Under the federal Terrorism Risk Act of 2002 (including ensuing Congressional actions pursuant to the Act) a terrorist act may be certified:

   a. if the aggregate covered commercial property and casualty insurance losses resulting from the terrorist act exceed $5 million; and

   b. (1) if the act of terrorism is:

      a) a violent act; or

      b) an act that is dangerous to human life, property or infrastructure; and

   (2) if the act is committed:

      a) by an individual or individuals as part of an effort to coerce the civilian population of the United States; or

      b) to influence the policy or affect the conduct of the United States government by coercion.

All other policy terms and conditions apply.

EXHIBIT K

IMPORTANT INFORMATION REGARDING TERRORISM RISK INSURANCE COVERAGE

The Terrorism Risk Insurance Act of 2002 was signed into law on November 26, 2002. The Act (including ensuing Congressional actions pursuant to the Act) defines an act of terrorism, to mean any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States to be (i) an act of terrorism; (ii) to be a violent act or an act that is dangerous to human life, property or infrastructure; (iii) to have resulted in damage within the United States or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and (iv) to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States government by coercion.

Subject to the policy terms and conditions, this policy provides insurance coverage for acts of terrorism as defined in the Act.

Any coverage for certain commercial lines of property and casualty insurance provided by your policy for losses caused by certified acts of terrorism are partially paid by the federal government under a formula established by federal law. Under this formula, the government will reimburse us for 85% of such covered losses that exceed the statutory deductible paid by us. However, beginning January 1, 2016 the share will decrease 1% per calendar year until it equals 80%. **You should also know that in the event aggregate insured losses exceed $100 billion during any year the Act is in effect, then the federal government and participating United States insurers that have met their insurer deductible shall not be liable for the payment of any portion of that amount of the loss that exceeds $100 billion. In the event that aggregate insured losses exceed $100 billion annually, no additional claims will be paid by the federal government or insurers.** This formula is currently effective through December 31, 2020 unless extended.

The premium charge, if any, for this coverage is shown separately on the attached Declarations page. In the event of a certified act of terrorism, future policies also may include a government assessed terrorism loss risk-spreading premium in accordance with the provisions of the Act.

Please contact us if you would like to reject coverage for certified acts of terrorism.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY - WITH LIMITED BODILY INJURY EXCEPTION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE

A. The following is added to Paragraph **1.** of **B EXCLUSIONS**:

(1) Damages, other than damages because of "personal injury" 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 media 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. The following is added to Paragraph **p.** of **B EXCLUSIONS**:

Personal Injury And Advertising Injury

"Personal injury" 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.

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.

All other policy terms and conditions apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGES - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

BUSINESSOWNERS COMMON POLICY CONDITIONS, J. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US is amended. The following condition is added.

If the claim paid is less than the agreed loss because of any deductible or other limiting terms, the recovery is prorated between you and us based on the interest of each in the loss. This condition only applies if we pay for a loss and then payment is made by those responsible for the loss.

All other policy terms and conditions apply.

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BUSINESSOWNERS 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 SECTION H - PROPERTY DEFINITIONS.

A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, 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 the buildings and structures at the premises described in the Declarations, including:

(1) Completed additions;

(2) Permanently installed fixtures, machinery and equipment;

(3) Your personal property in apartments or rooms furnished by you as landlord;

(4) Outdoor fixtures;

(5) Personal property owned by you that is used to maintain or service the buildings or structures or the premises, including:

(a) Fire extinguishing equipment;

(b) Outdoor furniture;

(c) Floor coverings; and

(d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(6) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the buildings or structures;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures.

b. **Business Personal Property** located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises, including:

(1) Property you own that is used in your business;

(2) Property of others that is in your care, custody or control; but this property is not covered for more than the amount for which you are legally liable, plus the cost of labor,

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materials or services furnished or arranged by you on personal property of others; and

(3) Tenant's improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:

(a) Made a part of the building or structure you occupy but do not own; and

(b) You acquired or made at your expense but cannot legally remove.

2. **Property Not Covered**

Covered Property does not include:

a. Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;

b. Bullion, money or securities;

c. Contraband, or property in the course of illegal transportation or trade;

d. Land (including land on which the property is located), water, growing crops or lawns;

e. Outdoor fences, radio or television antennas, including their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants, all except as provided in the:

(1) Outdoor Property Coverage Extension; or

(2) Outdoor Signs Optional Coverage;

f. Watercraft (including motors, equipment and accessories) while afloat.

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 loss of or damage to:

(1) Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

(2) Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

(3) Property that is missing, but there is no physical evidence to show what happened to it, such as shortage disclosed on taking inventory. This limitation does not apply to the Optional Coverage for Money and Securities.

(4) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

b. We will not pay more for loss of or damage to glass that is part of a building or structure than $100 for each plate, pane, multiple plate insulating unit, radiant or solar heating panel, jalousie, louver, or shutter. We will not pay more than $500 for all loss of or damage to building glass that occurs at any one time.

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This Limitation does not apply to loss or damage by the "specified causes of loss", except vandalism.

c. We will not pay for loss of or damage to fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken, unless caused by the "specified causes of loss" or building glass breakage. This restriction does not apply to:

(1) Glass that is part of a building or structure;

(2) Containers of property held for sale; or

(3) Photographic or scientific instrument lenses.

d. For loss or damage by theft, the following types of property are covered only up to the limits shown:

(1) $2,500 for furs, fur garments and garments trimmed with fur.

(2) $2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth $100 or less per item.

(3) $2,500 for patterns, dies, molds and forms.

5. **Additional Coverages**

a. **Debris Removal**

(1) 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 earliest of:

(a) The date of direct physical loss or damage; or

(b) The end of the policy period.

(2) The most we will pay under this Additional Coverage is 25% of:

(a) The amount we pay for the direct loss or damage; plus

(b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in paragraph (4) below.

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

(a) Extract "pollutants" from land or water; or

(b) Remove, restore or replace polluted land or water.

(4) If:

(a) The sum of loss or damage and debris removal expense exceeds the Limit of Insurance; or

(b) The debris removal expense exceeds the amount payable under the 25% Debris Removal coverage limitation in paragraph (2) above;

we will pay up to an additional $5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

b. **Preservation of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for

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any direct physical loss of or damage to that property:

(1) While it is being moved or while temporarily stored at another location; and

(2) Only if the loss or damage occurs within 10 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to $1,000 for your liability for fire department service charges:

(1) Assumed by contract or agreement prior to loss; or

(2) Required by local ordinance.

d. Collapse

We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

(1) The "special causes of loss" or breakage of building glass, all only as insured against in this policy;

(2) Hidden decay;

(3) Hidden insect or vermin damage;

(4) Weight of people or personal property;

(5) Weight of rain that collects on a roof;

(6) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not pay for loss of or damage to the following types of property, if otherwise covered in this policy, under items (2), (3), (4), (5) and (6) unless the loss or damage is a direct result of the collapse of a building:

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.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

e. Water Damage

If loss or damage caused by or resulting from a covered water 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 steam escapes.

We will not pay the cost of repairing or replacing the system or appliance itself; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

(1) Results in sprinkler leakage; or

(2) Is directly caused by freezing.

f. Business Income

We will pay for the actual loss of Business Income you sustained due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from any Covered Cause of Loss.

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

Business Income means the:

(1) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and

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

g. Extra Expense

We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from a Covered Cause of Loss.

Extra Expense means expense incurred:

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

(a) At the described premises; or

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

(i) Relocation expenses; and

(ii) Costs to equip and operate the replacement or temp-orary locations.

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

(3) (a) To repair or replace any property; or

(b) 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 f., Business Income.

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

h. Pollutant Clean Up and Removal

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

(1) The date of direct physical loss or damage; or

(2) The end of the policy period.

The most we will pay for each location under this Additional Coverage is $10,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

6. Coverage Extensions

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

a. Personal Property at Newly Acquired Premises

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(1) You may extend the insurance that applies to Business Personal Property to apply to that property at any premises you acquire.

The most we will pay for loss or damage under this Extension is $10,000 at each premises.

(2) Insurance under this Extension for each newly acquired premises will end when any of the following first occurs:

(a) This policy expires.

(b) 30 days expire after you acquire or begin construction at the new premises; or

(c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the premises.

b. Personal Property Off Premises

You may extend the insurance that applies to Business Personal Property to apply to covered Business Personal Property, other than money and securities, while it is in course of transit or temporarily at a premises you do not own, lease or operate. The most we will pay for loss or damage under this Extension is $1,000.

c. Outdoor Property

You may extend the insurance provided by this policy to apply to your outdoor fences, radio and television antennas, signs (other than signs attached to buildings), trees, shrubs and plants, including debris removal expense, caused by or resulting from any of the following causes of loss:

(1) Fire;

(2) Lightning;

(3) Explosion;

(4) Riot or Civil Commotion; or

(5) Aircraft.

The most we will pay for loss or damage under this Extension is $1,000, but not more than $250 for any one tree, shrub or plant.

d. 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, including those which exist on electronic or magnetic media, for which duplicates do not exist. The most we will pay under this Extension is $1,000 at each described premises.

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. Building Ordinance

The enforcement of any ordinance or law:

(1) Regulating the construction, use or repair of any property; or

(2) Requiring the tearing down of any property, including the cost of removing its debris.

b. Earth Movement

(1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide or earth sinking, rising or shifting. But if

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loss or damage by fire or explosion results, we will pay for that resulting loss or damage.

(2) Volcanic eruption, explosion or effusion. But if loss or damage by fire, building glass breakage or volcanic action results, we will pay for that resulting loss or damage.

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

(a) Airborne volcanic blast or airborne shock waves;

(b) Ash, dust, or particulate matter; or

(c) Lava flow.

All volcanic eruptions that occur within any 72-hour period will constitute a single occurrence.

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

c. **Governmental Action**

Seizure or destruction of property by order of governmental authority.

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

d. **Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

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

e. **Power Failure**

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

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

f. **War and Military Action**

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, u-surped power, or action taken by governmental authority in hindering or defending against any of these

g. **Water**

(1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

(2) Mudslide or mudflow;

(3) Water that backs up 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

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(c) Doors, windows or other openings.

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

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

a. **Electrical Apparatus:** Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires.

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

b. **Consequential Losses:** Delay, loss of use or loss of market.

c. **Smoke, Vapor, Gas:** Smoke, vapor or gas from agricultural smudging or industrial operations.

d. **Maintenance 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) Insects, birds, rodents or other animals;

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force; or

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

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

e. **Steam Apparatus:** Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if loss or damage by fire or combustion explosion results, we will pay for that resulting loss or damage. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fire vessel or within the flues or passages through which the gases of combustion pass.

f. **Frozen Plumbing:** Water 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 water supply if the heat is not maintained.

g. **Dishonesty:** Dishonest or criminal act by you, any of your partners, 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.

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This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.

h. **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.

i. **Exposed Property:** Rain, snow, ice or sleet to personal property in the open.

j. **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 described premises, we will pay for that resulting loss or damage.

k. **Pollution:** We will not pay for loss or damage caused by or resulting from the release, discharge or dispersal of "pollutants" unless the release, discharge or dispersal is itself caused by any of the "specified causes of loss". But if loss or damage by the "specified causes of loss" results, we will pay for the resulting 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 loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage.

a. **Weather Conditions:** Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss or damage.

b. **Acts or Decisions:** Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. **Negligent Work:** Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property on or off the described premises.

4. **Business Income and Extra Expense Exclusions.** 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.

C. LIMITS OF INSURANCE

1. The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

2. The most we will pay for loss of or damage to outdoor signs attached to buildings is $1,000 per sign in any one occurrence.

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3. The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

4. **Building Limit - Automatic Increase**

   a. The Limit of Insurance for Buildings will automatically increase by the annual percentage shown in the Declarations.

   b. The amount of increase will be:

      (1) The Building limit that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building limit, times

      (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times

      (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Building limit, divided by 365.

   Example:

   If: The applicable Building limit is $100,000.
   The annual percentage increase is 8%.
   The number of days since the beginning of the policy year (or last policy change) is 146.

   The amount of increase is
   $100,000 x .08 x 146 ÷ 365 = $3,200.

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

   a. The Limit of Insurance for Business Personal Property will automatically increase by 25% to provide for seasonal variations.

   b. This increase will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:

      (1) The 12 months immediately preceding the date the loss or damage occurs; or

      (2) The period of time you have been in business as of the date the loss or damage occurs.

D. DEDUCTIBLES

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance.

2. Regardless of the amount of the Deductible, the most we will deduct from any loss or damage under all of the following Optional Coverages in any one occurrence is $250:

   a. Money and Securities;

   b. Employee Dishonesty;

   c. Exterior Grade Floor Glass; and

   d. Outdoor Signs.

   But this $250 deductible will not increase the deductible shown in the Declarations. This deductible will be used to satisfy the requirements of the deductible in the Declarations.

3. No deductible applies to the following Additional Coverages:

   a. Fire Department Service Charge;

   b. Business Income; and

   c. Extra Expense.

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E. PROPERTY LOSS CONDITIONS

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

If we submit to 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 or damage to Covered Property:

a. Notify the police if a law may have been broken.

b. Give us prompt notice of the loss or damage. Include a description of the property involved.

c. As soon as possible, give us a description of how, when and where the loss or 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 and 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 limit 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.

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 of 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 settle 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 all or part 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 damage occurred.

5. Limitation - Electronic Media and Records

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We will not pay for any loss of Business Income caused by direct physical loss of or damage to Electronic Media and Records after the longer of:

a. 60 consecutive days from the date of direct physical loss or damage; or

b. The period, beginning with the date of direct physical loss or damage, necessary to repair, rebuild or replace with reasonable speed and similar quality, other property at the described premises due to loss or damage caused by the same occurrence.

Electronic Media and Records are:

(1) Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells;

(2) Data stored on such media; or

(3) Programming records used for electronic data processing or electronically controlled equipment.

Example No. 1:

A Covered Cause of Loss damages a computer on June 1. It takes until September 1 to replace the computer, and until October 1 to restore the data that was lost when the damage occurred. We will only pay for the Business Income Loss sustained during the period June 1 - September 1. Loss during the period September 2 - October 1 is not covered.

Example No. 2:

A Covered Cause of Loss results in the loss of data processing programming records on August 1. The records are replaced on October 15. We will only pay for the Business Income loss sustained during the period August 1 - September 29 (60 consecutive days). Loss during the period September 30 - October 15 is not covered.

6. Loss Payment

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

a. We will not pay you more than your financial interest in the Covered Property.

b. We will either:

(1) Pay the value of lost or damaged property, as described in paragraph d. below;

(2) Pay the cost of repairing or replacing the lost or 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.

c. We will give notice of our intentions within 30 days after we receive the sworn statement of loss.

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 loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.

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

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

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

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

(i) The cost to replace, on the same premises, the lost or damaged property with other property:

i. Of comparable material and quality; and

ii. Used for the same purpose; or

(ii) The amount you actually spend that is necessary to repair or replace the lost or 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) Used or second-hand merchandise held in storage or for sale;

(b) Property of others;

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

(d) Manuscripts;

(e) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac.

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

(5) Tenants' Improvements and Betterments at:

(a) Replacement cost if you make repairs promptly.

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

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

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

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

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

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(6) Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:

(a) Blank materials for reproducing the records; and

(b) Labor to transcribe or copy the records.

(7) Applicable only to the Optional Coverages:

(a) Money at its face value; and

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

e. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

g. We will pay for covered loss or damage within 30 days after we receive the sworn 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.

7. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

8. Resumption of Operations

We will reduce the amount of your:

a. Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.

b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

9. Vacancy

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

a. Not pay for any loss or damage caused by:

(1) Vandalism;

(2) Sprinkler leakage, unless you have protected the system against freezing;

(3) Building glass breakage;

(4) Water damage;

(5) Theft; or

(6) Attempted Theft.

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b. Reduce the amount we would otherwise pay for the loss or damage by 15%.

Buildings under construction are not considered vacant.

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.

If you violate a condition of this policy, we will not pay for loss or damage at the involved location. But your coverage will continue for other locations at which the violation does not apply.

2. Mortgage Holders

a. The term "mortgage holder" includes trustee.

b. We will pay for covered loss of or 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 loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

(1) The 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 right 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.

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 nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we do not 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

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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 loss or damage commencing:

(1) During the policy period shown in the Declarations; and

(2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.

b. The coverage territory is:

(1) The United States of America (including its territories and possessions);

(2) Puerto Rico; and

(3) Canada.

G. OPTIONAL COVERAGES

If shown as applicable in the Declarations, the following Optional Coverages also apply. These coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

1. **Outdoor Signs**

a. We will pay for direct physical loss of or damage to all outdoor signs at the described premises:

(1) Owned by you; or

(2) Owned by others but in your care, custody or control.

b. Paragraph A.3., Covered Causes of Loss, and Section B., Exclusions, do not apply to this Optional Coverage, except for:

(1) Paragraph B.1.c., Governmental Action;

(2) Paragraph B.1.d., Nuclear Hazard; and

(3) Paragraph B.1.f., War and Military Action.

c. We will not pay for loss or damage caused by or resulting from:

(1) Wear and tear;

(2) Hidden or latent defect;

(3) Rust;

(4) Corrosion; or

(5) Mechanical breakdown.

d. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Outdoor Signs shown in the Declarations.

e. The provisions of this Optional Coverage supersede all other references to outdoor signs in this policy.

2. **Exterior Grade Floor Glass**

a. We will pay for direct physical loss of or damage to all exterior grade floor and basement glass, including all lettering and ornamentation, located at the described premises and:

(1) Owned by you; or

(2) Owned by others but in your care, custody or control.

b. We will also pay for necessary:

(1) Expenses incurred to put up temporary plates or board up openings;

(2) Repair or replacement of encasing frames; and

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(3) Expenses incurred to remove or replace obstructions.

c. Paragraph A.3., Covered Causes of Loss, and Section B., Exclusions, do not apply to this Optional Coverage, except for:

(1) Paragraph B.1.c., Governmental Action;

(2) Paragraph B.1.d., Nuclear Hazard; and

(3) Paragraph B.1.f., War and Military Action.

d. We will not pay for loss or damage caused by or resulting from:

(1) Wear and tear;

(2) Hidden or latent defect;

(3) Corrosion; or

(4) Rust.

e. This Optional Coverage supersedes all limitations in this policy that apply to exterior grade floor glass.

3. **Money and Securities**

a. We will pay for loss of money and securities used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:

(1) Theft, meaning any act of stealing;

(2) Disappearance; or

(3) Destruction.

b. In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:

(1) Resulting from accounting or arithmetical errors or omissions;

(2) Due to the giving or surrendering of property in any exchange or purchase; or

(3) Of property contained in any money-operated device unless the amount of money deposited in it is recorded by a continuous recording instrument in the device.

c. The most we will pay for loss in any one occurrence is:

(1) The limit shown in the Declarations for Inside the Premises for money and securities while:

(a) In or on the described premises; or

(b) Within a bank or savings institution; and

(2) The limit shown in the Declarations for Outside the Premises for money and securities while anywhere else.

d. All loss:

(1) Caused by one or more persons; or

(2) Involving a single act or series of related acts;

is considered one occurrence.

e. You must keep records of all money and securities so we can verify the amount of any loss or damage.

4. **Employee Dishonesty**

a. We will pay for direct loss of or damage to Business Personal Property, including money and securities, resulting

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from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you and your partner) with the manifest intent to:

(1) Cause you to sustain loss or damage; and also

(2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:

(a) Any employee; or

(b) Any other person or organization.

b. We will not pay for loss or damage:

(1) Resulting from any dishonest or criminal act that you or any of your partners commit whether acting alone or in collusion with other persons.

(2) The only proof of which as to its existence or amount is:

(a) An inventory computation; or

(b) A profit and loss computation.

c. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations.

d. All loss or damage:

(1) Caused by one or more persons; or

(2) Involving a single act or series of related acts;

is considered one occurrence.

e. We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

f. This Optional Coverage does not apply to any employee immediately upon discovery by:

(1) You; or

(2) Any of your partners, officers or directors not in collusion with the employee;

of any dishonest act committed by that employee before or after being hired by you.

g. We will pay only for covered loss or damage discovered no later than one year from the end of the Policy Period.

h. If you (or any predecessor in interest) sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Optional Coverage, provided:

(1) This Optional Coverage became effective at the time of cancellation or termination of the prior insurance, and

(2) The loss or damage would have been covered by this Optional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.

i. The insurance under paragraph h. above is part of, not in addition to, the Limit of Insurance applying to this Optional Coverage and is limited to the lesser of the amount recoverable under:

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(1) This Optional Coverage as of its effective date; or

(2) The prior insurance had it remained in effect.

5. **Mechanical Breakdown**

a. We will pay for direct damage to Covered Property caused by an Accident to an Object. The Object must be:

(1) Owned by you or in your care, custody or control; and

(2) At the described premises.

b. Accident means a sudden and accidental breakdown of the Object or a part of the Object. At the time the breakdown occurs, it must manifest itself by physical damage to the Object that necessitates repair or replacement.

c. None of the following is an Accident:

(1) Depletion, deterioration, corrosion or erosion;

(2) Wear and tear;

(3) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;

(4) Breakdown of any vacuum tube, gas tube or brush;

(5) Breakdown of any electronic computer or electronic data processing equipment;

(6) Breakdown of any structure or foundation supporting the Object or any of its parts;

(7) The functioning of any safety or protective device; or

(8) The explosion of gases or fuel within the furnace of any Object or within the flues or passages through which the gases of combustion pass.

d. Object means any of the following equipment:

(1) Boiler and Pressure Vessels:

(a) Steam heating boilers and condensate return tanks used with them;

(b) Hot water heating boilers and expansion tanks used with them;

(c) Hot water supply boilers;

(d) Other fired or unfired vessels used for maintenance or service of the discarded premises but not used for processing or manufacturing;

(e) Steam boiler piping, valves, fittings, traps and separators, but only if they:

(i) Are on your premises or between parts of your premises;

(ii) Contain steam or condensate of steam; and

(iii) Are not part of any other vessel or apparatus;

(f) Feed water piping between any steam boiler and a feed pump or injector.

(2) Air Conditioning Units - Any air conditioning unit that has a capacity of 60,000 Btu or more, including.

(a) Inductors, converters and coils that make use of a refrigerant and form part of a cooling, humidity control or space heating system;

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(b) Interconnecting piping, valves and fittings containing only a refrigerant, water, brine or other solution;

(c) Vessels heated directly or indirectly that:

(i) Form part of an absorption type system; and

(ii) Function as a generator, refrigerator or concentrator;

(d) Compressors, pumps, fans and blowers used solely with the system together with their driving electric motors; and

(e) Control equipment used solely with the system.

e. Object does not mean:

(1) As Boiler and Pressure Vessels:

(a) Equipment that is not under internal vacuum or internal pressure other than weight of contents;

(b) Boiler settings;

(c) Insulating or refractory material; or

(d) Electrical, reciprocating or rotating apparatus within or forming a part of the boiler or vessel.

(2) As Air Conditioning Units, any:

(a) Vessel, cooling tower, reservoir or other source of cooling water for a condenser or compressor, or any water piping leading to or from that source; or

(b) Wiring or piping leading to or from the unit.

f. We will not pay for an Accident to any Object while being tested.

g. **Suspension**

Whenever an Object is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an Accident to that Object. This can be done by delivering or mailing a written notice of suspension to:

(1) Your last known address; or

(2) The address where the object is located.

If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

H. PROPERTY DEFINITIONS

1. **"Operations"** means your business activities occurring at the described premises.

2. **"Period of Restoration"** means the period of time that:

a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

b. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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

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

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EXHIBIT K

(2) 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".

3. **"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.

4. **"Specified Causes of Loss"** means the following:

Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or similar rock formations. 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.

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BUSINESSOWNERS 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 Company 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 F - LIABILITY AND MEDICAL EXPENSES DEFINITIONS.

A. COVERAGES

1. **Business Liability** We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" 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.

   a. This insurance applies only:

      (1) To "bodily injury" or "property damage":

         (a) That occurs during the policy period; and

         (b) That is caused by an "occurrence". The "occurrence" must take place in the "coverage territory".

      (2) To "personal injury" caused by an offense:

         (a) Committed in the "coverage territory" during the policy period; and

         (b) Arising out of the conduct of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you.

      (3) To "advertising injury" caused by an offense committed:

         (a) In the "coverage territory" during the policy period; and

         (b) In the course of advertising your goods, products or services.

   b. We will have the right and duty to defend any "suit" seeking those damages. But

      (1) The amount we will pay for damages is limited as described in Section D - Limits of Insurance;

      (2) We may investigate and settle any claim or "suit" at our discretion; and

      (3) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgment or settlements or medical expenses.

   c. 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".

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d. "Property damage" that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the "occurrence" that caused it.

e. **Coverage Extension - Supplementary Payments**

In addition to the Limit of Insurance, we will pay, with respect to any claim or "suit" we defend:

(1) All expenses we incur.

(2) Up to $250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.

(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 $100 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 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 our Limit of Insurance.

2. **Medical Expenses**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(a) The accident takes place in the "coverage territory" and during the policy period;

(b) The expenses are incurred and reported to us, within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the Limit of Insurance. We will pay reasonable expenses for:

(1) First aid at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

B. EXCLUSIONS

1. **Applicable to Business Liability Coverage -**

This insurance does not apply to:

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EXHIBIT K

a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) Assumed in a contract or agreement that is an "insured contract", or

(2) That the insured would have in the absence of the contract or agreement.

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

e. "Bodily injury" to:

(1) An employee of the insured arising out of and in the course of employment by the insured; or

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

This exclusion applies:

(a) Whether the insured may be liable as an employer or in any other capacity; and

(b) to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

f. (1) "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:

(a) At or from premises you own, rent or occupy;

(b) At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste;

(c) That are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for you or any person or organization for whom you may be legally responsible; or

(d) At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations:

(i) If the pollutants are brought on or to the site or location in connection with such operations; or

(ii) If the operations are to test for, monitor, clean up, remove,

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contain, treat, detoxify or neutralize the pollutants.

(2) Any loss, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

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.

Subparagraphs (a) and (d)(i) of paragraph (1) of this exclusion do not apply to "bodily injury" or "property damage" caused by heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

g. "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 does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of the operation of any of the following equipment:

(a) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(b) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

h. "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. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. "Bodily injury" or "property damage" due to rendering or failure to render any professional service. This includes but is not limited to:

(1) Legal, accounting or advertising services;

(2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;

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(3) Supervisory, inspection or engineering services;

(4) Medical, surgical, dental, x-ray or nursing services or treatment;

(5) Any health service or treatment;

(6) Any cosmetic or tonsorial service or treatment;

(7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

(8) Ear piercing services; and

(9) Services in the practice of pharmacy; but this exclusion does not apply to an insured whose operations include those of a retail druggist or drugstore.

k. "Property damage" to:

(1) Property you own, rent or occupy;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in your care, custody or control;

(5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

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

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

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

m. "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. "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. 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:

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(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 injury" or " advertising injury:"

(1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;

(2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

(3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or

(4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

q. "Advertising injury" arising out of:

(1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;

(2) The failure of goods, products or services to conform with advertised quality or performance;

(3) The wrong description of the price of goods, products or services; or

(4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

Exclusions c., d., e., f., g., h., i., k., l., m., n. and o. do not apply to damage by fire or explosion to premises rented to you. A separate Limit of Insurance applies to this coverage as described in Section D., Limits of Insurance.

2. **Applicable to Medical Expenses Coverage -** We will not pay expenses for "bodily injury":

a. To any insured.

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

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

d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law.

e. To a person injured while taking part in athletics.

f. Included within the "products-completed operations hazard".

g. Excluded under Business Liability Coverage.

h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

3. **Applicable to both Business Liability Coverage and Medical Expenses Coverage - Nuclear Energy Liability Exclusion.**

This insurance does not apply.

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EXHIBIT K

a. Under Business Liability Coverage to "bodily injury" or "property damage":

(1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

(a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or

(b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under medical Expenses Coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

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

(1) The "nuclear material":

(a) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or

(b) Has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility"; but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

As used in this exclusion:

"byproduct material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear facility" means;:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for:

(1) Separating the isotopes of uranium or plutonium;

(2) Processing or utilizing "spent fuel"; or

(3) Handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is

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located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

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

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

"nuclear material" means "source material", "special nuclear material" or "byproduct material";

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

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

"source material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"special nuclear material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof; *"spent fuel"* means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor"; *"waste"* means any waste material:

(a) Containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content; and

(b) Resulting from the operation by any person or organization of any "nuclear facility" included under paragraphs (a) and (b) of the definition of "nuclear facility"

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

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

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

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

2. Each of the following is also an insured:

   a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, none of these employees is an insured for:

      (1) "Bodily injury" or "property damage" to you or to a co-employee while in the course of his or her employment;

      (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or

      (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).

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

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.

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

a. "Bodily injury" to a co-employee of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

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

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. The most we will pay for the sum of all damages because of all:

a. "Bodily injury", "property damage" and medical expenses arising out of any one "occurrence"; and

b. "Personal injury" and "advertising injury" sustained by any one person or organization;

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

3. The most we will pay under Business Liability Coverage for damages because of "property damage" to premises rented to you arising out of any one fire or explosion is the Fire Legal Liability limit shown in the Declarations.

4. **Aggregate Limits**

The most we will pay for:

a. Injury or damage under the "products-completed operations hazard" arising from all "occurrences" during the policy period is the Liability and Medical Expenses limit; and

b. All other injury or damage, including medical expenses, arising from all "occurrences" during the policy period is twice the Liability and Medical Expenses limit. This limitation does not apply to

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"property damage" to premises rented to you arising out of fire or explosion

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

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

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

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

a. You must see to it that we are notified promptly of an "occurrence" that may result in a claim. Notice should include:

(1) How, when and where the "occurrence" took place; and

(2) The names and addresses of any injured persons and witnesses.

b. If a claim is made or "suit" is brought against any insured, you must see to it that we receive prompt written notice of the claim or "suit".

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and

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

d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Financial Responsibility Laws

a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.

b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this policy:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for

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damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. **Separation Of Insureds**

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

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

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

F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. **"Advertising Injury"** means injury arising out of one or more of the following offenses:

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

b. Oral or written publication of material that violates a person's right of privacy;

c. Misappropriation of advertising ideas or style of doing business; or

d. Infringement of copyright, title or slogan.

2. **"Auto"** means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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

4. **"Coverage Territory"** means:

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

b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or

c. All parts of the world if:

(1) The injury or damage arises out of:

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

(b) 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; and

(2) The insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in a. above or in a settlement we agree to.

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

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

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

if such property can be restored to use by:

(1) The repair, replacement, adjustment or removal of "your product" or "your work"; or

(2) Your fulfilling the terms of the contract or agreement.

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6. **"Insured Contract"** means:

   (a) A lease of premises;

   (b) A sidetrack agreement;

   (c) An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;

   (d) Any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

   (e) An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;

   (f) An elevator maintenance agreement; or

   (g) That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

   An "insured contract" does not include that part of any contract or agreement:

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

      (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

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

   (b) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failing to render professional services, including those listed in (a) above and supervisory, inspection or engineering services; or

   (c) That indemnifies any person or organization for damage by fire or explosion to premises rented or loaned to you.

7. **"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".

8. **"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

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(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 designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing;

(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.

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

10. **"Personal Injury"** means injury, other than "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;

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

e. Oral or written publication of material that violates a person's right of privacy.

11. a. **"Products - Completed Operations Hazard"** includes all "bodily injury" and property damage" 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.

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. "Your work" will be deemed completed at the earliest of the following times:

(1) When all of the work called for in your contract has been completed.

(2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

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(3) 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.

c. This hazard 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 created by the "loading or unloading" of it; or

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

12. **"Property damage"** means:

a. Physical injury to tangible property, including all resulting loss of use of that property; or

b. Loss of use of tangible property that is not physically injured.

13. **"Suit"** means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes an arbitration proceeding alleging such damages to which you must submit or submit with our consent.

14. "Your Product" means:

a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(1) You;

(2) Others trading under your name; or

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

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

"Your product" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. and b. above.

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

15. **"Your Work"** means:

a. Work or operations performed by you or on your behalf; and

b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. or b. above.

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BUSINESSOWNERS 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.

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3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

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

B. CHANGES

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

C. CONCEALMENT, MISREPRESENTATION OR FRAUD

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

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

D. EXAMINATION OF YOUR BOOKS AND RECORDS

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

E. INSPECTIONS AND SURVEYS

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 workers or the public. And we do not warrant that condition:

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

1. If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess

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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.

2. Business Liability Coverage is excess over any other insurance that insures for direct physical loss or damage.

3. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

I. PREMIUMS

1. The first named Insured shown in the Declarations:

   a. Is responsible for the payment of all premiums; and

   b. Will be the payee for any return premiums we pay.

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

3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:

   a. Paid to us prior to the anniversary date; and

   b. Determined in accordance with paragraph 2. above.

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

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

J. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. Applicable to Businessowners Property coverage:

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

   a. Prior to a loss to your Covered Property.

   b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:

      (1) Someone insured by this insurance;

      (2) A business firm:

         (a) Owned or controlled by you; or

         (b) That owns or controls you; or

      (3) Your tenant.

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

   This will not restrict your insurance.

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2. Applicable to Businessowners Liability coverage:

   If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

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.

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EXHIBIT B

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF HAMPTON
DANIEL A. SPEIGHTS,
Plaintiff,
vs. CASE NO. 2022-CP-25-00269
CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY,
Defendants.
VIDEOCONFERENCE
DEPOSITION OF: JOSEPH WILLIAM MCMANUS, JR.
(Attending by VTC)
DATE: July 28, 2023
TIME: 10:00 a.m.
LOCATION: Law Offices of
WALL TEMPLETON & HALDRUP, P.A.
145 King Street
Suite 300
Charleston, South Carolina
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: Julie L. Bonomo
(Attending by VTC)

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF
DANIEL SPEIGHTS:
SPEIGHTS & SOLOMONS, LLC
BY: GIBSON SOLOMONS, III
(Attending by VTC)
100 Oak Street East
Hampton, South Carolina 29924
Gsolomons@speightsandsolomons.com

ATTORNEYS FOR DEFENDANT
CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY:

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ATTORNEYS FOR DEFENDANT
BANKERS STANDARD INSURANCE COMPANY:

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Greensboro, North Carolina 27408
336-419-4900
Jmalone@goldbergsegalla.com

(INDEX AT REAR OF TRANSCRIPT)

JOSEPH WILLIAM MCMANUS, JR.

being first duly sworn, testified as follows:

EXAMINATION

BY MR. SOLOMONS:

Q. Good morning. My name is Gibson Solomons. We met off the record, but I wanted to put it on the record, and I represent the plaintiff and Mr. Daniel Speights in an action he has filed in attempt to cover a loss and that in those attempts -- or let me state this. Do you understand what actions we're here to discuss today?

A. Yes, I do.

Q. Have you ever had your deposition taken before?

A. No, I have not.

Q. All right. Well, you have very capable counsel who I have known a long time, and I'm sure he has covered a lot of things with you. So that we understand this morning's ground rules, I'm just going to go over a few things with you. We are taking this deposition pursuant to South Carolina's rules. And what that means is now that you're under oath, if you have any question about anything, you'll ask me -- there is a few caveats

to that, but you'll ask me to clarify or you'll ask me if you don't understand a question, and if you don't say that, I'm going to assume you do. Is that fair?

A. Yes, sir, that is fair.

Q. If you have questions about the topics now that we have begun the deposition, you should direct those questions about this process to me, and I'll try and address your questions as best I can. Is that fair?

A. Yes, it is.

Q. As we proceed in this deposition, there is going to likely be a moment in time where your attorney may object to the form of a question that I ask. I would ask you if -- as you hear him begin to speak, stop answering the question, allow him to speak and object to the form, and then go ahead and answer the question that was asked. The only exception to that is your attorney may -- it doesn't happen very often. He may explicitly tell you don't answer that question.

And then if that happens, I probably will say to you -- and I don't want to take you by surprise. I may say to you your attorney has instructed you not the answer the question. Are

you going to answer the question? At which point, if I was sitting next to a guy the size of Morgan, I would say I'm going to follow his advice. And so, I'll just tell you that's how it's going to occur if you -- I doubt that comes up today.

But the other things are, if you need to take a break, we'll take a break. I'll try and make this as painless as possible. The purpose of this is -- this what we call a discovery deposition. So all I'm trying to do is discern what are the facts that can be put on the table as it relates to Mr. Speights' claim for coverage for the $250,000 loss that was incurred.

So all those instructions now under our belt, please state your entire time for the record?

A. Joseph William McManus, Jr.

Q. Tell me your street address.

A. 4995 Alpha Street, North Charleston, South Carolina 29405.

Q. What is your current role for Auto-Owners?

A. I'm a field claim representative.

Q. How long have you served as a field claim representative for Auto-Owners?

A. For about six years.

Q. What is your date of birth?
A. May 20th, 1993.
Q. Prior to being a field claims representative to Auto-Owners, what was -- where were you employed?
A. I actually started with Auto-Owners straight out of college. So...
Q. Okay.
A. I didn't have any full-time employment prior.
Q. Where did you go to school?
A. I attended Newberry College in Newberry, South Carolina.
Q. Where is home originally, Joe?
A. Charleston, South Carolina, specifically Mount Pleasant is where I would say I grew up.
Q. Okay. In your current role, do you serve on a team or a group of, you know, specially assigned to any particular area?
A. We certainly consider ourselves a team, and, you know, I do work out of the Florence claims office, and I do have a specific territory that I work in and, yes, other claim reps have additional territories throughout the state.

Q. Okay. In your work as a field claims rep in the Florence claims office, I have to assume, based upon the fact that you're the one sitting there, that Hampton, South Carolina, is in your territory?

A. That sounds correct.

Q. Have you ever been to Hampton, South Carolina?

A. Yes, sir, I have.

Q. When was the last time you were in Hampton?

A. I believe I actually went last month, had two instances where a tree fell on structures for some insureds that resided in Hampton.

Q. In the Florence claims office, can you tell me who your boss is?

A. My current boss, my current manager right now is Mr. Robby Howell.

Q. Robby Howe?

A. Yes, sir.

Q. H-O-W-E?

A. L-L, yes.

Q. Oh, Howell. I apologize.

A. Yes, sir.

Q. When this claim came in to your office,

was Mr. Howell the head of that office?

A. At the time, no, he was not.

Q. Who was the head of the office?

A. It's Courtney Ellingston.

Q. Could you spell that last name for me?

A. I believe it is E-L-L-I-N-G-S-T-O-N.

Q. Okay. Courtney Ellingston. How long ago did Mrs. Ellingston leave in that or quit serving in that capacity?

A. I believe it's been about -- it was just before the COVID-19 outbreak is when she moved to a branch in Pittsburgh and retained her same position just at the branch in Pittsburgh.

Q. Okay. So I asked you earlier -- well, let me ask this: I know that Mr. Howell and prior previous to that Mrs. Ellingston is who you reported to. Do you have anyone that reports to you?

A. No, I do not.

Q. Okay. And if -- is there any intermediary in between, for example, Mr. Howell and you? So is there -- if there is -- I'm just thinking of a hierarchical chart, and if I put you on a chart and I put Mr. Howell on that chart is there any person that would show up in between the

two of you?

A. We do have a claims supervisor role, and, you know, their role is basically to, you know, assist when needed.

Q. Okay. And give me an example, if you don't mind, of a time when a claims supervisor might be needed.

A. If a large loss comes in and you need help on site, you know, scoping and writing an estimate for that loss.

Q. Okay. In your role as a claims supervisor in the Florence claims office, did you come to understand that Mr. Speights was making a claim on y'all's policy for a loss of $250,000?

A. Can you clarify your question because I think you stated my title with the company incorrectly.

Q. Okay. I apologize, and I appreciate you doing that. I want things to be stated accurately.

In your role as a field claims officer, did you come to understand that Mr. Speights was bringing a claim under the policy for a loss of $250,000?

A. Yes, I was aware.

Q. And in -- when you were made aware of that, were you the person that was tasked with both examining the policy and examining the loss to discern whether there was a loss and whether that loss was covered?

A. Yes, I was.

Q. And when -- as you were discerning that, could you tell me -- other than myself, because you and I, I think had several -- a few conversations. Other than a couple of conversations with me, could you tell me the names of any of the people you may have spoken to when this claim came in?

A. Sure. I believe when I first made the call to your law firm, there was someone at your front desk answered and transferred me over to the voicemail of Ms. Linda Hardin.

Q. Okay. What about Mr. Ellis at the Ellis Insurance Agency? Ever speak with him?

A. I do not believe I ever spoke with Mr. Ellis, no.

Q. What about anyone at the bank? Did you ever speak with anyone at the Palmetto State Bank?

A. No, I did not.

Q. Okay. What about any other external

people concerning the loss that was claimed on the policy? Did you have any other discussions with any third parties about this particular claim?

A. No, sir.

Q. All right. Did you talk to your claims supervisor about this claim?

A. Not that I recall, no.

Q. Okay. I should have asked you this before but in preparation for this deposition, did you speak to any person in preparation for the deposition? And let me tell you before you answer just because this is the first time you have been deposed, I don't want to know things your attorney talked to you about. But other than -- so other than your attorney, did you speak to any other persons in preparation for this deposition?

A. No, I did not.

Q. So you did not speak with a claims supervisor about your depo?

A. No, speaking to them about it, no, I did not. Are they aware that I am being deposed today? Yes.

Q. Okay. And same with the head of the office Mr. Howell, he is aware, but you didn't have any discussions with him?

A. Yes, that is correct.
Q. What about to prepare for the deposition? What have you done to prepare?
A. I met with my attorney and also reviewed the file.
Q. Okay. And I was going to ask you that next. So you have looked at documents. You reviewed the file. Could you give me an overview of what the file that you looked at contained?
A. Sure. A print-off of the notes, the coverage letter, and the -- again, documents between me and my attorney.
Q. Okay. So the -- in preparation, you took a look at the file. Now is that the master to the extent that there is such a thing, and is that the master file?
A. Can you clarify for me?
Q. Sure. Let me give you a comparison and that might help.
A. Okay.
Q. In my office we frequently will have a large file that contains everything on a topic matter, and then inside that large file there may be subsets of the file. So, for example, if working on a lawsuit and inside that lawsuit is a

discreet issue, I may have a file for each discreet issue that's appeared that's in the lawsuit, but then I have a bigger file. And so what I want -- what I was wondering is, is there a -- is there a Dan Speights or Speights and Solomons master file and what were you looking at was the is subset or was it the whole file?

A. I looked at the whole claim file for our insured Speights and Solomon, LLC.

Q. Okay. And as it relates to that, the policy itself -- the policy that we're talking about today. The policy is an Auto-Owners policy, correct? The one you're being deposed about today?

A. It's an Owner's policy, yes, sir.

Q. All right. And would you agree that there is an Auto-Owners policy that was effective at the time this loss occurred?

A. Yes, I agree.

Q. All right. Now, is the essential purpose of insurance to provide protection against unlikely events of unknown losses?

A. Can you clarify that, please?

Q. Sure. Is the essential purpose of insurance to provide protection for the purchaser of the insurance against unknown losses or losses

which may occur?

MR. TEMPLETON: Object to the form.

THE WITNESS: I still don't understand your question. I'm sorry.

BY MR. SOLOMONS:

Q. Okay. And I'm just trying to get a context of what we're talking about a little bit. So in the -- in the context of insurance, the reason someone would purchase insurance is to provide protection against a loss which has not yet occurred, right?

A. Yes, that is the general purpose of insurance, yes.

Q. And the way that comes to be is that a contract is entered into between the insurance company, who accepts money, and it's insured, which pays the money, which may or may not result in the insurance company having to pay money as a result of the coverage. Is that accurate?

A. Yes, it is.

Q. The money the insurance company takes is the premium, and then the -- that's the insurance company's consideration, and then the consideration that the insurance company offers the insured is coverage against a set of losses. Is

that still an accurate statement?

A. Yes, that's accurate.

Q. And the way an insurance company makes money, makes a profit is it calculates what the risks are, and can take -- and over the aggregate of all of these insureds, it takes in more money in premiums than it pays out in losses. Is that also accurate?

A. That can happen, yes.

Q. Well, that's how an insurance company makes money. Isn't that accurate? That's how it makes a profit?

A. That could be part of how to make a profit, yes.

Q. Okay. Would you agree with me that in this instance that Speights and Solomons purchased a policy and paid a premium?

A. I would say that Speights and Solomons, LLC purchased the policy and paid the premium, yes.

Q. Okay. And do you -- and you were careful to say Speights and Solomons, LLC, and I should have said that because that's in there, and we're particular with that. Do you understand that Dan Speights is the founding partner and owner of Speights and Solomons, LLC?

A. Yes, I understand.

Q. So back to the general terms. When a risk becomes a realized loss, that's when the contract provides that the insured is made whole by the insurance company by paying to cover the loss -- provided the loss is covered. Is that accurate?

A. Yes, that's accurate.

Q. And so you would agree in that -- again, there may be tiny caveats in this, but in general that there is really only two basic reasons why an insurance company wouldn't pay if there is a policy in effect. The first is the loss wasn't actually sustained, and then the second is the loss isn't covered by the policy. Would you agree with that?

A. I tend to agree with what you're saying, yes. But there also may be other circumstances that could come into play.

Q. I understand. Given -- we can put the two -- the reasons for denial of coverage into those two lumps provided there is a policy out there. In this instance, it appears that the reason Auto-Owners has taken the position that it has is that it believes the loss is not a covered

loss. Is that accurate?

A. Yes, that's accurate.

Q. And just to be a tiny bit redundant, the reason Auto-Owners has taken the position it has taken is not because it has a dispute with the fact that there was, in fact, a loss. In other words, Auto-Owners does not dispute -- it has no basis to dispute that a $250,000 loss did occur?

A. I don't dispute that there was a $250,000 loss of Mr. Dan Speights' money, yes.

Q. Okay. In the review of documents that you have seen prior to today, have you seen the invoice that was sent to the firm that the firm was responding to?

A. Yes, I saw that.

Q. And you saw that in that invoice, that there was ostensively a charge for services rendered to the firm. Did you see that on the invoice?

A. I don't -- if I had it in front of me, I'm sure I could give you an accurate answer.

Q. Okay. Let's do this. Again, because this is just -- this is a discovery deposition. All I'm trying to figure out is what facts are known, and what facts are out there. Pretend for a

moment that I am a newspaper reporter, and I have come and I have said to you in succinct style, tell me what you know about this claim. How it occurred or the facts underlying the claim, I guess. What occurred, and then when you became aware of it? It's broad. I acknowledge this is broad. So what I'm trying to get you to tell me is what do you understand about what occurred that ended up in $250,000 being stolen?

A. Okay. I understand there was a bad actor that impersonated Mr. Speights and had asked an employee of the firm to transfer money out of his personal account into an offshore account. And that's the gist of what I know. Again, she voluntarily parted with the funds and the money was not recovered as far as I know.

Q. Okay. And one of the things you told me, Joe, is that she voluntarily parted with the funds. Is that an important distinction as you see it as to whether this was a covered loss?

A. Yes, it is. If you look at Page 2 of the -- excuse me, page 3 of the coverage letter, Exclusion H is false pretense. It states -- go back to page 1, under Exclusion B, "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 cause of event that contributes concurrently or in any sequence to the loss."

And, again, that exclusion -- back to Page 3, that Exclusion H is false pretense. It states that "false pretense is voluntarily parting with any property by you or anyone else that you have entrusted the property if induced to do so by fraudulent scheme, trick, device or false pretense."

And as I stated earlier, there was a bad actor involved is that basically tricked your employee into voluntarily parting with those funds.

Q. So -- and just so I understand, would the effect of that -- that -- that policy provision, would it play out like this if, for example, let's say I went down to Halls on King Street to have a meal, and I -- and I had a policy from Auto-Owners that had that false pretense provision in it, and I parked my car on the street and somebody broke in and stole my car, I may very well have a valid claim. But if I took the same car on the same exact day and there was a guy standing out there and he's wearing a valet vest

and he's wearing a valet hat, and it says Halls, and I flipped him the keys to my truck and he took off in my truck, that false pretense would say you don't have a valid claim, wouldn't it?

A. Potentially. But this is also not a commercial auto policy. So I'm really having a hard time with that analogy.

Q. Well, give me another instance where false pretense may come into play.

MR. TEMPLETON: Object to the form.

BY MR. SOLOMONS:

Q. Can you think of one?

A. Offhand, no.

Q. Is -- has there been any litigation that you're aware of with Auto-Owners about the operation of the false pretense clause?

A. No, not that I'm aware of.

Q. Have you denied other claims as a result of the false pretense clause?

A. Since this claim, I believe so, but I'm not entirely sure prior.

Q. In the instances where you believe you have -- subsequent to this claim being denied, what were the circumstances without giving me the names that would have triggered the false pretense claim?

A. I believe it's a very similar circumstance involving a phishing attempt.

Q. Is -- and let me just figure out where we draw the line on this. If my mom -- well, it's a commercial policy so let's just stay right where we are. If -- if we were to receive something from what looked like our bank and it just said we need to confirm your account information. We're sending out something to all of our account holders, and we need to confirm your account information. And so we're like, okay, well, we have got to confirm it. So someone in the office or myself or Dan hits reply and puts all of our account information, including whatever vitals that they need -- my social or Dan's social to get into it -- and then they then take that information and drain our account dry. Is that a false pretense claim that isn't covered?

A. Based on what you're describing, potentially, yes. There seems to be, you know, a trick or a scheme that's involved in your scenario.

Q. All right. Would you agree with me that Speights and Solomons or Dan Speights had no role in drafting the language in this policy?

A. Yes, I would agree.

Q. And are you aware that in South Carolina if there is any ambiguity in a policy that that ambiguity is construed against the insurer?

A. Yes, I'm aware.

Q. Other than against litigation against Auto-Owners, and -- and claims that you have had subsequent, are you aware of any internal memoranda concerning losses similar to the ones suffered by Mr. Speights in this case? Internal memorandum --

A. No, I'm not aware of.

Q. I sorry. I spoke over you, and I did something I -- I tell people don't do. I apologize.

So my question was if you're aware of any internal memoranda in your company speaking to losses of this type?

A. I'm not aware, no.

Q. Have you attended any seminars where people were discussing covering the risk of losses of this type?

A. No.

Q. Have you read any industry publications that addressed losses the same or similar to suffered in this case?

A. No, I have not.

Q. Do you receive in the Florence office certain insurance industry publications?

A. I think we'll get some e-mails from PLRB. They send out those e-mails.

Q. Okay.

A. But I don't have the time to go through and read every single thing that is sent to me.

Q. How many open files do you have at any given time --

A. I think it would range between -- can you repeat your question.

Q. Sure. How many open files do you have at any given time?

A. Sure. I have typically anywhere from 75 up to 120. Again, a lot of it has to do with the weather.

Q. Is a $250,000 theft claim unusual?

A. Somewhat, yes. But I also see unusual stuff every day and new things every day as well. I think that is pretty standard across any industry. You're going to run into new stuff, stuff that is a little out of the ordinary.

Q. And -- and you stated that at least in your six year experience in Auto-Owners, this claim when it came in, this was the first of its type

that you're aware of that was excluded as a result of the false pretense clause?

A. I believe so, yes.

Q. Now is there a way for Mr. Speights to have purchased coverage that would have covered false pretense?

A. Not that I'm aware of.

Q. Is there --

A. It's a possibility.

Q. Is there any descriptions or educational materials as -- as the internet has become more and more an integral part of our life that describes to insurance brokers and potential policy holders that they are not covered for this type of loss if your -- if your interpretation is correct?

A. I'm not sure if there is or not.

Q. Have you ever been a part of any explanations to either brokers or policy holders, hey, you need to be aware what you have doesn't cover you, if this -- if this loss were to occur, you aren't covered because of false --

A. I have not --

Q. Yeah.

A. I'm sorry. I believe to answer your

question, no, I have not had any contact with any agent or broker.

Q. Okay. Now, we might have to take just a short minute. I sent over to --

MR. SOLOMONS: -- Morgan, I sent you documents I think or had sent to you documents I think that included the policy.

MR. TEMPLETON: Yeah, I have got the policy. I have got the policy.

MR. SOLOMONS: Okay.

MR. TEMPLETON: For the record, it's your Bates Stamp No. 13 --

MR. SOLOMONS: Right.

MR. TEMPLETON: -- through 152. So I have it in my hand, and I am putting it in front of the witness.

MR. SOLOMONS: Okay. Great. We won't be a whole lot longer. I just have a few questions about the policy itself and some of the language.

BY MR. SOLOMONS:

Q. So if you take a look the first page is DAS 000 -- a bunch of zeros and then 13. If you flip that over to the next page, 14, are you taking a look at that?

A. Yes, sir, I am.

Q. It has a -- a -- what looks like a line item set of limits and premiums, and what it says under the bold coverages is it immediately says "Aggregate limit 4 million dollars."

Do you see that?

A. Yes, I do.

Q. Now, the term "aggregate limit," seems to me that there may be a bunch of coverages in here, but no matter what happens, you can't add them up to more than 4 million dollars. Is that what that means?

A. That's going to fall within -- under your business liability protection. So in regards to a liability loss, I believe so, yes.

Q. Okay. Is this for -- is this 4 million dollars just for business liability?

A. I believe so based on, you know, what category this is under, business liability protection.

Q. Okay. Let me ask this so that if you flip the page to the next page, page 15 -- oh, actually, yeah, no. Flip to page 15. It says "The entity recovery coverage," and it says "There is an annual aggregate coverage here of $15,000."

Is someone impersonating Mr. Speights

and having the $250,000 sent in a wire, is -- is that potentially covered under identity recovery?

A. I'm not sure.

Q. Okay. If you flip over to 16, there are a list of coverages, and this is for the location of 100 Oak Street which I will tell you and you may have been here enough with me -- you said you have come to Hampton a number of times. You may have been by the office. Our main office is located at 100 Oak Street.

So I can tell you that where Mrs. Herndon is located is at 100 Oak. And would you agree that what is listed there is -- under location, one, are the coverages that are assigned to the 100 Oak Street location?

A. Yes, that's correct.

Q. Well, the first thing I notice is terrorism. Is -- is the -- are the acts that occurred that ended up in Mr. Speights and -- and the firm instructing the bank to send money internationally, are these acts of terrorism?

A. I don't believe so, no.

Q. Okay. Well, but there is no -- is there a way for us to definitively know? I mean, it could have been terrorists, couldn't it have?

MR. TEMPLETON: Object to the form.

THE WITNESS: I don't believe that this constitutes an act of terror, no.

BY MR. SOLOMONS:

Q. Okay. There is also in here personal property replace -- business personal property replacement costs, and that's the very first line of the coverages. Are -- are moneys considered personal property?

A. Under this policy, no, they are not.

Q. Well, if you skip down or down to the fourth to the bottom, third to the bottom, and second to the bottom, in second and third to the bottom of this -- on this page are money and securities are considered money and securities, right?

A. So you have an op- --

Q. Go ahead. I'm sorry?

A. You -- you have an optional coverage here that, you know, again, does, in fact, grant you in certain circumstances some coverage for moneys and securities.

Q. And for money lost inside, it looks like it's included, and for money lost outside the premises, it looks like it's included. And then

right above that there is an amount for forgery and alterations that also seems included; is that correct?

A. Yes, there was some coverage on here for forgery and alteration, yes.

Q. And could -- I describe this e-mail as an altered e-mail? The e-mail that --

A. Which e-mail are you referencing?

Q. The -- the e-mail that requested and ended up obtaining a $250,000 wire to be sent overseas -- could I describe that as an altered e-mail?

A. I don't believe it was altered. I believe it was directly typed by a bad actor who then sent it. There was nothing that was altered.

Q. Could I describe it as forged -- Mr. Speights' electronic --

A. I believe that.

Q. Mr. Speights' electronic signature on that e-mail was that a forgery of his electronic signature?

A. Essentially, could be.

MR. SOLOMONS: What I need to do real quick, if you don't mind, is can we take a short break and let me kind of run through my notes, and

I might be done, Joe, if that is okay -- if that is okay with counsel.

MR. TEMPLETON: Sure.

MR. SOLOMONS: I'm -- I'm going to mute and turn off my camera for a second, and then I'll come right back to you.

(A brief recess was taken.)

MR. SOLOMONS: Madam Court Reporter, can I give you my order while we're waiting?

THE COURT REPORTER: You sure can.

MR. SOLOMONS: I don't know if there is going to be an exhibit or not, but I would like just an electronic copy, you know, regular condensed and electronic exhibits is fine if there are any.

THE COURT REPORTER: Okay. No problem. Thank you.

MR. SOLOMONS: And do you need my e-mail address for anything or --

THE COURT REPORTER: No, I have your info. We're good.

Okay. Thank you.

MR. TEMPLETON: Julie, I'm going to want a copy of it as well, and we're going to read and sign as well. And you can send it -- send it

to me and I'll handle getting that to the witness.

THE COURT REPORTER: Can I get your e-mail, please.

MR. TEMPLETON: Sure. It's Morgan, M-O-R-G-A-N, dot, Templeton, T-E-M-P-L-E-T-O-N, at, Wall, W-A-L-L, Templeton, dot, com.

THE COURT REPORTER: Great. Thank you.

MR. TEMPLETON: Sure.

(A brief pause transpired.)

MR. SOLOMONS: The plaintiff doesn't have any further questions. Thank you, Joe, for being patient.

MR. MALONE: I don't have any questions.

MR. TEMPLETON: I have got a couple of questions for you, Joe.

EXAMINATION

BY MR. TEMPLETON:

Q. This is Morgan Templeton. Obviously, I'm representing the company. You were asked earlier about examples of false pretenses that could potentially be covered. Do you recall that line of questioning?

A. Yes, I do.

Q. All right. So would I be correct that

if a third party somehow hacked into one of the firm's accounts and took money or stole money, that would be a covered loss?

A. Yes, I believe the keyword there is you know, again, "stolen."

Q. The distinction that you're drawing here is that the decision to transfer the funds was a voluntary decision albeit made under a false pretense, right?

A. Yes, sir.

Q. The named insured on this policy is Speights and Solomon, LLC, correct?

A. That's correct.

Q. This policy was not sold to Mr. Daniel A. Speights; is that correct?

A. (Inaudible.)

Q. All right. And --

THE COURT REPORTER: Could you repeat that answer. Was that a "yes"?

THE WITNESS: Yes.

THE COURT REPORTER: Thank you.

BY MR. TEMPLETON:

Q. And you were asked a question about terrorism coverage. Was a claim ever submitted to you under a terrorism theory?

A. No.

Q. And the invoices that came from the Chinese company and the e-mails that were sent by the bad actor, were those provided to you for the denial letter of November 5, 2019?

A. No, they were not.

MR. TEMPLETON: Thank you.

MR. SOLOMONS: The plaintiff doesn't have any further questions. Thank you all for working on a Friday. I know it's summertime, but let's get out of here and do something fun.

MR. TEMPLETON: Yeah, one -- one housekeeping thing, Gibson.

MR. SOLOMONS: Yes.

MR. TEMPLETON: I sent an e-mail about the scheduling order. Are you good with that?

MR. SOLOMONS: Yes. Okay.

MR. TEMPLETON: I'll draw that up and if you guys are okay, I'll include --

THE COURT REPORTER: Mr. Malone, do you need a copy?

MR. MALONE: Yes, please. Just e-tran, regular condensed. Gibson, were you marking the policy as an exhibit?

MR. SOLOMONS: I wasn't but --

MR. MALONE: That's fine. I didn't want to order exhibits if there aren't any --

MR. TEMPLETON: Can we go back on the record for one moment, I forgot to ask one other question that I needed to ask.

(Back on the record.)

BY MR. TEMPLETON:

Q. Mr. McManus, with respect to the policy itself that is in front of you right now, from a false pretense standpoint is there a sub-limit of coverage within that policy, and if so, what is it?

A. In regards to moneys and securities there is a sub-limit of 50,000 with a $250 deductible.

Q. All right. So in the example that I gave if somebody had hacked in and stolen the money and it was a covered loss, the limit of insurance would have been $50,000; is that right?

A. That's correct.

MR. TEMPLETON: All right. That's it. Thanks.

THE COURT REPORTER: And, Mr. Solomons, is electronic okay other than the original, of course?

MR. SOLOMONS: Yep.

THE COURT REPORTER: Okay. Great.

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition concluded at 10:58 a.m.)

CERTIFICATE OF REPORTER

I, Julie L. Bonomo, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 10th day of August, 2023, at Charleston, Charleston County, South Carolina.



Julie L. Bonomo
Court Reporter
My Commission expires
July 28, 2027

I N D E X

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

Morgan S. Templeton, Esq.
Morgan.Templeton@WallTempleton.com
August 10, 2023
RE: Speights, Daniel A. v. Chubb Limited D/B/A Chubb National Insurance Company, Et Al.
7/28/2023, Joseph William McManus, Jr. (#5980947)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at cs-southeast@veritext.com.

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,

Veritext Legal Solutions

Speights, Daniel A. v. Chubb Limited D/B/A Chubb National Insurance Company, Et Al.

Joseph William McManus, Jr. (#5980947)

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Joseph William McManus, Jr. Date

Speights, Daniel A. v. Chubb Limited D/B/A Chubb National Insurance Company, Et Al.

Joseph William McManus, Jr. (#5980947)

ACKNOWLEDGEMENT OF DEPONENT

I, Joseph William McManus, Jr., do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____

Joseph William McManus, Jr. Date

*If notary is required

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EXHIBIT K

South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

EXHIBIT K

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored

in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

EXHIBIT
3

EXHIBIT K

ELECTRONICALLY FILED - 2023 Oct 12 3:46 PM - HAMPTON - COMMON PLEAS - CASE#2022CP2500269

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO. 2022-CP-25-00269
	)	
DANIEL A. SPEIGHTS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**PLAINTIFF'S MOTION TO RECONSIDER**
CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY, AUTO-OWNERS INSURANCE COMPANY, and BANKERS STANDARD INSURANCE COMPANY,	)	
	)	
Defendants.	)	
	)	

On September 25, 2023, the Court heard argument on the Motion for Summary Judgment brought by Defendant Auto-Owners Insurance Company. At the conclusion of the argument, the Court advised the parties that it would take the matter under advisement. Prior to the Court filing the Order, Plaintiff provided a summary of argument and attached the documents referenced in argument. On October 5, the Court filed its Order granting partial summary judgment. The Court divided the support for its ruling into two issues, "The Insured Issue" and the "Voluntary Parting Exclusion". For the following reasons, the Court should reconsider the ruling and deny the Defendant's request for Partial Summary Judgment.

Background

For context, this matter stems from a theft by forgery and forced entry into an email server that occurred in September of 2019. A thief broke into Speights & Solomons, LLC's email server. The thief deleted certain emails and created emails. The thief, forging the electronic signature of Dan Speights ("Plaintiff"), requested the firm's bookkeeper to pay $250,000.00, ostensibly to

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address an invoice made out to the firm of Speights & Solomons for investment distributions and professional services. The bookkeeper, through the use of Speights & Solomons email accounts, posed questions concerning the fraudulent invoice to whom she believed to be the Plaintiff. The firm's bookkeeper then acted pursuant to the thief's altered and forged emails. The bookkeeper, acting in reliance upon the forgery, instructed the firm's bank to transfer the funds. The bank then wired the funds to the account provided on the invoice to Speights & Solomons, the named insured. Because of the undetected hack and capture of the insured's email system, the theft was only discovered when Plaintiff physically entered the office and was asked a question by the bookkeeper. The exchange alerted Plaintiff and the bookkeeper that a theft had occurred. Attempts were made to pull back the funds. Following these unsuccessful attempts, the Plaintiff instructed his insurance agent to inform the applicable insurance companies of the loss. The Defendant denied the claim. Plaintiff then brought this lawsuit.

The Insured Issue

It is not disputed that the issue at bar concerns a theft that began with the receipt of a forged email and fraudulent invoice ("the invoice"). (DAS 000003, Exhibit A). The invoice was not addressed to Dan Speights individually. The invoice was addressed to the named policy holder Speights & Solomons, LLC. It is also not disputed that the theft was initiated through the firm's bookkeeper who was following firm protocol by contacting the Plaintiff concerning the invoice and by using the funds of the Plaintiff to satisfy the invoice that was addressed to the insured.

Plaintiff's counsel began oral argument by explaining that Defendant's summary judgment motion is made prior to the conclusion of discovery and that the Plaintiff's deposition has not been taken. The Defendant's Motion was filed only six days after the Plaintiff had taken its first deposition of Defendant representatives and written discovery is still outstanding. This matter was

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filed less than a year prior to the filing of the summary judgment motion and had not been placed on a trial roster. See Rule 40 SCRCP.

Summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003);*Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct.App. 2002); *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct.App. 2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct.App. 2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998). Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a "full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Baughman v. American Tel. Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333; *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999); *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835;*Trivelas*, 348 S.C. at 130, 558 S.E.2d at 273; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App. 2002); *Hedgepath v. American Tel. Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct.App. 2001); *Bayle*

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v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App. 2001); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct.App. 1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct.App. 1995). "Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App. 1989).

The Defendant acknowledged that the Plaintiff was the owner of the firm in deposition. (Exhibit B Deposition of McManus, p.15 line 23- p.16 line 2). It certainly can be inferred that the personal money lost was being used as the insured's. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656;*Glasscock, Inc. v. United States Fid. Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct.App. 2001); *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct.App. 2000); see also *Laurens Emergency Med. Specialists v. M.S. Bailey Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

Had the Plaintiff's deposition been taken, the Plaintiff would have explained that he covers the expenses of the firm out of his own funds. The Plaintiff would have explained that as an owner and founder of the firm, his personal funds were regularly used to address financial needs of the insured. (See Exhibit C, Affidavit of Plaintiff).

Notwithstanding the above, (the amalgamation of funds and funding between Plaintiff and the named inured as a factual matter), the policy itself blurs the lines of distinction being used as

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the basis for denial of coverage. The policy at issue states that "[a] limited liability company, you are insured. Your members are also insured, but only with respect to the conduct of your business. (Page DAS000083, Exhibit A). It is at least an issue of fact of whether the payment of an invoice addressed to the business is acting "with respect to the conduct of your business". The Court's order notes that the portion of the policy that contains this language is found in the "Businessowners Liability Coverage Form" as opposed to the "Businessowners Special Property Coverage Form". However, the policy is silent as to the definition in the "Businessowners Special Property Form". To grant summary judgment on this basis, the Court must come to the conclusion that in one form for businessowners, there is a definition that explicitly covers the Plaintiff as an insured, but in the other portion of the same policy for the same businessowners, there is no definition so the Court must choose to ignore other explicit definitions in the policy and narrowly construe an elsewhere defined term to prohibit coverage.

Furthermore, the law provides that members of an LLC have certain legal standing as it relates to the affairs of the LLC. Each member of a LLC has presumptive authority and agency to pursue contractual and legal rights of the LLC, especially those which inure to the members' benefit. S.C. Code § 33-44-301(a)(1). South Carolina's statutory law states that members of an LLC may sign "any instrument" that affects the company's interest without limitation. Plaintiff may be bringing this lawsuit on behalf of himself but also as the most appropriate member of the firm to protect the amalgamated funds. See S.C. Code § 33-44-301 "any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property."

Lastly, The Courts have found that an ownership interest provides standing to sue. *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 154 (S.C. 1992) ("Further, unlike the

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property regime in *Queen's Grant*, CJF has an ownership interest in the Mall. We hold CJV had standing to sue on behalf of Belks, Thalhimers and Sears."). The Defendant does not contest that Plaintiff is the owner of the insured.

An analysis of where these lines are drawn factually circles back to the factual issue of what the funds were. The theft is not purely a theft of the Plaintiff and the theft does not have purely effects on solely the named insured. The funds and the entity itself have blurred lines. Does this amalgamation require that this action should also be brought in the derivative? No such suggestion has been made by the Defendant.

Voluntary Parting

It stands to reason that if an insured chose to give away, ("voluntarily part") with $250,000.00, that same insured after gifting the money could not then turn around and claim the gifting or voluntarily parting as a loss to be covered under a policy. That is not what happens here and given the word voluntary the plain and ordinary meaning, no one could call this a voluntary parting.

Critically, Webster's Dictionary breaks out the definitions of the word voluntary under the law.

> **a:** done by design or intention **: INTENTIONAL**
> was convicted of *voluntary* manslaughter
> **b:** acting or done of one's own free will without valuable consideration or legal obligation
> a *voluntary* conveyance

There is no evidence, much less contradicting evidence, that the bookkeeper of the insured intended to allow a thief to make away with $250,000.00. The Plaintiff certainly had no intention to part ways with this money without valuable consideration. If the Court gives the word voluntary

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its normal legal meaning (the intentional parting made with design without consideration or legal obligation), there is at least an issue of fact as to whether the act is voluntary.

In the deposition of the Defendant (Exhibit B), the Defendant testified that the basis for the denial of this claim is that the "false pretenses clause" would categorize the Plaintiff's actions as voluntary.

The application of summary judgment in the exclusion of a policy for a "voluntary parting" in South Carolina is both factually and legally novel. While the mere fact that a legal issue is novel, does not by itself render a case inappropriate for summary judgment, the fact that an issue is both legally and factually novel leaves a fact finder unable to render a decision in an established context. The novelty makes the application of the exclusion more appropriate for a full determination of all facts (once discovery is complete) by a jury. *Schmidt v. Courtney*, 357 S.C. 310, 318 (S.C. Ct. App. 2003) ("We find it extremely troubling this case was resolved on a summary judgment basis, especially considering the injury to Schmidt and the novel issue involved in this case.")

In the deposition of the Defendant's representative, it was admitted that the Defendant had never used the false pretense basis to deny a claim prior to the Plaintiff's claim. On July 28, 2023, in the deposition of Joseph William McManus, Jr., the Defendant stated that this claim "was the first of its type, that you're aware of, that was excluded as a result of the false pretense clause? A. I believe so. Yes." (Exhibit B Deposition of McManus, p.23 line 25- p.24 line 3).

An analysis of other state's insurance law and the application of exclusions of coverage is not an appropriate basis for summary judgment. Nor is the law cited to Court by Defendant and repeated in the Order by any means universal. Court's looking at the exact same policy dispute in the exact same factual scenario have come to opposite conclusions.

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> [T]he Forgery and Alteration Endorsement and the False Pretense Exclusion function to define the scope of coverage and, thus, serve the same purpose and function....Where the language of an insurance policy is ambiguous, as it is in the context of the Forgery and Alteration Endorsement and the False Pretense Exclusion being read in tandem, the contract should be interpreted in favor of the insured because the insurer is in control of the process of articulating the terms. *See Oglesby,* 695 A.2d at 1149–50; *Axis Reinsurance,* 993 A.2d at 1062.

Morris James LLP v. Continental Casualty Co., 928 F. Supp. 2d 816, 825 (D. Del. 2013)[1]

South Carolina law states "conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *Lyons v. Fid. Nat'l Title Ins. Co.*, 415 S.C. 115, 129 (S.C. Ct. App. 2015). ""Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Auto-Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144 (S.C. Ct. App. 2015) citing *Owners Ins. Co. v. Clayton,* 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005)." The policy at issue has multiple types of coverage which all conflict with the "false pretense" or "voluntary parting" exclusion: a point that was conceded in the Defendant's deposition. (See Exhibit B, p.21 lines 22-25). In this voluminous policy, the Defendant stated that it did not cover money damages and then stated that it did cover money damages. The terms under additional optional coverages states:

> **"We will pay for loss of money or securities used in your business** while at a bank or savings institution, within your living quarters or the living quarters of your partners or employees having use and custody of the property, at the described premises, or in transit between any of these places **resulting directly from: (1) Theft, meaning any act of stealing."** (See Page 17 of 21 to the incomplete policy attached as Defendant's Exhibit A, emphasis added)

[1] See Also *Cent. Mut. Ins. Co. v. Reliance Prop. Mgmt., Inc.*, No. 05-21-00071-CV, 2022 WL 1657031, at *6 (Tex. App. May 25, 2022) (ruling that voluntary parting exclusion "cannot be reconciled" with "endorsement's express coverage of loss for fraud-based crimes")

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When asked about the additional coverage in deposition, the Defendant conceded that the Plaintiff had purchased additional coverage for money and securities. (Exhibit B p.28 lines 19-22). The normal rule of policy interpretation is that endorsements supersede any limitations in the policy.

The Defendant also conceded that there was additional coverage purchased for forgery and alteration. (Exhibit B p.29 lines 4-5). The forgery endorsement states explicitly that the Defendant will pay for any forgery of any promise in money. (Exhibit A DAS000021). The Defendant further conceded that Plaintiff's electronic signature on an email "[e]ssentially, could be" forgery. (Exhibit B, lines 19-22). The Defendant conceded that a policy was in place (Exhibit B p. 13 lines 15-18), that Plaintiff suffered the loss (Exhibit B p. 17 lines 9-10) and conceded that coverage in addition to that noted above could apply as well. (Exhibit B p.27 lines 1-3).

The Defendant concedes that coverages apply while at the same time arguing that exclusions apply. This is precisely the conflict noted in other jurisdictions and the exact type of conflict that longstanding law in South Carolina construes in favor of the insured.

Conclusion

At a minimum, there are conclusions and inferences to be drawn from the facts that remain open as to whether the funds lost were being employed for and on behalf of the insured. At a minimum, there are admitted conflicting policy terms creating ambiguity. As a matter of procedure, this matter still has open discovery.

For all of the foregoing reasons, the Plaintiff requests that the Court reconsider its October 5 ruling and deny the Defendant's Motion for Summary Judgment without prejudice to renew the motion upon completion of discovery.

EXHIBIT K

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Respectfully submitted,

/s/ A. Gibson Solomons, III
A. Gibson Solomons, III, Esq.
Speights & Solomons, LLC
100 Oak Street, East
Post Office Box 685
Hampton, South Carolina, 29924
(803) 943-4444
gsolomons@speightsandsolomons.com
Attorneys for Plaintiff

October 12, 2023
Hampton, South Carolina

EXHIBIT
4

EXHIBIT K

ELECTRONICALLY FILED - 2023 Oct 12 3:46 PM - HAMPTON - COMMON PLEAS - CASE#2022CP2500269

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON DANIEL A. SPEIGHTS, Plaintiff, vs. CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Civil Action No. 2022-CP-25-00269

AFFIDAVIT OF DANIEL A. SPEIGHTS

1. My name is Daniel A. Speights.
2. I am the Plaintiff in the above captioned action. I have personal knowledge of facts pertinent to this action. This affidavit only provides a portion of the pertinent facts for the above captioned case of which I have personal knowledge. My deposition has not been taken.
3. I am a founder of Speights & Solomons and the senior partner of the firm.
4. I have historically and frequently provided funds to the firm for the continuation of the firm's business practices.
5. On September 25, 2019, an invoice addressed to Speights & Solomons was received by the firm's bookkeeper.
6. At the time of the bookkeeper's receipt of the invoice, I had no knowledge of the invoice.
7. The bookkeeper sent an email that was intercepted by a thief and I never received the email. The thief, forging my electronic signature, asked the that the invoice be paid.
8. In continuation of the standard practice, as referenced in Paragraph 3, above, my private funds of $250,000 were forwarded as payment of the invoice.

EXHIBIT K

FURTHER, THE AFFIANT SAYETH NOT.

DANIEL A. SPEIGHTS

Sworn to before me this 12th day
of October 2023.

Susan L. Murdaugh
Notary for the State of South Carolina
My Commission Expires: June 5, 2025

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EXHIBIT K

RECEIVED
Apr 15 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE
COUNTY OF HAMPTON)

RE: Daniel A. Speights vs. Chubb Limited d/b/a Chubb National Insurance Company; Auto-Owners Insurance Company; and Bankers Standard Insurance Company
(Appeal No. 2023-001845 /Case No. 2022-CVP-25-00269)

PERSONALLY APPEARED before me, Susan T. Murdaugh, who being duly sworn, deposes and says: that she is employed in the office of Speights & Solomons, LLC, attorneys for the Appellant in the above-referenced action; that she served the foregoing Appellant's Memorandum in Opposition to Motion to Strike Matter and Exclude Matter from Record on Appeal this 15th day of April, 2024, via electronic email and U.S. Mail to the attorney(s) listed below:

Morgan S. Templeton. Esquire
W. Richards Hundly, Esquire
WALL TEMPLETON & HALDRUP, P.A.
Post Office Box 1200
Charleston, South Carolina 29402
Attorneys for Respondent Auto-Owners Insurance Company

Susan T. Murdaugh
SUSAN T. MURDAUGH

SWORN TO before me this 15
day of April, 2024

Rosemarie Lightsey (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/15/2032

EXHIBIT K

RECEIVED
Apr 15 2024
SC Court of Appeals

SPEIGHTS & SOLOMONS, LLC
ATTORNEYS AT LAW
100 OAK STREET EAST
POST OFFICE BOX 685
HAMPTON, SOUTH CAROLINA 29924
(803) 943-4444

FACSIMILE (803) 943-4599

April 15, 2024

VIA EMAIL (ctappfilings@scourts.org)
& UPS GROUND

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Daniel A. Speights v. Chubb Limited, etc., et al.
Appeal No. 2023-001845 (2022-CP-25-00269)

Dear Ms. Kitchings:

Enclosed for electronic filing please find Appellant's Memorandum in Opposition to Motion to Strike Matter and Exclude Matter from Record on Appeal with exhibits and Affidavit of Service. I am sending the original and six (6) copies via UPS ground service.

With kind regards, I am

Sincerely yours,

Susan T. Murdaugh
Paralegal

stm
Enclosures
cc: Morgan S. Templeton, Esquire (w/enc) (via email and regular mail)
W. Richards Hundly, Esquire (w/enc) (via email and regular mail)

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF HAMPTON
DANIEL A. SPEIGHTS,
Plaintiff,
vs. CASE NO. 2022-CP-25-00269
CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY,
Defendants.

VIDEOCONFERENCE

DEPOSITION OF: JOSEPH WILLIAM MCMANUS, JR.
(Attending by VTC)

DATE: July 28, 2023

TIME: 10:00 a.m.

LOCATION: Law Offices of
WALL TEMPLETON & HALDRUP, P.A.
145 King Street
Suite 300
Charleston, South Carolina

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Julie L. Bonomo
(Attending by VTC)

Q. Okay. In your work as a field claims rep in the Florence claims office, I have to assume, based upon the fact that you're the one sitting there, that Hampton, South Carolina, is in your territory?

A. That sounds correct.

Q. Have you ever been to Hampton, South Carolina?

A. Yes, sir, I have.

Q. When was the last time you were in Hampton?

A. I believe I actually went last month, had two instances where a tree fell on structures for some insureds that resided in Hampton.

Q. In the Florence claims office, can you tell me who your boss is?

A. My current boss, my current manager right now is Mr. Robby Howell.

Q. Robby Howe?

A. Yes, sir.

Q. H-O-W-E?

A. L-L, yes.

Q. Oh, Howell. I apologize.

A. Yes, sir.

Q. When this claim came in to your office,

people concerning the loss that was claimed on the policy? Did you have any other discussions with any third parties about this particular claim?

A. No, sir.

Q. All right. Did you talk to your claims supervisor about this claim?

A. Not that I recall, no.

Q. Okay. I should have asked you this before but in preparation for this deposition, did you speak to any person in preparation for the deposition? And let me tell you before you answer just because this is the first time you have been deposed, I don't want to know things your attorney talked to you about. But other than -- so other than your attorney, did you speak to any other persons in preparation for this deposition?

A. No, I did not.

Q. So you did not speak with a claims supervisor about your depo?

A. No, speaking to them about it, no, I did not. Are they aware that I am being deposed today? Yes.

Q. Okay. And same with the head of the office Mr. Howell, he is aware, but you didn't have any discussions with him?

A. Yes, that is correct.
Q. What about to prepare for the deposition? What have you done to prepare?
A. I met with my attorney and also reviewed the file.
Q. Okay. And I was going to ask you that next. So you have looked at documents. You reviewed the file. Could you give me an overview of what the file that you looked at contained?
A. Sure. A print-off of the notes, the coverage letter, and the -- again, documents between me and my attorney.
Q. Okay. So the -- in preparation, you took a look at the file. Now is that the master to the extent that there is such a thing, and is that the master file?
A. Can you clarify for me?
Q. Sure. Let me give you a comparison and that might help.
A. Okay.
Q. In my office we frequently will have a large file that contains everything on a topic matter, and then inside that large file there may be subsets of the file. So, for example, if working on a lawsuit and inside that lawsuit is a

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Apr 19 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

The Honorable George M. McFadden, Jr., Circuit Court Judge

Appellate No. 2023-001845
Civil Action No.: 2022-CP-25-00269

Daniel A. Speights . . . . . Appellant,

vs.

Chubb Limited d/b/a Chubb National Insurance Company, Auto-Owners Insurance Company, and Bankers Standard Insurance Company . . . . . Defendants,

Of Whom Auto-Owners Insurance Company is the . . . . . Respondent.

PROOF OF SERVICE

I, Morgan Templeton, of Wall Templeton & Haldrup, do hereby certify that I have served Respondent's Reply to Appellant's Memorandum in Opposition to Motion to Strike by depositing the same in the United States Mail, properly posted on April 19, 2024 addressed as follows to counsel of record:

A. Gibson Solomons, III
Speights & Solomons, LLC
100 Oak Street East
Post Office Box 685
Hampton, South Carolina 29924
gsolomons@speightsandsolomons.com
tshaffer@speightsandsolomons.com
smurdaugh@speightsandsolomons.com
Attorneys for Plaintiff

Dated this 19th day of April, 2024.



WALL TEMPLETON & HALDRUP, P.A.
Morgan S. Templeton (S.C. Bar No. 15456)
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April 19, 2024

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SC Court of Appeals

Shelby Spencer
Appeals Specialist
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29202
ctappfilings@sccourts.org

RE: *Daniel A. Speights v. Chubb Limited, et al*
Civil Action No.:2022-CP-25-00269
App Case No.: 2023-001845

Dear Ms. Spencer:

Enclosed please find Respondent, Auto-Owners Insurance Company's Reply to Appellant's Memorandum in Opposition to Motion to Strike along with the requisite Proof of Service. I am also enclosing the filing fee of $50.00. I would ask that you file the originals with the Court and return a filed-stamped copy at your convenience.

If you have any questions or concerns, please feel free to give me a call.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton

MST/sjs
Enclosures
cc: A. Gibson Solomons, III, Esquire (*w/ encl, via electronic mail only*)