

19614

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry County
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2010-CP-26-4112

ORIGINAL

SC Court of Appeals

NOV 14 2011

RECEIVED

Elisa Narruhn Respondent

v.

Alea London Limited and Anderson
General Insurance Defendant

Of whom, Alea London Limited is Appellant

RECORD ON APPEAL

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Attorney for Respondent

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Of whom, Alea London Limited is Appellant

RECORD ON APPEAL

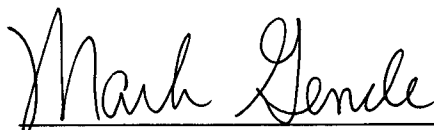
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October 31, 2011

A handwritten signature in cursive script, reading "Mark V. Gende". The signature is written in dark ink and is positioned above a horizontal line.

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Mark V. Gende

William R. Calhoun, Jr.

Sweeny, Wingate & Barrow, P.A.

1515 Lady Street

Columbia, South Carolina 29201

(803) 256-2233

Attorneys for Appellant Alea London Limited

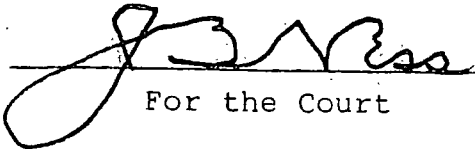
The Supreme Court of South Carolina

ORDER

Pursuant to the provisions of Section 4, Article V,
South Carolina Constitution,

IT IS ORDERED, that upon the filing by any party of a
post-trial motion, in jury or non-jury actions, under Rules 50,
52, 59, or 60(a), SCRCP, the party shall within ten (10) days
provide a copy of the motion to the trial judge.

IT IS FURTHER ORDERED, that all post-trial motions shall
be disposed promptly by written order of the trial judge but no
later than sixty (60) days after the filing of such motions. The
Chief Judge for Administrative Purposes in each Circuit shall
assure compliance with this Administration Order.

 C.J.
For the Court

Columbia, South Carolina

May 22, 1986.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Perceval, II,

Defendants.

ORDER OF REFERENCE
FOR SUPPLEMENTAL
PROCEEDINGS

FILED
HORRY COUNTY
2010 JAN 27 AM 10:28
MELANIE HUGGINS-WARD
CLERK OF COURT

It appearing that pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, that this action is one which may be referred to the Master-In-Equity or a Special Referee for supplemental proceedings in regard to a money judgment entered by this Court; NOW, THEREFORE;

IT IS ORDERED that this action be and the same hereby is referred to Nate Fata., Esquire, Horry County, South Carolina, to take the testimony arising under the pleadings and to make his finding of fact and conclusions of law with the authority to enter final judgment pursuant to Rule 53(e), *SCRPC*. Any appeal from the final judgment entered by Nate Fata, Esquire shall be to the

A.H.D.
S.C. Court of Appeals.

Resident

Presiding Judge
Fifteenth Judicial Circuit

Dated: 10/13/, 2009
Conway, South Carolina

¹⁰ A hearing has been scheduled in the above-mentioned case for Feb. 9, 2009, at 10:00 o'clock A.m. before Nate Fata, Esquire.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Perceval, II,

Defendants.

ORDER

FILED
COUNTY
2010 MAR -8 PM 12:13
CLARENCE HUGHES, MARSH
CLERK OF COURT

This matter is before me pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* for supplemental proceedings. By Order dated October 13, 2009, Steven H. John, Resident Judge for the Fifteenth Judicial Circuit, referred this matter to me with a hearing to be held on February 9, 2010. Present at the hearing was Plaintiff's counsel, Gene M. Connell, Jr., who advised the court that on January 26, 2010 he had mailed to Richard Cronce, the Registered Agent for RKC Entertainment, LLC, a copy of the Order of Judgment, Order of Reference for Supplemental Proceedings and notice of the hearing date. The notice of the hearing date was mailed to Richard Cronce at both of his addresses.

At the hearing, Richard Cronce failed to appear and the court proceeded to hear the case. Previously, the Circuit Court, Judge J. Michael Baxley presiding, had issued an Order of Judgment against RKC Entertainment LLC in the amount of Six Million an 00/100 (\$6,000,000.00) Dollars. Plaintiff's counsel has requested that the court issue an order assigning any rights RKC Entertainment, LLC or Richard Cronce has against their liability insurance carrier to the Plaintiff/Judgment Creditor. Plaintiff's counsel has further asked that if any funds are collected through this assignment that such amount be credited against the Judgment.

NA

At the hearing, I was presented with a copy of an insurance policy that Plaintiff's counsel had received from the Anderson General Insurance Agency on July 27, 2009. This insurance policy, which is part of the record, lists The Red Room as the Assured and the Insurer is Alea London Limited.

The court has reviewed the Plaintiff's counsel's request that any right the Defendant had against Alea London Limited Insurer be assigned as a "chose in action to the Plaintiff." The court believes that this is an appropriate subject of supplemental proceedings and further recognizes that this is an attempt to collect anything from the Defendant which may be of value to satisfy the Judgment of the Plaintiff.

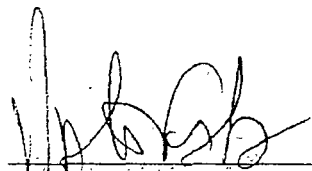
Accordingly,

IT IS ORDERED that any and all claim by RKC Entertainment LLC against Alea London Limited Insurers is assigned to the Plaintiff under Policy Number ALT047106.

IT IS FURTHER ORDERED that any and all right, title and claim which RKC Entertainment LLC may have against Alea London Limited Insurers for failure to pay the claim, defend the claim, or to investigate the claim and for any other claim that RKC Entertainment LLC may have against Alea London Limited is hereby assigned to the Plaintiff Elisa Narruhn.

IT IS FURTHER ORDERED that should the Plaintiff collect any monies from Alea London Limited that these monies shall be used to offset the Six Million and 00/100 (\$6,000,000.00) Dollars Judgment filed in this court on July 9, 2009.

AND IT IS ORDERED.



Nate Fata, Special Referee
Fifteenth Judicial Circuit

Dated: March 3, 2010
SURF-CIDE BAY South Carolina.

NE

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-26-4112

Elisa Narruhn,

Plaintiff,

vs.

Alea London Limited and Anderson
General Insurance,

Defendants

ORDER

FILED
CLERK OF COURT
JULY -2 AM 11:11
CLERK OF COURT

This matter is before the Court based on Defendant Alea London Limited's motion to set aside an Order under SCRCP 60 to which Alea London Limited was not a party. Briefly stated, Narruhn sued RKC Entertainment LLC for personal injuries in a prior action and this court awarded a judgment. After the judgment was entered, Plaintiff's counsel obtained a second Order of this Court assigning the case to a Special Referee for purposes of supplemental proceedings. The Special Referee then assigned any right under RKC's liability insurance policy to Narruhn. Narruhn has filed this action against Alea London Limited for bad faith and for failure to defend. Alea London Limited has moved to vacate the Order of the Special Referee.

At the outset it should be noted that Alea London Limited is not a party to the Order it seeks to overturn and thus does not have standing to ask the Court for relief under SCRCP 60. (SCRCP 60(3) allows a party to seek relief from a final judgment.) In this case, Alea London Limited is not a party as the judgment is against RKC Entertainment, LLC, not Alea London Limited. Further, Alea London Limited cannot make this motion since it is more than a year after the Order of judgment was issued. (See SCRCP 60(5).) Here, the Order of the Circuit Court which vested

authority in the Special Referee is dated October 13, 2009, which is almost seventeen (17) months ago.

APPLICABLE LAW

It is settled in South Carolina that special referees and masters have the authority of a circuit court judge. South Carolina Rule of Civil Procedure 53(e) provides in pertinent part:

When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

In this case, the Honorable Steven H. John signed an Order on October 13, 2009 which is a part of the Court's files that provides that this matter was referred to Nate Fata with "any appeal from the final judgment entered by Nate Fata, Esquire shall be to the S. C. Court of Appeals."

South Carolina's law has long recognized that when a matter is referred with finality and an order is issued, the special referee is required to make all rulings in the case. The circuit court may not overrule or change the special referee's order. There is ample authority for this proposition in South Carolina. See *Roche v. Young Bros.*, 504 S.E.2d 311 (1998) (Supreme Court reverses Court of Appeals and holds that a defaulting party need not consent to an Order of Reference.). See also S.C. Code Ann. § 14-11-85 which holds "an appeal from an order or judgment of a special referee must be to the Supreme Court or South Carolina Court of Appeals. See also *Wachovia Bank v. Player*, 535 S.E.2d 128 (2000) (A special referee who heard the case must hear the SCRCP 60 motion). See also *Normandy v. S.C. Dept. of Transportation*, 688 S.E.2d 136 (2009) (Once a case is referred the special referee has authority to make all decisions in case).

In sum, the Court finds this case has been referred to the Special Referee with any appeal of his Order being to the South Carolina Court of Appeals. If Defendant Alea London Limited, which is not a party, wishes to file an SCRCP Rule 60 motion, it must be heard before the Special Referee

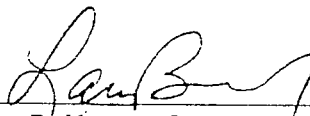
since it relates to an Order issued by him. (See SCRCP 60(a): "A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.") Indeed, in *Wachovia*, the court made clear that a special referee or master's role has changed with new South Carolina Rule of Civil Procedure 53(f) and S.C. Code § 14-11-85. Now, all matters are referred with finality. (See FN 3 *Wachovia Bank of S.C. v. Player*, 535 S.E.2d 128 (S.C. 2000).

Based on the above authority, the Court declines jurisdiction of this case because this matter is vested with the Special Referee who was assigned to it pursuant to Order of this Court. Further, Defendant Alea London Limited has no basis to challenge the Order because Alea London Limited was not a party and thus may not file an SCRCP Rule 60 motion.

Accordingly,

IT IS ORDERED that Defendant's motion is DENIED.

AND IT IS SO ORDERED.



Larry B. Hyman, Jr.
Administrative Judge

2/14, 2011
Conway, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-26-4134

FILED
HORRY COUNTY
06 APR 17 AM 10:33
CLERK OF COURT

Elisa Narruhn,)

Plaintiff,)

vs.)

RKC-Entertainment, LLC d/b/a)
The Red Room and Ardon)
Perceval Cato, II,)

Defendants.)

**ORDER FOR JUDGMENT AND FOR
HEARING TO ASCERTAIN DAMAGES**
(Defendant RKC Entertainment)

IT **APPEARING** from the affidavit of J. Dwight Hudson, attorney for the plaintiff(s), that the defendant(s) **RKC ENTERTAINMENT** in this matter has/have been duly served with a Summons and Complaint and that more than thirty (30) days have elapsed during which no responsive pleading was filed by Defendant(s); and

IT **FURTHER APPEARING** that a hearing to ascertain damages pursuant to Rule 55 of the South Carolina Rules of Civil Procedure should be held to determine the amount owed the plaintiff(s);

It is hereby **ADJUDGED, ORDERED AND DECREED** that the defendant(s) are/is hereby in default and a judgment in an amount to be determined at a hearing to be held shall be filed in favor of the plaintiff(s).



PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

Dated: April 13, 2006

E3501_11927

436929190

Line 1

Hudson Law Firm

11:50:04 a.m. 06-10-2008

8/9

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-26-4134

Elisa Naruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a
The Red Room and Ardon
Perceval Cato, II,

Defendants.

ORDER FOR JUDGMENT AND FOR
HEARING TO ASCERTAIN DAMAGES
(Defendant RKC Entertainment)

IT APPEARING from the affidavit of J. Dwight Hudson, attorney for the plaintiff(s), that the defendant(s) RKC ENTERTAINMENT in this matter has/have been duly served with a Summons and Complaint and that more than thirty (30) days have elapsed during which no responsive pleading was filed by Defendant(s); and

IT FURTHER APPEARING that a hearing to ascertain damages pursuant to Rule 55 of the South Carolina Rules of Civil Procedure should be held to determine the amount owed the plaintiff(s);

It is hereby ADJUDGED, ORDERED AND DECREED that the defendant(s) are/are hereby in default and a judgment in an amount to be determined at a hearing to be held shall be filed in favor of the plaintiff(s).

Edward B. Cunningham
PRESIDING JUDGE
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

Dated: *April 13, 2006*

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Percevia, II,

Defendants.

ORDER OF JUDGMENT
(As to RKC Entertainment, LLC)

CO. JUDGE
JUL-9
11:02

I. BACKGROUND FACTS

This matter is before the Court based on an Order of Default signed by The Honorable Edward B. Cottingham dated April 3, 2006. At that time, this Court determined RKC Entertainment, LLC d/b/a The Red Room to be in default and ordered a damages hearing to be held. The original Complaint alleges negligence, including failure to warn, failing to use reasonable care, and failing to call the police. The case was called for trial on June 15, 2009 after counsel notified RKC Entertainment, LLC d/b/a The Red Room at their last known address of the date of the hearing. Counsel also provided copies of letters identified as Exhibits 1, 2, 3 which were sent to Richard Cronic, the Managing Agent of RKC Entertainment and to Defendant Ardon Percevia Cato, II. All of these letters indicate that these Defendants were advised of the date and time of the hearing. At the call of the case, none of the Defendants were in the courtroom. The Court then proceeded to hear the evidence.

II. EVIDENCE OF CASE

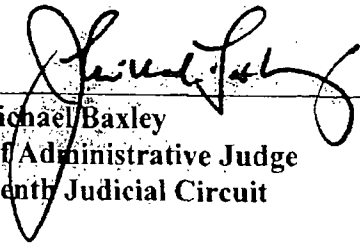
On April 9, 2005, Elisa Narruhn was a customer at RKC Entertainment, LLC d/b/a The Red Room when a shooting broke out in which Defendant Ardon Percevia Cato, II shot Elisa

Narruhn and other people. Elisa Narruhn was immediately rendered paraplegic by the bullet wounds and has been unable to walk since the incident. Narruhn is a native of Micronesia and was here working at the time making approximately \$500.00 a week at a Japanese Steakhouse. She was immediately taken to the hospital by Horry County EMS and thereupon seen by Dr. Eugene Giddens, a local neurosurgeon. Thereafter, she spent from April 9, 2005 to April 20, 2005 at Grand Strand Regional Medical Center and was transferred to HealthSouth Rehabilitation in Florence, South Carolina. Her total medical bills are \$114,065.26. She is 32 years of age and at the time of the shooting was 28 years old. She is completely dependent on her mother who has brought her to the hearing today. She also testified that she has continuous pain and discomfort including what she described as pins and needles that cause almost constant sensation all down her body. She is unable to go to the bathroom and needs a catheter at all times. She has recently had to have a bullet removed from her body due to severe pain in her back. She is unemployed and is aware from her testimony that she will never be able to walk again. Her lost wages at her age, considering nothing other than her testimony that she made \$500.00 a week, would equal \$26,000.00 a year. With her working to retirement age from the time she was injured would be approximately 37 years. It is apparent to the Court that her lost wage claim is approaching \$1,000,000.00, not including the medical bills of \$114,065.26 which were introduced into evidence. Further, the Court is aware from the testimony of Elisa Narruhn of the terrible suffering and depression that she has undergone as a result of her paraplegia. The Court finds that her testimony is very credible and further finds that her testimony about the pain and inability to do the most basic things are persuasive. I have carefully considered the testimony, the medical evidence, the demeanor of the witnesses, and the severity of the injury to the Plaintiff. Accordingly,

IT IS ORDERED that Plaintiff have judgment against the Defendants, jointly and severally, in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars actual damages. Accordingly,

IT IS ORDERED that the Plaintiff have judgment against the Defendants in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

IT IS SO ORDERED.



J. Michael Baxley
Chief Administrative Judge
Fifteenth Judicial Circuit

June 25, 2009
Conway, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Elisa Narruhn,)
Plaintiff,)
vs.)
RKC Entertainment, LLC d/b/a)
The Red Room and Ardon)
Perceval Cato, II,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-26-4/34

COMPLAINT
(JURY TRIAL DEMANDED)

HORRY COUNTY
05 AUG -4 PM 2:28
CLERK OF COURT

The Plaintiff, complaining of the Defendants herein, alleges:

1. That Plaintiff, Elisa Narruhn, is a resident of Horry County, State of South Carolina.
2. That the Defendant, RKC Entertainment, LLC d/b/a The Red Room (hereinafter "Defendant Red Room") is, upon information and belief, a South Carolina corporation with its principal place of business located in South Carolina.
3. That the Defendant, Ardon Perceval Cato, II, (hereinafter "Defendant Cato") is a citizen and resident of Horry County, State of South Carolina.
4. That jurisdiction and venue are proper in this Court.
5. On or about April 9, 2005 Plaintiff was present in the Red Room and was there for the purpose of purchasing food/drink.
6. While in the Red Room on said date, Plaintiff was assaulted by Defendant Cato, who had been ejected from the nightclub and then returned through an exit only door randomly shooting into the dance floor area severely injuring Plaintiff.
7. Defendant Red Room did or should have foreseen that the assault against Plaintiff would occur because Defendant Cato had been behaving in a hostile and disorderly manner and was intoxicated on the occasion of the assault on Plaintiff, and

because The Red Room is located in a high-crime area and has a reputation as a gathering place for persons with violent tendencies.

8. The Defendants were negligent, reckless, willful, wanton, careless, and grossly negligent at the time and place above-mentioned in the following particulars:

- a. In failing to remove Defendant Cato from the premises when his behavior warranted such action on the date of the assault against Plaintiff.
- b. In serving intoxicating liquor to Defendant Cato when he was intoxicated even though Defendant knew or should have known that doing so increased the danger that he would act in a violent manner.
- c. In failing to employ security guards or "bouncers" who could have controlled Defendant Cato and thereby preventing the assault.
- d. In failing to intervene to stop the assault or to call the police when Plaintiff was assaulted.
- e. In failing to warn Plaintiff and other persons of the premises' dangerous and unsafe conditions.
- f. In failing to use the degree of care that a reasonable and prudent person should have exercised under the existing conditions and circumstances;
- g. In shooting and severely injuring Plaintiff.

9. As the direct and proximate result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer, injuries including but not limited to the following:

- a. Thoracic paraplegia and hemothorax;
- b. Medical expenses;
- c. Physical pain and suffering;
- d. Impairment of health and bodily efficiency.

10. Plaintiff is informed and believes that she is entitled to judgment against Defendants for actual and punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount, the costs of this action, and for such other and further relief as the court may deem just and proper.



J. Dwight Hudson
Hudson Law Office
1203 48th Avenue N, Ste 111
Myrtle Beach SC 29577
(843) 692-9889; Fax (843) 692-9190

Myrtle Beach, South Carolina
July 29, 2005

ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Elisa Narruhn,)

Plaintiff,)

vs.)

RKC Entertainment, LLC d/b/a)

The Red Room and Ardon)

Perceval Cato, II,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-26-4134

**AMENDED COMPLAINT
(JURY TRIAL DEMANDED)**

CLERK OF COURT

05 AUG 26 PM 2:41

HORRY COUNTY

The Plaintiff, complaining of the Defendants herein, alleges:

1. That Plaintiff, Elisa Narruhn, is a resident of Horry County, State of South Carolina.
2. That the Defendant, RKC Entertainment, LLC d/b/a The Red Room (hereinafter "Defendant Red Room") is, upon information and belief, a South Carolina corporation with its principal place of business located in South Carolina.
3. That the Defendant, Ardon Perceval Cato, II, (hereinafter "Defendant Cato") is a citizen and resident of Horry County, State of South Carolina.
4. That jurisdiction and venue are proper in this Court.
5. On or about April 9, 2005 Plaintiff was present in the Red Room and was there for the purpose of purchasing food/drink.
6. While in the Red Room on said date, Plaintiff was assaulted by Defendant Cato.
7. Defendant Red Room did or should have foreseen that the assault against Plaintiff would occur because Defendant Cato had been behaving in a hostile and disorderly manner and was intoxicated on the occasion of the assault on Plaintiff, and because The Red Room is located in a high-crime area and has a reputation as a gathering place for persons with violent tendencies.

cds

8. The Defendant Red Room was negligent, grossly negligent, reckless, willful, wanton, and careless at the time and place above-mentioned in the following particulars:

- a. In failing to permanently remove Defendant Cato from the premises when his behavior warranted such action on the date of the assault against Plaintiff.
- b. In serving intoxicating liquor to Defendant Cato when he was intoxicated even though Defendant knew or should have known that doing so increased the danger that he would act in a violent manner.
- c. In failing to employ sufficient security guards who could have controlled Defendant Cato and thereby prevented the assault.
- d. In failing to intervene to stop the assault or to call the police when Defendant Cato was ejected from the premises and/or before Plaintiff was assaulted.
- e. In failing to warn Plaintiff and other persons on the premises of dangerous and unsafe conditions.
- f. In failing to use the degree of care that a reasonable and prudent person should have exercised under the existing conditions and circumstances;

9. The Defendant Cato was negligent, grossly negligent, reckless, willful, and wanton at the time and place above-mentioned in the following particulars:

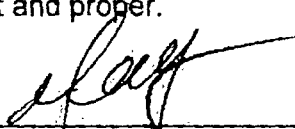
- a. In unlawfully carrying a pistol or firearm onto the premises of a business selling alcoholic liquors, beers or wines for on-premises consumption.
- b. In unlawfully, willfully, negligently, recklessly and intentionally discharging a firearm in a public place.
- c. In unlawfully carrying a concealed weapon or firearm.
- d. In illegally possessing and/or carrying a firearm.
- e. In unlawfully, willfully, wantonly, negligently and recklessly shooting and severely injuring Plaintiff.

10. As the direct and proximate result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer, injuries including but not limited to the following:

- a. Thoracic paraplegia and hemothorax;
- b. Medical expenses;
- c. Physical pain and suffering;
- d. Impairment of health and bodily efficiency.

11. Plaintiff is informed and believes that she is entitled to judgment against Defendants for actual and punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount, the costs of this action, and for such other and further relief as the court may deem just and proper.



J. Dwight Hudson, SC Bar #2753
HUDSON LAW OFFICES
1203 48th Ave North, Suite 111
Myrtle Beach SC 29577
(843) 692-9889; Fax (843) 692-9190

Myrtle Beach, South Carolina
August 23, 2005

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 08-CP-26 2609

Elisa Narruhn,)
Plaintiff,)
vs.)
Jacob Garron aka Joseph)
Barron,)
Defendant.)

**COMPLAINT
(JURY TRIAL DEMANDED)**

08 APR - 1 PM 12:24
105
101

The Plaintiff, complaining of the Defendant herein, alleges:

1. That Plaintiff, Elisa Narruhn, is a resident of Horry County, State of South Carolina.
2. That the Defendant, Jacob Garron aka Joseph Barron is, upon information and belief, is a citizen and resident of Horry County, State of South Carolina.
3. At all times hereinafter mentioned, the Defendant was the owner and/or landlord of certain lands and premises commonly known as 1121 North Kings Highway, in the City of Myrtle Beach, County of Horry, and State of South Carolina.
4. At all times hereinafter mentioned 1121 North Kings Highway was operating as an eating and drinking establishment or tavern, as the case may be, known as The Red Room.
5. That jurisdiction and venue are proper in this Court.
6. On or about April 9, 2005 Plaintiff was lawfully an invitee as a customer of The Red Room and was there for the purpose of purchasing food/drink.
7. While in the Red Room on said date, Plaintiff was assaulted by one of its patrons.

8. Prior to April 9, 2005, the Defendant was the landlord of the premises above mentioned and at all times herein was in possession and control of the building and premises.

9. That by virtue of the fact that the Defendant was the landlord-lessee of the premises in question, he had a common law and/or contractual duty to ensure the operation or occupation of the premises maintained compliance with all laws, ordinances and regulations of every lawful authority having jurisdiction of said premises.

10. Defendant did or should have foreseen that the assault against Plaintiff would occur because The Red Room is located in a high-crime area and had a reputation as a gathering place for persons with violent tendencies.

11. The Defendant was negligent, grossly negligent and breached duty to the Plaintiff at the time and place above-mentioned in the following particulars:

a. in failing to enforce the terms of the lease to protect the public and particularly the plaintiff herein by allowing the tenant(s) to serve alcohol to the point of intoxication to its patrons and/or allowing intoxicated persons access to the landlord's property on a regular basis;

b. in failing to enforce the terms of the lease to protect the public and particularly the plaintiff herein when the landlord knew or should have known of the dangerous conditions and activities existing on its property; and

c. in failing to enforce the terms of the lease to protect the public and particularly the plaintiff herein when the landlord had constructive knowledge of the dangerous and/or unlawful activity taking place upon the landlord's premises either by

common knowledge, newsprint or media and/or as evidenced by the multiple complaints investigated by the local governmental authorities;

d. In failing to employ sufficient security guards who could have controlled and thereby prevented the assault;

e. In failing to warn Plaintiff and other persons on the premises of dangerous and unsafe conditions; and

f. In failing to use the degree of care that a reasonable and prudent landlord should have exercised under the existing conditions and circumstances.

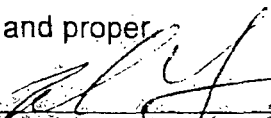
12. As the direct and proximate result of Defendants' negligence and breach of duty, Plaintiff has suffered, and will continue to suffer, injuries including but not limited to the following:

- a. Thoracic paraplegia and hemothorax;
- b. Medical expenses;
- c. Physical pain and suffering;
- d. Impairment of health and bodily efficiency.

13. Plaintiff is informed and believes that she is entitled to judgment against Defendant for actual and punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount, the costs of this action, and for such other and further relief as the court may deem just and proper.

Myrtle Beach, South Carolina
April 1, 2008



J. Dwight Hudson, SC Bar #2753
HUDSON LAW OFFICES
1203 48th Ave North, Suite 111
Myrtle Beach SC 29577
(843) 692-9889; Fax (843) 692-9190

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-26 4112

Elisa Narruhn,)
)
Plaintiff,)
)
vs.)
)
Alea London Limited and Anderson)
General Insurance,)
)
Defendants.)

COMPLAINT
(Bad Faith/Failure to Defend)

JURY TRIAL DEMANDED

FILED
CLERK OF COURT
JULY 11 AM 11:38
HORRY COUNTY

The Plaintiff, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiff, Elisa Narruhn, is a citizen and resident of Horry County, South Carolina.
2. The Defendant, Alea London Limited, is, upon information and belief, an insurer which has been approved by the State of South Carolina to do business in this State.
3. The Defendant, Anderson General Insurance, was the insurance agent for RKC Entertainment.
4. That on or about April 9, 2005, the Plaintiff was a guest invitee at The Red Room a/k/a RKC Entertainment, LLC when Plaintiff was shot and rendered quadriplegic as a result of this incident.
5. That Plaintiff brought a lawsuit against RKC Entertainment, LLC d/b/a The Red Room and Ardon Perceval, II and that Alea London Limited and its agent were notified by their insured of this action through Defendant Anderson General Insurance who is the agent for RKC Entertainment and Alea London Limited.

6. That despite notification the Defendants failed to defend their insured and take adequate steps to make sure it was protected when the lawsuit was filed.

7. That a hearing was held before The Honorable J. Michael Baxley and an Order of Judgment was issued against RKC Entertainment, LLC in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

8. That RKC Entertainment, LLC was properly served through its Registered Agent, Richard Cronic, on or about January 26, 2010 with an Order of Reference for Supplemental Proceedings.

9. That on February 9, 2010, a hearing was held before the Special Referee for purposes of Supplemental Proceedings.

10. That an Order was issued by the Special Referee assigning to the Plaintiff, Elisa Narruhn, any and all claim that RKC Entertainment, LLC or Richard Cronic may have against its liability insurance carrier, Alea London Limited. A copy of that Order dated March 3, 2010 is attached hereto as Exhibit "A".

11. That a copy of the insurance policy between the Plaintiff and Alea London Limited with Policy No. ALT047106 is attached hereto as Exhibit "B".

12. That Plaintiff brings this cause of action against Defendants for all claims that RKC Entertainment or Richard Cronic may have against Alea London Limited for any manner whatsoever including failure to defend and for all consequential damages.

13. That these claims are based upon the Order of the Special Referee which requires an assignment of any chose in action that RKC Entertainment, LLC or Richard Cronic had against its insurer under Policy No. ALT047106 to include failure to pay a claim, failure to defend a claim, bad faith or to investigate a claim.

14. That Plaintiff requests actual damages, punitive damages and the costs of the action.

FOR A FIRST CAUSE OF ACTION
(Failure to Defend)

15. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

16. That Defendants Alea London Limited and Anderson General Insurance had a policy of insurance with The Red Room/RKC Entertainment, LLC with Policy No. ALT047106.

17. That on the date this incident occurred, April 9, 2005, the policy was in full force and effect having been in force and effect from December 9, 2004 until December 9, 2005.

18. That the policy in question required that the Defendants provide a defense to their insured, The Red Room a/k/a RKC Entertainment, LLC and Defendants knew their insured had been sued.

19. That the Defendants failed to defend their insured and that as a result therein of Defendants' failure to defend the insured, judgment was entered against the insured by the Plaintiff, Elisa Narruhn, in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

20. That Plaintiff brings this cause of action against the Defendants for failure to defend the aforementioned case under the terms of its policy.

21. That the insuring agreement provides in pertinent part: Our right and duty to defend ends when we have used up the applicable limit of insurance (See Commercial General Liability Coverage Form Section 1(a)(2).

22. That the Defendants made no attempt to honor their duties under the terms of the policy and breached the policy of insurance with the Plaintiff by failing to defend the suit.

23. As a direct and proximate result, judgment was entered against the insured, RKC Entertainment, LLC in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

24. Plaintiff brings this cause of action for actual damages, punitive damages and the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Bad Faith)

25. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

26. That the Defendants had an insurance policy with the Plaintiff's Assignee.

27. That the aforementioned insurance policy was in full force and effect.

28. That the Defendants, through their officers, agents and/or employees, refused to investigate, pay, defend or take any action to protect the insured RKC Entertainment, LLC d/b/a The Red Room after notice was given to them of the lawsuit.

29. That Plaintiff brings this cause of action for bad faith refusal to pay/refusal to defend/refusal to investigate for actual damages, for punitive damages and the costs of this action.

FOR A THIRD CAUSE OF ACTION
(Negligence)

30. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

31. That Defendants were negligent, reckless, willful and wanton in one or more of the following particulars:

- a. In failing to take steps to protect the insured RKC Entertainment
- b. In failing to pay the claim;

- c. In failing to defend the claim;
- d. In failing to adjust the claim;
- e. In failing to investigate the claim;
- f. In failing to protect the insured after notice of the lawsuit;
- g. In failing to advise Alea London Ltd of the underlying action;
- h. In failing to protect RKC Entertainment of the claim;
- i. In failing to do what a reasonable person would have done under the same or similar circumstances.

32. As a direct and proximate result, the insured RKC Entertainment, LLC d/b/a The Red Room had a judgment against it in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

33. That Plaintiff brings this cause of action for actual damages, punitive damages and the costs of this action.

FOR A FOURTH CAUSE OF ACTION
(Unfair Claims Practices Act)

34. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

35. That Defendants, through their officers, agents and/or employees, engaged in unfair claims practices by failing to investigate, failing to pay and/or failing to defend the aforementioned claim after notice of the lawsuit.

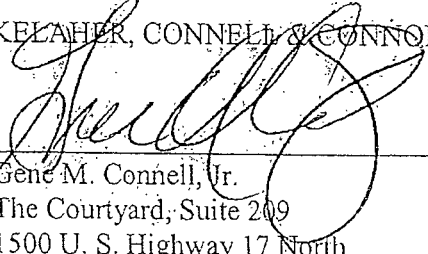
36. The Plaintiff brings this cause of action for actual damages, punitive damages and the costs of this action.

WHEREFORE, Plaintiff prays for judgment as follows:

A. On the First Cause of Action for actual and punitive damages.

- B. On the Second Cause of Action for actual and punitive damages.
- C. On the Third Cause of Action for actual and punitive damages.
- D. On the Fourth Cause of Action for actual and punitive damages.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

April 8, 2010
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Perceval, II,

Defendants.

ORDER

FILED
HORRY COUNTY
2010 MAR - 8 PM 12:13
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter is before me pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* for supplemental proceedings. By Order dated October 13, 2009, Steven H. John, Resident Judge for the Fifteenth Judicial Circuit, referred this matter to me with a hearing to be held on February 9, 2010. Present at the hearing was Plaintiff's counsel, Gene M. Connell, Jr., who advised the court that on January 26, 2010 he had mailed to Richard Cronic, the Registered Agent for RKC Entertainment, LLC, a copy of the Order of Judgment, Order of Reference for Supplemental Proceedings and notice of the hearing date. The notice of the hearing date was mailed to Richard Cronic at both of his addresses.

At the hearing, Richard Cronic failed to appear and the court proceeded to hear the case. Previously, the Circuit Court, Judge J. Michael Baxley presiding, had issued an Order of Judgment against RKC Entertainment LLC in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars. Plaintiff's counsel has requested that the court issue an order assigning any rights RKC Entertainment, LLC or Richard Cronic has against their liability insurance carrier to the Plaintiff/Judgment Creditor. Plaintiff's counsel has further asked that if any funds are collected through this assignment that such amount be credited against the Judgment.

NA "Exhibit A"

At the hearing, I was presented with a copy of an insurance policy that Plaintiff's counsel had received from the Anderson General Insurance Agency on July 27, 2009. This insurance policy, which is part of the record, lists The Red Room as the Assured and the Insurer is Alea London Limited.

The court has reviewed the Plaintiff's counsel's request that any right the Defendant had against Alea London Limited Insurer be assigned as a "chose in action to the Plaintiff." The court believes that this is an appropriate subject of supplemental proceedings and further recognizes that this is an attempt to collect anything from the Defendant which may be of value to satisfy the Judgment of the Plaintiff.

Accordingly,

IT IS ORDERED that any and all claim by RKC Entertainment LLC against Alea London Limited Insurers is assigned to the Plaintiff under Policy Number ALT047106.

IT IS FURTHER ORDERED that any and all right, title and claim which RKC Entertainment LLC may have against Alea London Limited Insurers for failure to pay the claim, defend the claim, or to investigate the claim and for any other claim that RKC Entertainment LLC may have against Alea London Limited is hereby assigned to the Plaintiff Elisa Narruhn.

IT IS FURTHER ORDERED that should the Plaintiff collect any monies from Alea London Limited that these monies shall be used to offset the Six Million and 00/100 (\$6,000,000.00) Dollars Judgment filed in this court on July 9, 2009.

AND IT IS ORDERED.

Dated: March 3, 2009
Surfside Beach South Carolina.



Nare Fata, Special Referee
Fifteenth Judicial Circuit



[Click here and type return address]

ANDERSON GENERAL INSURANCE

July 20, 2009

GENE CONNELL
SUITE 209 , THE COURTYARD
1500 U S HIGHWAY 17 NORTH
P O DRAWER 14547
SURFSIDE BCH SC 29587

MR. CONNELL,

THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORDS.

Sincerely,

ROBERT HIERS

[Click here and type slogan]

"Exhibit B"

received
7/27/09

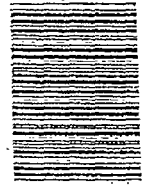
DATE ISSUED December 21, 2004	CONTRACT NO. 330.320.04	PREVIOUS NO. ALT040400

THIS DECLARATION PAGE IS ATTACHED TO AND FORMS PART OF CERTIFICATE/COVER NOTE PROVISIONS

CERTIFICATE / POLICY NUMBER: **ALT047106**

1	Name of Assured THE RED ROOM R.K.C. ENTERTAINMENT, LLC. 1220-F RIVER OAKS DR. MYRTLE BEACH, SC 29577	THIS COMPANY HAS BEEN APPROVED BY THE DIRECTOR OR HIS DESIGNEE OF THE SOUTH CAROLINA DEPARTMENT OF INSURANCE TO WRITE BUSINESS IN THIS STATE AS AN ELIGIBLE SURPLUS LINES INSURER, BUT IT IS NOT AFFORDED GUARANTY FUND PROTECTION.
	ANDERSON GENERAL INSURANCE 3721 WESLEY ST UNIT 133 MYRTLE BEACH, SC 29579	

2	Effective From 12:01am Both Days at Standard Time : December 9, 2004	TO December 9, 2005

3	Acting upon your instruction, we have effected the Insurance with:	NAME OF INSURERS Section I ALEA LONDON LIMITED	AMOUNT OR PERCENT 100%		ALVOCU
		Section II			
		ALEA LONDON LIMITED	100%		

	LIMIT	COVERAGE	RATE	PREMIUM
		<u>SECTION I - LIABILITY</u>		
4	\$1,000,000	COMMERCIAL GENERAL LIABILITY	SEE CL150	\$1,961.00
		<u>SECTION II - LIQUOR LIABILITY</u>		
	\$300,000	COMMERCIAL LIQUOR LIABILITY	SEE S8000	\$1,181.00
			TOTAL BASE	3,142.00

5	SPECIAL CONDITIONS IL0017 (11-85), IL0021(11-85), TAPCO1998, MOLD EXCL (10-01), CL150, S8000 (4-94)	TERRORISM PREMIUM POLICY FEE \$125.00 INSPECTION TAX \$196.02 FSLSO SERVICE FEE TOTAL \$3,463.02

6	

In witness whereof this covernote has been signed at BURLINGTON, NC this 21 day of December, 2004
TAMMYT SC

TAPCO UNDERWRITERS, INC

Tapco

by



IL 00 17 11 85

COMMON POLICY CONDITIONS

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

A. CANCELLATION

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

B. CHANGES

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

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the

policy period and up to three years afterward.

D. INSPECTIONS AND SURVEYS

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 conditions:

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

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

E. PREMIUMS

The first Named Insured shown in the Declarations:

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

F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IL 00 21 11 85

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY
COMMERCIAL AUTO COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY
NEW YORK DEPARTMENT OF TRANSPORTATION

1. The insurance does not apply:

A. Under any Liability Coverage, to $\pm$ bodily injury² or $\pm$ property damage²:

(1) With respect to which an $\pm$ insured² under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the $\pm$ hazardous properties² of $\pm$ nuclear material² 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 $\pm$ insured² is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to $\pm$ bodily injury² resulting from the $\pm$ hazardous properties² of $\pm$ nuclear material² and arising out of the operation of a $\pm$ nuclear facility² by any person or organization.

C. Under any Liability Coverage, to $\pm$ bodily injury² or $\pm$ property damage² resulting from the $\pm$ hazardous properties² of $\pm$ nuclear material² if:

(1) The $\pm$ nuclear material² (a) is at any $\pm$ nuclear

facility² owned by, or operated by or on behalf of, an $\pm$ insured² or (b) has been discharged or dispersed therefrom;

(2) The $\pm$ nuclear material² is contained in $\pm$ spent fuel² or $\pm$ waste² at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an $\pm$ insured²; or

(3) The $\pm$ bodily injury² or $\pm$ property damage² arises out of the furnishing by an $\pm$ insured² of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any $\pm$ nuclear facility² but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to $\pm$ property damage² to such $\pm$ nuclear facility² and any property thereat.

2. As used in this endorsement:

$\pm$ Hazardous properties² include radioactive, toxic or explosive properties;

$\pm$ Nuclear material² means $\pm$ source material², $\pm$ Special nuclear material² or $\pm$ by-product material²;

$\pm$ Source material², $\pm$ special nuclear material² and $\pm$ by-product material² have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

$\pm$ Spent fuel² means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a $\pm$ nuclear reactor²;

$\pm$ Waste² means any waste material (a) containing $\pm$ by-product material² other than the tailings or wastes

produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its $\pm$ source material² content and (b) resulting from the operation by any person or organization of any $\pm$ nuclear facility² included under the first two paragraphs of the definition of $\pm$ nuclear facility.²

$\pm$ Nuclear facility² means:

- (a) Any $\pm$ nuclear reactor²;
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing $\pm$ spent fuel² or (3) handling, processing or packaging $\pm$ waste²;
- (c) Any equipment or device used for the processing, fabricating or alloying of $\pm$ special nuclear material² if at any time the total amount of such material in the custody of the $\pm$ insured² at the

premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of $\pm$ waste²;

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;

$\pm$ Nuclear reactor² 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;

$\pm$ Property damage² includes all forms of radioactive contamination of property.

SERVICE OF SUIT CLAUSE

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon

LeBoeuf, Lamb, Green & MacRae 125 West 55th St. New York, NY 10019-4513

and that in any suit instituted against any one of them upon this contract. Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy:

This insurance does not apply to "bodily injury", "property damage", "personal injury", "advertising injury", "medical payments" arising out of, resulting from, caused by, contributed to, or in any way related to any "mold".

This exclusion applies to all "bodily injury", "property damage", and "medical payments" included in the "products-completed operations hazard". This exclusion also applies to all "bodily injury", "property damage" and "medical payments" which is not included in the "products-completed operations hazard".

This exclusion also applies to any loss, cost or expense arising out of or associated, in any way, with any:

- 1) request, demand, or order that any insured or others abate, mitigate, test for, monitor, remediate, clean up, remove, contain, treat, detoxify, kill, destroy, dispose of, investigate or neutralize, or in any way respond to or assess the presence or effects of "mold"; or
- 2) claim or suit on behalf of any person, entity, or organization, including any governmental authority, for damages because of abating, mitigating, testing for, monitoring, remediating, clean up, removing, containing, treating, detoxifying, killing, destroying, disposing of, investigating, or neutralizing, or in any way responding to, or assessing, the effects of "mold"; or
- 3) any obligation to share with, repay, or indemnify any person, organization or entity, related in any way to items 1) and 2) above.

We will not defend any claim or suit, or pay any damages, loss, expense, cost, or obligation caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold".

The following definition is added to the Policy:

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

Commercial General Liability Total Mold Exclusion
MOLD EXCL (10-01)

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy;

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing individually, or in any combination therewith or another substance.

Commercial Property Total Mold Exclusion
MOLD EXCL (10-01)

COMMERCIAL GENERAL LIABILITY COVERAGE PART SUPPLEMENTAL DECLARATIONS

Policy No. ALT047106 Effective Date December 9, 2004
12:01 A.M., Standard Time

Named Insured THE RED ROOM Agent No. 3901442

Item 1. Limits of Insurance	
Coverage	Limit of Liability
Aggregate Limits of Liability	\$ <u>\$2,000,000</u> General Aggregate (other than Products/Completed Operations) \$ <u>1,000,000</u> Products/Completed Operations Aggregate
Coverage B - Personal and Advertising Injury Limit	\$ <u>1,000,000</u> Personal and Advertising Injury Limit
Coverage A - Bodily Injury and Property Damage Liability	\$ <u>1,000,000</u> Each Occurrence Limit
Damage to Premises Rented to You Limit	\$ <u>50,000</u> Fire Damage Limit
Coverage C - Medical Payments	\$ <u>5,000</u> Medical Expense Limit
Item 2. Description of Business	
Form of Business:	
☐ Individual ☐ Partnership ☐ Joint Venture ☐ Trust ☒ Limited Liability Company ☐ Organization including a corporation (other than Partnership, Joint Venture or Limited Liability Company)	
Location of All Premises You Own, Rent or Occupy: <u>1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577</u>	
Description of Business: RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITHOUT	
Item 3. Forms and Endorsements	
Form(s) and Endorsement(s) made a part of this policy at time of issue: CL150 - EX, ALEA-GL01 (01-04), CG0001 (10-01), CG2011 (01-96), CG2116 (11-85), CG2136 (11-85), CG2139 (10-93), CG2144 (11-85), CG 2160 (4-98), CG2175(12-02), CG2407 (11-85), UTS-128g(10-94), x	
Item 4. Premiums	
Coverage Part Premium:	\$ <u>\$1,961.00</u>
Other Premium:	\$
Total Premium:	\$ <u>3,142.00</u>
THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.	

CL150

Original

COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. ALT047106 Effective Date: December 9, 2004
12:01 A.M., Standard Time
 Named Insured THE RED ROOM Agent No. 3901442

Prem. No. 01	Bldg. No. 01	Class Code 16916	Exposure 250,000	Basis GROSS SALES - per \$1000 Gross Sales	
Class Description: RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR				Premises/Operations	
				Rate	Premium
				5.28	\$1,321
				Products/Comp Operations	
				Rate	Premium
				1.76	\$440
Prem. No. 01	Bldg. No. 01	Class Code 49950	Exposure 2.00	Basis T) PER AI	
Class Description: ADDITIONAL INTERESTS				Premises/Operations	
				Rate	Premium
				FLAT	\$200
				Products/Comp Operations	
				Rate	Premium
				INCLUDED	INCLUDED
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium

ALEA-GL-01

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE MONTH DAY YEAR	INSURED
ALT047106	December 9, 2004	THE RED ROOM

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
ALL SECTIONS OF THIS SEVEN (7) PAGE ALEA-GL-01 APPLY TO, AND MODIFY, YOUR POLICY.**

ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

EXCLUSION - TOTAL POLLUTION

Exclusion f. under COVERAGE A (Section I) is replaced by the following:

- f. (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants; or
 - (b) Claim or suit by or on behalf of a government authority for damages because of testing for, monitoring, clearing up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

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EXCLUSION - ASBESTOS, SILICA DUST, TOXIC SUBSTANCES

The following exclusion is added to COVERAGES A, B, and C (Section I)

This insurance does not apply to:

- (1) "Bodily injury," "personal injury" or medical payments caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelium or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos fibres or dust or silica dust;
- (2) Any "property damage" due to or arising out of the actual or alleged presence of asbestos or silica dust in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, cleaning or removal of any property or substance; or
- (3) "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments or any other action based upon the Insured(s) supervision, removal, instructions, recommendations, warranties (expressed or implied), warnings or advice given, or withheld regarding asbestos fibres or dust or silica dust.
- (4) The installation, manufacture, transportation, storage or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by the policy does not apply to payment for the investigation or defense of any claim or any cost, fine or penalty or for any expense or claim or suit related to any of the above.

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EXCLUSION - LEAD CONTAMINATION

The following exclusion is added to COVERAGES A, B, AND C (Section I):

This insurance does not apply to:

- (1) "Bodily Injury," "property damage," "advertising injury," "personal injury" or medical payments arising out of the ingestion, inhalation or absorption of lead in any form;
- (2) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of lead; or
- (3) Any loss, cost or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of lead.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGE

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defense for such action. We shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

EXCLUSION - VOLUNTARY LABOR

The following exclusion is added to COVERAGE A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

EXCLUSION - EMPLOYMENT RELATED PRACTICES

The following is added to COVERAGE A and B (Section I):

This insurance does not apply to "bodily injury" or "personal injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (1) above.

EXCLUSION - COMMUNICABLE DISEASE

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

EXCLUSION - PARTICIPANTS

The following exclusion is added to Paragraph 2., Exclusions of Coverage (Section I - Coverages):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to "any person" while practicing for or participating in any circus, concert, demonstration, event, exhibition, race, rodeo, show, contest or any activity of an athletic or sports nature for the events shown in this Schedule.

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE A. Bodily Injury and Property Damage Liability (Section I - Coverages):

This insurance does not apply to "property damage" to property of "any person" defined herein including but not limited to "autos", watercraft, aircraft, animals or any other property of the foregoing.

The following definition is added to DEFINITIONS. (Section V):

"Any person" shall include but is not limited to animal handlers, announcers, attendants, clowns, contestants, entertainers, mechanics, musicians, officials, participants, singers, speakers, stage crews, stock contractors, vendors or their employees, any person employed by or doing volunteer work for you or on your behalf, or any person involved in the promotion, sponsoring or production of the event designated in the Schedule.

PAR EXC 01 (01/04)

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EXCLUSION - CLASSIFICATION LIMITATION

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to "bodily injury", "Property damage", "advertising injury", "personal injury" or medical payments for operations which are not classified or shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

ADDITIONAL CONDITIONS

NOTICE TO ALL POLICY HOLDERS

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

THIS POLICY EXCLUDES COVERAGE FOR POLLUTION AND / OR ACTUAL, ALLEGED OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS AT ANY TIME.

LIMITATION - OTHER INSURANCE

Other Insurance, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), Item b(3) providing Excess Insurance if the loss arises out of the maintenance or use of aircraft, "autos" or watercraft is ~~deleted~~.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION

This Endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART
Exclusion c. of Coverage A (Section I) is replaced by the following:

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:

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
 - (a) Requires a license
 - (b) Is for the purpose of financial gain or livelihood; or
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

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EXCLUSION - ELECTROMAGNETIC FIELDS

The following exclusion is added to COVERAGES A, B, C (Section I):

This insurance does not apply to and no duty to defend is provided by us for any claim for "bodily injury", "property damage", "personal injury", "advertising injury" or medical payments which arise out of, or is contributed to either directly or indirectly, by exposure to magnetic fields, electric fields, electromagnetic fields, electronic fields or any other radiation, however caused or generated.

EXCLUSION - INDEPENDENT CONTRACTORS EMPLOYEES OR LEASED WORKERS

This insurance does not apply to "Bodily Injury", "Personal Injury", "Advertising Injury" to:

1. Any employee or leased worker of independent contractors arising out of operations performed for you by said independent contractors or your acts or omissions in connection with general supervision of such operations if you have rejected the obligations of any workers' compensation or similar law, or abrogated, waived or otherwise set aside common rights or defenses generally accorded any employer under any workers' compensation, disability benefits or unemployment compensation law or any similar law; or
2. The spouse, child, parent, brother or sister of that employee or leased worker as a consequence of 1. above.

MINIMUM EARNED PREMIUM ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that minimum earned premium of 25% (twenty-five per cent) applies to this policy.

EXCLUSION - RADON GAS

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to and no duty to defend is provided by us for:

1. "Bodily injury", "property damage", "personal injury", "advertising injury" or medical payments arising out of the presence of, exposure to, ingestion of, emission or release of radon gas.
2. Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of radon gas; or
3. Any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of radon gas.

SEVERAL LIABILITY NOTICE

The subscribing Insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer, who for any reason, does not satisfy all or part of its obligations.

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ALEA-GL-01 (01/04)

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**EXCLUSION - INJURY TO LEASED WORKERS AND
PRACTICES RELATED TO LEASED WORKERS**

A. The following exclusions are added to paragraph 2., Exclusion, COVERAGE A (Section I):

This insurance does not apply to:

c. "Bodily injury" to:

- (1) Any "leased worker" arising out of and in the course of performing his or her duties related to the conduct of your business;
- (2) The spouse, child, parent, brother or sister of that "leased worker" as a consequence of (1) above.

This exclusion applies:

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

p. "Bodily injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination, recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "bodily injury" as a result of (1) through (3) above.

This exclusion applies:

- (1) Whether the "insured" may be held liable as the party responsible for directing the "leased worker" in the performance of his duties related to the conduct of your business or in any other capacity; and
- (2) To any obligation to share damages with or to repay someone else who must pay damages because of the injury.

B. The following exclusion is added to paragraph 2. Exclusions, COVERAGE B (Section I):

This insurance does not apply to:

c. "Personal injury" or "advertising injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination; recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "Personal injury" or "advertising injury" as a result of (1) through (3) above.

C. The DEFINITIONS Section is amended to include the following:

"Leased worker" means a person employed by a labor contractor and leased to you.

CANCELLATION CLAUSE

NOTWITHSTANDING anything contained in this Insurance to the contrary, this Insurance may be cancelled by the Insured at any time by written notice or by surrender of this contract of insurance. This Insurance may also be cancelled by or on behalf of the Insurers by the delivery to the Insured or by mailing to the Insured, by registered, certified or other first class mail, at the Insured's address as shown in this Insurance written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Insured, the Insurers shall retain customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis, the Insurers shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein, whichever is the greater.

Payment or tender of any unearned premium by the Insurers shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.

LONDON FORM 1331

**RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE -
PHYSICAL DAMAGE DIRECT**

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused; *NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, any loss or damage arising directly from the Fire shall (subject to the provisions of this policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

*Note - If Fire is not an insured peril under this policy the words "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

LONDON FORM 1191

SERVICE OF SUIT CLAUSE

It is agreed that in the event of failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon LeBoeuf, Lamb, Greene and MacRae 125 West 55th St. New York, NY 10019-4513 and that any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Insurers' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this Contract of insurance (or Reinsurance), and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

LONDON FORM 1998

WAR AND CIVIL WAR EXCLUSION CLAUSE

Notwithstanding anything to the contrary contained herein, this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

LONDON FORM 464

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

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

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

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

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

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

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

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

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

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

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

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

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

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

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

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage" 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. Damage To Property

"Property damage" to:

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

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

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

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

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

k. **Damage To Your Product**

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

l. **Damage To Your Work**

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

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

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

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

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

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

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

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

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

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

o. **Personal And Advertising Injury**

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

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

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. **Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the Insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

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

d. Criminal Acts

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

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

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

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

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

h. Wrong Description Of Prices

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

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

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

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

j. Insureds In Media And Internet Type Businesses

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

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

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

k. Electronic Chatrooms Or Bulletin Boards

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

l. Unauthorized Use Of Another's Name Or Product

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

m. Pollution

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

n. Pollution-Related

Any loss, cost or expense arising out of any:

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

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

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

c. Injury On Normally Occupied Premises

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

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while taking part in athletics.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

h. War

Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

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

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

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

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. 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.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

SECTION III - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.
- The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

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

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

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

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

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

- c. You and any other involved Insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section 1 Coverage A Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

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

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

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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

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

5. Premium Audit

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

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

6. Representations

By accepting this policy, you agree:

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

7. Separation Of Insureds

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

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

9. When We Do Not Renew

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

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

SECTION V - DEFINITIONS

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- 2. "Auto" means a 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, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
- 5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by:
 - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

 - (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
 - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or

- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in 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; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
16. "Products-completed operations hazard":
 - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any 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.

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

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

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

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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

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

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and

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

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

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

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 20 11 01 96

ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

Endorsement effective December 5, 2004 12:01 A.M. standard time	Policy No. ALT047106
Named Insured THE RED ROOM	Countersigned by (Authorized Representative)

SCHEDULE

1. Designation of Premises (Part Leased to You):

1119 & 1121 N KINGS HWY, MYRTLE BEACH, SC 29577

2. Name of Person or Organization (Additional Insured):

SCHWARZ BROTHERS HOLDINGS
1947 N FAYETTEVILLE ST
ASHEBORO, NC 27203

3. Additional Premium: 100

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

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

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

POLICY NUMBER: ALT047106

CL 268
(11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 16 11 85

EXCLUSION — DESIGNATED PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description of Professional Services:

1. RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITHOUT DANCE FLOOR

2.

3.

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

With respect to any professional services shown in the Schedule, this insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" due to the rendering or failure to render any professional service.

CL 273
(11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 36 11 85

EXCLUSION OF NEW ENTITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Part 4. of WHO IS AN INSURED (Section II) does not apply.

CL 273 (11-85)
CG 21 36 11 85

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Page 1 of 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 39 10 93

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement.

POLICY NUMBER: ALT047106

CL 281
(11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 44 11 85

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises: 1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577

Project: RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
**EXCLUSION - YEAR 2000 COMPUTER-RELATED AND
OTHER ELECTRONIC PROBLEMS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage", "personal injury" or "advertising injury" arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including micro-processors;
- (b) Computer application software;
- (c) Computer operating system and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

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

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage arising, directly or indirectly, out of a "certified act of terrorism" or an "other act of terrorism". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

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

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury," "property damage," "personal and advertising injury," injury or "environmental damage" as may be defined in any applicable Coverage Part.
2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":
 - a. The act resulted in aggregate losses in excess of \$5 million; and
 - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
- C. In the event of any incident of a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

CL 335
(11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 24 07 11 85

PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Description of Premises and Operations:

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

With respect to $\pm$ bodily injury² or $\pm$ property damage² arising out of $\pm$ your products² manufactured, sold, handled or distributed:

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

Paragraph a. of the definition of $\pm$ Products-com -

pleted operations hazard² in the DEFINITIONS Section is replaced by the following:

- a. $\pm$ Products-completed operations hazard² in -
cludes all $\pm$ bodily injury² and $\pm$ property damage² that arises out of $\pm$ your products² if the $\pm$ bodily injury² or $\pm$ property damage² occurs after you have relinquished possession of those products.

ENDORSEMENT NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	(STANDARD TIME)				INSURED	AGENCY AND CODE
	MO.	DAY	YR.	12:01 A.M. NOON		
ALT047106	December	9,	2004	X	THE RBD ROOM R.K.C. ENTERTAINMENT, LLC.	ANDERSON GENERAL INSURANCE 3501442

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL PROVISIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that the following special provisions (indicated by an "X") apply to this policy.

SCHEDULE

☒ Bodily Injury and Property Damage Liability Deductible Endorsement

Coverage	Amount and Basis of Deductible	
Bodily Injury Liability	\$ 500	per claimant
Property Damage Liability	\$ 500	per claimant
Personal Injury Liability	\$ 500	per claimant
Advertising Injury Liability	\$ 500	per claimant

☒ Minimum and Advance Premium Endorsement

Minimum Premium \$ 3,142.00

☒ Minimum Earned Premium

Minimum Earned Premium _____ 25 % of the original premium.

BODILY INJURY AND PROPERTY DAMAGE LIABILITY DEDUCTIBLE ENDORSEMENT

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

"Aggregate" limits for such coverages shall not be reduced by the application of such deductible amount.

2. The deductible amounts include all legal and loss adjustment expenses.

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the limits of insurance applicable to "each occurrence" for such coverages will be reduced by the amount of such deductible.

3. The deductible amounts stated in the Schedule apply under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of "bodily injury" sustained by one person, or to all damages because of "property damage" sustained by one person, any organization, or association or any individual member of any organization or association as the result of any one "occurrence."

4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," claim or "suit," apply irrespective of the application of the deductible amount.

5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

MINIMUM AND ADVANCE PREMIUM ENDORSEMENT

Item b. of the Premium Audit Condition (under SECTION IV-COMMERCIAL GENERAL LIABILITY CONDITIONS) is changed to read:

- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable to us on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured, subject to a minimum premium listed in the Schedule above. For purposes of this policy, the terms advance premium, audit premium, earned premium, and minimum premium are defined as follows:

Advance Premium — The premium that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.

Audit Premium — The premium that is developed by calculating the difference between the Advance Premium and the Earned Premium.

Earned Premium — The premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis for the policy period.

Minimum premium — The lowest premium for which this insurance will be written for the policy period.

MINIMUM EARNED PREMIUM

If this policy is cancelled at the request of the INSURED, the total retained by the Company shall not be less than the percentage of the original premium listed in the Schedule above.

AUTHORIZED REPRESENTATIVE

DATE

**COMMERCIAL LINES POLICY
LIQUOR LIABILITY COVERAGE FORM
SUPPLEMENTAL DECLARATIONS**

These Supplemental Declarations form a part of policy number ALT047106

1. NAMED INSURED AND MAILING ADDRESS

THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220 F RIVER OAKS DR.
MYRTLE BEACH, SC 29577

2. LIMITS OF INSURANCE

Aggregate Limit	\$ <u>\$300,000</u>
Each Occurrence Limit	\$ <u>\$300,000</u>

3. BUSINESS DESCRIPTION AND LOCATION OF PREMISES

Business Description:
RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITH
Location of all premises you own, rent or occupy: 1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577

4. DESCRIPTION OF HAZARDS

DESCRIPTION OF HAZARDS	Code No.	*Premium Basis	Rate	Advance Premium
RESTAURANT	58161	\$) 175,000	6.75	\$ 1181

5. Policy may be AUDITABLE

6. SPECIFIC LIQUOR LIABILITY FORMS/ENDORSEMENTS

CG0033(01-95), CG0305(10-93), CG 2160 (4-98), CG2806(11-85), TLIQ 001

This page alone does not provide coverage and must be attached to a Commercial Lines Common Policy Declarations Page, Common Policy Conditions, Coverage Part Coverage Form(s) and any other applicable forms and endorsements.

LIQUOR LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (Section II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section V).

SECTION I - LIQUOR LIABILITY COVERAGE

1. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); 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.

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

2. This insurance applies to "injury" which occurs during the policy period in the "coverage territory."

a. Exclusions.

This insurance does not apply to:

- a. Expected or Intended Injury
"Injury" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
Workers' Compensation and Similar Laws
Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

Employer's Liability

c. "Bodily injury" to:

- An "employee" of the insured arising out of (1) and in the course of:
Employment by the insured; or
(a) Performing duties related to the
(b) conduct of the insured's business; or
The spouse, child, parent, brother or sister
(2) of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

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

Liquor License Not In Effect

- d. "Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is suspended or after such license expires, is cancelled or revoked.

Your Product

- e. "Injury" arising out of "your product." This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

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

Other Insurance

- f. Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance. This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

SUPPLEMENTARY PAYMENTS

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

- All expenses we incur.
1. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work.
2. All costs taxed against the insured in the "suit."
3. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not

pay any prejudgment interest based on that period of time after the offer.

6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds.
 - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
 - a. Your "employees," other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:

(1) "Injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph (1)(a) above; or
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above.

(2) "Property damage" to property:

- (a) Owned or occupied by, or
 - (b) Rented or loaned to that "employee," any of your other "employees," by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).
- b. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
 - b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits."
2. The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.
3. Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

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

period for purposes of determining the Limits of Insurance.

SECTION IV - LIQUOR LIABILITY CONDITIONS

1. Bankruptcy.

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

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

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

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

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

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.
- You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved Insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us.

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claim-

ant's legal representative.

4. Other Insurance.

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

a. Primary Insurance

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

b. Method of Sharing

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

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

5. Premium Audit.

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

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

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

6. Representations.

By accepting this policy, you agree:

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

7. Separation Of Insureds.

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

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

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

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

9. **When We Do Not Renew.**

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

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

SECTION V - DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, provided the "injury" 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" 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.
3. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."
4. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
5. "Injury" means all damages, including damages because of "bodily injury" and "property damage," and including damages for care, loss of services or loss of support.

6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."

7. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

8. "Suit" means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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

10. "Your product" 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:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability or performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

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

POLICY NUMBER ALT047106

COMMERCIAL GENERAL LIABILITY

CG 03 05 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 03 05 10 93

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies Insurance under the following:

LIQUOR LIABILITY COVERAGE PART

SCHEDULE

Location

Coverage

Liquor Liability

Amount and Basis of Deductible
PER CLAIM or PER COMMON CAUSE
\$ 500 \$ XXXX

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

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for "injury", however caused):-

A. Our obligation under the Liquor Liability Coverage to pay damages on your behalf applies only to the amount of damages in excess of any deductible amount stated in the Schedule above.

B. You may select a deductible amount on either a per claim or a per common cause basis. Your selected deductible applies to the Liquor Liability Coverage and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

1. PER CLAIM BASIS. If the deductible amount indicated in the schedule above is on a per claim basis, that deductible applies under Liquor Liability Coverage, to all "injuries" sustained by any one person or organization.

2. PER COMMON CAUSE BASIS. If the deductible amount indicated in the Schedule above is on a per common cause basis, that deductible amount applies under Liquor Liability Coverage to all damages because of "injury" as the result of the selling, serving or furnishing of any alcoholic beverage to any one person, regardless of the number of persons or organizations who sustain damages.

C. The terms of this insurance, including those with respect to:

1. Our right and duty to defend and "suit" seeking those damages; and

2. Your duties in the event of an "injury", claim or "suit"

D. We may pay any part or all of the deductible amount to effect settlement of any claims or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

CG 03 05 10 93

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section 1 - Coverage A - Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section 1 - Coverage B - Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage", "personal injury" or "advertising injury" arising directly or indirectly out of:

- a. Any actual or alleged failure, malfunction or inadequacy of:

- (1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including microprocessors;
- (b) Computer application software;
- (c) Computer operating system and related software;

- (d) Computer networks;

- (e) Microprocessors (computer chips) not part of any computer system; or

- (f) Any other computerized or electronic equipment or components; or

- (2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

- b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

POLICY NUMBER ALT047106

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO INSURED PREMISES

This endorsement modifies Insurance under the following:

LIQUOR LIABILITY COVERAGE PART

SCHEDULE

Description and Location of "Insured Premises":

RESTUARANT

1119 & 1121 N KINGS HWY, MYRTLE BEACH, SC 29577

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

This insurance only applies to "damages" arising out of your "insured premises".
"Insured premises" means:

1. The premises shown in the Schedule; and
2. Any premises you acquire during the policy period for use in manufacturing, distributing, selling, serving or furnishing alcoholic beverages if:
 - a. You notify us within 30 days after the acquisition, and
 - b. You have no other valid and collectible insurance applicable to the loss.

TLIQ 001

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE			INSURED
	MONTH	DAY	YEAR	
ALT047106	12	09	04	THE RED ROOM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE PART

EXCLUSION - TOTAL POLLUTION

This insurance does not apply to:

- f. (1) "injury" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants; or
 - (b) Claim or suit by or on behalf of a government authority for damages because of testing for, monitoring, clearing up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

EXCLUSION - ASBESTOS, SILICA DUST, TOXIC SUBSTANCES

This insurance does not apply to:

- (1) "injury" caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelium or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos fibres or dust or silica dust;
- (2) Any "injury" due to or arising out of the actual or alleged presence of asbestos or silica dust in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, cleaning or removal of any property or substance; or
- (3) "injury" or any other action based upon the Insured(s) supervision, removal, instructions, recommendations, warranties (expressed or implied), warnings or advice given, or withheld regarding asbestos fibres or dust or silica dust.

EXCLUSION - ATHLETIC OR SPORTS PARTICIPANTS

This insurance does not apply to "injury" to any person while practicing for or participating in any sports contest or exhibition that you sponsor.

TLIQ 001

EXCLUSION - LEAD CONTAMINATION

This insurance does not apply to:

- (1) "injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- (2) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of lead; or
- (3) Any loss, cost or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of lead.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGE

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defence for such action. We shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

EXCLUSION - VOLUNTARY LABOR

This insurance does not apply to "injury to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

EXCLUSION - EMPLOYMENT RELATED PRACTICES

This insurance does not apply to "injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
- (4) Consequential "injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

TLIQ 001
Page 2 of 4

TLIQ 001

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error, or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

This insurance does not apply to "injury" arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (a) above.

EXCLUSION - COMMUNICABLE DISEASE

This insurance does not apply to "injury" arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

TLIQ 001
Page 3 of 4

TLIQ 001

EXCLUSION - CLASSIFICATION LIMITATION

This insurance does not apply to "injury" for operations which are not classified or shown on the Declarations, its endorsements or supplements. Coverage applies only to those operations as described under the "Description and Locations".

ADDITIONAL CONDITIONS

NOTICE TO ALL POLICY HOLDERS

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

THIS POLICY EXCLUDES COVERAGE FOR POLLUTION AND / OR ACTUAL, ALLEGED OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS AT ANY TIME.

TLIQ 001
Page 4 of 4

04-15-2005 11:30 AM

NOTICE OF CANCELLATION OR REFUSAL TO RENEW

Policy No
ALT047106

Issued Through Agency Or Office At:
Tapco Underwriters, Inc.
Burlington, NC 27215

Cancellation or Termination Will Take Effect At:
Date (Hour Standard Time)
03/29/2005 12:01 AM

Date of Notice
04/14/2005

Name and
Address of
Insurance
Company

Received From:
ALEA LONDON, LTD. (330320.04 - COMM)
DAWSON HOUSE
5 JEWRY STREET
LONDON EL EC3N2EX

Name and
Address of
Insured

THE RED ROOM
1220-F RIVER OAKS DR.
MYRTLE BEACH SC 29577

ANDERSON GENERAL INSURANCE
3721 WESLEY ST UNIT 133
COLUMBUS PLAZA
MYRTLE BEACH SC 29579

For use as a certificate of mailing as provided in Section 931 of the Domestic Mail Manual
May be used for Domestic and International mail, does not provide for insurance.

Cancellation

You are hereby notified, in accordance with the terms and conditions of the above mentioned numbered policy and in accordance with the law, that your insurance will cease at and from the hour and date indicated above. If premium has been paid, premium adjustment will be made as soon as practicable.

THIS ACTION HAS BEEN TAKEN FOR THE FOLLOWING SPECIFIC REASON OR REASONS:

FINANCE COMPANY REQUEST

(Duplicate of Notice of Cancellation or Termination to Lienholder)

You are hereby notified that the agreement under the Loss Payable Cause payable to you as Lienholder which is a part of the above policy, issued to the above insured, is hereby cancelled (or terminated) in accordance with the conditions of the policy; said cancellation (or termination) to be effective on and after the hour and date mentioned above.

United States Postal Service
Received from:
ALEA LONDON, LTD. (330320.04 - COMM)

Insurance
Company

Name and
Address of
Lienholder 1

Name and
Address of
Lienholder 2

Name and
Address of
Lienholder 3

For Registered Mail or Certificate Mail
Notice of Cancellation or Nonrenewal to
the insured and, if required, to the
Lienholder, the appropriate U.S. Postal
Service receipt must be attached hereto
and no postage stamp should be affixed
to the receipt reproduced hereon.

CERTIFICATION

I hereby certify that I personally mailed
in the U.S. Post office at the place and
time stamped hereon, a notice of
cancellation or nonrenewal to the insured
and, if required, to the Lienholder; an
exact carbon copy of which appears above,
and at said time received from the
U.S. Postal Service the receipt made
a part hereof or attached hereto.

Signed 04/14/2005

Premium 3142.00 Return Premium 2195.00
Company Copy



Signature
Expiration 12/09/2005
ACCT#:AUOCUG

03-08-2005 11:03 AM

TAPCO UNDERWRITERS, INC.

POLICY NUMBER: ALT047106

COMPANY: ALEA LONDON, LTD. (330320.04 - COMM

'POLICY ENDORSEMENT'

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NAME OF ASSURED
THE RED ROOM
R.X.C. ENTERTAINMENT, LLC.
1220-F RIVER OAKS DR.

MYRTLE BEACH , SC 29577

PRODUCER
ANDERSON GENERAL INSURANCE
COLUMBUS PLAZA
3721 WESLEY ST UNIT 133
MYRTLE BEACH , SC 29579
AGENT #: 3901442

EFFECTIVE DATE: 12/09/2004

EXPIRATION DATE: 12/09/2005

New Annual Premium: \$ 3142.00
Difference: \$ 100.00

Additional Premium: \$ 100.00
Return Premium:

ENDORSEMENT EFFECTIVE DATE: 03/03/2005

ENDORSEMENT NUMBER: 002

It Is Agreed And Understood That:

FORM CG2010 (07-04) IS ADDED TO THE POLICY TO ADD JOSEPH H. BARRON
AS ADDITIONAL INSURED.
PREMIUM IS 100% EARNED.
SEE ATTACHED FORMS.

All other provisions and conditions of this policy remain unchanged.

AUTHORIZED _____

This Endorsement Is Issued By TAPCO Underwriters, Inc. In Burlington, N.C.
PRODUCER#: 143 ACCOUNT NUMBER: AUOCUG



03-08-2005 11:03 AM

COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Insured Person or Organization:

JOSEPH H. BARRON
630 1ST AVENUE, NW
HICKORY, NC 28601

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

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;
In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion(s) apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CG 20 10 07 04

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Tapco

Page 1 of 1

01-05-2005 02:47 PM

TAPCO UNDERWRITERS, INC.

POLICY NUMBER: ALT047106

COMPANY: ALEA LONDON, LTD. (330320.04 - COMM)

POLICY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NAME OF ASSURED
THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220-F RIVER OAKS DR.

MYRTLE BEACH, SC 29577

PRODUCER
ANDERSON GENERAL INSURANCE
COLUMBUS PLAZA
3721 WESLEY ST UNIT 133
MYRTLE BEACH, SC 29579
AGENT #: 3901442

EFFECTIVE DATE: 12/09/2004

EXPIRATION DATE: 12/09/2005

New Annual Premium: \$ 3042.00
Difference: \$ -100.00

Additional Premium:
Return Premium: \$ -100.00

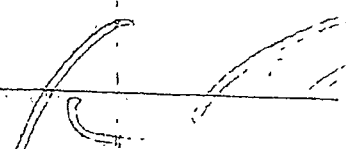
ENDORSEMENT EFFECTIVE DATE: 12/09/2004

ENDORSEMENT NUMBER: 001

It Is Agreed And Understood That
THE POLICY IS AMENDED TO DELETE ONE ADDITIONAL INSURED THE POLICY
SHOULD HAVE ONLY LISTED ONE ADDITIONAL INSURED IN LIEU OF TWO

All other provisions and conditions of this policy remain unchanged.

AUTHORIZED



This Endorsement Is Issued By TAPCO Underwriters, Inc. In Burlington, N.C.
PRODUCER#: 15
ACCOUNT NUMBER: AUOCUG



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-26-4112

Elisa Narruhn, as Assignee of
RKC Entertainment LLC,

Plaintiff,

vs.

Alea London Limited and Anderson
General Insurance,

Defendants.

AMENDED COMPLAINT
(Bad Faith/Failure to Defend)

JURY TRIAL DEMANDED

The Plaintiff, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiff, Elisa Narruhn, is a citizen and resident of Horry County, South Carolina, and pursuant to an Order of the Special Referee was assigned any and all claims that RKC Entertainment, LLC may have against Alea London Limited insurers for failure to pay a claim, defend a claim, or to investigate a claim and "for any other claim that RKC Entertainment LLC may have against Alea London Limited." (See Order of Special Referee Nate Fata dated March 3, 2010 and attached hereto as Exhibit "A").

2. The Defendant, Alea London Limited, is, upon information and belief, an Insurer which has been approved by the State of South Carolina to do business in this State.

3. The Defendant, Anderson General Insurance, was the insurance agent for RKC Entertainment.

4. That on or about April 9, 2005, the Plaintiff was a guest invitee at The Red Room a/k/a RKC Entertainment, LLC when Plaintiff was shot and rendered quadriplegic as a result of this incident.

5. That Plaintiff brought a lawsuit against RKC Entertainment, LLC d/b/a The Red Room and Ardon Perceval, II and that Alea London Limited and its agents were notified by their insured of this action through various correspondence with the landlord's attorney.

6. That despite service on the Defendant RKC Entertainment, LLC, it failed to defend the lawsuit and Defendants Alea London Limited and Anderson General Insurance also had notice of the underlying lawsuit and declined to defend.

7. That a hearing was held before The Honorable J. Michael Baxley and an Order of Judgment was issued against RKC Entertainment, LLC in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

8. That RKC Entertainment, LLC was properly served through its Registered Agent, Richard Cronce, on or about January 26, 2010, with an Order of Reference for Supplemental Proceedings.

9. That on February 9, 2010, a hearing was held before the Special Referee for purposes of Supplemental Proceedings.

10. That an Order was issued by the Special Referee assigning to the Plaintiff Elisa Narruhn any and all claims that RKC Entertainment, LLC or Richard Cronce may have against its liability insurance carrier, Alea London Limited. A copy of that Order dated March 3, 2010 is attached hereto as Exhibit "A".

11. That a copy of the insurance policy between the Plaintiff and Alea London Limited with Policy No. ALT047106 is attached hereto as Exhibit "B".

12. That Plaintiff brings this cause of action as Assignee for all claims that RKC Entertainment or Richard Cronce may have against Alea London Limited for any manner

whatsoever including failure to defend this lawsuit and the underlying lawsuit and for failure to investigate, make payment, and for all consequential damages.

13. That these claims are based upon the Order of the Special Referee which requires an assignment of a chose in action and/or any and all claims that RKC Entertainment, LLC or Richard Cronce had against its insurer under Policy No. ALT047106 to include failure to pay a claim, failure to defend a claim, failure to investigate and/or bad faith.

14. That further Anderson General Insurance Company was the designated agent of RKC Entertainment, LLC and as such collected certain insurance payments from RKC Entertainment, LLC.

15. That Anderson General Insurance Company collected those payments in March 2005 and Alea London Limited has no notice of receiving those payments as per counsel's admission in open court on March 1, 2011.

16. That as a result, Anderson General Insurance is also liable for failure to forward said premium payments to Alea London Limited.

17. That Plaintiff requests actual damages, punitive damages and the costs of the action.

FOR A FIRST CAUSE OF ACTION AS TO ALEA LONDON INSURANCE
(Failure to Defend)

18. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

19. That Defendants Alea London Limited and Anderson General Insurance had a policy of insurance with The Red Room/RKC Entertainment, LLC with Policy No. ALT047106.

20. That on the date this incident occurred, April 9, 2005, the policy was in full force and effect having been in force and effect from December 9, 2004 until December 9, 2005.

21. That the policy in question required that the Defendants provide a defense to their insured, The Red Room a/k/a RKC Entertainment, LLC and Defendants knew their insured had been sued.

22. That the Defendants failed to defend their insured and that as a result therein of Defendants' failure to defend the insured, judgment was entered against the insured by the Plaintiff, Elisa Narruhn, in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

23. That Plaintiff brings this cause of action against the Defendants for failure to defend the aforementioned case under the terms of its policy.

24. That the insuring agreement provides in pertinent part: Our right and duty to defend ends when we have used up the applicable limit of insurance (See Commercial General Liability Coverage Form Section 1(a)(2).

25. That the Defendants made no attempt to honor their duties under the terms of the policy and breached the policy of insurance with the Plaintiff by failing to defend the suit.

26. As a direct and proximate result, judgment was entered against the insured, RKC Entertainment, LLC in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars.

27. Plaintiff brings this cause of action for actual damages, punitive damages and the costs of this action.

FOR A SECOND CAUSE OF ACTION AS TO ALEA LONDON INSURANCE
(Bad Faith)

28. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

29. That the Defendants had an insurance policy with the Plaintiff's Assignee.

30. That the aforementioned insurance policy was in full force and effect.

31. That the Defendants, through their officers, agents and/or employees, refused to investigate, pay, defend or take any action to protect the insured RKC Entertainment, LLC d/b/a The Red Room after notice was given to them of the lawsuit.

32. That Plaintiff brings this cause of action for bad faith refusal to pay/refusal to defend/refusal to investigate for actual damages, for punitive damages and the costs of this action.

FOR A THIRD CAUSE OF ACTION AS TO ALEA LONDON LIMITED
AND ANDERSON GENERAL INSURANCE
(Negligence)

33. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

34. That Defendants were negligent, reckless, willful and wanton in one or more of the following particulars:

- a. In failing to take steps to protect the insured RKC Entertainment;
- b. In failing to pay the claim;
- c. In failing to defend the claim;
- d. In failing to adjust the claim;
- e. In failing to investigate the claim;
- f. In failing to protect the insured after notice of the lawsuit;
- g. In failing to act once Alea London was aware of the claim as made by landlord's counsel;
- h. In failing to protect RKC Entertainment from the claim;
- i. In failing to timely make premium payments to Alea London;

- j. In failing to turn over premium payments to Alea London by Anderson General Insurance;
- k. In failing to properly account for premium payments paid in March 2005 by RKC Entertainment to Alea London and its agent Anderson General Insurance;
- l. In failing to timely send payment of insurance premium to Charleston Premium Finance by Anderson General Insurance and its agents; and
- m. In failing to send premium payment to Charleston Premium Finance or Tapco Underwriters by Anderson General Insurance or its agents until after the policy had been cancelled.

35. As a direct and proximate result, the insured RKC Entertainment, LLC d/b/a The Red Room has a judgment against it in the amount of Six Million and 00/100 (\$6,000,000.00) Dollars in favor of Plaintiff Narruhn.

36. That Plaintiff requests actual damages, punitive damages and the costs of this action as to both Defendants.

FOR A FOURTH CAUSE OF ACTION AS TO ALEA LONDON LIMITED
(Agency/Respondent Superior)

37. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

38. The Plaintiff is informed and believes that Anderson General Insurance was the authorized agent of Alea London Limited, Charleston Premium Finance and Tapco Underwriters.

39. That three premium payments dated 01/21/2005, 03/2/2005 and 03/3/2005 were paid directly to Anderson General Insurance as agent for Alea London Limited.

40. That these payments were not forwarded to Alea London Limited or its agents.

41. That these premiums were not properly handled and were not properly credited to RKC Entertainment's account.

42. That Plaintiff brings this cause of action under the doctrine of agency/respondeat superior in that Alea London Limited is liable for the acts of its agent Anderson in failing to timely handle the premiums.

43. The Plaintiff asks for actual damages, punitive damages and costs against Alea London Limited under the doctrine of respondeat superior.

FOR A FIFTH CAUSE OF ACTION AS TO ALEA LONDON LIMITED
(Unfair Claims Practices Act)

44. The Plaintiff realleges and reiterates each and every allegation as fully as repeated verbatim herein.

45. That Defendants, through their officers, agents and/or employees, engaged in unfair claims practices by failing to investigate, failing to pay and/or failing to defend the aforementioned claim after notice of the lawsuit and by sending out a postdated notice of cancellation.

46. The Plaintiff brings this cause of action for actual damages, punitive damages and the costs of this action.

WHEREFORE, Plaintiff prays for judgment as follows:

A. On the First Cause of Action as to Alea London Limited for actual and punitive damages.

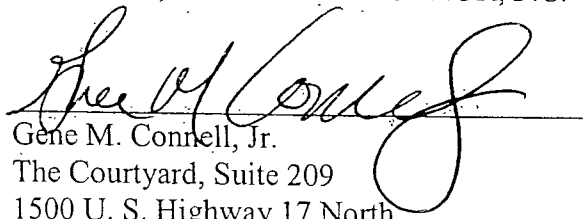
B. On the Second Cause of Action as to Alea London Limited for actual and punitive damages.

C. On the Third Cause of Action as to Alea London Limited and Anderson General Insurance for actual and punitive damages.

D. On the Fourth Cause of Action as to Alea London Limited for actual and punitive damages.

E. On the Fifth Cause of Action as to Alea London Limited for actual and punitive damages.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

March 4, 2011
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Perceval, II,

Defendants.

ORDER

FILED
HORRY COUNTY
2010 MAR -8 PM 12:13
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter is before me pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* for supplemental proceedings. By Order dated October 13, 2009, Steven H. John, Resident Judge for the Fifteenth Judicial Circuit, referred this matter to me with a hearing to be held on February 9, 2010. Present at the hearing was Plaintiff's counsel, Gene M. Connell, Jr., who advised the court that on January 26, 2010 he had mailed to Richard Cronic, the Registered Agent for RKC Entertainment, LLC, a copy of the Order of Judgment, Order of Reference for Supplemental Proceedings and notice of the hearing date. The notice of the hearing date was mailed to Richard Cronic at both of his addresses.

At the hearing, Richard Cronic failed to appear and the court proceeded to hear the case. Previously, the Circuit Court, Judge J. Michael Baxley presiding, had issued an Order of Judgment against RKC Entertainment LLC in the amount of Six Million an 00/100 (\$6,000,000.00) Dollars. Plaintiff's counsel has requested that the court issue an order assigning any rights RKC Entertainment, LLC or Richard Cronic has against their liability insurance carrier to the Plaintiff/Judgment Creditor. Plaintiff's counsel has further asked that if any funds are collected through this assignment that such amount be credited against the Judgment.

At the hearing, I was presented with a copy of an insurance policy that Plaintiff's counsel had received from the Anderson General Insurance Agency on July 27, 2009. This insurance policy, which is part of the record, lists The Red Room as the Assured and the Insurer is Alea London Limited.

The court has reviewed the Plaintiff's counsel's request that any right the Defendant had against Alea London Limited Insurer be assigned as a "chose in action to the Plaintiff." The court believes that this is an appropriate subject of supplemental proceedings and further recognizes that this is an attempt to collect anything from the Defendant which may be of value to satisfy the Judgment of the Plaintiff.

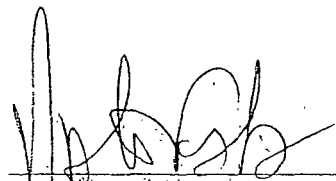
Accordingly,

IT IS ORDERED that any and all claim by RKC Entertainment LLC against Alea London Limited Insurers is assigned to the Plaintiff under Policy Number ALT047106.

IT IS FURTHER ORDERED that any and all right, title and claim which RKC Entertainment LLC may have against Alea London Limited Insurers for failure to pay the claim, defend the claim, or to investigate the claim and for any other claim that RKC Entertainment LLC may have against Alea London Limited is hereby assigned to the Plaintiff Elisa Narruhn.

IT IS FURTHER ORDERED that should the Plaintiff collect any monies from Alea London Limited that these monies shall be used to offset the Six Million and 00/100 (\$6,000,000.00) Dollars Judgment filed in this court on July 9, 2009.

AND IT IS ORDERED.



Nate Fata, Special Referee
Fifteenth Judicial Circuit

Dated: March 3, 2010
SURFIDE Beach South Carolina.

[Click here and type return address]

ANDERSON GENERAL INSURANCE

July 20, 2009

GENE CONNELL
SUITE 209, THE COURTYARD
1500 U S HIGHWAY 17 NORTH
P O DRAWER 14547
SURFSIDE BCH SC 29587

MR. CONNELL,

THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORDS.



Sincerely,

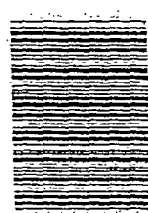
ROBERT HIERS

A handwritten signature in black ink, appearing to read "Robert Hiers". The signature is fluid and cursive, with a large, sweeping "R" at the beginning.

[Click here and type slogan]

" Evh 101 - R "

received
7/27/09

DATE ISSUED December 21, 2004		CONTRACT NO. 330.320.04		PREVIOUS NO. ALT040100		
THIS DECLARATION PAGE IS ATTACHED TO AND FORMS PART OF CERTIFICATE/COVER NOTE PROVISIONS						
CERTIFICATE / POLICY NUMBER: ALT047106						
1	Name of Assured THE RED ROOM R.K.C. ENTERTAINMENT, LLC. 1220-F RIVER OAKS DR. MYRTLE BEACH, SC 29577	THIS COMPANY HAS BEEN APPROVED BY THE DIRECTOR OR HIS DESIGNEE OF THE SOUTH CAROLINA DEPARTMENT OF INSURANCE TO WRITE BUSINESS IN THIS STATE AS AN ELIGIBLE SURPLUS LINES INSURER, BUT IT IS NOT AFFORDED GUARANTY FUND PROTECTION.				
2	Effective From 12:01am Both Days at Standard Time: December 9, 2004 TO December 9, 2005					
3	Acting upon your instruction, we have effected the insurance with:		NAME OF INSURERS Section I ALEA LONDON LIMITED Section II ALEA LONDON LIMITED	AMOUNT OR PERCENT 100% 100%		Aluocu
4	LIMIT \$1,000,000 \$300,000	COVERAGE <u>SECTION I - LIABILITY</u> COMMERCIAL GENERAL LIABILITY <u>SECTION II - LIQUOR LIABILITY</u> COMMERCIAL LIQUOR LIABILITY	RATE SEE CL150 SEE S8000	PREMIUM \$1,961.00 \$1,181.00 TOTAL BASE 3,142.00		
5	SPECIAL CONDITIONS IL0017 (11-85), IL0021(11-85), TAPCO1998, MOLD EXCL (10-01), CL150, S8000 (4-94)			TERRORISM PREMIUM POLICY FEE \$125.00 INSPECTION TAX \$196.02 FSLSO SERVICE FEE TOTAL \$3,463.02		
6						

In witness whereof this covernote has been signed at BURLINGTON, NC this 21 day of December, 2004
TAMMYT SC

TAPCO UNDERWRITERS, INC

Tapco

by 

IL 00 17 11 85

COMMON POLICY CONDITIONS

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

A. CANCELLATION

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

B. CHANGES

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

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the

policy period and up to three years afterward.

D. INSPECTIONS AND SURVEYS

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 conditions:

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

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

E. PREMIUMS

The first Named Insured shown in the Declarations:

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

F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IL 00 21 11 85

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY
COMMERCIAL AUTO COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY
NEW YORK DEPARTMENT OF TRANSPORTATION

1. The insurance does not apply:

A. Under any Liability Coverage, to $\pm$ bodily injury² or $\pm$ property damage²:

- (1) With respect to which an $\pm$ insured² under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the $\pm$ hazardous properties² of $\pm$ nuclear material² 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 $\pm$ insured² is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to $\pm$ bodily injury² resulting from the $\pm$ hazardous properties² of $\pm$ nuclear material² and arising out of the operation of a $\pm$ nuclear facility² by any person or organization.

C. Under any Liability Coverage, to $\pm$ bodily injury² or $\pm$ property damage² resulting from the $\pm$ hazardous properties² of $\pm$ nuclear material² if:

- (1) The $\pm$ nuclear material² (a) is at any $\pm$ nuclear

facility² owned by, or operated by or on behalf of, an $\pm$ insured² or (b) has been discharged or dispersed therefrom;

- (2) The $\pm$ nuclear material² is contained in $\pm$ spent fuel² or $\pm$ waste² at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an $\pm$ insured²; or

- (3) The $\pm$ bodily injury² or $\pm$ property damage² arises out of the furnishing by an $\pm$ insured² of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any $\pm$ nuclear facility², but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to $\pm$ property damage² to such $\pm$ nuclear facility² and any property thereat.

2. As used in this endorsement:

$\pm$ Hazardous properties² include radioactive, toxic or explosive properties;

$\pm$ Nuclear material² means $\pm$ source material², $\pm$ Special nuclear material² or $\pm$ by-product material²;

$\pm$ Source material², $\pm$ special nuclear material² and $\pm$ by-product material² have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

$\pm$ Spent fuel² means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a $\pm$ nuclear reactor²;

$\pm$ Waste² means any waste material (a) containing $\pm$ by-product material² other than the tailings or wastes

produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its $\pm$ source material² content and (b) resulting from the operation by any person or organization of any $\pm$ nuclear facility² included under the first two paragraphs of the definition of $\pm$ nuclear facility.²

$\pm$ Nuclear facility² means:

- (a) Any $\pm$ nuclear reactor²;
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing $\pm$ spent fuel² or (3) handling, processing or packaging $\pm$ waste²;
- (c) Any equipment or device used for the processing, fabricating or alloying of $\pm$ special nuclear material² if at any time the total amount of such material in the custody of the $\pm$ insured² at the

premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of $\pm$ waste²;

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;

$\pm$ Nuclear reactor² 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;

$\pm$ Property damage² includes all forms of radioactive contamination of property.

SERVICE OF SUIT CLAUSE

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon

LeBoeuf, Lamb, Green & MacRae 125 West 55th St. New York, NY 10019-4513

and that in any suit instituted against any one of them upon this contract. Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy,:

This insurance does not apply to "bodily injury", "property damage", "personal injury", "advertising injury", "medical payments" arising out of, resulting from, caused by, contributed to, or in any way related to any "mold".

This exclusion applies to all "bodily injury", "property damage", and "medical payments" included in the "products-completed operations hazard". This exclusion also applies to all "bodily injury", "property damage" and "medical payments" which is not included in the "products-completed operations hazard".

This exclusion also applies to any loss, cost or expense arising out of or associated, in any way, with any:

- 1) request, demand, or order that any insured or others abate, mitigate, test for, monitor, remediate, clean up, remove, contain, treat, detoxify, kill, destroy, dispose of, investigate or neutralize, or in any way respond to or assess the presence or effects of "mold"; or
- 2) claim or suit on behalf of any person, entity, or organization, including any governmental authority, for damages because of abating, mitigating, testing for, monitoring, remediating, clean up, removing, containing, treating, detoxifying, killing, destroying, disposing of, investigating, or neutralizing, or in any way responding to, or assessing, the effects of "mold"; or
- 3) any obligation to share with, repay, or indemnify any person, organization or entity, related in any way to items 1) and 2) above.

We will not defend any claim or suit, or pay any damages, loss, expense, cost, or obligation caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold".

The following definition is added to the Policy:

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

Commercial General Liability Total Mold Exclusion
MOLD EXCL (10-01)

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy;

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing individually, or in any combination therewith or another substance.

Commercial Property Total Mold Exclusion
MOLD EXCL (10-01)

COMMERCIAL GENERAL LIABILITY COVERAGE PART SUPPLEMENTAL DECLARATIONS

Policy No. ALT047106 Effective Date December 9, 2004
12:01 A.M., Standard Time

Named Insured THE RED ROOM Agent No. 3901442

Item 1. Limits of Insurance		
Coverage	Limit of Liability	
Aggregate Limits of Liability	\$ <u>2,000,000</u>	General Aggregate (other than Products/Completed Operations)
	\$ <u>1,000,000</u>	Products/Completed Operations Aggregate
Coverage B - Personal and Advertising Injury Limit	\$ <u>1,000,000</u>	Personal and Advertising Injury Limit
Coverage A - Bodily Injury and Property Damage Liability	\$ <u>1,000,000</u>	Each Occurrence Limit
Damage to Premises Rented to You Limit	\$ <u>50,000</u>	Fire Damage Limit
Coverage C - Medical Payments	\$ <u>5,000</u>	Medical Expense Limit
Item 2. Description of Business		
Form of Business:		
☐ Individual ☐ Partnership ☐ Joint Venture ☐ Trust ☒ Limited Liability Company ☐ Organization including a corporation (other than Partnership, Joint Venture or Limited Liability Company)		
Location of All Premises You Own, Rent or Occupy: <u>1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577</u>		
Description of Business: RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITHOUT		
Item 3. Forms and Endorsements		
Form(s) and Endorsement(s) made a part of this policy at time of issue: CL150 - EX, ALEA-GL-01 (01-04), CG0001 (10-01), CG2011 (01-96), CG2116 (11-85), CG2136 (11-85), CG2139 (10-93), CG2144 (11-85), CG 2160 (4-98), CG2175(12-02), CG2407 (11-85), UTS-128g(10-94), x		
Item 4. Premiums		
Coverage Part Premium:	\$	<u>1,961.00</u>
Other Premium:	\$	
Total Premium:	\$	<u>3,142.00</u>
THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.		

CL150

Original

COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. ALT047106 Effective Date: December 9, 2004
 12:01 A.M., Standard Time
 Named Insured THE RED ROOM Agent No. 3901442

Prem. No. 01	Bldg. No. 01	Class Code 16916	Exposure 250,000	Basis GROSS SALES - per \$1000 Gross Sales	
Class Description: RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR				Premises/Operations	
				Rate	Premium
				5.28	\$1,321
				Products/Comp Operations	
				Rate	Premium
				1.76	\$440
Prem. No. 01	Bldg. No. 01	Class Code 49950	Exposure 2.00	Basis T) PER AI	
Class Description: ADDITIONAL INTERESTS				Premises/Operations	
				Rate	Premium
				FLAT	\$200
				Products/Comp Operations	
				Rate	Premium
				INCLUDED	INCLUDED
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium

ALEA-GL-01

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE		INSURED
	MONTH	DAY YEAR	
ALT047106	December 9, 2004		THE RED ROOM

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
ALL SECTIONS OF THIS SEVEN (7) PAGE ALEA-GL-01 APPLY TO, AND MODIFY, YOUR POLICY.**

ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**EXCLUSION - TOTAL POLLUTION**

Exclusion f. under COVERAGE A (Section I) is replaced by the following:

- f. (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants; or
 - (b) Claim or suit by or on behalf of a government authority for damages because of testing for, monitoring, clearing up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

CG 21 49 11 88

EXCLUSION - ASBESTOS, SILICA DUST, TOXIC SUBSTANCES

The following exclusion is added to COVERAGES A, B, and C (Section I)

This insurance does not apply to:

- (1) "Bodily injury," "personal injury" or medical payments caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelium or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos fibres or dust or silica dust;
- (2) Any "property damage" due to or arising out of the actual or alleged presence of asbestos or silica dust in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, clearing or removal of any property or substance; or
- (3) "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments or any other action based upon the Insured(s) supervision, removal, instructions, recommendations, warranties (expressed or implied), warnings or advice given, or withheld regarding asbestos fibres or dust or silica dust.
- (4) The installation, manufacture, transportation, storage or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by the policy does not apply to payment for the investigation or defense of any claim or any cost, fine or penalty or for any expense or claim or suit related to any of the above.

ALEA-GL-01 (01/04)

Page 1 of 7

EXCLUSION - LEAD CONTAMINATION

The following exclusion is added to COVERAGES A, B, AND C (Section I):

This insurance does not apply to:

- (1) "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments arising out of the ingestion, inhalation or absorption of lead in any form;
- (2) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of lead; or
- (3) Any loss, cost or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of lead.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGE

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defense for such action. We shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

EXCLUSION - VOLUNTARY LABOR

The following exclusion is added to COVERAGE A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

EXCLUSION - EMPLOYMENT RELATED PRACTICES

The following is added to COVERAGE A and B (Section I):

This insurance does not apply to "bodily injury" or "personal injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (1) above.

EXCLUSION - COMMUNICABLE DISEASE

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

EXCLUSION - PARTICIPANTS

The following exclusion is added to Paragraph 2., Exclusions of Coverage (Section I - Coverages):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to "any person" while practicing for or participating in any circus, concert, demonstration, event, exhibition, race, rodeo, show, contest or any activity of an athletic or sports nature for the events shown in this Schedule.

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE A. Bodily Injury and Property Damage Liability (Section I - Coverages):

This insurance does not apply to "property damage" to property of "any person" defined herein including but not limited to "autos", watercraft, aircraft, animals or any other property of the foregoing.

The following definition is added to DEFINITIONS. (Section V):

"Any person" shall include but is not limited to animal handlers, announcers, attendants, clowns, contestants, entertainers, mechanics, musicians, officials, participants, singers, speakers, stage crews, stock contractors, vendors or their employees, any person employed by or doing volunteer work for you or on your behalf, or any person involved in the promotion, sponsoring or production of the event designated in the Schedule.

PAR EXC 01 (01/04)

EXCLUSION - CLASSIFICATION LIMITATION

The following exclusion is added to COVERAGES A, B, and C (Section I):

This Insurance does not apply to "bodily injury", "Property damage", "advertising injury", "personal injury" or medical payments for operations which are not classified or shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

ADDITIONAL CONDITIONS**NOTICE TO ALL POLICY HOLDERS**

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

THIS POLICY EXCLUDES COVERAGE FOR POLLUTION AND / OR ACTUAL, ALLEGED OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS AT ANY TIME.

LIMITATION - OTHER INSURANCE

Other Insurance, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), Item b(3) providing Excess Insurance if the loss arises out of the maintenance or use of aircraft, "autos" or watercraft is deleted.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION

This Endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE PART Exclusion c. of Coverage A (Section I) is replaced by the following:

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:

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
 - (a) Requires a license
 - (b) Is for the purpose of financial gain or livelihood; or
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

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EXCLUSION - ELECTROMAGNETIC FIELDS

The following exclusion is added to COVERAGES A, B, C (Section I):

This insurance does not apply to and no duty to defend is provided by us for any claim for "bodily injury", "property damage", "personal injury", "advertising injury" or medical payments which arise out of, or is contributed to either directly or indirectly, by exposure to magnetic fields, electric fields, electromagnetic fields, electronic fields or any other radiation, however caused or generated.

EXCLUSION - INDEPENDENT CONTRACTORS EMPLOYEES OR LEASED WORKERS

This insurance does not apply to "Bodily Injury", "Personal Injury", "Advertising Injury" to:

1. Any employee or leased worker of independent contractors arising out of operations performed for you by said independent contractors or your acts or omissions in connection with general supervision of such operations if you have rejected the obligations of any workers' compensation or similar law, or abrogated, waived or otherwise set aside common rights or defenses generally accorded any employer under any workers' compensation, disability benefits or unemployment compensation law or any similar law; or
2. The spouse, child, parent, brother or sister of that employee or leased worker as a consequence of 1. above.

MINIMUM EARNED PREMIUM ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that minimum earned premium of 25% (twenty-five per cent) applies to this policy.

EXCLUSION - RADON GAS

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to and no duty to defend is provided by us for:

1. "Bodily injury", "property damage", "personal injury", "advertising injury" or medical payments arising out of the presence of, exposure to, ingestion of, emission or release of radon gas.
2. Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of radon gas; or
3. Any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of radon gas.

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer, who for any reason, does not satisfy all or part of its obligations.

LSW1001 (8/94)

**EXCLUSION - INJURY TO LEASED WORKERS AND
PRACTICES RELATED TO LEASED WORKERS**

A. The following exclusions are added to paragraph 2., Exclusion, COVERAGE A (Section I):

This insurance does not apply to:

o. "Bodily Injury" to:

- (1) Any "leased worker" arising out of and in the course of performing his or her duties related to the conduct of your business;
- (2) The spouse, child, parent, brother or sister of that "leased worker" as a consequence of (1) above,

This exclusion applies:

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

p. "Bodily injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination, recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "bodily injury" as a result of (1) through (3) above.

This exclusion applies:

- (1) Whether the "insured" may be held liable as the party responsible for directing the "leased worker" in the performance of his duties related to the conduct of your business or in any other capacity; and
- (2) To any obligation to share damages with or to repay someone else who must pay damages because of the injury.

B. The following exclusion is added to paragraph 2. Exclusions. COVERAGE B (Section I):

This insurance does not apply to:

c. "Personal injury" or "advertising injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination; recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "Personal injury" or "advertising injury" as a result of (1) through (3) above.

C. The DEFINITIONS Section is amended to include the following:

"Leased worker" means a person employed by a labor contractor and leased to you.

CANCELLATION CLAUSE

NOTWITHSTANDING anything contained in this Insurance to the contrary, this Insurance may be cancelled by the Insured at any time by written notice or by surrender of this contract of insurance. This Insurance may also be cancelled by or on behalf of the Insurers by the delivery to the Insured or by mailing to the Insured, by registered, certified or other first class mail, at the Insured's address as shown in this Insurance written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Insured, the Insurers shall retain customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis, the Insurers shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein, whichever is the greater.

Payment or tender of any unearned premium by the Insurers shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.

LONDON FORM 1331

**RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE -
PHYSICAL DAMAGE DIRECT**

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused; *NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, any loss or damage arising directly from the Fire shall (subject to the provisions of this policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

*Note - If Fire is not an insured peril under this policy the words "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

LONDON FORM 1191

SERVICE OF SUIT CLAUSE

It is agreed that in the event of failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon LeBoeuf, Lamb, Greene and MacRae, 125 West 55th St. New York, NY 10019-4513 and that any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Insurers' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this Contract of Insurance (or Reinsurance), and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

LONDON FORM 1998

WAR AND CIVIL WAR EXCLUSION CLAUSE

Notwithstanding anything to the contrary contained herein, this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

LONDON FORM 464

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

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

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

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

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

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

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

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

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

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

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

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the Insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the Insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

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

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

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

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage" 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. Damage To Property

"Property damage" to:

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

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

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

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

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

k. Damage To Your Product

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

l. Damage To Your Work

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

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

m. Damage To Impaired Property Or Property Not Physically Injured

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

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

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

n. Recall Of Products, Work Or Impaired Property

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

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

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

o. Personal And Advertising Injury

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

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

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance ; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

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

d. Criminal Acts

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

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

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

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

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

h. Wrong Description Of Prices

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

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

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

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

j. Insureds In Media And Internet Type Businesses

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

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

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

k. Electronic Chatrooms Or Bulletin Boards

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

l. Unauthorized Use Of Another's Name Or Product

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

m. Pollution

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

n. Pollution-Related

Any loss, cost or expense arising out of any:

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

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

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

c. Injury On Normally Occupied Premises

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

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while taking part in athletics.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

h. War

Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

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

a. All expenses we incur.

b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.

e. All costs taxed against the insured in the "suit".

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

b. This insurance applies to such liability assumed by the insured;

c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

(a) Cooperate with us in the investigation, settlement or defense of the "suit";

(b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

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

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by
you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. 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.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

SECTION III - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

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

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

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

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

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

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I Coverage A Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

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

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

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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

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

5. Premium Audit

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

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

6. Representations

By accepting this policy, you agree:

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

7. Separation Of Insureds

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

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

9. When We Do Not Renew

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

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

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means a 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, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by:
 - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
 Paragraph f. does not include that part of any contract or agreement:
 - (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
 - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in 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; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

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

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

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or

- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
- (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any 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.
- b. Does not include "bodily injury" or "property damage" arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.
17. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, electronic data is not tangible property.
- As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
21. "Your product":
- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and

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

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 20 11 01 96

ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

Endorsement effective December 9, 2004 12:01 A.M. standard time	Policy No: ALT047106
Named Insured THE RED ROOM	Countersigned by

(Authorized Representative)

SCHEDULE

1. Designation of Premises (Part Leased to You):

1119 & 1121 N KINGS HWY, MYRTLE BEACH, SC 29577

2. Name of Person or Organization (Additional Insured):

SCHWARZD BROTHERS HOLDINGS
1947 N PAYETTEVILLE ST
ASHEBORO, NC 27203

3. Additional Premium: 100

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

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

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

POLICY NUMBER: ALT047106

CL 268
(11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 16 11 85

EXCLUSION— DESIGNATED PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description of Professional Services:

1. RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITHOUT DANCE FLOOR

2.

3.

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

With respect to any professional services shown in the Schedule, this insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" due to the rendering or failure to render any professional service.

CL 273
(11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 36 11 85

EXCLUSION OF NEW ENTITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Part 4. of WHO IS AN INSURED (Section II) does not apply.

CL 273 (11-85)
CG 21 36 11 85

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Page 1 of 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 39 10 93

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".
- b. A sidetrack agreement.
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad.
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality.
- e. An elevator maintenance agreement.

POLICY NUMBER: ALT047106

CL 281
(11-85)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 44 11 85

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises: 1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577

Project: RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage", "personal injury" or "advertising injury" arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including microprocessors;
- (b) Computer application software;
- (c) Computer operating system and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

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

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage arising, directly or indirectly, out of a "certified act of terrorism" or an "other act of terrorism". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

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

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury," "property damage," "personal and advertising injury," "injury or environmental damage" as may be defined in any applicable Coverage Part.
 2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":
 - a. The act resulted in aggregate losses in excess of \$5 million; and
 - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
 3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
- C. In the event of any incident of a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 24 07 11 85

PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Description of Premises and Operations:

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

With respect to $\pm$ bodily injury² or $\pm$ property damage² arising out of $\pm$ your products² manufactured, sold, handled or distributed:

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

Paragraph a. of the definition of $\pm$ Products-com -

pleted operations hazard² in the DEFINITIONS Section is replaced by the following:

- a. $\pm$ Products-completed operations hazard² in - cludes all $\pm$ bodily injury² and $\pm$ property damage² that arises out of $\pm$ your products² if the $\pm$ bodily injury² or $\pm$ property damage² occurs after you have relinquished possession of those products.

ENDORSEMENT NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	(STANDARD TIME)			INSURED	AGENCY AND CODE
	MO.	DAY	YR. 12:01 NOON		
ALT047106		December 9, 2004	A.M. X	THE RED ROOM R.K.C. ENTERTAINMENT, LLC.	ANDERSON GENERAL INSURANCE 3901442

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL PROVISIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that the following special provisions (indicated by an "X") apply to this policy.

SCHEDULE

☒ Bodily Injury and Property Damage Liability Deductible Endorsement

Coverage	Amount and Basis of Deductible	
Bodily Injury Liability	\$ 500	per claimant
Property Damage Liability	\$ 500	per claimant
Personal Injury Liability	\$ 500	per claimant
Advertising Injury Liability	\$ 500	per claimant

☒ Minimum and Advance Premium Endorsement

Minimum Premium \$ 3,142.00

☒ Minimum Earned Premium

Minimum Earned Premium 25 % of the original premium.

BODILY INJURY AND PROPERTY DAMAGE LIABILITY DEDUCTIBLE ENDORSEMENT

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

"Aggregate" limits for such coverages shall not be reduced by the application of such deductible amount.

2. The deductible amounts include all legal and loss adjustment expenses.

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the limits of insurance applicable to "each occurrence" for such coverages will be reduced by the amount of such deductible.

3. The deductible amounts stated in the Schedule apply under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of "bodily injury" sustained by one person, or to all damages because of "property damage" sustained by one person, any organization, or association or any individual member of any organization or association as the result of any one "occurrence."

4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," claim or "suit," apply irrespective of the application of the deductible amount.

5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

MINIMUM AND ADVANCE PREMIUM ENDORSEMENT

Item b. of the Premium Audit Condition (under SECTION IV-COMMERCIAL GENERAL LIABILITY CONDITIONS) is changed to read:

- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable to us on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured, subject to a minimum premium listed in the Schedule above. For purposes of this policy, the terms advance premium, audit premium, earned premium, and minimum premium are defined as follows:

Advance Premium — The premium that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.

Audit Premium — The premium that is developed by calculating the difference between the Advance Premium and the Earned Premium.

Earned Premium — The premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis for the policy period.

Minimum premium — The lowest premium for which this insurance will be written for the policy period.

MINIMUM EARNED PREMIUM

If this policy is cancelled at the request of the INSURED, the total retained by the Company shall not be less than the percentage of the original premium listed in the Schedule above.

AUTHORIZED REPRESENTATIVE

DATE

**COMMERCIAL LINES POLICY
LIQUOR LIABILITY COVERAGE FORM
SUPPLEMENTAL DECLARATIONS**

These Supplemental Declarations form a part of policy number ALT047106

1. NAMED INSURED AND MAILING ADDRESS

THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220 F RIVER OAKS DR.
MYRTLE BEACH, SC 29577

2. LIMITS OF INSURANCE

Aggregate Limit	\$ <u>300,000</u>
Each Occurrence Limit	\$ <u>300,000</u>

3. BUSINESS DESCRIPTION AND LOCATION OF PREMISES

Business Description:

RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITH

Location of all premises you own, rent or occupy: 1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577

4. DESCRIPTION OF HAZARDS

DESCRIPTION OF HAZARDS	Code No.	*Premium Basis	Rate	Advance Premium
RESTAURANT	58161	\$) 175,000	6.75	\$ 1181

5. Policy may be AUDITABLE

6. SPECIFIC LIQUOR LIABILITY FORMS/ENDORSEMENTS

CG0033(01-96), CG0305(10-93), CG 2160 (4-98), CG2806(11-85), TLIQ 001

This page alone does not provide coverage and must be attached to a Commercial Lines Common Policy Declarations Page, Common Policy Conditions, Coverage Part Coverage Form(s) and any other applicable forms and endorsements.

LIQUOR LIABILITY COVERAGE FORM

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

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

The word "Insured" means any person or organization qualifying as such under WHO IS AN INSURED (Section II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section V).

SECTION I - LIQUOR LIABILITY COVERAGE**1. Insuring Agreement.**

- a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the Insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the Insured against any "suit" seeking those damages. However, we will have no duty to defend the Insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (2) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

2. This insurance applies to "injury" which occurs during the policy period in the "coverage territory."

a Exclusions.

This insurance does not apply to:

Expected or Intended Injury

"Injury" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b.**Workers' Compensation and Similar Laws**

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

Employer's Liability**c. "Bodily injury" to:**

- An "employee" of the Insured arising out of (1) and in the course of:
Employment by the Insured; or
(a) Performing duties related to the
(b) conduct of the Insured's business; or
The spouse, child, parent, brother or sister
(2) of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

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

Liquor License Not in Effect

- d. "Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is suspended or after such license expires, is cancelled or revoked.

Your Product

- e. "Injury" arising out of "your product." This exclusion does not apply to "injury" for which the Insured or the Insured's indemnitees may be held liable by reason of:

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

Other Insurance

- f. Any injury with respect to which other insurance is afforded or would be afforded but for the exhaustion of the limits of insurance. This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the Insured by reason of the selling, serving or furnishing of any alcoholic beverage.

SUPPLEMENTARY PAYMENTS

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

All expenses we incur:

1. The cost of bonds to release attachments, but only
2. for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work.
3. All costs taxed against the Insured in the "suit."
4. Prejudgment interest awarded against the Insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not

pay any prejudgment interest based on that period of time after the offer.

6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

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

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

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

2. Each of the following is also an Insured:

- a. Your "employees," other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:

(1) "Injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph (1)(a) above; or
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above.

- (2) "Property damage" to property:

(a) Owned or occupied by, or

(b) Rented or loaned

to that "employee," any of your other "employees," by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).

- b. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

- c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

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

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

- b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

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

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits."

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

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

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

period for purposes of determining the Limits of Insurance.

SECTION IV - LIQUOR LIABILITY CONDITIONS

1. Bankruptcy.

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

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

- a. You must see to it that we are notified as soon as practicable of an "injury" which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "injury" took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any "injury" arising out of an occurrence.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us.

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claim-

ant's legal representative.

4. Other Insurance.

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

a. Primary Insurance

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

b. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also.

Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

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

5. Premium Audit.

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations.

By accepting this policy, you agree:

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

7. Separation Of Insureds.

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

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

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

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

9. **When We Do Not Renew.**

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

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

SECTION V - DEFINITIONS

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

2. **"Coverage territory"** means:

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

b. International waters or airspace, provided the "injury" 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" 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.

3. **"Employee"** includes a "leased worker." "Employee" does not include a "temporary worker."

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

5. **"Injury"** means all damages, including damages because of "bodily injury" and "property damage," and including damages for care, loss of services or loss of support.

6. **"Leased worker"** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."

7. **"Property damage"** means:

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

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

8. **"Suit"** means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:

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

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

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

10. **"Your product"** 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:

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

b. The providing of or failure to provide warnings or instructions.

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

POLICY NUMBER ALT047106

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 03 05 10 93

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance under the following:

LIQUOR LIABILITY COVERAGE PART

SCHEDULE

Location
Coverage

Liquor Liability

Amount and Basis of Deductible
PER CLAIM or PER COMMON CAUSE
\$ 500 \$ XXXX

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

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for "injury", however caused):-

A. Our obligation under the Liquor Liability Coverage to pay damages on your behalf applies only to the amount of damages in excess of any deductible amount stated in the Schedule above.

B. You may select a deductible amount on either a per claim or a per common cause basis. Your selected deductible applies to the Liquor Liability Coverage and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

1. PER CLAIM BASIS. If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies under Liquor Liability Coverage, to all "injuries" sustained by any one person or organization.

2. PER COMMON CAUSE BASIS. If the deductible amount indicated in the Schedule above is on a per common cause basis, that deductible amount applies under Liquor Liability Coverage to all damages because of "injury" as the result of the selling, serving or furnishing of any alcoholic beverage to any one person, regardless of the number of persons or organizations who sustain damages.

C. The terms of this insurance, including those with respect to:

1. Our right and duty to defend and "suit" seeking those damages; and

2. Your duties in the event of an "injury", claim or "suit"

D. We may pay any part or all of the deductible amount to effect settlement of any claims or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage", "personal injury" or "advertising injury" arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including microprocessors;
- (b) Computer application software;
- (c) Computer operating system and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

POLICY NUMBER ALT047106

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO INSURED PREMISES

This endorsement modifies insurance under the following:

LIQUOR LIABILITY COVERAGE PART

SCHEDULE

Description and Location of "Insured Premises":

RESTUARANT

1119 & 1121 N KINGS HWY, MYRTLE BEACH, SC 29577

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

This insurance only applies to "damages" arising out of your "insured premises".
"Insured premises" means:

1. The premises shown in the Schedule; and
2. Any premises you acquire during the policy period for use in manufacturing, distributing, selling, serving or furnishing alcoholic beverages if:
 - a. You notify us within 30 days after the acquisition, and
 - b. You have no other valid and collectible insurance applicable to the loss.

TLIQ 001

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE			INSURED
	MONTH	DAY	YEAR	
ALT047106	12	09	04	THE RED ROOM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE PART

EXCLUSION - TOTAL POLLUTION

This insurance does not apply to:

- f. (1) "injury" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants; or
 - (b) Claim or suit by or on behalf of a government authority for damages because of testing for, monitoring, clearing up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

EXCLUSION - ASBESTOS, SILICA DUST, TOXIC SUBSTANCES

This insurance does not apply to:

- (1) "injury" caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelium or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, ingestion or absorption of asbestos fibres or dust or silica dust;
- (2) Any "injury" due to or arising out of the actual or alleged presence of asbestos or silica dust in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, cleaning or removal of any property or substance; or
- (3) "injury" or any other action based upon the Insured(s) supervision, removal, instructions, recommendations, warranties (expressed or implied), warnings or advice given, or withheld regarding asbestos fibres or dust or silica dust.

EXCLUSION - ATHLETIC OR SPORTS PARTICIPANTS

This insurance does not apply to "injury" to any person while practicing for or participating in any sports contest or exhibition that you sponsor.

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Page 1 of 4

EXCLUSION - LEAD CONTAMINATION

This insurance does not apply to:

- (1) "injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- (2) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of lead; or
- (3) Any loss, cost or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of lead.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGE

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defence for such action. We shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

EXCLUSION - VOLUNTARY LABOR

This insurance does not apply to "injury to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

EXCLUSION - EMPLOYMENT RELATED PRACTICES

This insurance does not apply to "injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harrassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
- (4) Consequential "injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error, or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

This insurance does not apply to "injury" arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (a) above.

EXCLUSION - COMMUNICABLE DISEASE

This insurance does not apply to "injury" arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

TLIQ 001

EXCLUSION - CLASSIFICATION LIMITATION

This insurance does not apply to "injury" for operations which are not classified or shown on the Declarations, its endorsements or supplements. Coverage applies only to those operations as described under the "Description and Locations".

ADDITIONAL CONDITIONS

NOTICE TO ALL POLICY HOLDERS

This Insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

THIS POLICY EXCLUDES COVERAGE FOR POLLUTION AND / OR ACTUAL, ALLEGED OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS AT ANY TIME.

TLIQ 001
Page 4 of 4

04-15-2005 11:30 AM

NOTICE OF CANCELLATION OR REFUSAL TO RENEW

Policy No
ALT047106

Issued Through Agency Or Office At:
Tapco Underwriters, Inc.
Burlington, NC 27215

Cancellation or Termination Will Take Effect At:
Date (Hour Standard Time)
03/29/2005 12:01 AM

Date of Notice
04/14/2005

Name and
Address of
Insurance
Company

Received From:
ALEA LONDON, LTD. (330320.04 - COMM)
DAWSON HOUSE
5 JEWRY STREET
LONDON EL EC3N2EX

Name and
Address of
Insured

THE RED ROOM
1220 F RIVER OAKS DR.

ANDERSON GENERAL INSURANCE
3721 WESLEY ST UNIT 133
COLUMBUS PLAZA

MYRTLE BEACH SC 29577

MYRTLE BEACH SC 29579

For use as a certificate of mailing as provided in Section 931 of the Domestic Mail Manual
May be used for Domestic and International mail, does not provide for insurance.

Cancellation

You are hereby notified, in accordance with the terms and conditions of the above mentioned numbered policy and in accordance with the law, that your insurance will cease at and from the hour and date indicated above. If premium has been paid, premium adjustment will be made as soon as practicable.

THIS ACTION HAS BEEN TAKEN FOR THE FOLLOWING SPECIFIC REASON OR REASONS:

FINANCE COMPANY REQUEST

(Duplicate of Notice of Cancellation or Termination to Lienholder)

You are hereby notified that the agreement under the Loss Payable Cause payable to you as Lienholder which is a part of the above policy, issued to the above insured, is hereby cancelled (or terminated) in accordance with the conditions of the policy, said cancellation (or termination) to be effective on and after the hour and date mentioned above.

United States Postal Service

Received from:
ALEA LONDON, LTD. (330320.04 - COMM)

Insurance
Company

Name and
Address of
Lienholder 1

Name and
Address of
Lienholder 2

Name and
Address of
Lienholder 3

For Registered Mail or Certificate Mail
Notice of Cancellation or Nonrenewal to
the insured and, if required, to the
Lienholder, the appropriate U.S. Postal
Service receipt must be attached hereto
and no postage stamp should be affixed
to the receipt reproduced hereon.

CERTIFICATION

I hereby certify that I personally mailed
in the U.S. Post office at the place and
time stamped hereon, a notice of
cancellation or nonrenewal to the insured
and, if required, to the Lienholder, an
exact carbon copy of which appears above,
and at said time received from the
U.S. Postal Service the receipt made
a part hereof or attached hereto.

Signed 04/14/2005

Premium 3142.00 Return Premium 2195.00
Company Copy

Signature
Expiration 12/09/2005
ACCT#:AUOCUG



03-08-2005 11:03 AM

TAPCO UNDERWRITERS, INC.

POLICY NUMBER:ALT047106

COMPANY:ALEA LONDON, LTD. (330320.04 - COMM

'POLICY ENDORSEMENT'

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NAME OF ASSURED
THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220-F RIVER OAKS DR.

MYRTLE BEACH ,SC 29577

PRODUCER
ANDERSON GENERAL INSURANCE
COLUMBUS PLAZA
3721 WESLEY ST UNIT 133
MYRTLE BEACH ,SC 29579
AGENT #:3901442

EFFECTIVE DATE:12/09/2004

EXPIRATION DATE:12/09/2005

New Annual Premium: \$ 3142.00
Difference: \$ 100.00

Additional Premium:\$ 100.00
Return Premium:

ENDORSEMENT EFFECTIVE DATE:03/03/2005

ENDORSEMENT NUMBER:002

It is Agreed And Understood That:

FORM CG2010 (07-04) IS ADDED TO THE POLICY TO ADD JOSEPH H. BARRON
AS ADDITIONAL INSURED.
PREMIUM IS 100% EARNED.
SEE ATTACHED FORMS.

All other provisions and conditions of this policy remain unchanged.

AUTHORIZED _____

This Endorsement is Issued By TAPCO Underwriters, Inc. In Burlington, N.C.
PRODUCER#:143 ACCOUNT NUMBER:AUOCUG



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Insured Person or Organization:

JOSEPH H. BARRON
630 1ST AVENUE, NW
HICKORY, NC 28601

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

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part, by:

1. Your acts or omissions; or
 2. The acts or omissions of those acting on your behalf;
- In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion(s) apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

01-05-2005 02:47 PM

TAPCO UNDERWRITERS, INC.

POLICY NUMBER:ALT047106

COMPANY:ALEA LONDON, LTD. (330320.04 - COMM

'POLICY ENDORSEMENT'

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NAME OF ASSURED
THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220-F RIVER OAKS DR.

MYRTLE BEACH ,SC 29577

PRODUCER
ANDERSON GENERAL INSURANCE
COLUMBUS PLAZA
3721 WESLEY ST UNIT 133
MYRTLE BEACH ,SC 29579
AGENT #:3901442

EFFECTIVE DATE:12/09/2004

EXPIRATION DATE:12/09/2005

New Annual Premium: \$ 3042.00
Difference: \$ -100.00

Additional Premium:
Return Premium:\$ -100.00

ENDORSEMENT EFFECTIVE DATE:12/09/2004

ENDORSEMENT NUMBER:001

It Is Agreed And Understood That

THE POLICY IS AMENDED TO DELETE ONE ADDITIONAL INSURED THE POLICY
SHOULD HAVE ONLY LISTED ONE ADDITIONAL INSURED IN LIEU OF TWO

All other provisions and conditions of this policy remain unchanged.

AUTHORIZED

This Endorsement Is Issued By TAPCO Underwriters, Inc. In Burlington, N.C.
PRODUCER#:15

ACCOUNT NUMBER:AUOCUG



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Elisa Narruhni,

Plaintiff

v.

Alea London Limited and Anderson
General Insurance,

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

Civil Action No.: 2010-CP-26-4112

DEFENDANT ALEA LONDON
LIMITED'S ANSWER TO PLAINTIFF'S
COMPLAINT

(JURY TRIAL DEMANDED)

COMES NOW, Defendant Alea London Limited, by and through their undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.
2. Admits, upon information and belief, the allegation of paragraph 1.
3. Lacks sufficient knowledge and information to form a belief as to the allegations of paragraph 2 through paragraph 36, and thereby deny the same.

FOR A SECOND DEFENSE

(Failure to State a Claim)

4. The allegations contained in paragraphs 1 through 3 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
5. The Defendant would show that the Plaintiff's Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

2010 OCT 24 AM 11:18
CLERK OF COURT
MELANIE HUGGINS-WARD
Horry County

FOR A THIRD DEFENSE

(Comparative Negligence)

6. The allegations contained in paragraphs 1 through 5 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

7. The Defendant would show that such injuries or losses that Plaintiff sustained, if any, was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiff, combining, concurring and contributing with the negligence, if any, on the part of this Defendant, to such a degree that Plaintiff's recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE

8. The allegations contained in paragraphs 1 through 7 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

9. The Defendant craves reference to the insuring agreement between the parties for all conditions, exclusions, and endorsements contained therein.

FOR A FIFTH DEFENSE

(Intervening and Superseding Negligence)

10. The allegations contained in paragraphs 1 through 9 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

11. The Defendant would show that such injuries or losses that Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, was not due to or caused by any negligence on the part of the Defendant, but was rather due to and caused by the contributing, concurring, intervening or superseding fault, breach of warranty or act or omission of a third party, over which this Defendant had no control.

FOR A SIXTH DEFENSE

(Improper Venue)

12. The allegations contained in paragraphs 1 through 11 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

13. Defendant pleads the defense of improper venue in the County of Horry, State of South Carolina.

FOR A SEVENTH DEFENSE

(Statute of Limitations)

14. The allegations contained in paragraphs 1 through 13 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

15. The Defendant would show that this action is barred by the applicable Statute of Limitations.

FOR AN EIGHTH DEFENSE

(Unclean Hands)

16. The allegations contained in paragraphs 1 through 15 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

17. The Defendant would show, upon information and belief, that Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A NINTH DEFENSE

(Policy Cancelled)

18. The allegations contained in paragraphs 1 through 17 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

19. A Notice of Intent to cancel was mailed to the insured on March 14, 2005, by the Premium Service Company, Charleston Premium Finance. The Notice of Intent to Cancel stated

that the insured's policy would be cancelled unless a payment of \$244.84 was made on or before March 24, 2005. This provided the ten (10) day notice required by S.C. Code Ann. §38-39-90.

The insured failed to make the requisite payment on or before March 24, 2005 – or thereafter. Therefore, the policy was cancelled effective March 29, 2005. A Notice of Cancellation, stating this effective date, was sent to the insured. Providing cancellation five (5) days after the expiration of the period provided by the Notice of Intent to Cancel complies with the requirements of S.C. Code Ann §38-39-90(c).

The insured's policy, having been cancelled effective March 29, 2005, was, therefore, not in effect when Plaintiff Narruhn was on the insured's premises on April 9, 2005.

Because the insured's policy was no longer in effect on the date that Plaintiff was shot, it provides no coverage for the Plaintiff Narruhn's injuries caused by her being shot on April 9, 2005.

FOR A TENTH DEFENSE

(Punitive Damages)

20. The allegations contained in paragraphs 1 through 19 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

21. The Defendant alleges that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

22. The Defendant alleges that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3

of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

23. The Defendant alleges that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant.

24. The Defendant alleges that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

25. Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendants' exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the

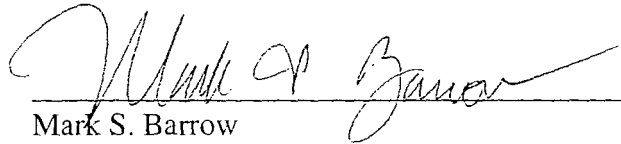
Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs, for attorneys' fees and such other and further relief this Court deems just and proper.

The Defendant demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

**ATTORNEYS FOR THE DEFENDANT
ALEA LONDON LIMITED**

Columbia, South Carolina
October 1, 2010

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF HORRY) (10-CP-26-04112)
3)
4 ELISA NARRUHN)
5)
6)
7 VERSUS) TRANSCRIPT OF RECORD
8)
9)
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B E F O R E:

HONORABLE LARRY B. HYMAN, JR., Judge.

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

GENE M. CONNELL, JR., ESQ.
ATTORNEY FOR PLAINTIFF

SUSAN TAYLOR WALL, ESQ.
MARK V. GENDE, ESQ.
ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON MARCH 1, 2011.)

2 THE COURT: Okay. All right. I read the Brief that
3 was provided to me. I think the only Brief that I have is one
4 provided by Ms. Wall, but I have read that, so I'm a little
5 familiar with what we are doing here. We've got three
6 motions. The first motion is Motion Relief and Certification
7 of Service. Looks like that's ---

8 MR. GENDE: That, Your Honor, is Alea's motion. It's a
9 motion to set aside a previous Order. I don't know how it
10 came out the way it did.

11 THE COURT: Yes. Well, I don't know what that is
12 anyway, Relief and Certification of Service.

13 So let me hear you as to what motion you have.

14 MS. WALL: Your Honor, would you like me to go first?
15 I did file mine first. My may be a bit more discreet.

16 THE COURT: All right. Okay. Are you Ms. Wall?

17 MS. WALL: Your Honor, my name is Susan Wall. I
18 represent ---

19 THE COURT: All right. Good to see you, Ms. Wall. I
20 don't think I've ever met you, have I?

21 MS. WALL: I'm delighted to be here. I think I may
22 have appeared in front of you once quite some time ago, so ---

23 THE COURT: Well, it's a pleasure to have you, Ms.
24 Wall.

25 MS. WALL: Thank you, Your Honor. I appreciate that.

1 THE COURT: Okay. You want to go forward. You have a
2 motion, I believe, to dismiss the Defendant, Anderson General
3 Insurance Company; is that correct?

4 MS. WALL: Your Honor, yes, I do. It's ac ---

5 THE COURT: All right. Let me see if I might shorten
6 this.

7 Mr. Connell, how do we keep Anderson in?

8 MR. CONNELL: Your Honor, Ms. Wall has not given me any
9 answers to interrogatories or requests for production, and I
10 will need that to understand, but I will tell you that she
11 gave me some documents, and one of the documents she gave me I
12 think is very telling. It is actually a document where, when
13 the assignment was made, or before that, the insured actually
14 made two payments directly to Anderson Insurance Company.

15 THE COURT: That doesn't really make any difference,
16 does it? They are a broker.

17 MR. CONNELL: Well, it makes a big difference, because
18 there's about whether they gave that money over to the Alea
19 Insurance Company afterward, ---

20 THE COURT: Oh.

21 MR. CONNELL: ---And let me show you what she gave me
22 so you can see it.

23 THE COURT: Is this a situation as to the existence of
24 insurance? Is that what the issue is here?

25 MR. CONNELL: No. No, Your Honor, here is the

1 situation. Ms. Narruhn ---

2 THE COURT: What do you allege?

3 MR. CONNELL: Ms. Narruhn was at a night club, RKC
4 Entertainment,, and she was shot and rendered a paraplegic.
5 Judge Baxley had a trial and awarded her Six Million Dollars.

6 THE COURT: All right.

7 MR. CONNELL: Thereafter I sued -- well, thereafter the
8 judgment was referred, with finality, to a special referee who
9 assigned the rights to Ms. Narruhn.

10 THE COURT: All right. That was as to the bar or
11 wherever she was.

12 MR. CONNELL: Well, what it was was -- it's an
13 assignment ---

14 THE COURT: RKC.

15 MR. CONNELL: ---Assignment of whatever rights RKC
16 Entertainment may have for their insurance company not picking
17 up the tab. Clearly that's what it is.

18 THE COURT: Set out very clearly in Ms. Wall's Brief.
19 Okay.

20 MR. CONNELL: And one of the big issues in the case,
21 Your Honor, is when the policy lapsed -- and the accident
22 happened on April 9th, and attached to the other Defendant's
23 Brief is a letter, and a notice of cancellation for April
24 15th, 2005, which is some six days afterwards, and that notice
25 of cancellation -- I'll show it to you.

1 MR. GENDE: If I might approach I can give you a copy
2 of our statement that has these ---

3 MR. CONNELL: That Notice of Cancellation shows that it
4 would have canceled on April 15th, 2005, and it has Anderson
5 Insurance Company as a producer, and RKC Entertainment as the
6 insured.

7 THE COURT: Okay.

8 MR. CONNELL: All right. Well, when Ms. Wall
9 objected ---

10 THE COURT: Is Alea's position that this was a canceled
11 policy, a terminated policy?

12 MR. GENDE: Alea's position is a terminated policy, and
13 also is excluded as ---

14 THE COURT: And Mr. Connell, you are saying, or
15 alleging that Anderson got the payments and didn't turn them
16 over in a timely ---

17 MR. CONNELL: I am saying that that is a question of
18 fact in the case based upon this document which Ms. Wall gave
19 me that shows the payments were made by the insured back in
20 March, right before the cancellation.

21 THE COURT: Ms. Wall, tell me about that.

22 MS. WALL: Yes sir, Your Honor, and I ---

23 THE COURT: I want to see what sort of allegations he
24 has here. I know he's got several causes, but that might
25 create -- there might be some sort of duty created as to

1 Anderson's at that point.

2 MS. WALL: All right, Your Honor, maybe if we can back
3 up so that I can -- I brought my Motion to Dismiss because I'm
4 looking at the Complaint, and it's a 12(B)(6) motion, and we
5 look at the Complaint.

6 THE COURT: All right.

7 MS. WALL: And the Complaint as -- and Your Honor, if
8 you have my Brief, I attached the Complaint to my Brief, so we
9 have it in front of us ---

10 THE COURT: Okay.

11 MS. WALL: ---And it's very, very clear ---

12 THE COURT: Well, Clare is a little paper stingy and I
13 didn't get that added with the Complaint, but I have it right
14 here.

15 MS. WALL: Your Honor, I have an extra copy. I'll be
16 delighted to hand it up.

17 THE COURT: I have it right here.

18 MS. WALL: All right. In the Complaint it's very clear
19 that the Plaintiff has no relationship to -- to my client, who
20 is an insurance agency, and I want to make sure the record is
21 absolutely clear on this. My client is not an insurance
22 company. It is merely an independent insurance agency,
23 somebody comes to them and says, can you help me get
24 insurance, and they help customers find insurance. The
25 insurance company here is Alea. The agency is Anderson.

1 THE COURT: Mr. Connell, do you allege anywhere here
2 that the Defendants had -- or excuse me, that RKC -- and
3 that's what we are looking at, you know, what rights did RKC
4 have. RKC, what -- do you allege that this -- that RKC made
5 the payments to Anderson, and that Anderson was derelict in
6 providing them to Alea, and for that reason Alea canceled?

7 MR. CONNELL: Well, Your Honor, if I had their
8 discovery requests to be able to do something I might be able
9 to do that, but what they are asking you to do is dismiss this
10 thing out of the box under 12(B), and my position is that
11 there is enough documentation that clearly would not allow a
12 dismissal at this point. We would like to know the payments I
13 just showed you, when they were paid, when they were sent to
14 Alea, how they were sent to Alea. We would like to take Mr.
15 Hier's deposition and understand because we stand -- our
16 position is, we stand in the shoes of RKC in trying to attempt
17 to collect ---

18 THE COURT: Well, you know, Ms. Wall's defense,
19 regardless of what you call it, she -- the crux is that it's
20 lack of duty; there is no privity between RKC and Anderson, I
21 mean, that's what it's about, and you raise an interesting
22 question. You are now alleging that -- of course it's outside
23 the pleadings at this time, but you are alleging that RKC did,
24 in fact, pay for their -- their insurance premium by taking it
25 and delivering it to their agent, their agent accepted it, and

1 their agent didn't provide it to Alea. I mean, I think that
2 clearly would create some sort of duty on Anderson to turn
3 that money over in a timely fashion to the insurance company,
4 and I think that's where you are coming -- you are coming
5 from. That's not in the -- as I see it, not in the Complaint
6 at this time, and she's asking for a 12(B)(6) dismissal.

7 Well, you know, I can grant a 12(B)(6) dismissal, Ms.
8 Wall, but it's without prejudice, he's going to refile it.

9 I mean, you don't have a statute problem, do you?

10 MR. CONNELL: Well, Your Honor, on top of that, if I
11 had been allowed to do any discovery before the motion ---

12 THE COURT: You are saying that it's premature?

13 MR. CONNELL: Yes sir, and I'm saying that I ought to
14 have -- and she did give me some documents just out of -- but
15 I sent a request for admissions and some other issues. If I
16 had -- if I had that information I would have been able to
17 amend my Complaint and allege. All I'm going on it what I was
18 given, and I don't think that based upon that that she ought
19 to be able to get a 12(B)(6) at this juncture in the case.

20 MS. WALL: Your Honor, might I address this? There is
21 a threshold issue problem, and Your Honor is absolutely right.
22 What we are talking about here is a Plaintiff named Elisa
23 Narruhn. What rights does she have against Alea and here also
24 by naming Anderson. The only rights she could possibly have
25 are under that Order of the Court, two-page Order which I've

1 handed up to the Court.

2 THE COURT: Does he ---

3 MS. WALL: The Special Referee. That Order is
4 absolutely clear that they did not assign any rights, none,
5 that RKC may have had against Anderson. Nothing could be
6 clearer than this Order. Your Honor, the Order says
7 repeatedly, RKC's rights against their liability insurance
8 carrier, and then they even define who the carrier is, as Alea
9 London, and they say it in ever single paragraph. That is all
10 that was assigned, Your Honor.

11 THE COURT: I saw that.

12 And of course -- have you gotten RKC to assign -- do a
13 voluntary assignment of any rights it may have against
14 Anderson?

15 MR. CONNELL: No sir, but Anderson is an agent of RKC,
16 and took the premium in, and took the premium from RKC, and
17 our position would be that that is -- as the agency
18 relationship, that they would be covered by that.

19 THE COURT: Did you allege agency in your Complaint?

20 MR. CONNELL: I add -- I allege them as Defendants in
21 the Negligence Cause of Action, yes sir.

22 THE COURT: I mean, did you couch that in terms of
23 their being agents, and liability based on an agency theory?

24 MR. CONNELL: No, but I'm happy to amend to do that.

25 THE COURT: I mean, it would appear to me that there is

1 going to have to be something like that, and I'm -- you know,
2 to have her named as Plaintiff I'm not sure that we might not
3 need to do that in a different way, Elisa Narruhn as assignee
4 of or whatever. I'm just not sure.

5 You know, I don't want to get into a situation where,
6 you know, we start renting 12(B) motions that are clearly
7 without prejudice and we end up having to just file it again
8 and we just start it all over.

9 MS. WALL: But Your Honor, if I might interrupt. The
10 reason I brought this is that we are all bound by the Order of
11 the Special Master or the Referee, and the Order is clear,
12 Your Honor, that there were no rights ---

13 THE COURT: I think you are correct.

14 MS. WALL: ---Against Anderson ---

15 THE COURT: I think you are correct as to that, but I
16 believe that RKC could voluntarily assign it's rights in the
17 action ---

18 MS. WALL: But they haven't done so, Your Honor, and
19 they didn't even ask for it.

20 MR. CONNELL: And Your Honor, I could go back to the
21 Special Master and ask for an assignment of rights against
22 Anderson also, and they don't have a right to object to that
23 because they don't represent RKC Entertainment, Inc..

24 THE COURT: I understand that, and it's just a matter
25 of jumping through the hoops and making work for everybody,

1 you know. It's going to eventually come back around. If I
2 grant your motion he's going to refile.

3 MS. WALL: Well, Your Honor, ---

4 THE COURT: And you know, I think you are probably, at
5 this juncture, entitled to it, but you know, what can we do to
6 make less work for everybody, and is there a statute of
7 limitations problem?

8 MR. CONNELL: Your Honor, the judgment -- no. The
9 judgment was rendered back in 2009.

10 MS. WALL: Your Honor, and let me see if I can find
11 some solution here, and let me keep talking about this, with
12 the Court's permission. I not only filed, with regard to the
13 Negligence Cause of Action, because of course the basis for
14 that is a duty. We know there is no duty to this Plaintiff
15 except through an assignment.

16 THE COURT: Right.

17 MS. WALL: Now let me at least go to the other three,
18 if I might, Your Honor ---

19 THE COURT: Certainly.

20 MS. WALL: ---Because they absolutely can't state a
21 cause of action, and have failed to do so, and never will be
22 able to, under any theory, as to the other three Causes of
23 Action. Notice Causes of Action, Your Honor, are first of all
24 -- first of all, the First Cause of Action, Failure to Defend,
25 an insurance agency doesn't defend, an insurance company has a

1 duty to defend because, of course, they have the contract, and
2 we have ---

3 THE COURT: And Mr. -- Mr. Connell, isn't that ---

4 MS. WALL: ---Clear South Carolina Law on that.

5 THE COURT: ---Isn't that true?

6 MR. CONNELL: Yes sir. I'm not -- I'll cut it short
7 for her, make it easy for her.

8 My -- what I see from what she has given me is a
9 potential negligence claim between the two co-defendants about
10 how the policy was paid, and who paid for it.

11 As for the issue of her -- of the failure to defend, I
12 do not waive that against Alea. I think there is an issue
13 about that. But as to her I will agree as to -- and I think
14 you've talked about the Insurance Claims Practices Act.

15 MS. WALL: There's a Second Cause of Action, a Bad
16 Faith, Refusal to Pay Benefits. Again, that's clearly only as
17 to a company, not agency.

18 THE COURT: That would not go through Anderson.

19 MR. CONNELL: Only to Alea.

20 MS. WALL: All right. And then finally, the Fourth
21 Cause of Action, Unfair Claims Practices Act. Your Honor,
22 first of all, there is no private cause of action as to
23 anybody on that, and clearly it goes to insurers only.

24 THE COURT: He's out. He's out as to that.

25 MS. WALL: All right. Now, Your Honor, I would like to

1 make the record clear on this. I had filed a Motion for
2 Protective Order because I had a pending 12(B)(6) Motion to
3 Dismiss. I didn't want my client to have to expend
4 considerable fees and cost, paying an attorney, to respond to
5 discovery from the Plaintiff, and therefore I also filed a
6 Motion for Protective Order pending a hearing by Your Honor on
7 my Motion to Dismiss. I wanted to be cooperative, however,
8 because I wanted Mr. Connell to have what I had. I got the
9 entire file from my client and I did send it to him on
10 February the 14th, 2011. I sent him the whole file.

11 Now what he did not tell the Court was, in conjunction
12 with that, Your Honor, I gave him a cover letter, and that
13 cover letter -- and I will be happy to hand a copy up to the
14 Court, if I might approach, Your Honor, in case Mr. Connell --

15 -

16 - He has it. Okay.

17 Your Honor, just for your edification ---

18 THE COURT: Thank you, Ms. Wall.

19 MS. WALL: ---And I explained the documents to him, and
20 if you will note, Your Honor, in the second paragraph, last
21 three lines from the bottom, I explained the payment -- and we
22 are referencing the last payment -- was given to Anderson, my
23 client, and this payment was sent by Anderson to TapCo
24 Underwriters, and what was it for. I explained, it was for an
25 endorsement, adding additional insurers, so the explanation of

1 the payment is there.

2 Now I know we are getting into the merits here, but --
3 I didn't want the record to reflect only Mr. Connell's
4 guessing on what was -- what the document meant, or what the
5 payment meant, because I actually tried to be -- tried to
6 explain it to him so he would have the information.

7 Your Honor, I have absolutely nothing to hide here. My
8 agency got a few payments, passed them on. What the insurance
9 company ultimately determined to do was, of course, for the
10 insurance company, as it always is, and here that is Alea,
11 Your Honor.

12 I did receive -- as I mentioned, I filed a Motion for
13 Protective Order because I did receive from Plaintiff's
14 counsel ---

15 THE COURT: Let me just ask counsel, was the policy
16 ever canceled for late payment or non-payment?

17 MR. GENDE: The policy was canceled for non-payment of
18 premiums, and in the ---

19 THE COURT: Is there an issue that would appear that --
20 that Anderson received some payments and was negligent -- and
21 there again, we are sort of getting into facts, but I want to
22 see what's really going on here. Is there anything that would
23 suggest that if Anderson had acted promptly, and you had
24 received the payments earlier, that there would have been
25 coverage? I mean, you are saying, we did not receive a

1 payment, late or otherwise, we didn't send any back, we just
2 didn't get the payment.

3 MR. GENDE: And had no knowledge of any of this until
4 this morning, so really aren't able to analyze what those
5 payments are for. Apparently there -- they had an additional
6 insured. They are prior to the dates that the policy would
7 have been canceled, but they are not for the amounts that were
8 requested in order to continue the policy, so there is a good
9 bit of investigation on our part that would have to be done to
10 determine just what these were, because they are payments that
11 we have never seen before and had no knowledge of before, were
12 never passed on to us. I have seen our entire file, reviewed
13 our entire file ---

14 THE COURT: So you are saying that there is some sort
15 of discrepancy, somewhere there are some payments alleged that
16 you didn't get?

17 MR. GENDE: Well, I'm saying there is this sheet of
18 paper that shows some payments, and I have no clue what those
19 are because we had no knowledge of those.

20 MR. CONNELL: And it was never sent to us by Alea,
21 because they didn't have it. I only got it because Ms. Wall
22 gave it to me in some stuff she gave me.

23 THE COURT: What are those payments, Ms. Wall?

24 MS. WALL: It was -- what happens is, this is the type
25 of policy -- and I believe, Your Honor, it's one of those -- I

1 don't want to call it exactly high risk, but it is, it's a bar
2 policy, and so very often what happens is, in order to get one
3 of those policies you have to go through a broker, so you come
4 to an insurance agency. They, in turn, have to work through a
5 broker who, in turn, finds Alea. The broker here is TapCo.
6 And so there were a few times when the insured, RKC, would
7 drop off payments -- not very often, but on occasion would
8 drop off payments with Anderson, and Anderson would then send
9 them on to TapCo if that's what was called for, or directly to
10 Alea. I think here it was TapCo because TapCo was the broker,
11 and that's how payments are always made. In turn TapCo then
12 has the relationship with, and the contact with the ultimate
13 insurance company, Alea.

14 THE COURT: Well, it would seem that there is an issue
15 here. Mr. -- you gave Mr. Connell a document indicating that
16 you had received payments that Alea says we never got.

17 MS. WALL: The payment being sent to TapCo for
18 additional insureds being added to the policy.

19 THE COURT: And I assume then that if had received
20 payments, and they were correct payments, there would be
21 coverage.

22 MR. GENDE: I want to be very careful about ---

23 THE COURT: I understand you want to be very careful,
24 but potentially, you are just saying you didn't get the money.

25 MR. GENDE: That is something we would analyze.

1 I can also tell you that, I think we've looked at the
2 TapCo file as well, and I don't have any knowledge of this
3 through the TapCo file.

4 Did we produce that to you as well?

5 MR. CONNELL: I think so.

6 And Your Honor, I -- you know, I don't ---

7 THE COURT: Well, this is what I'm going to do. I'm
8 going to grant Ms. Wall's motion as to the three causes of
9 action. I'm not going to do it as to the negligence. I am
10 going to find it is premature. I'm going to let you -- if you
11 want to file a motion to amend, okay. If not, I'm going to
12 let you complete some discovery. I'm going to keep her motion
13 alive as to that cause of action, and reschedule it. Okay.

14 MR. CONNELL: Your Honor, I'm going to file a motion to
15 amend.

16 And how about her discovery? Am I going to be entitled
17 to get her -- the discovery requests I made? I had sent them
18 some request for production.

19 THE COURT: Well, you still have a cause of action
20 alive at this point.

21 MR. CONNELL: Okay. Will you give it to me then, the
22 discover ---

23 MS. WALL: Of course I will, but I wouldn't have done
24 it up to this point.

25 Our Motion to Dismiss, Your Honor, fifteen days to do

1 that?

2 THE COURT: Yes.

3 MS. WALL: Thank you.

4 MR. CONNELL: You can have more than that. I don't
5 care.

6 THE COURT: All right. Let's see what else we have.

7 MS. WALL: Yes, Your Honor. I think that takes care of
8 both of my motions. Thank you, Your Honor.

9 THE COURT: Okay. All right. Okay. And we still have
10 a motion in that, do we not?

11 MR. GENDE: Yes, Your Honor. Mark Gende for Alea.

12 THE COURT: All right, Mr. Gende.

13 MR. GENDE: Bill Calhoun, as well, with me.

14 We are moving to set aside that Special Referee's Order
15 that has been discussed here this morning, under rule
16 60(B)(1), (4) and (5).

17 THE COURT: Can I do that?

18 MR. GENDE: Yes sir.

19 MR. CONNELL: No sir. You -- there's an Order of
20 Reference with Finality. You are not entitled to do that.

21 THE COURT: If it's with finality wouldn't -- it would
22 have to be appealed to the Court of Appeals or the Supreme
23 Court, if it was ---

24 MR. CONNELL: No sir. They would have to go back to
25 the Special Referee and ask him to set it aside.

1 THE COURT: I mean, you have to reconsider, a motion to
2 reconsider, it has to be made timely, or appeal it, which if
3 it was referred with finality wouldn't I have to do that?

4 MR. GENDE: This is an Order, the procedure which we
5 were not made part of, the argument of which we had no notice
6 of. We were not involved in any way, then all of a sudden we
7 are the ones who are suppose to carry the full brunt of a Six
8 Million Dollar default judgment.

9 We had no due process. We had no notice. We had no
10 right to be heard. We had no judicial review. We had no
11 nothing, so ---

12 THE COURT: I mean, they never gave you notice of the
13 pendency of this action?

14 MR. GENDE: That's -- they -- we never had notice of
15 the Defendants in -- the only notice that we had of this
16 action was of an underlying case that came through a second
17 party -- Insurance Company.

18 THE COURT: That's a heck of a defense, Mr. Connell, to
19 their -- their liability under the policy.

20 MR. CONNELL: Not true, Your Honor. You look at
21 their -- look at their Brief, and they have -- they were given
22 -- we filed suit back in 2008, and we sued the landlord and
23 RKC Entertainment.

24 The landlord had a lawyer, and he wrote a letter to
25 Alea, to their Claims Department -- it's all the way in the

1 back, Exhibit Number 5 -- and he said, I want to let you know
2 that we are going to bring a cross-claim, and you are on
3 notice about this claim. This is before the Six Million
4 Dollar judgment. And he wrote a letter to them, and the
5 Claims Department adjuster wrote a letter back, Assistant
6 Vice-President of Claims, and said, by the way, we don't have
7 any coverage here, and we deny any and all claims. So they
8 knew long before the Six Million Dollar judgment was going to
9 be entered against the insured that the claim was out there.
10 They just chose not to act.

11 MR. GENDE: Not entirely accurate, Your Honor. The
12 exhibits are there in our motion -- in our Memorandum. You
13 can see them. We had been corresponded with very late in the
14 game. Because of the landlord's attorney's action we
15 disclaimed coverage, and as far as we were concerned we were
16 done at that point. We didn't receive service of any process,
17 or any complaint. We didn't receive formal notices, or notice
18 of any kind of any hearing. The only notice of the underlying
19 suit went to Krump, who was the registered agent for the
20 insured, but that notice was never forwarded on to us, so we
21 didn't have any -- we didn't have any notice. We were
22 absolutely surprised by this. We were not present.

23 THE COURT: Sounds to me like you are making a 60(B)
24 motion for relief from judgment ---

25 MR. GENDE: Yes, Your Honor.

1 THE COURT: ---Or lack of jurisdiction.

2 MR. GENDE: Well, we have made ---

3 THE COURT: Personal jurisdiction over you in the prior
4 action.. Isn't that kind of what you are doing? You are
5 saying ---

6 MR. CONNELL: No, Your Honor. He's actually asking --
7 think about what he's doing here. He's asking you to set
8 aside a Order for someone that he might have had an insurance
9 relationship. He's not asking for anything other than that.
10 He wants to set aside the Master-in-Equity's, and Special
11 Referee's Order assigning that Cause of Action that was done
12 by him, and he doesn't have a right to be involved in that,
13 number one. He's not representing RKC Entertainment.

14 THE COURT: Okay. So he could do it voluntarily?
15 Couldn't RKC just assign it ---

16 MR. CONNELL: Right. They could have done it. You
17 couldn't have done a thing about that. That's right.

18 THE COURT: Just assign our rights.

19 MR. GENDE: Well, we think that there is a problem with
20 RKC having done that voluntarily, and we've discussed that in
21 our Brief, and that is not what happened. What happened is, a
22 Special Referee took a default judgment and decided that the
23 Plaintiff, Ms. Narruhn, could have a cause of action against a
24 private person, could have a cause of action against the
25 insurance carrier, which is contrary to the laws of the State

1 of South Carolina, and did it without the insurance carrier
2 having notice, being present, being able to make any argument,
3 and there is substantial questions about coverage in this
4 matter. We canceled the policy, number one. Number two,
5 there was an assault. There's assault exclusions in here.
6 Number three, they never communicated to us about the claim.
7 There are cooperation clauses in the Contract of Insurance.
8 There's all kinds of reasons why that shouldn't have happened.

9 Also, the supplemental procedure ---

10 **THE COURT:** And those are defenses which you can
11 interpose against Ms. Narruhn. If she has taken the position
12 of RKC, I mean, they are still viable.

13 **MR. GENDE:** However, more importantly, or, you know, a
14 corollary, the supplemental proceedings themselves were
15 defective. We argue this in our Memorandum. Number one, they
16 have Rule 52. They have to find certain findings of facts and
17 conclusions of law, and sufficient findings of facts and
18 conclusions of law to state that Alea had any coverage or any
19 money owed to the Plaintiff was simply not done in this case.
20 Read the Order of Reference, or excuse me, the Special
21 Referee's Order, which I know you have. All he essentially
22 does is find that there was an insurance policy out there, so
23 that wasn't adequate.

24 **THE COURT:** And he assigns whatever the rights are,
25 sort of like a quitclaim deed, you know.

1 MR. CONNELL: Kind of like you do in a bad faith claim,
2 Your Honor. If you get a judgment the insured assigns you.
3 We served Mr. Krump on behalf of RKC. He didn't show up. We
4 asked the Court to do that and they granted that, and there's
5 nothing wrong with that. That's done all -- in South
6 Carolina.

7 MR. GENDE: In order for a special referee in a
8 supplemental proceedings to assign anything there has to be
9 found there is a legal, substantial, definable thing for them
10 to assign. In this case there is not. There is no ownership
11 that was established that they would have any right to any
12 money that Alea had.

13 THE COURT: Okay, tell me -- and this is what gives me
14 pause here, what authority do I have to set aside the judgment
15 of a Special Referee to whom a matter has been referred by a
16 second judge, some other judge. I assume -- it wasn't me, was
17 it?

18 MR. CONNELL: Judge John signed the Order.

19 THE COURT: Judge John refers it, with finality, okay.
20 How then may I come forward and set aside, essentially Judge
21 John's Order and the Order of the Special Referee. I mean, at
22 best it would need to go before Judge John, at the very best.

23 MR. CONNELL: Your Honor, it can't even go to ---

24 THE COURT: And I don't even think that would work.

25 MR. CONNELL: It doesn't work. When you -- that's what

1 finality is all about, as Your Honor knows. When a Special
2 Referee has an Order of Finality you've got to go back to that
3 special referee and make that argument.

4 And remember, this is Alea making an argument for an
5 insured they say they don't have coverage for, so how does
6 Alea have the right to even do that?

7 So, you are right, Your Honor, you could not do that.
8 You could not do anything in regard to another Judge's Order,
9 and this is too removed. This is Judge John referring to a
10 special referee.

11 THE COURT: Judge John essentially says this Special --
12 who was this Special Referee?

13 MR. CONNELL: Nate Fata.

14 THE COURT: That Nate Fata will hear this. As a
15 Special Referee he has the same authority as a Circuit Judge.
16 He's going to rule, and he's going to dispose of this case
17 with finality. There is no precedent. There is no authority
18 for a second Circuit Judge to come in and set aside what that
19 Special Referee appointed by Judge John has to say. I mean --
20 -

21 MR. GENDE: We would argue that they do. First of all,
22 we are only asking that the Special Referee's Order be set
23 aside. Number two, the 60(B) requires on motion and upon
24 terms that are just, the Court may relieve a party, and we
25 were not a party to that prior action. We are a party to this

1 action. There are due process reasons what you should be able
2 to relieve that, because we had no notice, we had no hearing,
3 we had no judicial review on that, and for those reasons ---

4 THE COURT: But how are you prejudiced by that? It's
5 the same action that RKC could have brought if -- if there was
6 no -- if it was never addressed in the Special Referee's
7 Order. He never addressed this, never considered it, and RKC
8 could have made this same claim, could it not, if it had a Six
9 Million Dollar judgment against it.

10 MR. GENDE: We are prejudiced because we are put in a
11 position of defending a tort action as an insurance carrier
12 against a private individual, which is not allowed in this
13 State. That alleged assignment, or right, was created in a
14 judicial proceeding for which we had no notice, and we are not
15 part, and had no review.

16 THE COURT: Why wasn't this action brought as assignee
17 of RKC?

18 MR. CONNELL: I could have done that, Your Honor,
19 brought it only simply based on what the Order of the Special
20 Referee allowed me to do. I mean, I could -- I could change
21 the caption and put it as Narruhn, as assignee of RKC
22 Entertainment. I may do that in the motion to amend, but I
23 still think the procedure was appropriate. I mean, at every
24 step RKC was notified of the trial before Judge Baxley, a
25 verdict was entered, they were notified of the supplementary

1 proceeding, a verdict was entered against them, and in fact
2 this -- this is even better than that, because Alea knew all
3 along that the Six Million Dollar judgment trial was pending,
4 and wrote a letter, which is in their Brief, that says, we are
5 not going to take any -- we are not going to be involved in
6 this whatsoever, so they had -- not only did they have notice,
7 they had notice long before the Six Million Dollar verdict was
8 rendered.

9 MR. GENDE: May I respond to a couple of things? The
10 only thing we had notice of is what is in that -- that letter.
11 We didn't have notice of any Six Million Dollar verdict in
12 this case. We didn't have notice about the Six Million Dollar
13 judgment.

14 MR. CONNELL: That's cause the trial hadn't happened
15 yet.

16 MR. GENDE: Well, that's my point exactly. We didn't
17 have the kind of notice that Mr. Connell is alleging that we
18 had. We had no service, no legal, you know, notice to attend
19 and appear to answer ---

20 THE COURT: Are you saying that if you knew Six Million
21 Dollars was on the line you would have perked up?

22 MR. GENDE: No. I'm saying that we had the notice that
23 the policy for which we -- or a -- an event for which we
24 disclaimed that didn't have coverage for three substantial
25 reasons.

1 THE COURT: Did you ever send a letter -- did you ever
2 send a letter to RKC and say, look, we are -- we are -- we are
3 not going to cover you on this, we are not going to defend
4 either? Did you ever have any correspondence like that with
5 RKC? I would bet you did. I would certainly think you would
6 have.

7 MR. GENDE: ---answer to that at this point, and just
8 wouldn't want to speculate on what ---

9 THE COURT: Okay.

10 MR. CONNELL: And Your Honor, when you look at Exhibit
11 5 it says we have -- we have tendered the defense to you as
12 landlord of the underlying action when the Six Million Dollar
13 verdict was gotten. I mean, and then she says, no you don't,
14 we are not going to do this. So I mean, it's pretty clear, I
15 think, that they had notice.

16 MR. GENDE: The other thing we had absolutely no notice
17 of, that there was going to be some -- that he was going to
18 seek as assignment against Alea, you know, we didn't know any
19 of that.

20 And also, there's a serious question about whether or
21 not RKC could have assigned a right to pursue, you know, their
22 causes of action to the Plaintiff. There's cooperation
23 requiring this, or at least that they were going to still
24 argue for some kind of coverage.

25 THE COURT: You would still have the same defenses.

1 MR. GENDE: Correct. They couldn't do that and be
2 consistent with an argument there was still coverage.

3 THE COURT: Well, I just don't believe that I have
4 authority to go set aside the Special Referee's Order. I just
5 do not believe I have that authority, and that's my ruling.

6 MR. GENDE: Well, Your Honor, if I may just interrupt
7 for just a second.

8 I understand what you are saying. I hear that argument.
9 I have not heard any legal basis, except, you know, the
10 discussion about Judge John issued it to the Special Referee,
11 and that ---

12 THE COURT: Well, I haven't heard any authority --
13 heard you give me any authority for that.

14 MR. GENDE: Rule 60(B)..

15 MR. CONNELL: Your Honor, there are cases on -- I
16 didn't bring them with me because I didn't get the Brief until
17 yesterday, but there are cases on special referee with
18 finality. I mean, there are a number of them. I could give
19 them to you. It's clear. You have to either go back to them,
20 like Your Honor suggested. You have to make a -- have to file
21 a motion ---

22 THE COURT: All right. I'll let you both brief it,
23 okay. Get me something within the next ten days. Okay.

24 MS. WALL: Your Honor, before we leave may I just put
25 on the record ---

1 THE COURT: Yes, Ms. Wall.

2 MS. WALL: This -- thank you, Your Honor. This
3 colloquy brings out exactly the problem that my client is
4 having here. They are arguing about the validity of an
5 assignment. Well, there isn't even an assignment as to my
6 poor client, Anderson. How can Elisa Narruhn possibly
7 continue under any theory or claim against Anderson General
8 Insurance? I don't care if it's under negligence or any other
9 cause of action. She can't have one.

10 THE COURT: That's all they've got is negligence, and
11 your motion is still viable as to that. If, you know, Mr.
12 Connell says, I just need some more time on discovery I may
13 very well grant your motion.

14 I want this put back before me. Ms. Wall, if you will
15 contact the non-jury coordinator -- that's Ms. Johnson -- and
16 tell her that we didn't resolve all of it. Thirty days should
17 be sufficient, forty-five days, something like that.

18 Mr. Connell, bring it back before me and we will see
19 what we can do on that.

20 Give him at least thirty days after you've served him
21 with responses to discovery.

22 MR. CONNELL: Your Honor, I'm going to amend the
23 Complaint.

24 Are you going to object to me amending it ---

25 I mean, because obviously they will carry it out, if I

1 amend the Complaint to add some of the allegations that I've
2 learned from what you have given me now.

3 MS. WALL: I'll have to refile then my 12(B)(6) cause
4 it doesn't change the fact that your client has no standing to
5 sue Anderson. So I would file it, again, I guess ---

6 THE COURT: Well, let's let him go ahead and amend it
7 then, and you can file it and your motion will -- we will hear
8 it as to his Amended Complaint, and maybe we will save some
9 time down the road. Okay.

10 So, Mr. Connell, you owe me an order. No, excuse me.
11 We are going to brief that. Clare will prepare an order.

12 Ms. Wall, you owe me an order, right.

13 Okay.

14 MR. GENDE: And we are briefing the issue of the
15 Circuit Court's ability to set aside an order of ---

16 THE COURT: That's all I want briefed. That's it.
17 Okay.

18 MR. GENDE: Very good.

19 THE COURT: Thank you very much.

20 MR. GENDE: Thank you, Your Honor.

21 MS. WALL: Thank you, Judge.

22 THE COURT: All right. It's good to see you.

23 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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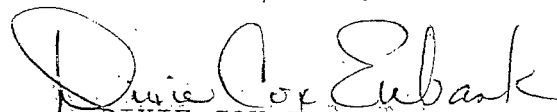
31

C E R T I F I C A T E

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2
3 I, the undersigned, DIXIE COX EUBANK, Official Court
4 Reporter for the Fifteenth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate and complete Transcript of Record of all the
7 proceedings had and evidence introduced in the MOTION HEARING
8 of the captioned case, relative to appeal, in the COURT OF
9 COMMON PLEAS NON-JURY on the 1st day of March, 2011.

10 I DO FURTHER CERTIFY that I am neither of kin, counsel
11 nor interest to any party hereto.

12 June 20, 2011

13 
14 DIXIE COX EUBANK

15 CIRCUIT COURT REPORTER
16 FIFTEENTH JUDICIAL CIRCUIT
17
18
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25

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

IN THE COMMON PLEAS COURT

ELISA NARRUHN

Plaintiff

vs.

RKC ENTERTAINMENT, LLC D/B/A THE RED
ROOM AND ARDON PERCEVAL CATO, II

Defendant

AFFIDAVIT

OF SERVICE

TIME OF SERVICE 2:55 PM

CASE # 2005CP264134

HORRY COUNTY
05 NOV - 6 PM 1:14
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, the undersigned
deponent, who being duly sworn says that he/she served the
SUMMONS, AMENDED COMCPLAINT, INTERROGATORIES, REQUEST FOR PRODUCTION
in the action on RKC ENTERTAINMENT, , by delivery to

()

personally;

()

, the

of the party served, and

a person of discretion residing at the residence of the party served;

(X) RICHARD CRONCE

, the REGISTERED AGENT

of RKC ENTERTAINMENT, LLC

and leaving with him/her a copy at

1220 F RIVER OAKS DR
MYRTLE BEACH, SC

in Horry County, South Carolina on the 12th day of OCTOBER 2005,
at 2:55 o'clock P.M., that deponent knows the person so served , and
that deponent is not a party of this action, is not less than
eighteen (18) years of age and has no interest therein or connection
therewith.

SWORN to and subscribed before me

this 17th day of OCTOBER , 2005

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 10-29-2006

RANDALL W. LACK
DEPUTY SHERIFF

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 05-CP-26-4134

Elisa Narruhn,)
Plaintiff,)
vs.)
RKC Entertainment, LLC d/b/a)
The Red Room and Ardon)
Perceval Cato, II,)
Defendants.)

**AFFIDAVIT OF DEFAULT
AS TO DEFENDANT RKC**

FILED
HORRY COUNTY
06 APR 17 AM 10:38
CLERK OF COURT

PERSONALLY appeared before me, J. Dwight Hudson, who, being duly sworn, states that he is the Attorney for the Plaintiff(s) in the above action; that a Summons and Complaint was duly served on the Defendant(s), October 12, 2005 on Richard Crouce, Registered Agent for Defendant RKC Entertainment, LLC d/b/a The Red Room, by leaving a copy of same with said Defendant(s), as shown by the Affidavit of Service of Randall W. Lack, Deputy Sherriff for Horry County; that more than thirty (30) days have elapsed since the service of said Summons and Complaint and that the Defendant(s) has/have served no Answer, Notice of Appearance, Motion or other pleading in this matter is/and now are in default. This Affidavit is provided pursuant to the provisions of Circuit Court Rule 55; that Defendant(s) is/are not a member of the military service; and the Defendant(s) is/are in default.


J. DWIGHT HUDSON, ATTORNEY

Dated: April 4, 2006

SWORN to and subscribed before me
this 4th day of April, 2006.


Notary Public for South Carolina: Jacquelyn S. McCoy
My Commission Expires: 07/09/2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELISA NARRUHN

PLAINTIFFS

v.

JACOB GARRON A/K/A JOSEPH
BARRON

DEFENDANT

) IN THE COURT OF COMMON PLEAS
) THE FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2008-CP-26-2609
)
)
)
)
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)
)
)

STIPULATION OF DISMISSAL
WITH PREJUDICE

CE 11/12/24 PM 1:54

COME NOW, Plaintiff Elisa Narruhn and Defendant Joseph Barron sued as Jacob Garron a/k/a Joseph Barron, pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure and by and through their counsel of record, and hereby stipulate to the dismissal with prejudice of the Plaintiff's claims against Defendant Joseph Barron sued as Jacob Garron a/k/a Joseph Barron in the above-captioned action.

KELAHHER, CONNELL AND CONNOR, PC CARLOCK, COPELAND & STAIR, LLP

By:

GENE M. CONNELL, JR.

Attorney for Plaintiff Elisa Narruhn

P.O. Box 14547
Surfside Beach, SC 29578
(843) 238-5648

By:

N. KEITH EMGE, JR.
State Bar No.: 065955

DAVID J. HARMON
State Bar No.: 72506

Attorneys for Defendant Jacob Garron a/k/a
Joseph Barron

40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307

E3501_11927

Law Offices of Gerald Huston, LLC

c/o 3759 North Ravenswood, Suite 231

Chicago, Illinois 60613

(630) 750-0450 (Huston direct)

(773) 880-1260 (Office main)

(773) 880-1265 (Fax)

Via Facsimile & Certified U.S. Mail Return Receipt Requested

October 6, 2008

Ms. Beth Gauldin
Assistant Vice President - Claims
Tapco Underwriters, Inc.
3060 South Church Street
P.O. Box 286
Burlington, N.C. 27215

RECEIVED
OCT 14 2008
TAPCO

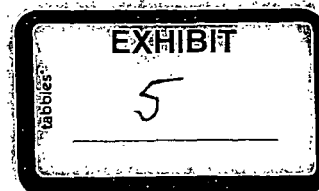
Re: **Our Insured:** Joseph Barron
Your Insureds: R.K.C. Entertainment, LLC d/b/a The Red Room
Joseph Barron (additional insured)
Case Caption: *Narruhn v. Jacob Garron aka Joseph Barron*
Case No.: 08-CP-26-2609
Jurisdiction: Court of Common Pleas - County of Horry, S.C.
Date of Loss: 4/9/05
AESLIC File No.: C66942

Dear Ms. Gauldin:

My firm represents American Empire Surplus Lines Insurance Company ("American Empire") with regard to the above-referenced lawsuit. We write to you today in Tapco Underwriters, Inc.'s ("Tapco") capacity as Managing General Agent for Alea London, Ltd. If our understanding of Tapco's relationship with R.K.C. Entertainment and/or Alea London is in error, please advise us immediately.

Upon information and belief, Alea London, Ltd./Tapco Underwriters, Inc., issued a commercial general liability (believed to be Policy No. ALT 047-106) to its insured, R.K.C. Entertainment, LLC d/b/a The Red Room, that was in effect on April 9, 2005. More specifically, upon belief, the policy provided \$1,000,000 in primary insurance coverage for occurrences falling within the policy period, believed to be 12/9/04 to 12/9/05. Under that policy, Joseph H. Barron was named as an additional insured with regard to general liability claims. (Please see Certificate of Liability Insurance, attached hereto.)

Please be advised that on or about April 1, 2008, Plaintiff Elisa Narruhn filed a Complaint in the Court of Common Pleas, Fifteenth Judicial Circuit, Corry County, South Carolina,



E3501-11927

Ms. Beth Gaudin

Assistant Vice President - Claims

Tapco Underwriters, Inc.

October 6, 2008

Page 2

captioned *Narruhn v. Jacob Garron aka Joseph Barron*, case no. 08-CP-26-2609 (hereinafter "the Complaint"). (Please see the Complaint, attached hereto.)

In the Complaint, Plaintiff alleges that defendant Joseph Barron was the owner and/or landlord of the property at 1121 North Kings Highway, Myrtle Beach, S.C., which was operated as an eating and drinking establishment known as the Red Room. Plaintiff alleges that she was a patron of the Red Room on April 9, 2005, when she was assaulted by another Red Room patron. Plaintiff alleges Mr. Barron was negligent in various respects relating to the property at issue and RKC Entertainment's operation of the Red Room, which Plaintiff characterizes as operating in "dangerous and unsafe conditions." Plaintiff alleges that, as a result of that negligence, she suffered various personal injuries, for which she now seeks actual and punitive damages.

On or about August 14, 2008, Mr. Barron was served with summons and Complaint. On or about August 18, 2008, American Empire was tendered a copy of the Complaint and asked to defend and indemnify Mr. Barron. American Empire is currently providing a defense to Mr. Barron, reserving any and all policy defenses.

Additionally, at all times relevant to the Complaint, a Lease Agreement was in effect between Mr. Barron and your first-named insured, RKC Entertainment, LLC. (Please see the Lease Agreement, attached hereto.) Pursuant to the terms of the Lease Agreement, RKC Entertainment agreed as follows:

12. Indemnity, Hold Harmless, Insurance. Tenant [RKC Entertainment] will indemnify and hold harmless the Landlord [Joseph Barron] against all liability, claims, suits or demands arising out of or asserted or brought by reason of any of the Tenant's operations and use of the Premise for any injury or damage on or about the Premised Premises, whether caused by the negligence of the Tenants, its officers, agent employees or otherwise. Tenant shall procure and maintain in force, at his expense, during the term of this Lease, and any extension thereof, fire and extended coverage insurance on the contents of the leased premises and single limit public liability insurance in the amount of at least \$1,000,000 for personal injury and \$100,000.00 property damage. Such coverage shall be adequate to protect against liability for damage claims through public use or arising out of accidents occurring around or in the leased premises. The insurance policy shall provide coverage for contingent liability of Landlord or any claims or losses and Tenant shall name Landlord as co-insured under said policy upon execution of this Lease. All policies of casualty insurance shall contain a waiver of subrogation against Landlord and Tenant. Landlord shall have no responsibility for the personal property of Tenant nor for the insurance of same.

Lease Agreement, at Paragraph 12, emphases added.

E3501-11927

Ms. Beth Gaudin
Assistant Vice President - Claims
Tapco Underwriters, Inc.
October 6, 2008
Page 3

Pursuant to Mr. Barron's status as an additional insured under the Alea London, Ltd./Tapco policy, American Empire hereby tenders defense and indemnification of this claim to Alea London, Ltd./Tapco. American Empire further requests that Alea London, Ltd./Tapco assume all costs of defense of this matter, including all costs and expenses incurred to date. Additionally, American Empire also tenders the defense and indemnity of the Complaint to Alea London, Ltd./Tapco pursuant to the terms of the Lease Agreement in effect between Mr. Barron and your first-named insured RKC Entertainment, LLC.

Please contact us at your earliest convenience to discuss this matter and whether Alea London, Ltd./Tapco will assume the defense and indemnification of Mr. Barron relating to this lawsuit. If it is your position that the Alea London, Ltd./Tapco policy is not required to respond to this claim, please advise us in writing immediately. I look forward to speaking with you soon.

Very truly yours,

LAW OFFICES OF GERALD HUSTON



Gerald W. Huston

Alea North America (via U.S. Mail only)
55 Capital Boulevard
Corporate Ridge
Rocky Hill, CT 06067

Anderson General Insurance (via U.S. Mail only)
3721 Wesley St. Unit 133
Columbus Plaza
Myrtle Beach, S.C. 29579

Joseph H. Barron (via U.S. Mail only)

Michael Matheus (via U.S. Mail only)
Casualty Line Manager
American Empire Group
580 Walnut Street, 10th Floor
Cincinnati, OH 45202

E3501_11927

October 8, 2008

Gerald W. Huston
Law Offices of Gerald Huston, LLC
3759 North Ravenswood, Suite 231
Chicago, IL 60613

Sent via facsimile # 773-880-1265

Re : Insured : The Red Room
Policy #: ALT 047106
D/loss : 4/8/05
Your : Joseph Barron

Mr. Huston,

We are the agent of the Insurer, Alea London Limited ("Underwriters") subscribing to Certificate No. ALT 047106 ("Policy"). We are in receipt of the Summons and Complaint filed against Jacob Garron aka Joseph Barron ("your client") by Elisa Narruhn. We understand that you have tendered this matter for defense and indemnification under this policy of insurance.

Please be advised that our records indicate that this policy canceled effective March 29, 2005 for non payment of premium to the premium finance company.

As there has been no occurrence of bodily injury or property damage during the policy period, we regret that Underwriters cannot assist you with the defense or indemnification of this matter and you should take steps to protect your client's interests in this matter.

By stating the above reason for denial, Alea London Limited do not intend to waive any of their rights or defenses, which they may now have or may discover in the future under this policy of insurance. All rights, defenses and privileges afforded to Underwriters under this policy of insurance are expressly reserved on their behalf.

E3501_11927

Should you have any questions, comments or further information that you feel would cause the carrier to alter their position, please advise in writing and we will forward it to Underwriters for consideration.

Best regards,

Beth S. Gaudin
Assistant Vice President - Claims



Commercial Division
1-800-334-5579

3060 South Church Street • P.O. Box 286
Burlington, North Carolina 27216
(Local) 336-584-8892
(Fax) 336-584-8880
(Claims Fax) 336-538-0094
www.GoTapco.com

Personal Lines Division
1-800-548-1489

Certification

The undersigned hereby certifies that the attached is a true and complete copy of policy number ALT 047106 issued to The Red Room and R.K.C. Entertainment, LLC for Commercial General Liability and Commercial Liquor Liability coverage; by Tapco Underwriters, Inc., a managing general agent for Alea London Limited.

Tapco Underwriters, Inc.

By Beth S. Gaudin

Beth S. Gaudin
Assistant Vice President - Claims



Lloyd's, London Correspondents



Burlington, North Carolina

Clearwater, Florida

Hc

exas

Los Angeles, California

Alea 0656

04-15-2005 11:30 AM

NOTICE OF CANCELLATION OR REFUSAL TO RENEW

Policy No
A 7106

Issued Through Agency Or Office At:
Tapco Underwriters, Inc.
Burlington, NC 27215

Cancellation or Termination Will Take Effect At:
Date
03/29/2005 12:01 AM

Date of Notice
04/14/2005

Name and
Address of
Insurance
Company

Received From:
ALEA LONDON, LTD. (330320.04 - COMM)
DAWSON HOUSE
5 JEWRY STREET
LONDON EL EC3N2EX

Name and
Address of
Insured

THE RED ROOM
1220 F RIVER OAKS DR.
MYRTLE BEACH SC 29577

ANDERSON GENERAL INSURANCE
3721 WESLEY ST UNIT 133
COLUMBUS PLAZA
MYRTLE BEACH SC 29579

For use as a certificate of mailing as provided in Section 931 of the Domestic Mail Manual
May be used for Domestic and International mail, does not provide for insurance.

Cancellation

You are hereby notified, in accordance with the terms and conditions of the above mentioned numbered policy and in accordance with the law, that your insurance will cease at and from the hour and date indicated above. If premium has been paid, premium adjustment will be made as soon as practicable.

THIS ACTION HAS BEEN TAKEN FOR THE FOLLOWING SPECIFIC REASON OR REASONS:
FINANCE COMPANY REQUEST

(Duplicate of Notice of Cancellation or Termination to Lienholder)

You are hereby notified that the agreement under the Loss Payable Cause payable to you as Lienholder which is a part of the above policy, issued to the above insured, is hereby cancelled (or terminated) in accordance with the conditions of the policy, said cancellation (or termination) to be effective on and after the hour and date mentioned above.

Insurance
Company

United States Postal Service
Received from:
ALEA LONDON, LTD. (330320.04 - COMM)

Name and
Address of
Lienholder 1

Name and
Address of
Lienholder 2

Name and
Address of
Lienholder 3

For Registered Mail or Certificate Mail
Notice of Cancellation or Nonrenewal to
the insured and, if required, to the
Lienholder, the appropriate U.S. Postal
Service receipt must be attached hereto
and no postage stamp should be affixed
to the receipt reproduced hereon.

CERTIFICATION

I hereby certify that I personally mailed
in the U.S. Post office at the place and
time stamped hereon, a notice of
cancellation or nonrenewal to the insured
and, if required, to the Lienholder, an
exact carbon copy of which appears above,
and at said time received from the
U.S. Postal Service the receipt made
a part hereof or attached hereto.

Signed 04/14/2005

Premium 3142.00 Return Premium 2195.00
Company Copy

Signature
Expiration 12/09/2005
ACCT#: AUOCUG



Alea 0657

03-08-2005 11:03 AM

TAPCO UNDERWRITERS, INC.

POLICY NUMBER:ALT047106

COMPANY:ALEA LONDON, LTD. (330320.04 - COMM

'POLICY ENDORSEMENT'

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NAME OF ASSURED

THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220-F RIVER OAKS DR.

MYRTLE BEACH , SC 29577

PRODUCER

ANDERSON GENERAL INSURANCE
COLUMBUS PLAZA

3721 WESLEY ST UNIT 133

MYRTLE BEACH , SC 29579

AGENT #:3901442

EFFECTIVE DATE:12/09/2004

EXPIRATION DATE:12/09/2005

New Annual Premium: \$ 3142.00

Difference: \$ 100.00

Additional Premium:\$ 100.00

Return Premium:

ENDORSEMENT EFFECTIVE DATE:03/03/2005

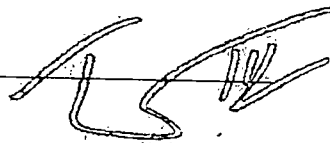
ENDORSEMENT NUMBER:002

It Is Agreed And Understood That:

FORM CG2010 (07-04) IS ADDED TO THE POLICY TO ADD JOSEPH H. BARRON
AS ADDITIONAL INSURED.
PREMIUM IS 100% EARNED.
SEE ATTACHED FORMS.

All other provisions and conditions of this policy remain unchanged.

AUTHORIZED _____



This Endorsement Is Issued By TAPCO Underwriters, Inc. In Burlington, N.C.
PRODUCER#:143 ACCOUNT NUMBER:AUOCUG



Alea 0658

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Additional Insured Person or Organization:

JOSEPH H. BARRON
630 1ST AVENUE, NW
HICKORY, NC 28601

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

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion(s) apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

TAPCO UNDERWRITERS, INC.

POLICY NUMBER: ALT047106

COMPANY: ALEA LONDON, LTD. (330320.04 - COMM

'POLICY ENDORSEMENT'

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

NAME OF ASSURED
THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220-F RIVER OAKS DR.

MYRTLE BEACH, SC 29577

PRODUCER
ANDERSON GENERAL INSURANCE
COLUMBUS PLAZA
3721 WESLEY ST UNIT 133
MYRTLE BEACH, SC 29579
AGENT #: 3901442

EFFECTIVE DATE: 12/09/2004

EXPIRATION DATE: 12/09/2005

New Annual Premium: \$ 3042.00
Difference: \$ -100.00

Additional Premium:
Return Premium: \$ -100.00

ENDORSEMENT EFFECTIVE DATE: 12/09/2004

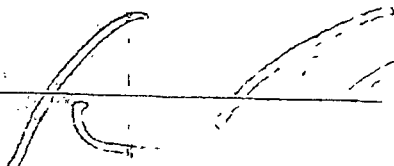
ENDORSEMENT NUMBER: 001

It Is Agreed And Understood That

THE POLICY IS AMENDED TO DELETE ONE ADDITIONAL INSURED THE POLICY
SHOULD HAVE ONLY LISTED ONE ADDITIONAL INSURED IN LIEU OF TWO

All other provisions and conditions of this policy remain unchanged.

AUTHORIZED



This Endorsement Is Issued By TAPCO Underwriters, Inc. In Burlington, N.C.
PRODUCER #: 15

ACCOUNT NUMBER: AUOCUG



Alea 0660

THIS DECLARATION PAGE IS ATTACHED TO AND FORMS PART OF CERTIFICATE / COVER NOTE PROVISIONS

CERTIFICATE / POLICY NUMBER: **ALT047106****Name of Assured**

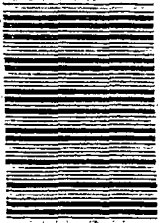
THE RED ROOM
R.K.C. ENTERTAINMENT, LLC.
1220 F RIVER OAKS DR.
MYRTLE BEACH, SC 29577

THIS COMPANY HAS BEEN APPROVED BY THE
DIRECTOR OR HIS DESIGNEE OF THE SOUTH
CAROLINA DEPARTMENT OF INSURANCE TO
WRITE BUSINESS IN THIS STATE AS AN ELIGIBLE
SURPLUS LINES INSURER, BUT IT IS NOT
AFFORDED GUARANTY FUND PROTECTION.

1 ANDERSON GENERAL INSURANCE
3721 WESLEY ST UNIT 133

MYRTLE BEACH, SC 29579

2 Effective From 12:01am Both Days at Standard Time December 9, 2004 to December 9, 2005

	NAME OF INSURERS	AMOUNT OR PERCENT	 Auocu
3 Acting upon your instruction, we have effected the insurance with:	Section I ALEA LONDON LIMITED	100%	
	Section II ALEA LONDON LIMITED	100%	

LIMIT	COVERAGE	RATE	PREMIUM
	<u>SECTION I - LIABILITY</u>		
4 \$1,000,000	COMMERCIAL GENERAL LIABILITY	SEE CL150	\$1,961.00
	<u>SECTION II - LIQUOR LIABILITY</u>		
\$300,000	COMMERCIAL LIQUOR LIABILITY	SEE S8000	\$1,181.00

TOTAL BASE 3,142.00

SPECIAL CONDITIONS		TERRORISM PREMIUM
5 IL0017 (11-85), IL0021 (11-85), TAPCO1998, MOLD EXCL (10-01), CL150, S8000 (4-94)		POLICY FEE \$125.00
		INSPECTION
		TAX \$196.02
		FSLSO SERVICE FEE
		TOTAL \$3,463.02

In witness whereof this covernote has been signed at BURLINGTON, NC this 21 day of December, 2004

TAMMYT SC

TAPCO UNDERWRITERS, INC

by

Alea 0661

IL 00 17 11 85

COMMON POLICY CONDITIONS

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

A. CANCELLATION

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

B. CHANGES

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

C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the

policy period and up to three years afterward.

D. INSPECTIONS AND SURVEYS

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 conditions:

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

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

E. PREMIUMS

The first Named Insured shown in the Declarations:

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

F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IL 00 21 11 85

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY
COMMERCIAL AUTO COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY
NEW YORK DEPARTMENT OF TRANSPORTATION

1. The insurance does not apply:

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

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

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

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

- (1) The nuclear material (a) is at any nuclear

facility owned by, or operated by or on behalf of, an insured or (b) has been discharged or dispersed therefrom;

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

2. As used in this endorsement:

Hazardous properties include radioactive, toxic or explosive properties;

Nuclear material means source material, Special nuclear material or by-product material;

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

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

Waste means any waste material (a) containing by-product material other than the tailings or wastes

produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content and (b) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of nuclear facility.

Nuclear facility means:

- (a) Any nuclear reactor;
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel or (3) handling, processing or packaging waste;
- (c) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the

premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

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

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

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

Property damage includes all forms of radioactive contamination of property.

SERVICE OF SUIT CLAUSE

It is further agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States; to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon

LeBoeuf, Lamb, Green & MacRae 125 West 55th St. New York, NY 10019-4513

and that in any suit instituted against any one of them upon this contract. Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Q

Q

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy:

This insurance does not apply to "bodily injury", "property damage", "personal injury", "advertising injury", "medical payments" arising out of, resulting from, caused by, contributed to, or in any way related to any "mold".

This exclusion applies to all "bodily injury", "property damage", and "medical payments" included in the "products-completed operations hazard". This exclusion also applies to all "bodily injury", "property damage" and "medical payments" which is not included in the "products-completed operations hazard".

This exclusion also applies to any loss, cost or expense arising out of or associated, in any way, with any:

- 1) request, demand, or order that any insured or others abate, mitigate, test for, monitor, remediate, clean up, remove, contain, treat, detoxify, kill, destroy, dispose of, investigate or neutralize, or in any way respond to or assess the presence or effects of "mold"; or
- 2) claim or suit on behalf of any person, entity, or organization, including any governmental authority, for damages because of abating, mitigating, testing for, monitoring, remediating, clean up, removing, containing, treating, detoxifying, killing, destroying, disposing of, investigating, or neutralizing, or in any way responding to, or assessing, the effects of "mold"; or
- 3) any obligation to share with, repay, or indemnify any person, organization or entity, related in any way to items 1) and 2) above.

We will not defend any claim or suit, or pay any damages, loss, expense, cost, or obligation caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold".

The following definition is added to the Policy:

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

Commercial General Liability Total Mold Exclusion
MOLD EXCL (10-01)

Alea 0666

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy:

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing individually, or in any combination therewith or another substance.

Commercial Property Total Mold Exclusion
MOLD EXCL (10-01)

Alea 0667

COMMERCIAL GENERAL LIABILITY COVERAGE PART SUPPLEMENTAL DECLARATIONS

Policy No. ALT047106 Effective Date December 9, 2004
12:01 A.M., Standard Time

Named Insured THE RED ROOM Agent No. 3901442

Item 1. Limits of Insurance

Coverage	Limit of Liability	
Aggregate Limits of Liability	\$ <u>\$2,000,000</u>	General Aggregate (other than Products/Completed Operations)
	\$ <u>1,000,000</u>	Products/Completed Operations Aggregate
Coverage B - Personal and Advertising Injury Limit	\$ <u>1,000,000</u>	Personal and Advertising Injury Limit
Coverage A - Bodily Injury and Property Damage Liability	\$ <u>1,000,000</u>	Each Occurrence Limit
Damage to Premises Rented to You Limit	\$ <u>50,000</u>	Fire Damage Limit
Coverage C - Medical Payments	\$ <u>5,000</u>	Medical Expense Limit

Item 2. Description of Business

Form of Business:

- ☐ Individual
 ☐ Partnership
 ☐ Joint Venture
 ☐ Trust
 ☒ Limited Liability Company

☐ Organization including a corporation (other than Partnership, Joint Venture or Limited Liability Company)

Location of All Premises You Own, Rent or Occupy:

1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577

Description of Business:

RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITH

Item 3. Forms and Endorsements

Form(s) and Endorsement(s) made a part of this policy at time of issue:

CL150 EX, ALEA-GL-01 (01-04), CG0001 (10-01), CG2011 (01-96), CG2136 (11-85), CG2139 (10-93), CG2144 (11-85), CG 2160 (4-98), CG2175 (12-02), CG2407 (11-85), UTS-128g (10-94), x

Item 4. Premiums

Coverage Part Premium:	\$ <u>\$1,961.00</u>
Other Premium:	\$ <u></u>
Total Premium:	\$ <u>3,142.00</u>

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

Alea-0668

COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. ALT047106 Effective Date: December 9, 2004

12:01 A.M., Standard Time

Named Insured THE RED ROOM Agent No. 3901442

Prem. No. 01	Bldg. No. 01	Class Code 16916	Exposure 250,000	Basis GROSS SALES - per \$1000 Gross Sales	
Class Description: RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR				Premises/Operations	
				Rate	Premium
				5.28	\$1,321
				Products/Comp Operations	
				Rate	Premium
				1.76	\$440
Prem. No. 01	Bldg. No. 01	Class Code 49950	Exposure 2.00	Basis T) PER AI	
Class Description: ADDITIONAL INTERESTS				Premises/Operations	
				Rate	Premium
				FLAT	\$200
				Products/Comp Operations	
				Rate	Premium
				INCLUDED	INCLUDED
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium

Alea 0669

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE MONTH DAY YEAR	INSURED
ALT047106	December 9, 2004	THE RED ROOM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
ALL SECTIONS OF THIS SEVEN (7) PAGE ALEA-GL-01 APPLY TO, AND MODIFY, YOUR POLICY.

ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

EXCLUSION - TOTAL POLLUTION

Exclusion f. under COVERAGE A (Section I) is replaced by the following:

- f. (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants; or
 - (b) Claim or suit by or on behalf of a government authority for damages because of testing for, monitoring, clearing up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, oils, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

CG 21 49 11 88

EXCLUSION - ASBESTOS, SILICA DUST, TOXIC SUBSTANCES

The following exclusion is added to COVERAGES A, B, and C (Section I)

This insurance does not apply to:

- (1) "Bodily injury," "personal injury" or medical payments caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelium or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos fibres or dust or silica dust;
- (2) Any "property damage" due to or arising out of the actual or alleged presence of asbestos or silica dust in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, cleaning or removal of any property or substance; or
- (3) "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments or any other action based upon the Insured(s) supervision, removal, instructions, recommendations, warranties (expressed or implied), warnings or advice given, or withheld regarding asbestos fibres or dust or silica dust.
- (4) The installation, manufacture, transportation, storage or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by the policy does not apply to payment for the investigation or defense of any claim or any cost, fine or penalty or for any expense or claim or suit related to any of the above.

EXCLUSION - LEAD CONTAMINATION

The following exclusion is added to COVERAGES A, B, AND C (Section I):

This insurance does not apply to:

- (1) "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments arising out of the ingestion, inhalation or absorption of lead in any form;
- (2) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of lead;
- or
- (3) Any loss, cost or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of lead.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGE

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defense for such action. We shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

EXCLUSION - VOLUNTARY LABOR

The following exclusion is added to COVERAGE A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

EXCLUSION - EMPLOYMENT RELATED PRACTICES

The following is added to COVERAGE A and B (Section I):

This insurance does not apply to "bodily injury" or "personal injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (1) above.

EXCLUSION - COMMUNICABLE DISEASE

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

EXCLUSION - PARTICIPANTS

The following exclusion is added to Paragraph 2., Exclusions of Coverage (Section I - Coverages):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to "any person" while practicing for or participating in any circus, concert, demonstration, event, exhibition, race, rodeo, show, contest or any activity of an athletic or sports nature for the events shown in this Schedule.

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE A. Bodily Injury and Property Damage Liability (Section I - Coverages):

This insurance does not apply to "property damage" to property of "any person" defined herein including but not limited to "autos", watercraft, aircraft, animals or any other property of the foregoing.

The following definition is added to DEFINITIONS. (Section V):

"Any person" shall include but is not limited to animal handlers, announcers, attendants, clowns, contestants, entertainers, mechanics, musicians, officials, participants, singers, speakers, stage crews, stock contractors, vendors or their employees, any person employed by or doing volunteer work for you or on your behalf, or any person involved in the promotion, sponsoring or production of the event designated in the Schedule.

PAR EXC 01 (01/04)

EXCLUSION - CLASSIFICATION LIMITATION

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to "bodily injury", "Property damage", "advertising injury", "personal injury" or medical payments for operations which are not classified or shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

ADDITIONAL CONDITIONS**NOTICE TO ALL POLICY HOLDERS**

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

THIS POLICY EXCLUDES COVERAGE FOR POLLUTION AND / OR ACTUAL, ALLEGED OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS AT ANY TIME.

LIMITATION - OTHER INSURANCE

Other Insurance, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), item b(3) providing Excess Insurance the loss arises out of the maintenance or use of aircraft, "autos" or watercraft is deleted.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION

This Endorsement modifies insurance provided under the following: COMMERCIAL GENERAL LIABILITY COVERAGE-PART

Exclusion c. of Coverage A (Section I) is replaced by the following:

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:

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
 - (a) Requires a license
 - (b) Is for the purpose of financial gain or livelihood; or
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

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EXCLUSION - ELECTROMAGNETIC FIELDS

The following exclusion is added to COVERAGES A, B, C (Section I):

This insurance does not apply to, and no duty to defend is provided by us for any claim for "bodily injury", "property damage", "personal injury", "advertising injury" or medical payments which arise out of, or is contributed to either directly or indirectly, by exposure to magnetic fields, electric fields, electromagnetic fields, electronic fields or any other radiation, however caused or generated.

EXCLUSION - INDEPENDENT CONTRACTORS EMPLOYEES OR LEASED WORKERS

This insurance does not apply to "Bodily Injury", "Personal Injury", "Advertising Injury" to:

1. Any employee or leased worker of independent contractors arising out of operations performed for you by said independent contractors or your acts or omissions in connection with general supervision of such operations if you have rejected the obligations of any workers' compensation or similar law, or abrogated, waived or otherwise set aside common rights or defenses generally accorded any employer under any workers' compensation, disability benefits or unemployment compensation law or any similar law; or
2. The spouse, child, parent, brother or sister of that employee or leased worker as a consequence of 1. above.

MINIMUM EARNED PREMIUM ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that minimum earned premium of 25% (twenty-five per cent) applies to this policy.

EXCLUSION - RADON GAS

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to and no duty to defend is provided by us for:

1. "Bodily injury", "property damage", "personal injury", "advertising injury" or medical payments arising out of the presence of, exposure to, ingestion of, emission or release of radon gas.
2. Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of radon gas; or
3. Any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of radon gas.

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer, who for any reason, does not satisfy all or part of its obligations.

LSW1001 (8/94)

EXCLUSION - INJURY TO LEASED WORKERS AND PRACTICES RELATED TO LEASED WORKERS

A. The following exclusions are added to paragraph 2., Exclusion, COVERAGE A (Section I):

This insurance does not apply to:

o. "Bodily injury" to:

- (1) Any "leased worker" arising out of and in the course of performing his or her duties related to the conduct of your business;
- (2) The spouse, child, parent, brother or sister of that "leased worker" as a consequence of (1) above.

This exclusion applies:

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

p. "Bodily injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination, recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "bodily injury" as a result of (1) through (3) above.

This exclusion applies:

- (1) Whether the "insured" may be held liable as the party responsible for directing the "leased worker" in the performance of his duties related to the conduct of your business or in any other capacity; and
- (2) To any obligation to share damages with or to repay someone else who must pay damages because of the injury.

B. The following exclusion is added to paragraph 2. Exclusions. COVERAGE B (Section I):

This insurance does not apply to:

c. "Personal injury" or "advertising injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination; recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "Personal injury" or "advertising injury" as a result of (1) through (3) above.

C. The DEFINITIONS Section is amended to include the following:

Leased worker" means a person employed by a labor contractor and leased to you.

CANCELLATION CLAUSE

NOTWITHSTANDING anything contained in this Insurance to the contrary, this Insurance may be cancelled by the Insured at any time by written notice or by surrender of this contract of insurance. This Insurance may also be cancelled by or on behalf of the Insurers by the delivery to the Insured or by mailing to the Insured, by registered, certified or other first class mail, at the Insured's address as shown in this Insurance written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Insured, the Insurers shall retain customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis, the Insurers shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein, whichever is the greater.

Payment or tender of any unearned premium by the Insurers shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.

LONDON FORM 1331

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE - PHYSICAL DAMAGE DIRECT

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused; *NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, any loss or damage arising directly from the Fire shall (subject to the provisions of this policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

Note - If Fire is not an insured peril under this policy the words "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

LONDON FORM 1191

SERVICE OF SUIT CLAUSE

It is agreed that in the event of failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon LeBoeuf, Lamb, Greene and MacRae 125 West 55th St. New York, NY 10019-4513 and that any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Insurers' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this Contract of insurance (or Reinsurance), and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

LONDON FORM 1998

WAR AND CIVIL WAR EXCLUSION CLAUSE

Notwithstanding anything to the contrary contained herein, this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

LONDON FORM 464

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

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

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

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

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

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

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

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

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

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

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

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

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

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

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

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

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f. (2) or f. (3) of the definition of "mobile equipment".

h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage" 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. Damage To Property

"Property damage" to:

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

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

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

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

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

k. Damage To Your Product

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

l. Damage To Your Work

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

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

m. Damage To Impaired Property Or Property Not Physically Injured

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

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

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

n. Recall Of Products, Work Or Impaired Property

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

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

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

o. Personal And Advertising Injury

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

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

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. **Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. **Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. **Material Published Prior To Policy Period**

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

d. **Criminal Acts**

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

e. **Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. **Breach Of Contract**

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

g. **Quality Or Performance Of Goods - Failure To Conform To Statements**

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

h. **Wrong Description Of Prices**

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

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

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

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

j. **Insureds In Media And Internet Type Businesses**

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

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

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

k. Electronic Chatrooms Or Bulletin Boards

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

l. Unauthorized Use Of Another's Name Or Product

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

m. Pollution

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

n. Pollution Related

Any loss, cost or expense arising out of any:

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

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

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

c. Injury On Normally Occupied Premises

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

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while taking part in athletics.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

h. War

Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

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

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee; has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

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

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. 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.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

SECTION III - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

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

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

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

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

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

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

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

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

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I, Coverage A Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

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

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

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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

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

5. Premium Audit

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

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

6. Representations

By accepting this policy, you agree:

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

7. Separation Of Insureds

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

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

9. When We Do Not Renew

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

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

SECTION V - DEFINITIONS

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

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means a 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, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above, or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

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

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

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. does not include that part of any contract or agreement:
- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in 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; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

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

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

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or

- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any 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.

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

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

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

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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

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

21. "Your product":

- a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and

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

b. Includes

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

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

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

22. "Your work":

a. Means:

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

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

b. Includes

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 20 11 01 96

ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

Endorsement effective December 9, 2004 12:01 A.M. standard time	Policy No. ALT047106
Named Insured THE RED ROOM	Countersigned by

(Authorized Representative)

SCHEDULE

1. Designation of Premises (Part Leased to You):
1119 & 1121 N KINGS HWY, MYRTLE BEACH, SC 29577
2. Name of Person or Organization (Additional Insured):
SCHWARZD BROTHERS HOLDINGS
1947 N FAYETTEVILLE ST
ASHEBORO, NC 27203

100

Additional Premium:

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

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 16 11 85

EXCLUSION—DESIGNATED PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description of Professional Services:

1. RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITHOUT DANCE FLOOR

2.

3.

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

With respect to any professional services shown in the Schedule, this insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" due to the rendering or failure to render any professional service.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 36 11 85

EXCLUSION NEW ENTITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Part 4. of WHO IS AN INSURED (Section II) does not apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 39 10 93

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".
- b. A sidetrack agreement.
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 44 11 85

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises: 1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577

Project: RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIP

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage", "personal injury" or "advertising injury" arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including microprocessors;
- (b) Computer application software;
- (c) Computer operating system and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

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

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

Any injury or damage arising, directly or indirectly, out of a "certified act of terrorism" or an "other act of terrorism". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

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

B. The following definitions are added:

1. For the purposes of this endorsement, any injury or damage means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to bodily injury, property damage, personal and advertising injury, injury or environmental damage as may be defined in any applicable Coverage Part.
 2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":
 - a. The act resulted in aggregate losses in excess of \$5 million; and
 - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
 3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
- C. In the event of any incident of a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 24 07 11 85

PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Description of Premises and Operations:

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

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

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

Paragraph a. of the definition of "Products-com -

pleted operations hazard" in the DEFINITIONS Section is replaced by the following:

- a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

ENDORSEMENT NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	(STANDARD TIME) MO. DAY YR. 12:01 NOON	INSURED	AGENCY AND CODE
ALT047106	December 9, 2004 X A.M.	THE RED ROOM R.K.C. ENTERTAINMENT, LLC.	ANDERSON GENERAL INSURANCE 3901442

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL PROVISIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that the following special provisions (indicated by an "X") apply to this policy.

SCHEDULE

☒ Bodily Injury and Property Damage Liability Deductible Endorsement

Coverage	Amount and Basis of Deductible
Bodily Injury Liability	\$ 500 per claimant
Property Damage Liability	\$ 500 per claimant
Personal Injury Liability	\$ 500 per claimant
Advertising Injury Liability	\$ 500 per claimant

☒ Minimum and Advance Premium Endorsement

Minimum Premium \$ 3,142.00

☒ Minimum Earned Premium

Minimum Earned Premium 25 % of the original premium.

BODILY INJURY AND PROPERTY DAMAGE LIABILITY DEDUCTIBLE ENDORSEMENT

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

"Aggregate" limits for such coverages shall not be reduced by the application of such deductible amount.

2. The deductible amounts include all legal and loss adjustment expenses.

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the limits of insurance applicable to "each occurrence" for such coverages will be reduced by the amount of such deductible.

3. The deductible amounts stated in the Schedule apply under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of "bodily injury" sustained by one person, or to all damages because of "property damage" sustained by one person, any organization, or association or any individual member of any organization or association as the result of any one "occurrence."

4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," claim or "suit," apply irrespective of the application of the deductible amount.

5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

MINIMUM AND ADVANCE PREMIUM ENDORSEMENT

Item b. of the Premium Audit Condition (under ~~SECTION IV COMMERCIAL GENERAL LIABILITY CONDITIONS~~) is changed to read:

- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit premiums are due and payable to us on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured, subject to a minimum premium listed in the Schedule above. For purposes of this policy, the terms advance premium, audit premium, earned premium, and minimum premium are defined as follows:

Advance Premium — The premium that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.

Audit Premium — The premium that is developed by calculating the difference between the Advance Premium and the Earned Premium.

Earned Premium — The premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis for the policy period.

Minimum premium — The lowest premium for which this insurance will be written for the policy period.

MINIMUM EARNED PREMIUM

If this policy is cancelled at the request of the INSURED, the total retained by the Company shall not be less than the percentage of the original premium listed in the Schedule above.

AUTHORIZED REPRESENTATIVE

DATE

Staple Here For This Policy Set

**Click The Page Forward Arrow (>) Under Formset
to Advance to the Dec. Page**

Agent's Copy

ANDERSON GENERAL INSURANCE
3721 WESLEY ST UNIT 133

MYRTLE BEACH, SC 29579

Insured: THE RED ROOM

Policy Number: ALT047106

RE: CERTIFICATES OF INSURANCE

Please find the following five pre-typed Certificates of Insurance.

You may use these when you receive a request to provide a Certificate of Insurance.

Simply fill in the "Certificate Holder's" name and address; then date the form and furnish a certificate.

We hope this added service will help to save you time in the future when you receive requests for Certificates of Insurance.

(Please note that "Additional Insureds" can only be added by a company issued endorsement.)

If you have questions or need assistance please call 1-800-334-5579.

Issue your next Certificate of Insurance online!

You can now issue Certificates of Insurance online via the Tapco web site at www.gotapco.com.

Once you have accessed the Tapco web site simply click on the Broker Web Services Gateway link. Enter your user name and password.

(If you haven't signed up yet for the TAPCO Broker Web Services Gateway, it's easy to sign-up online. Give us a call today at 1-866-240-0006 for the information that you need to sign up for access to all of your accounts with Tapco.)

To issue a Certificate of Insurance:

- Click on "Certificate of Insurance" link.
- Enter the account information (i.e. Binder ID, Policy Number, Named Insured, etc.) (A payment on the account is required to issue a Certificate of Insurance.)
- Select the Account you want to issue a Certificate for and click the "select" link.
- To Add and/or Edit Certificate Holder or Lien Holder, click the appropriate link.
- Enter the Certificate Holder information.
- Click "save" to ensure the updates are applied.
- Click "Go to Issue Certificate".
- Click the box beside the Certificate Holder name for the certificate that you would like to have issued.
- Click the appropriate delivery method (Email or Download).
- To View and/or Print Certificate of Insurance click "Download".
- To Email Certificate of Insurance check email and enter the recipients email address and click send.

Thank you for your business!

Sincerely,

TAPCO

Alea 0706

CERTIFICATE OF INSURANCE

ISSUE DATE

PRODUCER

ANDERSON GENERAL INSURANCE
3721 WESLEY ST UNIT 133
MYRTLE BEACH, SC 29579

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

INSURED

THE RED ROOM
R&K ENTERTAINMENT, LLC
1220 F RIVER OAKS DR
MYRTLE BEACH, SC 29577

COMPANY LETTER	A	ALEA LONDON LIMITED
COMPANY LETTER	B	
COMPANY LETTER	C	
COMPANY LETTER	D	
COMPANY LETTER	E	

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
A	GENERAL LIABILITY	ALT047106	December 9, 2004	December 9, 2005	GENERAL AGGREGATE	\$2,000,000
					PRODUCTS-COM/OP AGG.	1,000,000
					PERSONAL & ADV. INJURY	1,000,000
					EACH OCCURRENCE	1,000,000
					FIRE DAMAGE (Any one fire)	50,000
					MED. EXPENSE (Any one person)	5,000
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	
					BODILY INJURY (Per Person)	
					BODILY INJURY (Per Accident)	
					PROPERTY DAMAGE	
	EXCESS LIABILITY				EACH OCCURRENCE	
					AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS	
					EACH ACCIDENT	
					DISEASE POLICY LIMIT	
					DISEASE EACH EMPLOYEE	

DESCRIPTION OF OPERATIONS / VEHICLES / SPECIALTY ITEMS

RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS WITHOUT DANCE FLOOR

CERTIFICATE HOLDER

Should any of the above described policies be cancelled before the expiration date, the company shall endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives.

AUTHORIZED REPRESENTATIVE



Alea 0707

**COMMERCIAL LINES POLICY
LIQUOR LIABILITY COVERAGE FORM
SUPPLEMENTAL DECLARATIONS**

These Supplemental Declarations form a part of policy number ALT047106

1. NAMED INSURED AND MAILING ADDRESS

THE RED ROOM
RKC ENTERTAINMENT, LLC.
1220 F RIVER OAKS DR
MYRTLE BEACH, SC 29577

2. LIMITS OF INSURANCE

Aggregate Limit	\$ <u>300,000</u>
Each Occurrence Limit	\$ <u>300,000</u>

3. BUSINESS DESCRIPTION AND LOCATION OF PREMISES

Business Description:

RESTAURANTS WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS

Location of all premises you own, rent or occupy: 1119 & 1121 N. KINGS HWY., MYRTLE BEACH, SC 29577

4. DESCRIPTION OF HAZARDS

DESCRIPTION OF HAZARDS	Code No.	*Premium Basis	Rate	Advance Premium
RESTAURANT	58161	S) 175,000	6.75	\$ 1181

5. Policy may be AUDITABLE

6. SPECIFIC LIQUOR LIABILITY FORMS/ENDORSEMENTS

CG0033(01-96), CG0305(10-93), CG 2160 (4-98), CG2806(11-85), TLIQ 001

This page alone does not provide coverage and must be attached to a Commercial Lines Common Policy Declarations Page, Common Policy Conditions, Coverage Part Coverage Form(s) and any other applicable forms and endorsements.

LIQUOR LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (Section II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section V).

SECTION I - LIQUOR LIABILITY COVERAGE

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); 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.

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

2. This insurance applies to "injury" which occurs during the policy period in the "coverage territory."

a. Exclusions

This insurance does not apply to:

Expected or Intended Injury

"Injury" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

Workers' Compensation and Similar Laws

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

Employer's Liability

c. "Bodily Injury" to:

An "employee" of the insured arising out of (1) and in the course of:

Employment by the insured; or

- (a) Performing duties related to the (b) conduct of the insured's business; or The spouse, child, parent, brother or sister

- (2) of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

Whether the insured may be liable as an

- (1) employer or in any other capacity; and To any obligation to share damages with or (2) repay someone else who must pay damages because of the "injury."

Liquor License Not in Effect

- d. "Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is suspended or after such license expires, is cancelled or revoked.

Your Product

- e. "Injury" arising out of "your product." This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

Causing or contributing to the intoxication

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

Other Insurance

- f. Any "injury" with respect to which other insurance is afforded, or would be afforded, but for the exhaustion of the limits of insurance. This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

SUPPLEMENTARY PAYMENTS

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

All expenses we incur.

1. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
2. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work.
3. All costs taxed against the insured in the "suit."
4. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not

pay any prejudgment interest based on that period of time after the offer.

6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds.
- b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

- a. Your "employees," other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:

- (1) "Injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph (1)(a) above; or
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above.

- (2) "Property damage" to property:

- (a) Owned or occupied by, or
- (b) Rented or loaned

to that "employee," any of your other "employees," by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).

- b. Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

- c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

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

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

- b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

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

SECTION III - LIMITS OF INSURANCE

1. The limits of insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits."

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

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

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

period for purposes of determining the Limits of Insurance.

SECTION IV - LIQUOR LIABILITY CONDITIONS

Bankruptcy.

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

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

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

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

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

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

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

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us.

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claim-

ant's legal representative.

4. Other Insurance.

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

a. Primary Insurance

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

b. Method of Sharing

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

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

5. Premium Audit.

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

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

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

6. Representations.

By accepting this policy, you agree:

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

7. Separation Of Insureds.

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

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

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

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

9. **When We Do Not Renew**

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

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

SECTION V - DEFINITIONS

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

2. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the "injury" 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" 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.

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

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

5. "Injury" means all damages, including damages because of "bodily injury" and "property damage," and including damages for care, loss of services or loss of support.

6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."

7. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

8. "Suit" means a civil proceeding in which damages because of injury to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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

10. "Your product" 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:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability or performance or use of "your product", and
- b. The providing of or failure to provide warnings or instructions.

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

POLICY NUMBER ALT047106

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 03 05 10 93

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance under the following:

LIQUOR LIABILITY COVERAGE PART SCHEDULE

Location
Coverage

Amount and Basis of Deductible
PER CLAIM or PER COMMON CAUSE
\$ 500 \$ XXXX

Liquor Liability

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

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for "injury", however caused):-

A. Our obligation under the Liquor Liability Coverage to pay damages on your behalf applies only to the amount of damages in excess of any deductible amount stated in the Schedule above.

B. You may select a deductible amount on either a per claim or a per common cause basis. Your selected deductible applies to the Liquor Liability Coverage and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

1. PER CLAIM BASIS. If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies under Liquor Liability Coverage, to all "injuries" sustained by any one person or organization.
2. PER COMMON CAUSE BASIS. If the deductible amount indicated in the Schedule above is on a per common cause basis, that deductible amount applies under Liquor Liability Coverage to all damages because of "injury" was the result of the selling, serving or furnishing of any alcoholic beverage to any one person, regardless of the number of persons or organizations who sustain damages.

C. The terms of this insurance, including those with respect to:

1. Our right and duty to defend and "suit" seeking those damages; and
2. Your duties in the event of an "injury", claim or "suit"

D. We may pay any part or all of the deductible amount to effect settlement of any claims or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

CG 03 05 10 93

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Alea 0713

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage", "personal injury" or "advertising injury" arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including microprocessors;
- (b) Computer application software;
- (c) Computer operating system and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

POLICY NUMBER ALT047106

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**LIMITATION OF COVERAGE TO INSURED PREMISES**

This endorsement modifies insurance under the following:

LIQUOR LIABILITY COVERAGE PART**SCHEDULE**

Description and Location of "Insured Premises":

RESTAURANT

1119 & 1121 N KINGS HWY, MYRTLE BEACH, SC 29577

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

This insurance only applies to "damages" arising out of your "insured premises".
"Insured premises" means:

1. The premises shown in the Schedule; and
2. Any premises you acquire during the policy period for use in manufacturing, distributing, selling, serving or furnishing alcoholic beverages if:
 - a. You notify us within 30 days after the acquisition, and
 - b. You have no other valid and collectible insurance applicable to the loss.

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE			INSURED
	MONTH	DAY	YEAR	
LT047106	12	09	04	THE RED ROOM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE PART

EXCLUSION - TOTAL POLLUTION

This insurance does not apply to:

- f. (1) "injury" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants; or
 - (b) Claim or suit by or on behalf of a government authority for damages because of testing for, monitoring, clearing up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

EXCLUSION - ASBESTOS, SILICA DUST, TOXIC SUBSTANCES

This insurance does not apply to:

- (1) "injury" caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelium or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos fibres or dust or silica dust;
- (2) Any "injury" due to or arising out of the actual or alleged presence of asbestos or silica dust in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, cleaning or removal of any property or substance; or
- (3) "injury" or any other action based upon the Insured(s) supervision, removal, instructions, recommendations, warranties (expressed or implied), warnings or advice given, or withheld regarding asbestos fibres or dust or silica dust.

EXCLUSION - ATHLETIC OR SPORTS PARTICIPANTS

Insurance does not apply to "injury" to any person while practicing for or participating in any sports contest or exhibition that you sponsor.

EXCLUSION - LEAD CONTAMINATION

This insurance does not apply to:

- (1) "injury" arising out of the ingestion, inhalation or absorption of lead in any form;
- (2) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of lead; or
- (3) Any loss, cost or expense arising out of any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of lead.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGE

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defence for such action. We shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

EXCLUSION - VOLUNTARY LABOR

This insurance does not apply to "injury" to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

EXCLUSION - EMPLOYMENT RELATED PRACTICES

This insurance does not apply to "injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harrassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
- (4) Consequential "injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error, or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

This insurance does not apply to "injury" arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (a) above.

EXCLUSION - COMMUNICABLE DISEASE

This insurance does not apply to "injury" arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

EXCLUSION - CLASSIFICATION LIMITATION

This insurance does not apply to "injury" for operations which are not classified or shown on the Declarations, its endorsements or supplements. Coverage applies only to those operations as described under the "Description and Locations".

ADDITIONAL CONDITIONS

NOTICE TO ALL POLICY HOLDERS

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

THIS POLICY EXCLUDES COVERAGE FOR POLLUTION AND / OR ACTUAL, ALLEGED OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS AT ANY TIME.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Elisa Narruhm,

Plaintiff

v.

Alea London Limited and Anderson
General Insurance,

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

Civil Action No.: 2010-CP-26-4112

DEFENDANTS MOTION FOR RELIEF
FROM JUDGMENT OR ORDER

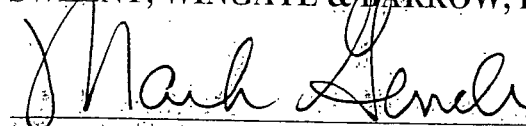
HORRY COUNTY
CLERK OF COURT
RECEIVED DEC 10 AM 10:41

TO: GENE M. CONNELL, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND
TO THE PLAINTIFF ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE, that the Defendant by its undersigned attorneys, will move before the Presiding Judge of the The State of South Carolina, County of Horry, on the tenth (10th) day after service hereof, or as soon as counsel may be heard, for an Order, pursuant to Rule 60(1), (4), and (5) of the South Carolina Rules of Civil Procedure for relief from an Order of the Court in Civil Action No. 2005-CP-26-4134, dated March 3, 2010, and filed March 8, 2010, in which the Court assigned any right of RKC Entertainment LLC or Richard Cronce to against Alea London Limited to the Plaintiff. This motion may be supported by a memorandum of law. Defendant's counsel has not communicated with Plaintiff's counsel concerning this Motion believing such communication would serve no useful purpose.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR ALEA LONDON LIMITED

Columbia, South Carolina
December 9, 2010

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Elisa Narruhn,

Plaintiff

v.

Alea London Limited and Anderson
General Insurance,

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

Civil Action No.: 2010-CP-26-4112

MEMORANDUM IN SUPPORT OF
MOTION TO SET ASIDE ORDER
UNDER RULE 60(b)(1), (4), and (5)

NATURE OF THE CASE

This is a case in which a Plaintiff, who had been shot in an establishment called The Red Room, seeks to enforce a judgment against The Red Room by collecting on the liability insurance policy issued to that establishment. Plaintiff has not obtained an assignment of The Red Room's rights against the insurance company, Alea London Limited, from the owner of The Red Room. Instead, a Special Referee, by Order of March 8, 2010, granted Plaintiff's Counsel's request to assign Red Room's owner's purported rights against its insurance company to Plaintiff. Alea London Limited had no notice of the hearing or any opportunity to be heard on the matter. Alea London Limited has moved to have relief under Rule 60, SCRPC, from that Order of March 8, 2010, a copy of which is at Exhibit 1.

FACTS BEARING ON THE MOTION

Ms. Narruhn was shot in The Red Room on or about April 9, 2005, by a man named Arden Percival Cato, II. She initiated a civil action, C.A. No. 05-CP-26-4134, against RKC Entertainment, LLC d/b/a The Red Room and Mr. Cato on August 4, 2005 in the Court of

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CLERK OF COURT

Common Pleas for Horry County. A copy of her original Complaint is at Exhibit 2. All of the injuries alleged were the direct result of the assault by Mr. Cato.

Prior to the assault on Ms. Narruhn, Alea London, pursuant to an application from Richard Cronic,¹ the operator of, and registered agent for, The Red Room, issued liability policy number ALT047106 to The Red Room. The policy covered the period 12/09/2004 to 12/09/2005. Liability application forms at Exhibit 3.

RKC Entertainment, LLC, owner of The Red Room, financed the purchase of the insurance policy through Charleston Premium Finance Company. Copies of the premium service agreement and notice of cancellation are at Exhibit 4. Due to non-payment of premiums, Alea London cancelled RKC's policy effective March 29, 2005, subsequent to the required 10-day written notice, which was sent by Charleston Premium on March 14, 2005. Thus, when Ms. Narruhn was shot on or about April 9, 2005, Alea London had no liability insurance in force for The Red Room.

Prior to obtaining the cited Order of Judgment, in 2008, Plaintiff filed a suit against Jacob Garron a/k/a Joseph Barron, the landlord of The Red Room. Barron's insurer, American Empire, then tendered Mr. Barron's defense to Alea on the basis of RKC's certificate of insurance which named Barron as an additional insured based on an indemnity provision in the lease agreement. Alea issued a disclaimer in response to this tender, based on the fact that the policy had been cancelled for non-payment of premium prior to the occurrence. Copies of the correspondence between counsel for American Empire and Alea London – which did not have counsel because it had been informed of the shooting just before the exchange of correspondence – are at Exhibit 5.

¹ A copy of the application is at Exhibit 3.

After obtaining a Six Million Dollar (\$6,000,000.00) default judgment in C.A. No. 05-CP-26-4134, Plaintiff commenced supplemental proceedings to determine the assets of RKC. In addition to determining the Plaintiff's rights against RKC Entertainment, a special referee assigned to Plaintiff any rights that RKC would have against Alea London, as reflected in the Order from which Alea London seeks relief (copy at Exhibit 1).

In 2010 Narruhn filed the instant suit against Alea and Anderson General Insurance, the producing agency, alleging bad faith, failure to defend, negligence, and unfair trade practices.

If the Alea London policy had been in force, which, as addressed above, was not the case, there are provisions that should preclude coverage for Ms. Narruhn's injuries. Among those provisions is an exclusion for injuries arising from assault and/or battery, as follows:

EXCLUSION – ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error or omission relating to an assault and/or battery.

Form ALEA-G-L-01 (01/04), at p. 3 of 7 (copy at Exhibit 6). This exact exclusion is also included in the liquor liability portion of the policy. See Form TLIQ001 at p. 3 of 4 (copy also at Exhibit 6).

Both the CGL and liquor liability parts of the policy included a condition that required the insured to notify Alea London of any "injury"/"occurrence" and provide copies of all legal documents, etc., to the insurer. The two requirements are, for purposes of this case, practically identical. Copies of both are at Exhibit 7. An extract of the conditions in the Liquor Liability part is as follows:

SECTION IV – LIQUOR LIABILITY CONDITIONS

2. Duties in The Event Of Injury, Claim or Suit.

- a. You must see to it that we are notified as soon as practicable of an “injury” which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the “injury” took place;
 - (2) The names and addresses of any injured persons and witnesses;
and
 - (3) The nature and location of any “injury” arising out of an occurrence.
- b. If a claim is made or “suit” is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or “suit” and the date received; and
 - (2) Notify us as soon as practicable.
You must see to it that we receive written notice of the claim or “suit” as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or “suit”;
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the “suit”

Form CL185(1-96) p. 3 of 4.

In the case at hand, Alea London’s insured, RKC Entertainment, failed completely to comply with (a), (b), or (c). There was no notice to the insurer about the shooting, or about Ms. Narruhn’s claim or about Plaintiff’s initiation of the lawsuit. No copies of the summons and complaint were provided by RKC Entertainment to Alea London, which was completely in the dark about this occurrence until the 2008 lawsuit was filed against the lessor of the property.

Alea London has moved to have the Special Referee’s Order of March 8, 2010, set aside under Rule 60, SCRCP. Specifically, Alea London has moved to have the Order set aside because of surprise, Rule 60(b)(1); because the judgment is void, covered by Rule 60(b)(4); and because it is no longer equitable for application in this current lawsuit, Rule 60(b)(5). These issues are addressed below.

ARGUMENT

I. THE ORDER OF MARCH 8, 2010, SHOULD BE VACATED UNDER RULE 60(b) (1) BECAUSE OF SURPRISE.

The Order of March 8, 2010 – when it was received from the South Carolina Insurance Department in the first week of September, 2010, as Exhibit A to Plaintiff's Complaint – was a complete surprise to Alea London. There were several grounds for this surprise: it had received no notice 1) of the underlying lawsuit; 2) of the default judgment of Six Million Dollars (\$6,000,000.00); 3) of the referral of the matter to a special referee for supplementary proceedings; or 4) of the hearing of February 9, 2010, before the Special Referee. Upon reviewing the documents, Alea London was also surprised that it was being brought into a lawsuit based on an assault that occurred after its policy had been cancelled for non-payment of premium. Even if there had been coverage, moreover, it would clearly have been excluded by the exclusion for assault and battery and/or voided because of the insured's total failure to comply with the notice and cooperation provisions of the policy. Thus, Alea London was surprised on several levels. There was nothing regarding the Order of March 8, 2010, which was not a surprise.

The surprise to Alea London is exacerbated by the fact that the Order of March 8, 2010 does not appear to meet the requirements of Rule 52(a),² SCRCP, in that the Court did not state sufficient facts to reach the legal conclusion that it necessarily reached. To assign the insured's "rights" against the insurance company to Plaintiff, there needed to be a *prima facie* showing to the court that the insurer had funds that rightfully belonged to the insured. Funds **proven prima facie** to belong to a judgment debtor in the hands of a third party may be reached in supplementary proceedings. Lynn v. International Broth. Of Firemen and Oilers, 228 S.C. 357, 363, 90 S.E.2d

² Rule 52(a) states, in pertinent part, that "[i]n all actions tried upon the facts without a jury..., the court shall find the facts specially and state separately its conclusions of law **thereon**" (emphasis added).

204, 206 (1955) citing Deer Island Lumber Co. v. Virginia- Carolina Chemical Co., 111 S.C. 299, 97 S.E. 833 (1919).

In the case at hand, the only facts cited are that: Plaintiff's counsel had received a copy of an insurance policy on July 27, 2009; that The Red Room was the named insured and that Alea London was the insurer. This recitation of facts is grossly insufficient to establish that Alea London owed money to The Red Room. It certainly does not reach the level of being a *prima facie* showing of such ownership based on coverage for the assault of April 9, 2005. There is no recitation of the effective dates of the policy, what type insurance the policy provided, what the provisions of the policy were, what endorsements were included in the policy, or any discussion of facts that would bring the Plaintiff's injury within coverage. For Alea London to be a judgment debtor – which the Court assumes it to be – there must be a *prima facie* showing of coverage under the policy, not simply the existence of a policy. Alea London clearly was surprised by being considered a judgment debtor by the Court.

Our law supports vacating the Order of March 8, 2010. Our Court of Appeals has addressed the issue of an insurance company bringing a Rule 60 (b) (1) Motion based on surprise. It held as follows:

Based on counsel's conduct and actions, it was reasonable for Zurich and New Prime to believe that any suit filed would include New Prime as a defendant or, at the very least, that counsel would provide Zurich a copy of any pleadings in the matter when filed. Thus, at a minimum, the facts show New Prime was taken by surprise when counsel filed the action solely against Deaton and failed to inform Zurich or New Prime of this action, thereby meeting the surprise or excusable neglect requirement under Rule 60(b)(1). Additionally, given this history of contact and negotiations between counsel and Zurich, most notably the representations made by counsel to Zurich, the conduct of the McClurgs' counsel in failing to simply notify Zurich of the complaint filed against Deaton raises serious concerns for this court and quite possibly satisfies the misrepresentation and misconduct envisioned by Rule 60(b)(3). Accordingly, we believe the trial court committed error

in finding the evidence did not, at least, support relief based on mistake, inadvertence, surprise or excusable neglect. Further, we find the trial court erred in its implicit finding that because New Prime was not a party to the initial lawsuit it could not make a Rule 60(b) motion. The Edwards [Edwards v. Ferguson, 254 S.C. 278, 175 S.E.2d 224 (1970)] case makes clear that a Rule 60(b) motion is properly made by an insurer under such circumstances.

McClurg v. Deaton, 380 S.C. 563, 573, 671 S.E.2d 87, 92-3 (Ct. App. 2008)

Here, Alea London had every right to expect that it would be notified by its insured of the shooting, the lawsuit against the Red Room, the default judgment of \$6,000,000.00, and the referral for supplementary proceedings. It could also have reasonably expected to be informed of the referral of the matter for supplementary proceedings and the hearing of February 9, 2010 by Plaintiff's counsel. As the Order of March 8, 2010, states, "Plaintiff's counsel had received [a copy of the insurance policy] from the Anderson General Insurance Agency on July 27, 2009." Order, p. 2. The Order of referral was dated October 13, 2009. In the two and one half months after receiving the policy and before the Order of Referral, Plaintiff's counsel could have, and should have, notified Alea London of the referral and hearing. Counsel's failure to do so suggests that the surprise to Alea London was purposeful.

The Order of March 8, 2010, should be vacated under Rule 60 (b)(1) because of the profound surprise to Alea London.

II. THE ORDER OF MARCH 8, 2010 SHOULD BE VACATED BECAUSE ALEA LONDON WAS NOT ACCORDED DUE PROCESS OF LAW.

Several aspects of the proceedings leading up to, and conduct of, the hearing before the Special Referee combine to cause a deprivation of Alea London's right to have due process of law. These actions culminated in the entry of the Order of March 8, 2010, which should consequently be vacated.

A. Alea London, whose interests were to be affected, should have been provided Notice of the Hearing before the Special Referee.

Alea London was provided absolutely no notice of the February 9, 2010, hearing before the Special Referee. Notice was provided to the Registered Agent of the insured, but the insured and insurer at this point had conflicting interests. It was clearly in the insured's interest to have the insurer be required to provide coverage to satisfy at least a part of the insured's liability. Notice to the insured was not, therefore, adequate notice to Alea London.

Clearly, Alea London's interests were to be addressed at the hearing. It was a third party which ostensibly had funds that were owed to the judgment debtor and Plaintiff was seeking to obtain those funds. Alea London was entitled to be represented in the discussion to show that it did not have any funds that were owed to the Red Room. The process leading to the Order of March 8, 2010, was defective in that it deprived Alea London of notice and an opportunity to be heard in a meaningful way.

South Carolina's Court of Appeals has addressed the requirements for procedural due process as follows:

Procedural due process imposes constraints on governmental decisions that deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. U. S. Const. amends. V and XIV, § 1; Mathews v. Eldridge, 424 U. S. 319, 331, 96, S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, an opportunity to be heard in a meaningful way, and judicial review. U. S. Const. amends. V. and XIV, § 1; S.C. Const. art. 1, § 22; Stono River Envtl. Prot. Ass'n. v. S. C. Dep't of Health and Envtl. Control, 305 S. C. 90, 94, 406 S.E.2d 340, 342 (1991). Further, due process is flexible and calls for such procedural protections as the particular situation demands. Kurscher v. City of Camden Planning Comm'n. 376 S. C. 165, 172, 656 S.E.2d 346, 350 (2008)

Harbit v. City of Charleston, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct. App. 2009)

Alea London received none of these prerequisites for the achievement of procedural due process. It did not receive notice of the hearing at which its interests were being addressed. It did not, and has not yet, had meaningful opportunity to be heard on the issue of its coverage – or lack thereof – for the Red Room's liability for the injury of Plaintiff. Finally, by the time it was informed of the entry of the Order of March 8, 2010, its opportunity for judicial review had been overtaken by events. It found out about the March 8 Order only when Plaintiff's Complaint, filed May 11, 2010, was served on it through the Department of Insurance. The Order of March 8 was Exhibit A to that Complaint.

The procedure employed regarding the hearing before the Special Referee did not meet the requirements of the U. S. or South Carolina Constitution.

B. The use of Supplementary Procedures to allow the Court to assign the Red Room's alleged – but not established – rights against Alea London – without Alea London's being present – is an abuse of South Carolina law, rendering the Judgment void.

There appears to be no precedent in this state for allowing a trial court to order the assignment of an insured's alleged – but not established – rights against an insurance company to a judgment creditor. Our law requires that before a court conducting supplementary proceedings allows a judgment creditor to proceed against a third party to obtain funds ostensibly owned by the judgment debtor, the ownership of the funds must be established. That is, after all, the purpose of supplementary proceedings: to allow discovery of funds that may be applied to the debt in issue. S. C. CODE ANN. § 15-39-310. In this case, Alea London contends, based on the provisions of its policy, that it is entitled to ownership of the funds that Plaintiff seeks. The issue of ownership should have been determined before the assignment of The Red Room's rights was ordered by The Court.

South Carolina Courts have addressed the issue of disputed ownership as follows:

It appears manifestly intended by the foregoing sections that a third person claiming property rights which have been passed upon in the original action under which the execution is issued should not be deprived either of his day in court or of the right of trial in the form prescribed by law for a regular judicial procedure. No provision appears that either expressly or by implication gives authority to the court to summarily dispose of the issue of ownership, or to order property claimed by another to be applied towards the satisfaction of an execution against the judgment debtor.

Nor can an appearance and return to such a rule, when made in obedience to the order of court, be given effect as consent to a mode of trial not authorized by the provisions of the statutes. On the other hand, it must be recognized that no limitation is imposed upon the discretion of the circuit judge in keeping the property within the control of the court, by forbidding its transfer or other disposition.

In our opinion, the decision of this court in the case of Deer Island Lumber Co. v. Virginia- Carolina Chemical Co. 111 S.C. 299, 97 S.E. 833, determines both questions raised in this appeal. In that case, Mr. Justice Gage, speaking for the court, in a matter similar to the case at bar, said:

"It is true the issue of ownership may not be finally determined, except the Deer Island Lumber Company shall be heard. But a judgment creditor may by the plain words of the statute arrest a fund in the hands of a third party, and alleged by such creditor to belong in truth to the judgment debtor, and **proven prima facie to so belong**, and hold the funds until the issue of ownership shall be decided. Sections 352 and 356, Code of Procedure [sections 614 and 618, Code of 1922]***

Corollary to that postulate is another that, if the fund appears on proof to be probably the property of Wilkins, then it ought to be held intact until probable shall be ascertained to be the real. An examination of the whole record satisfies us that the circuit judge was right to conclude that the deposit ought to be arrested until by orderly proceedings the owner of it may be identified. Since that issue must be tried, we shall not suggest the probabilities of the case, but shall content ourselves merely with the statement of our conclusion."

The insurance policy on its face stands in the name of the judgment debtor. In our opinion, this was a sufficient prima facie showing to warrant the circuit judge in holding the funds for proper action to decide who is entitled to have the funds, but it was not proper for the ownership to be

decided at the hearing before the circuit judge. A hearing for that purpose, as provided by law, should have come later.

Palmetto Bank & Trust Co. v. McCown-Clark Co., 143 S.C. 98, ___, 141 S.E. 155, 156 (1928)(emphasis added).

The first proposition of the appellant assumes to be true the very matter at issue, and that is the ownership of the deposit. It is true the issue of ownership may not be finally determined, except the Deer Island Lumber Company shall be heard. But a judgment creditor may by the plain words of the statute arrest a fund in the hands of a third party, and alleged by such creditor to belong in truth to the judgment debtor, and **proven prima facie to so belong**, and hold the funds until the issue of ownership shall be decided.

Deer Island Lumber Co. v. Virginia – Carolina Chemical Co., 111 S.C. 299, ___, 97 S.E. 833, ___ (1919)(emphasis added); See also Wannamaker v. Bryant, 165 S.C. 107, ___, 162 S.E. 779, 780 (1932) (quoting Palmetto Bank to the effect that insured's name on insurance policy was sufficient "to warrant the circuit judge in holding the funds... but it was not proper for the ownership to be decided before the circuit judge. A hearing for that purpose, as provided by law, should have come later"); Inter-Pac, Inc. v. Anderson, 36 B.R. 488, 490 (Bankr. D.S.C. 1982) ("The appellant failed to seek an order under § 15-39-410 hearing, hear and settle any issues of ownership by... third parties..."). South Carolina law provides specifically for intervention by a third party when the issue of ownership of property "arrested" by the court is being decided. Deer Island Lumber Co., *supra*. Because Alea London had no notice of Plaintiff's Motion for assignment or the hearing on that Motion, it was denied a right – the right to intervene – that it should have under our laws.

It is, therefore, clear under our law that the Special Referee did not have authority to assign to Plaintiff The Red Room's inchoate rights against Alea London. The Referee made the assignment on the basis that it was a "chose-in-action." It is uncontested that

our law, in supplementary proceedings, allows [a judgment creditor] to reach, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action" Lynn v. International Brotherhood of Fireman and Oilers, 228 S.C. 357, 362, 90 S. E. 2d 204, 206 (1955) (citations omitted).

In this case, however, the Referee erred in holding that The Red Room had a chose-in-action against Alea London. Any possible claim that The Red Room might have against the insurer is far too contingent and indefinite to constitute a chose in action. There is no certainty whatsoever that the Red Room would have any claim against Alea London.³ Our law requires that for a claim to be a chose-in-action, it must be based on a definite obligation, a contractual right. Our Supreme Court held as follows:

Where local union had obligation to pay parent union a specified percentage of the dues collected from the local's members, and **amount was definitely determined** each month, the obligation was a chose in action, the property of the parent union, and the circuit court had power to order amount of local union's monthly payments under its obligation to the parent union to be applied to the payment of the judgment against parent union. Code 1952, §10-1731.

Lynn, *supra.*, 228 S.C. at 357, 90 S.E.2d at 204 (emphasis added). More recently, our Court of Appeals held as follows:

Because Sgt. Ball's **vested right** to participate in a military retirement program, which could one day entitle him to receive retirement benefits as a form of deferred compensation, arises by virtue of his reenlistment contract, he could maintain an action at law to enforce this right should the military ever wrongfully attempt to deny it to him. Poe, 711 S. W. 2d at 855. This right of action is a chose in action, an interest which, as we noted, South Carolina courts include in the definition of the term "property." See Brown, 126 Cal. Rptr. At 637, 544 P.2d at 565 (a "**contractual right is not an expectancy but a chose in action**, a form of property").

Ball v. Ball, 312 S.C. 31, 33-34, 430 S.E.2d 533, 534-35 (Ct. App. 1993)(emphasis added).

³ As pointed out *supra.*, p. 2, the policy was cancelled prior to the shooting and, even if there would have been coverage, it would have been excluded by the Assault and Battery exclusion.

Plaintiff has used the assignment granted to it by the Special Referee to propound four causes of action against Alea London in C.A. No. 2010-CP-26-4112: failure to defend, bad faith, negligence, and unfair claims practices. Under each cause of action, Plaintiff prays for actual and punitive damages. These tort claims, which fail if there is no coverage under the policy,⁴ do not constitute choses in action, rights of RKC Entertainment enforceable by Ms. Narruhn, as they lack contractual certainty.

Because the process employed violated Alea London's right to due process and failed to follow South Carolina law regarding supplemental procedures in that the ownership of the putative insurance funds was not determined and Alea London was not added as a necessary party, the Special Referee lacked jurisdiction to issue the Order of March 8, 2010. The Order should, therefore, be declared to be void under Rule 60 (b)(4), SCRCF.

II. THE ORDER OF MARCH 8, 2010 SHOULD BE VACATED UNDER RULE 60 (b)(5) BECAUSE THE ORDER IS NOT EQUITABLE FOR IMPLEMENTATION.

It is inequitable to require Alea London to go to the expense and inconvenience of defending Plaintiff's tort action until the issue of coverage is determined. The assignment ordered by the Special Referee has directly allowed that to happen, in direct conflict with the public policy of this State, which does not allow tort plaintiffs to take direct action against a defendant's insurance company.

⁴ If the assignment is allowed to stand, Alea London will necessarily have to initiate an action for declaratory judgment of the coverage issue, which should have been part of supplementary proceedings. Supplementary proceedings are equitable in nature AG-Chem. Equip. Co. v. Daggerhart, 281 S.C. 380, 381, 315 S.E. 2d 379, 383 (Ct. App. 1984) (citations omitted).

Allowing such an assignment raises the definite possibility of collusion between a plaintiff and a defendant. By agreement,⁵ the plaintiff could serve the summons and complaint on the defendant, who would then fail to answer and subsequently take a default judgment. The defendant would not sign an assignment for the plaintiff against the insurer because that would violate the cooperation clause in the insurance contract. In lieu thereof, the plaintiff would petition for supplementary proceedings. Again, the defendant would not appear at the supplementary proceeding hearing and would default. Plaintiff's counsel would ask the court to assign the defaulting defendant's rights to plaintiff. Plaintiff and defendant are thereby able to work together to harm the third-party insurance company. The defendant avoids liability and the plaintiff is able to make the insurance company a defendant before a jury. While this conspiratorial procedure may not have taken place in this case (though the Plaintiff's failure to provide any notice to Alea London, despite having its policy for some 75 days, does raise that possibility), if this procedure is given the court's seal of approval, it may reasonably be anticipated that others will intentionally pursue such a course of action. The linchpin of this nefarious scheme is the trial court, which will often be a local Special Referee, granting the assignment of defendant's inchoate right to plaintiff. This Court, to preserve the integrity of our judicial system, to uphold the public policy against direct actions against insurance carriers, and to grant Alea London equity in this case, should vacate the Special Referee's Order and make plain that supplementary proceedings are not the appropriate vehicle for obtaining an assignment against a liability insurer unless coverage is determined.

As a matter of present and future equity, the Court should vacate the Order of March 8, 2010. It does not provide equity to Alea London and provides an awful precedent.

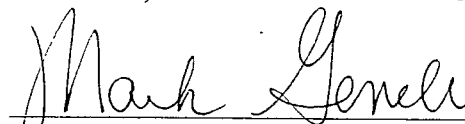
⁵ The unwritten agreement would be that the plaintiff would not seek execution on the personal assets of the defendant on the condition that the defendant would take default judgment(s).

CONCLUSION

The Order of March 8, 2010, under which the Special Referee granted the Plaintiff an assignment against the Defendant's liability insurer with no determination of coverage -- precluding any *prima facie* determination that the insured owned the funds -- should be vacated.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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Mark V. Gende

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(803) 256-2233

ATTORNEYS FOR ALEA LONDON LIMITED

Columbia, South Carolina
February 25, 2011

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Perceval, II,

Defendants.

ORDER

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CLERK OF COURT
JELANE HUGHES-APRU

This matter is before me pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* for supplemental proceedings. By Order dated October 13, 2009, Steven H. John, Resident Judge for the Fifteenth Judicial Circuit, referred this matter to me with a hearing to be held on February 9, 2010. Present at the hearing was Plaintiff's counsel, Gene M. Connell, Jr., who advised the court that on January 26, 2010 he had mailed to Richard Cronic, the Registered Agent for RKC Entertainment, LLC, a copy of the Order of Judgment, Order of Reference for Supplemental Proceedings and notice of the hearing date. The notice of the hearing date was mailed to Richard Cronic at both of his addresses.

At the hearing, Richard Cronic failed to appear and the court proceeded to hear the case. Previously, the Circuit Court, Judge J. Michael Baxley presiding, had issued an Order of Judgment against RKC Entertainment LLC in the amount of Six Million an 00/100 (\$6,000,000.00) Dollars. Plaintiff's counsel has requested that the court issue an order assigning any rights RKC Entertainment, LLC or Richard Cronic has against their liability insurance carrier to the Plaintiff/Judgment Creditor. Plaintiff's counsel has further asked that if any funds are collected through this assignment that such amount be credited against the Judgment.

NA

EXHIBIT

1

At the hearing, I was presented with a copy of an insurance policy that Plaintiff's counsel had received from the Anderson General Insurance Agency on July 27, 2009. This insurance policy, which is part of the record, lists The Red Room as the Assured and the Insurer is Alea London Limited.

The court has reviewed the Plaintiff's counsel's request that any right the Defendant had against Alea London Limited Insurer be assigned as a "chose in action to the Plaintiff." The court believes that this is an appropriate subject of supplemental proceedings and further recognizes that this is an attempt to collect anything from the Defendant which may be of value to satisfy the Judgment of the Plaintiff.

Accordingly,

IT IS ORDERED that any and all claim by RKC Entertainment LLC against Alea London Limited Insurers is assigned to the Plaintiff under Policy Number ALT047106.

IT IS FURTHER ORDERED that any and all right, title and claim which RKC Entertainment LLC may have against Alea London Limited Insurers for failure to pay the claim, defend the claim, or to investigate the claim and for any other claim that RKC Entertainment LLC may have against Alea London Limited is hereby assigned to the Plaintiff Elisa Narruhn.

IT IS FURTHER ORDERED that should the Plaintiff collect any monies from Alea London Limited that these monies shall be used to offset the Six Million and 00/100 (\$6,000,000.00) Dollars Judgment filed in this court on July 9, 2009.

AND IT IS ORDERED.


Nate Fata, Special Referee
Fifteenth Judicial Circuit

Dated: March 3, 2010
SURFIDE Bank, South Carolina.

EXHIBIT 2

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Elisa Narruhn,)

Plaintiff,)

vs.)

RKC Entertainment, LLC d/b/a)

The Red Room and Ardon)

Perceval Cato, II,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 05-CP-26-4134

COMPLAINT
(JURY TRIAL DEMANDED)

HORRY COUNTY
05 AUG -4 PM 2:28
MELANIE HOLLAND
CLERK OF COURT

The Plaintiff, complaining of the Defendants herein, alleges:

1. That Plaintiff, Elisa Narruhn, is a resident of Horry County, State of South Carolina.
2. That the Defendant, RKC Entertainment, LLC d/b/a The Red Room (hereinafter "Defendant Red Room") is, upon information and belief, a South Carolina corporation with its principal place of business located in South Carolina.
3. That the Defendant, Ardon Perceval Cato, II, (hereinafter "Defendant Cato") is a citizen and resident of Horry County, State of South Carolina.
4. That jurisdiction and venue are proper in this Court.
5. On or about April 9, 2005 Plaintiff was present in the Red Room and was there for the purpose of purchasing food/drink.
6. While in the Red Room on said date, Plaintiff was assaulted by Defendant Cato, who had been ejected from the nightclub and then returned through an exit only door randomly shooting into the dance floor area severely injuring Plaintiff.
7. Defendant Red Room did or should have foreseen that the assault against Plaintiff would occur because Defendant Cato had been behaving in a hostile and disorderly manner and was intoxicated on the occasion of the assault on Plaintiff, and

EXHIBIT

2

because The Red Room is located in a high-crime area and has a reputation as a gathering place for persons with violent tendencies.

8. The Defendants were negligent, reckless, willful, wanton, careless, and grossly negligent at the time and place above-mentioned in the following particulars:

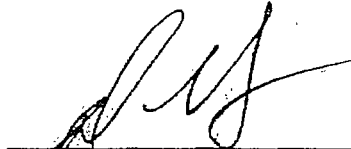
- a. In failing to remove Defendant Cato from the premises when his behavior warranted such action on the date of the assault against Plaintiff.
- b. In serving intoxicating liquor to Defendant Cato when he was intoxicated even though Defendant knew or should have known that doing so increased the danger that he would act in a violent manner.
- c. In failing to employ security guards or "bouncers" who could have controlled Defendant Cato and thereby preventing the assault.
- d. In failing to intervene to stop the assault or to call the police when Plaintiff was assaulted.
- e. In failing to warn Plaintiff and other persons of the premises' dangerous and unsafe conditions.
- f. In failing to use the degree of care that a reasonable and prudent person should have exercised under the existing conditions and circumstances;
- g. In shooting and severely injuring Plaintiff.

9. As the direct and proximate result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer, injuries including but not limited to the following:

- a. Thoracic paraplegia and hemothorax;
- b. Medical expenses;
- c. Physical pain and suffering;
- d. Impairment of health and bodily efficiency.

10. Plaintiff is informed and believes that she is entitled to judgment against Defendants for actual and punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount, the costs of this action, and for such other and further relief as the court may deem just and proper.



J. Dwight Hudson
Hudson Law Office
1203 48th Avenue N, Ste 111
Myrtle Beach SC 29577
(843) 692-9889, Fax (843) 692-9190

Myrtle Beach, South Carolina
July 29, 2005

ATTORNEY FOR PLAINTIFF

EXHIBIT 3



TAPCO

UNDERWRITERS, INC

Post Office Box 286 • Burlington, NC 27216-0286

1-800-334-5579 / fax 336-584-8880

1-800-418-2726 / fax 727-572-7909 (FLORIDA)

1-800-552-6326 / fax 703-392-3920 (DC, MD, VA)

www.GoTAPCO.com

RESTAURANT/ BARS/TAVERNS

GENERAL LIABILITY APPLICATION

Binder #

Applicant's Name: RKC Entertainment LLC dba THE RED ROOM
 Mailing Address: 1220 F RIVER DAKS DR, MYRTLE BCH 5129577
 Location of Risk: 1119 + 1121 N. KINGS HWY, MYRTLE BCH 5129577
 Type of Risk/Occupancy: _____
 Proposed Effective Date: From 12-9-04 To 12-9-05 =Years in Business: _____
 Applicant is ☐ Individual ☐ Corporation ☐ Partnership ☐ Joint Venture ☒ Other (Specify) LLC

LIMITS OF LIABILITY REQUESTED	
General Aggregate	\$ <u>2,000,000</u>
Products & Completed Operations Aggregate	\$ <u>1,000,000</u>
Personal & Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence	\$ <u>1,000,000</u>
Fire Damage (any one fire)	\$ <u>500,000</u>
Medical Expense (any one person)	\$ <u>5,000</u>
Other Coverages, Restrictions, and/or Endorsements	\$ _____
Deductible	\$ <u>500</u>

Additional Insured: SCHWARTZ Brothers Holdings 1947 NORTH
 Describe all business operations conducted by applicant: REST + BAR ASHOBORO NC 27205

Locations, age and construction of all premises owned, rented, or controlled by applicant (attach schedule if necessary)

MASONRY 1980

Interest of applicant in such premises ☐ Owner ☐ General Lessee ☒ Tenant
 Part Occupied by the applicant: ☒ Entire ☐ Portion ☐ None
 Number of years in business: NEW Number of years operating this type of business: _____
 Operating hours: 7-2 Number of days open each week: 6 Seating capacity: 100
 Receipts: Food \$ 75K
 Alcohol \$ 175K
 Total \$ 250K

Live Music? ☐ Yes ☒ No
 Disc jockey? ☐ Yes ☒ No
 Bouncers? ☐ Yes ☒ No
 Pool Tables? ☒ Yes ☐ No
 Dance Floor? ☐ Yes ☒ No

Any Amusement Devices ☒ Yes ☐ No (If yes, explain) video
 Exotic Dancers? ☐ Yes ☒ No
 Other? ☐ Yes ☒ No
 Explain: _____

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Cooking on premises ☒ Yes ☐ No
 Ansul System ☒ Yes ☐ No

If yes, please answer the following:
 Service agreement in place ☒ Yes ☐ No

EXHIBIT

3

During the past three years has any company ever cancelled, declined or refused to issue similar insurance to the applicant? NO
If so, please explain _____

SCHEDULE OF HAZARDS				
Loc No	Classification	Class. Code	Premium Basis Total Receipts	Terr
1	G.S.		250000	
	less than 75%	Alcohol		

Previous Insurer: Indicate premium and losses for the past three years Describe all losses None

Year	Company	Pol #	Premium	Losses Paid	Losses Reserved	Description

APPLICANT'S STATEMENT

I hereby certify the information contained in this application is true and I agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel any policy issued on the basis of this application, and I will hold the Company harmless for the action taken. I also agree that if a policy is issued pursuant to this application, the application shall become part of the policy and any renewal or rewrite thereof. I understand that coverage is not in force until bound with a Company Underwriter at TAPCO Underwriters, Inc.

Applicant's Signature [Signature] Applicant's Phone # 973-879-0521
Agency ANDERSON GENERAL Date 12/9/04
Agency Address 3721 Wesley St. #133, Myrtle Beach 29579
Agent's Signature [Signature] Agent's License Number _____
Agent's Phone # 843-236-8700 Agent's Fax # 843-236-3518
Agent's Email Address WREK @ SCCOAST.NET

FLORIDA FRAUD STATEMENT:

Section 817.234(1)(b), FS "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false or misleading information is guilty of a felony of the third degree."

TENNESSEE / VIRGINIA FRAUD STATEMENT:

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

POLICY PREMIUM

Base	\$	3142.00
Fee	\$	125.00
Tax	\$	196.02
Total	\$	3463.02

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DEC 13 2004
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TAPCO

UNDERWRITERS, INC

Post Office Box 286 • Burlington, NC 27216-0286
1-800-334-5579 / fax 336-584-8880
 1-800-418-2726 / fax 727-572-7909 (FLORIDA)
 1-800-552-6326 / fax 703-392-3920 (DC, MD, VA)
 www.GoTAPCO.com

LIQUOR LIABILITY APPLICATION

AVOCU-G.
Binder #

Applicant's Name R.K.C. ENTERTAINMENT LLC Contact for inspection Richard Cronle
 Applicant's Address 1320E RIVER OAKS Dr., Myrtle Beach SC 29577
 Proposed Effective Date From 12-9-04 to 12-9-05 Years in Business NEW
 Business Description Individual Partnership Corporation Other LLC
 Nature of Business REST + BAR
 Description and Location of Licensed Premises (No other licensed premises are covered unless accepted by the company and shown on the policy for an additional charge) REST + BAR
 Name, address, phone of Liquor Licensee (if different than applicant) Richard Cronle
 Limits Requested (Note: General Aggregate Limit must equal Each Common Cause Limit and not exceed General Liability Occurrence Limit)

Each Common Cause \$ 300,000 Aggregate \$ Same

Estimated Annual Receipts (they will be audited)
 Alcoholic Beverages \$ 175K
 Food and Non-alcoholic \$ 75K
 Other (e.g. entertainment, admissions, amusements) \$

Hours and days of operation 7:00 am Average age of customers 30

Describe type and frequency of live entertainment NONE
 If dancing is permitted, give area of dance floor NONE Describe type and number of amusement devices Pool Table + Video
 Hours and days owner or full-time manager is on duty When OPEN
 If applicant provides a program of training or guidance for employees with respect to handling minors or intoxicated customers attach copy of certificate issued by professional training organization

Liquor Liability loss experience (3 years) Show all incidents, even if nothing paid

Date	Reserved	Paid	Insurer	Description of Incident
<u>NONE</u>				

If liquor license has been suspended or licensee fined for liquor law violation in last 3 years, give details: NONE

If any liquor liability policy or coverage has been declined, cancelled or non-renewed during prior 3 years give details: NONE

APPLICANT'S STATEMENT I hereby certify the information contained in this application is true and I agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel any policy issued on the basis of this application, and I will hold the Company harmless for the action taken. I also agree that if a policy is issued pursuant to this application, the application shall become part of the policy and any renewal or rewrite thereof. I understand that coverage is not in force until bound with a Company Underwriter at TAPCO Underwriters, Inc.

Applicant's Signature Richard Cronle Applicant's Phone # 843-443-7521
 Agency Anderson General Date 12/09/04
 Agency Address 3721 Wesley St. #133, Myrtle Beach SC 29577
 Agent's Signature Robert W. Hume Agent's License Number # 261539023
 Agent's Phone # 843-236-4100 Agent's Fax # 843-236-3510
 Agent's Email Address WEEK 6 SCDONET.NET

FLORIDA FRAUD STATEMENT

Section 817.234(1)(b), FS "Any person who knowingly and with intent to injure, defraud or deceive any insurer files a statement of claim or an application containing any false or misleading information is guilty of a felony of the third degree."

TENNESSEE / VIRGINIA FRAUD STATEMENT

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

EXHIBIT 4

12-21-2004 04:01 PM

CHARLESTON PREMIUM FINANCE COMPANY

3060 South Church Street, P.O. Box 286
 Burlington, North Carolina 27216-0286
 Telephone: 1-800-922-4178

TAPCO
 PAYMENT POSTED
 DEC 15 2004
 AMOUNT

INSURANCE PREMIUM SERVICE AGREEMENT

INSURED		Producer	
Name	R.K.C. ENTERTAINMENT, LLC dba	Agency	ANDERSON GENERAL INSURANCE
Address	1220F River Oaks Dr.	Address	3721 WESLEY ST UNIT 133
City-St-Zip	Myrtle Beach SC 29577	City-St-Zip	MYRTLE BEACH SC 29579
Account Number	AUOCU	Insurance Company	
Premium	\$3,142.00	Fee	\$125.00
Tax	\$196.02	Total Premium	\$3,463.02

FEDERAL TRUTH IN LENDING DISCLOSURES:	
CREDITOR:	Charleston Premium Finance Company P.O. Box 286, Burlington, NC 27216
SECURITY: You are giving a security interest in the unearned premium refunds due under the policy(ies) being purchased. *INCLUDES A NON-REFUNDABLE FINANCE CHARGE OF \$15.00 IN NC & TN, \$20.00 IN GEORGIA.* LATE CHARGE: If payment is 5 days late you will be charged, five cents per dollar for each full dollar of delinquency or \$1.00 which ever is greater but not to exceed a maximum of \$5.00. PREPAYMENT, NONPAYMENT AND DEFAULT: If you pay off early, you may be entitled to a refund of part of the finance charge, although you may have to pay a prepayment penalty. See reverse of this document for any additional information about nonpayment, default, and prepayment refunds.	
In consideration of payment by Charleston Premium Finance Company (herein after referred to as CPFC) of the AMOUNT FINANCED of the premium described above, the undersigned insured agrees to the following terms and conditions:	
1 Agrees to make repayment to CPFC in the amounts and at the time specified and on the same date of the month thereafter.	
2 Appoints CPFC my true and lawful attorney-in-fact irrevocably with full authority to cancel any or all policies listed above or any substitution or rewrite thereof in the event of any default of repayment as agreed herein, subject to ten (10) days prior notice mailed to my last know address by CPFC of past due payments and of its intent to cancel (Continued on Reverse Side)	

A. Total Premiums	\$3,463.02
B. Cash Down Payment	\$959.51
C. Amount Financed	\$2,503.52
D. Finance Charge	\$215.28
E. Total Payments	\$2,718.80
F. ANNUAL PERCENTAGE	22.29%
G. TOTAL SALE PRICE	\$3,678.30
H. Number of Payments	8
Amount of Each Payment	\$339.85
Payments are due on the same day of each month beginning <u>01/15/2004</u>	

NOTICE: Do not sign this agreement before you read it or if it contains any blank space. You are entitled to a complete filled in copy of this agreement. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.

This Premium Finance Service Agreement Is Accepted By And On Behalf Of The Undersigned:
I ACKNOWLEDGE RECEIPT OF A COPY OF THIS TWO SIDED AGREEMENT

Signature Of Insured (or) Producer / Broker

Date

THIS AGREEMENT IS CONTINUED ON THE REVERSE. YOU MUST READ BOTH SIDES OF THE COMPLETED AGREEMENT

RECEIVED
 DEC 13 2004
 TAPCO

EXHIBIT

4

Charleston

Premium Finance

P.O. BOX 286 • BURLINGTON, NC 27216-0286
TELEPHONE: 1-800-922-4178

TEN (10) DAY NOTICE OF
INTENT TO CANCEL

NOTICE MAILING DATE	ACCOUNT NUMBER	SCHEDULED PAYMENT	LATE CHARGE
03/14/05	168136	239.84	5.00

AMOUNT DUE	PAY BEFORE THIS DATE
244.84	03/24/05
PLEASE PAY THIS AMOUNT	NOTICE EXPIRATION DATE

Please be advised that because of your failure to make payment of the amount due under your Premium Service Agreement with our company, we will request and effect cancellation of the policy or policies covered therein, pursuant to the power of attorney signed by you, unless the amount now due, shown above, is received in our office within 10 days from the mailing date of this notice.

NOTICE OR COPY TO:

ANDERSON GENERAL
3721 WELSEY ST UNIT 133
MYRTLE BEACH SC 29579

TO:

LLC. R.K.C. ENTERTAINMENT
1220F RIVER OAKS DR
MYRTLE BEACH SC 29577

Charleston

Premium Finance

P.O. BOX 286 • BURLINGTON, NC 27216-0286
TELEPHONE: 1-800-922-4178

TEN (10) DAY NOTICE OF
INTENT TO CANCEL

NOTICE MAILING DATE	ACCOUNT NUMBER	SCHEDULED PAYMENT	LATE CHARGE
03/14/05	168136	239.84	5.00

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Please be advised that because of your failure to make payment of the amount due under your Premium Service Agreement with our company, we will request and effect cancellation of the policy or policies covered therein, pursuant to the power of attorney signed by you, unless the amount now due, shown above, is received in our office within 10 days from the mailing date of this notice.

NOTICE OR COPY TO:

ANDERSON GENERAL
3721 WELSEY ST UNIT 133
MYRTLE BEACH SC 29579

TO:

LLC. R.K.C. ENTERTAINMENT
1220F RIVER OAKS DR
MYRTLE BEACH SC 29577

United States Postal Service

Certificate of Bulk Mailing

MAILER: Prepare this statement in ink. Affix meter stamp or uncanceled postage stamps covering fee in the block to the right. Present for certification:

Meter stamp or postage (uncanceled) stamps in payment of fee to be affixed here and canceled by postmarking, including date.

Fee for Certificate

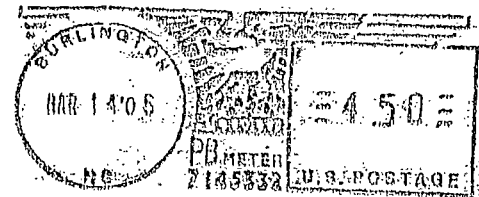
Up to 1,000 pieces (1 certificate for total number)

For each additional 1,000 pieces, or fraction

Duplicate Copy

Use
Current
Rate
Chart

302



Number of Identical Pieces	Class of Mail	Postage on Each	Number of Pieces to the Pound	Total Number of Pounds	Total Postage Paid	Fee Paid
470	First	.37	53	66 lb 11.02	\$173.90	4.50
Mailed For		Mailed By				
Tapco Underwriters						

Postmaster's Certificate

It is hereby certified that the above-described mailing has been received and number of pieces and postage verified.

(Postmaster or Designee)



04-15-2005 11:30 AM

NOTICE OF CANCELLATION OR REFUSAL TO RENEW



AL1047106

Issued Through Agency Or Office At:
Tapco Underwriters, Inc.
Burlington, NC 27215

Cancellation or Termination Will Take Effect At:
Date (Hour Standard Time)
03/29/2005 12:01 AM

Date of Notice
04/14/2005

Name and
Address of
Insurance
Company

Received From:
ALEA LONDON, LTD. (330320.04 - COMM)
DAWSON HOUSE
5 JEWRY STREET
LONDON EL EC3N2EX

Name and
Address of
Insured

THE RED ROOM
1220-F RIVER OAKS DR.
MYRTLE BEACH SC 29577

ANDERSON GENERAL INSURANCE
3721 WESLEY ST UNIT 133
COLUMBUS PLAZA
MYRTLE BEACH SC 29579

For use as a certificate of mailing as provided in Section 931 of the Domestic Mail Manual
May be used for Domestic and International mail, does not provide for insurance.

Cancellation

You are hereby notified, in accordance with the terms and conditions of the above mentioned numbered policy and in accordance with the law, that your insurance will cease at and from the hour and date indicated above. If premium has been paid, premium adjustment will be made as soon as practicable.

THIS ACTION HAS BEEN TAKEN FOR THE FOLLOWING SPECIFIC REASON OR REASONS:

FINANCE COMPANY REQUEST

(Duplicate of Notice of Cancellation or Termination to Lienholder)

You are hereby notified that the agreement under the Loss Payable Cause payable to you as Lienholder which is a part of the above policy, issued to the above insured, is hereby cancelled (or terminated) in accordance with the conditions of the policy, said cancellation (or termination) to be effective on and after the hour and date mentioned above.

United States Postal Service

Received from:

ALEA LONDON, LTD. (330320.04 - COMM)

Insurance
Company

Name and
Address of
Lienholder1

Name and
Address of
Lienholder2

Name and
Address of
Lienholder3

For Registered Mail or Certificate Mail
Notice of Cancellation or Nonrenewal to
the insured and, if required, to the
Lienholder, the appropriate U.S. Postal
Service receipt must be attached hereto
and no postage stamp should be affixed
to the receipt reproduced hereon.

CERTIFICATION

I hereby certify that I personally mailed
in the U.S. Post office at the place and
time stamped hereon, a notice of
cancellation or nonrenewal to the insured
and, if required, to the Lienholder, an
exact carbon copy of which appears above,
and at said time received from the
U.S. Postal Service the receipt made
a part hereof or attached hereto.

Signed 04/14/2005

Premium 3142.00 Return Premium 2195.00
Company Copy

Signature
Expiration 12/09/2005
ACCT#:AUOCUG



04-15-2005 11:30 AM

TAPCO UNDERWRITERS, INC
POST OFFICE BOX 286 * BURLINGTON NC. 27216-0286
WATTS:800-334-5579 * LOCAL:336-584-8892

96 --5212

ANDERSON GENERAL INSURANCE
COLUMBUS PLAZA
3721 WESLEY ST UNIT 133
MYRTLE BEACH, SC 29579

AGENT#:3901442

INSURED
THE RED ROOM

POL#
ALT047106

EFF
12/09/2004 - 12/09/2005

BASE RETURN	RETURN TAX	TOTAL RETURN	LESS COMM	TOTAL RETURN
2195.00	0.00	2195.00	219.50	1975.50

DATE:04/14/2005 TIME:13:01:02

THIS IS THE TOTAL RETURN PREMIUM FOR ACCOUNT# AUOCUG
THIS POLICY CANCELLED EFFECTIVE 03/29/2005

THIS INVOICE DOES NOT REFLECT ANY PRIOR DEBITS OR CREDITS WHICH MAY BE PENDING

C A N C E L I N V O I C E

TAPCO COPY

ACCT#:AUOCUG



DATE 04-15-2005 11:30 AM POLICY NUMBER AUG00UG

INSURANCE COMPANY TARGO

Notice is hereby given that the subject policy is cancelled effective
DATE 03/29/05 TIME 12:01 A.M.

INSURED: ACCOUNT NUMBER 168136
LLC. R.K.C. ENTERTAINMENT
1220F RIVER OAKS DR
MYRTLE BEACH SC 29577

PAY-OFF AMOUNT: 1831.42

NOTICE OF CANCELLATION

The unearned premium is to be sent to:

Charleston Premium Finance Company

P.O. Box 286
Burlington, North Carolina 27216-0286
1-800-922-4178

for proper distribution, as required by NC General Statute 58-60

CC: PRODUCING AGENT

ANDERSON GENERAL
3721 WELSEY ST UNIT 133
MYRTLE BEACH SC 29579

You are hereby notified that the policy described above is cancelled for non-payment of an installment in accordance with the conditions and terms of the Premium Finance Agreement, which incorporates a power of attorney. In Florida, this cancellation is effective one day after the above captioned date, in all other states this cancellation is effective on the above captioned date at the hour indicated in the policy as the effective time.

The undersigned does hereby certify that the named insured and the insurance agent have been furnished the ten (10) days written notice of our intent to cancel as required by North Carolina by General Statute 58-60, and that all applicable provisions of said Statute have been complied with. The Florida Insurance Code, Part XV of Chapter 627, recognizes this as valid notice of cancellation and provides that the gross unearned premium be returned to the premium finance company. The authority for this request is given in the attached duly executed power of attorney signed by the insured and as authorized under the premium finance license which was issued to the company by the various State Departments or Bureaus of Insurance and Departments of Financial Institutions (in South Carolina pursuant to title 38, chapter 27, Code of Laws; in Tennessee Sec. 56-37-103, as amended).

IF THE ABOVE CAPTIONED INSURANCE CONTRACT PROVIDES MOTOR VEHICLE LIABILITY INSURANCE REQUIRED BY THE FINANCIAL RESPONSIBILITY LAW, PROOF OF FINANCIAL RESPONSIBILITY IS REQUIRED TO BE MAINTAINED CONTINUOUSLY FOR A PERIOD OF THREE (3) YEARS, PURSUANT TO CHAPTER 324, FLORIDA STATUTES, AND THE OPERATION OF THE VEHICLE WITHOUT SUCH FINANCIAL RESPONSIBILITY IS UNLAWFUL.

If the policy or any statute requires the insurer to give notice to a mortgagee, governmental agency, or other third party before the policy can be cancelled, the insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation.

Any payment received after mailing of this Notice of Cancellation to the insurance company will not reinstate the policy.

The effective date of cancellation shall be no earlier than five days after the mailing of this form.

BY

CHARLESTON PREMIUM FINANCE COMPANY
P.O. BOX 286
BURLINGTON, NORTH CAROLINA 27216-0286

FL LIC #89574
SC LIC #91900139

GA LIC # 1572
TN LIC #00032

NC LIC #B-338
VA LIC #PF149

EXHIBIT 5

E3501_11927

Law Offices of Gerald Huston, LLC

c/o 3759 North Ravenswood, Suite 231

Chicago, Illinois 60613

(630) 750-0450 (Huston direct)

(773) 880-1260 (Office main)

(773) 880-1265 (Fax)

Via Facsimile & Certified U.S. Mail Return Receipt Requested

October 6, 2008

Ms. Beth Gauldin
Assistant Vice President – Claims
Tapco Underwriters, Inc.
3060 South Church Street
P.O. Box 286
Burlington, N.C. 27215

RECEIVED
OCT 14 2008
TAPCO

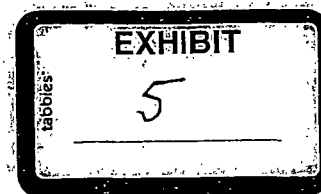
Re: **Our Insured:** Joseph Barron
 Your Insureds: R.K.C. Entertainment, LLC d/b/a The Red Room
 Joseph Barron (additional insured)
 Case Caption: *Narruhn v. Jacob Garron aka Joseph Barron*
 Case No.: 08-CP-26-2609
 Jurisdiction: Court of Common Pleas – County of Horry, S.C.
 Date of Loss: 4/9/05
 AESLIC File No.: C66942

Dear Ms. Gauldin:

My firm represents American Empire Surplus Lines Insurance Company ("American Empire") with regard to the above-referenced lawsuit. We write to you today in Tapco Underwriters, Inc.'s ("Tapco") capacity as Managing General Agent for Alea London, Ltd. If our understanding of Tapco's relationship with R.K.C. Entertainment and/or Alea London is in error, please advise us immediately.

Upon information and belief, Alea London, Ltd./Tapco Underwriters, Inc., issued a commercial general liability (believed to be Policy No. ALT 047 106) to its insured, R.K.C. Entertainment, LLC d/b/a The Red Room, that was in effect on April 9, 2005. More specifically, upon belief, the policy provided \$1,000,000 in primary insurance coverage for occurrences falling within the policy period, believed to be 12/9/04 to 12/9/05. Under that policy, Joseph H. Barron was named as an additional insured with regard to general liability claims. (Please see Certificate of Liability Insurance, attached hereto.)

Please be advised that on or about April 1, 2008, Plaintiff Elisa Narruhn filed a Complaint in the Court of Common Pleas, Fifteenth Judicial Circuit, Corry County, South Carolina,



E3501 11927

Ms. Beth Gaudin

Assistant Vice President - Claims

Tapco Underwriters, Inc.

October 6, 2008

Page 2

captioned *Narruhn v. Jacob Garron aka Joseph Barron*, case no. 08-CP-26-2609 (hereinafter "the Complaint"). (Please see the Complaint, attached hereto.)

In the Complaint, Plaintiff alleges that defendant Joseph Barron was the owner and/or landlord of the property at 1121 North Kings Highway, Myrtle Beach, S.C., which was operated as an eating and drinking establishment known as the Red Room. Plaintiff alleges that she was a patron of the Red Room on April 9, 2005, when she was assaulted by another Red Room patron. Plaintiff alleges Mr. Barron was negligent in various respects relating to the property at issue and RKC Entertainment's operation of the Red Room, which Plaintiff characterizes as operating in "dangerous and unsafe conditions." Plaintiff alleges that, as a result of that negligence, she suffered various personal injuries, for which she now seeks actual and punitive damages.

On or about August 14, 2008, Mr. Barron was served with summons and Complaint. On or about August 18, 2008, American Empire was tendered a copy of the Complaint and asked to defend and indemnify Mr. Barron. American Empire is currently providing a defense to Mr. Barron, reserving any and all policy defenses.

Additionally, at all times relevant to the Complaint, a Lease Agreement was in effect between Mr. Barron and your first-named insured, RKC Entertainment, LLC. (Please see the Lease Agreement, attached hereto.) Pursuant to the terms of the Lease Agreement, RKC Entertainment agreed as follows:

12. Indemnity, Hold Harmless, Insurance. Tenant [RKC Entertainment] will indemnify and hold harmless the Landlord [Joseph Barron] against all liability, claims, suits or demands arising out of or asserted or brought by reason of any of the Tenant's operations and use of the Premise for any injury or damage on or about the Demised Premises, whether caused by the negligence of the Tenants, its officers, agent employees or otherwise. Tenant shall procure and maintain in force, at his expense, during the term of this Lease, and any extension thereof, fire and extended coverage insurance on the contents of the leased premises and single limit public liability insurance in the amount of at least \$1,000,000 for personal injury and \$100,000.00 property damage. Such coverage shall be adequate to protect against liability for damage claims through public use or arising out of accidents occurring around or in the leased premises. The insurance policy shall provide coverage for contingent liability of Landlord or any claims or losses and Tenant shall name Landlord as co-insured under said policy upon execution of this Lease. All policies of casualty insurance shall contain a waiver of subrogation against Landlord and Tenant. Landlord shall have no responsibility for the personal property of Tenant nor for the insurance of same.

Lease Agreement, at Paragraph 12, emphases added.

E3501.11927

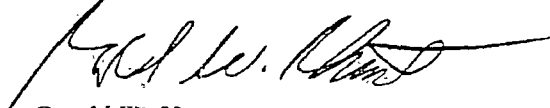
Ms. Beth Gaudin
Assistant Vice President - Claims
Tapco Underwriters, Inc.
October 6, 2008
Page 3

Pursuant to Mr. Barron's status as an additional insured under the Alea London, Ltd./Tapco policy, American Empire hereby tenders defense and indemnification of this claim to Alea London, Ltd./Tapco. American Empire further requests that Alea London, Ltd./Tapco assume all costs of defense of this matter, including all costs and expenses incurred to date. Additionally, American Empire also tenders the defense and indemnity of the Complaint to Alea London, Ltd./Tapco pursuant to the terms of the Lease Agreement in effect between Mr. Barron and your first-named insured RKC Entertainment, LLC.

Please contact us at your earliest convenience to discuss this matter and whether Alea London, Ltd./Tapco will assume the defense and indemnification of Mr. Barron relating to this lawsuit. If it is your position that the Alea London, Ltd./Tapco policy is not required to respond to this claim, please advise us in writing immediately. I look forward to speaking with you soon.

Very truly yours,

LAW OFFICES OF GERALD HUSTON



Gerald W. Huston

Alea North America (via U.S. Mail only)
55 Capital Boulevard
Corporate Ridge
Rocky Hill, CT 06067

Anderson General Insurance (via U.S. Mail only)
3721 Wesley St. Unit 133
Columbus Plaza
Myrtle Beach, S.C. 29579

Joseph H. Barron (via U.S. Mail only)

Michael Matheus (via U.S. Mail only)
Casualty Line Manager
American Empire Group
580 Walnut Street, 10th Floor
Cincinnati, OH 45202

E3501_11927

October 8, 2008

Gerald W. Huston
Law Offices of Gerald Huston, LLC
3759 North Ravenswood, Suite 231
Chicago, IL 60613

Sent via facsimile # 773-880-1265

Re : Insured : The Red Room
Policy #: ALT 047106
D/loss : 4/8/05
Your : Joseph Barron

Mr. Huston,

We are the agent of the Insurer, Alea London Limited ("Underwriters") subscribing to Certificate No. ALT 047106 ("Policy "). We are in receipt of the Summons and Complaint filed against Jacob Garron aka Joseph Barron ("your client") by Elisa Naruhn. We understand that you have tendered this matter for defense and indemnification under this policy of insurance.

Please be advised that our records indicate that this policy canceled effective March 29, 2005 for non payment of premium to the premium finance company.

As there has been no occurrence of bodily injury or property damage during the policy period, we regret that Underwriters cannot assist you with the defense or indemnification of this matter and you should take steps to protect your client's interests in this matter.

By stating the above reason for denial, Alea London Limited do not intend to waive any of their rights or defenses, which they may now have or may discover in the future under this policy of insurance. All rights, defenses and privileges afforded to Underwriters under this policy of insurance are expressly reserved on their behalf.

E3501_11927

Should you have any questions, comments or further information that you feel would cause the carrier to alter their position, please advise in writing and we will forward it to Underwriters for consideration.

Best regards,

Beth S. Gauldin
Assistant Vice President - Claims

EXHIBIT 6

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery, whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (1) above.

EXCLUSION - COMMUNICABLE DISEASE

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

EXCLUSION - PARTICIPANTS

The following exclusion is added to Paragraph 2, Exclusions of Coverage (Section I - Coverages):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to "any person" while practicing for or participating in any circus, concert, demonstration, event, exhibition, race, rodeo, show, contest or any activity of an athletic or sports nature for the events shown in this Schedule.

The following exclusion is added to Paragraph 2, Exclusions of COVERAGE A. Bodily Injury and Property Damage Liability (Section I - Coverages):

This insurance does not apply to "property damage" to property of "any person" defined herein including but not limited to "autos", watercraft, aircraft, animals or any other property of the foregoing.

The following definition is added to DEFINITIONS. (Section V):

"Any person" shall include but is not limited to animal handlers, announcers, attendants, clowns, contestants, entertainers, mechanics, musicians, officials, participants, singers, speakers, stage crews, stock contractors, vendors or their employees, any person employed by or doing volunteer work for you or on your behalf, or any person involved in the promotion, sponsoring or production of the event designated in the Schedule.

PAR EXC 01 (01/04)

ALEA-GL-01 (01/04)

Page 3 of 7

EXHIBIT

6

EXCLUSION - ASSAULT AND BATTERY

This insurance does not apply to any claim arising out of an assault and/or battery or out of any act or failure to act to prevent or suppress an assault and/or battery whether caused by the insured, an employee, a patron or any other person.

This exclusion applies to all causes of action arising out of an assault and/or battery including, but not limited to, allegations of negligent hiring, placement, training, or supervision, or to any act, error, or omission relating to an assault and/or battery.

EXCLUSION - ABUSE OR MOLESTATION

This insurance does not apply to "injury" arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (a) above.

EXCLUSION - COMMUNICABLE DISEASE

This insurance does not apply to "injury" arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

EXHIBIT 7

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

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

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

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

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

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

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

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

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

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

period for purposes of determining the Limits of Insurance.

SECTION IV - LIQUOR LIABILITY CONDITIONS

1. Bankruptcy.

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

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

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

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

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

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

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

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us.

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claim-

ant's legal representative.

4. Other Insurance.

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

a. Primary Insurance

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

b. Method of Sharing

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

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

5. Premium Audit.

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

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

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

6. Representations.

By accepting this policy, you agree:

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

7. Separation Of Insureds.

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

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

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Elisa Narruhn,

Plaintiff

v.

Alea London Limited and Anderson
General Insurance,

Defendants

THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

Civil Action No.: 2010-CP-26-4112

DEFENDANT ALEA LONDON
LIMITED'S MEMORANDUM
REGARDING THE CIRCUIT
COURT'S JURISDICTION TO SET
ASIDE ORDER OF SPECIAL REFEREE

HORRY COUNTY
11 MAR 14 AM 11:01
CLERK OF COURT

NATURE OF THE MOTION

This is a case in which Alea London Limited ("Alea") has moved under Rule 60(b) SCRCF, to have an Order set aside.

As addressed in Alea's Memorandum in Support of Motion to Set Aside Order under Rule 60(b)(1), (4), and (5), a copy of which was provided to the Court and has been filed with the Clerk of Court, Alea seeks to have the Order of Special Referee Nate Fata, entered March 8, 2010, set aside.

The grounds for the motion are Alea's total and absolute surprise about every aspect regarding the order and its issuance; that Alea was deprived of its right of due process, being deprived of notice and the right to a hearing; and because the order is so fundamentally inequitable that it should not be allowed to stand.

At the hearing of March 1, 2011, the Court expressed uncertainty as to whether it had jurisdiction to adjudicate the Rule 60(b) motion. The Court instructed Alea and the Plaintiff to brief the issue. This memorandum is submitted in response to that instruction.

FACTS BEARING ON THE MOTION

On January 27, 2010, the Honorable Steven H. John entered an Order appointing Attorney Nate Fata as a Special Referee for C.A. No. 2005-CP-26-4134. A copy of that Order is at Exhibit 1. It is apparent from the handwritten changes to the Order that Mr. Fata was the choice of Plaintiff's counsel.

The Order of Reference limited Mr. Fata's appointment to "supplemental proceedings in regard to a money judgment entered by this Court." It also directed that a hearing be conducted on February 9, 2010.

The hearing was conducted as scheduled, apparently with only Attorneys Fata and Connell present. The final Order from Special Referee Fata is at Exhibit 2. The Order recites that notice, including the Order of the Reference, was provided to Richard Cronic, the registered agent for RKC Entertainment, LLC on January 26, 2010 – the day before the Order of Reference was entered.

The Order, pursuant to Plaintiff's attorney's request, of which Alea had absolutely no notice, ordered that "any and all right. . . and claim which RKC Entertainment, LLC may have against Alea London. . . is hereby assigned to Plaintiff Elisa Narruhn." The Special Referee had only a copy of the policy, presented by Plaintiff's counsel with no certification or authentication, which was *de facto* hearsay, to support its Order regarding Alea. It is the assignment of RKC's rights against Alea that Alea seeks to vacate, as argued below.

ARGUMENT

- I. **SOUTH CAROLINA LAW PROVIDES THAT WHEN A SPECIAL REFEREE COMPLETES THE TASK INCORPORATED IN THE ORDER OF REFERENCE, HIS JURISDICTION ENDS AND JURISDICTION IS REPOSED IN THE CIRCUIT COURT.**

The Supreme Court has addressed specifically when a Master or Referee loses jurisdiction and where Rule 60(b) motions are to be filed and adjudicated thereafter. *Wachovia Bank of S.C., N.A. v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000) reh'g denied. The *Player* Court held as follows:

The proper construction of the order of reference is that it gives the master jurisdiction over the case and all matters arising from it until the master has performed all the duties assigned to him. . . .

Once the master has concluded his duties and entered all necessary orders, his jurisdiction ends and any post-trial motions, other than those covered by this Court's May 22, 1986, order^{FN2} are to be heard by the circuit court. The language in the order of reference authorizing the master to enter a final judgment is not a limitation on his jurisdiction, but rather is descriptive of the nature of his order.

^{FN2}. Pursuant to this order, a post-trial motion filed under Rules 50, 52, 59 or 60(a), SCRCP, is to be delivered to the trial judge, who is then to dispose of it promptly.

341 S.C. at 427, 535 S.E. 2d at 129 (emphasis added) (footnotes omitted). See also, *Hill v. Dotts*, 345 S.C. 304, 307, 547 S.E.2d 894, 896 (Ct. App. 2001) (*Special referee appointed to conduct a damages hearing, which he did, awarding damages for personal injury and property damage. Defendant filed motion under Rule 60(b) for relief. Circuit court had jurisdiction and conducted hearing* (emphasis added)).

It should be noted that the Supreme Court's Order of May 22, 1986 **excludes** motions under Rule 60(b) from the list of actions that must be presented to the trial court. A copy of this Order is at Exhibit 3.

II. THE CASES WHICH STATE THAT ONE CIRCUIT JUDGE DOES NOT HAVE THE AUTHORITY TO SET ASIDE THE ORDER OF ANOTHER CIRCUIT JUDGE ARE DISTINGUISHABLE AND NOT DISPOSITIVE IN THE CASE AT HAND.

The rule that one circuit court judge does not have authority to overturn an order of another circuit judge is founded on the prior Circuit Court Rules. In 1986, our Supreme Court held as follows:

The Church contends Judge Pyle violated Circuit Court Rule 60 when he disallowed the amended complaint after Judge Brown had earlier permitted the amended complaint. We agree.

One Circuit Court Judge does not have the authority to set aside the order of another. Circuit Court Rule 60; ^{FN1} Cook v. Taylor, 272 S.C. 536, 252 S.E.2d 923 (1979). The effect of Judge Pyle's order was to reverse the earlier substantive order, clearly an impermissible act.

^{FN1} This case was tried and appealed prior to July 1, 1985 [when the SCRCP went into effect].

Enoree Baptist Church v. Fletcher, 287 S.C. 602, 603-04, 340 S.E.2d 546, 547 (1986) (footnotes omitted). This rule is not in the current South Carolina Rules of Civil Procedure, but it is still correct under our law. *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008). However, as in *Salmonsens*, where a subsequent circuit judge's ruling on class certification and opt-out provisions in the case did not violate the rule that one circuit judge does not have authority to overturn an order of another circuit judge when the first judge did not rule on these provisions, 377 S.C. at 454, 661 S.E.2d at 88, for the reasons addressed below the rule will not be violated in this matter should the special referee's order be set aside with respect to the assignment.

A. In as much as the Special Referee's Assignment under the Order of Reference was completed, he was no longer "Another Circuit Judge."

As addressed above, citing *Player*, when a Special Referee completes the task assigned him in the Order of Reference, he no longer has jurisdiction. That is exactly what happened here. The Order of Reference, Exhibit 1, assigns Attorney Nate Fata to conduct supplementary proceedings; to hold a hearing to that effect on February 9, 2010; and to enter final judgment, which he did by entering his Order of March 8, 2010. He, therefore, completed everything he was charged with doing, so he no longer has jurisdiction. He is no longer a circuit judge. For a

circuit judge of the Fifteenth Judicial Circuit to hear and grant a Rule 60(b) motion would thus **not** be overturning the Order of another Circuit Judge.

B. The Court's grant of the Rule 60(b) motion would not reverse Judge John's Order.

To the extent Plaintiff asserts that for this Court to hear and grant the 60(b) motion would be to overrule Judge John's Order of Reference, that assertion is incorrect. As the Court of Appeals has stated:

The Binkleys argue that Judge Hall effectively reversed Judge Kittredge's prior order. We disagree.

Generally, one circuit court judge may not reverse or modify the order of another circuit court judge. In the present case, the issues before Judge Kittredge and Judge Hall were easily distinguishable. Judge Kittredge determined that Rabon Creek's easement was ambiguous, that the homeowners had no actual or constructive notice of it, and that the doctrine of equitable estoppel limited Rabon Creek's enforcement rights. Judge Hall addressed the question of when the Binkleys knew or should have known that they had a potential claim for legal malpractice against Haynsworth and determined that they had at least inquiry notice of their claim when Haynsworth advised them that the easement existed.

Binkley v. Burry, 352 S.C. 286, 295, 573 S.E.2d 838, 843 (Ct. App. 2002) (footnotes omitted).

Here, the issues before Judge Johns and the Court hearing the 60(b) motion are also easily distinguishable.

The issue before Judge John was whether Attorney Fata should conduct supplementary proceedings and when. The issues before the Court regarding the 60(b) motion are whether Alea – which was unrepresented at the hearing – was surprised; whether it was accorded the minimums of due process, notice and a hearing; and whether, given all the circumstances, it is equitable to enforce against Alea the Special Referee's – not Judge John's – Order granting Plaintiff an assignment against Alea when no evidence was presented to establish that RKC Entertainment, LLC had ownership of any assets deriving from Alea's policy.

The Court's Order granting the Rule 60(b) motion would not overrule or reverse any aspect of Judge John's Order.

C. Alea's Motion is *de facto* an Independent Action in Equity Specifically Allowed by Rule 60(b).

Rule 60(b), in pertinent part, states that, "[t]his rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding. . . ."

Our Court of Appeals has addressed such an action as follows:

Rule 60 explicitly indicates that it in no way limits the court's power to entertain an independent action "to relieve a party from a judgment. . . 'or' to set aside a judgment for fraud upon the court." (emphasis added). While the most common ground for an independent action is for fraud, the rule is not restricted to only that ground. The structure of this rule and its use of the word "or" indicate to this court two potential independent action attacks on a judgment, order or proceeding: 1) one based on such rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake or 2) one based in equity for fraud upon the court. See, 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2868 (2d ed.1995).

The Eighth Circuit characterized the independent action as follows:

The indispensable elements of such a cause of action are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law.

Nat'l Sur. Co. v. State Bank of Humboldt, 120 F. 593 (8th Cir. 1903). In essence, the rule merely reflects many of the considerations attendant to an equitable analysis. Further, since the independent action referenced in the rule is one in equity, the court may consider equitable defenses such as laches, unclean hands, and whether an adequate legal remedy exists. The court may also consider other policy doctrines such as *parens patriae*; we do not suggest this list is exclusive. However, what we do suggest is that equity only intervenes when the circumstances so require, but to do so, a court must be aware of all of the circumstances before it acts. Thus, the parties must be allowed to develop the record accordingly.

Mr. T. v. Mrs. T., 378 S.C. 127, 135-36, 162 S.E 2d 413, 417-18 (Ct. App. 2008).

Being independent and in equity, it should not be presented to the same court. Alea's claim meets all five of the elements stated by the Eighth Circuit, as follows:

- In equity and good conscience, the assignment against Alea – which was totally without notice – should not in good conscience be enforced.
- Alea's policy does not provide coverage. Even if it did, that coverage would be excluded by the exclusion for injuries caused by assault and battery.
- The intentional failure to notify Alea, despite knowing that it intended to impose liability on it, prevented Alea from obtaining the benefit of this defense.
- Alea is in no way at fault for not appearing at a hearing of which it had no knowledge or action.
- Alea has no adequate remedy at law. By the time it received the Order granting an assignment, the time for appeal was over.

The Court should clearly have jurisdiction over this independent act.

For the reasons cited, the rule that one circuit judge cannot overrule another circuit judge does not preclude this Court's exercise of jurisdiction.

CONCLUSION

The cited words of the Supreme Court from *Wachovia Bank of S.C. v. Player* to the effect that a special referee loses jurisdiction when he completes the task in the Order of Reference – and that jurisdiction reverts to the Circuit Court – governs this action.

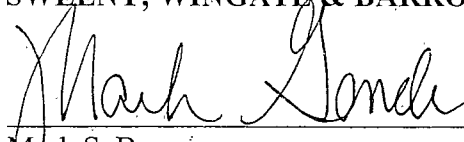
For this Court to hear and grant Alea's Rule 60(b) motion would not violate the rule that one circuit judge cannot overrule another circuit judge. The special referee, having completed his work, is no longer a special referee and is most certainly not "another circuit judge." The

issues being considered by the Court would clearly be distinguishable from those inherent in the Order of Reference and Rule 60(b) allows an independent action, which this is.

The Court, therefore, has jurisdiction and should exercise it to relieve Alea from the order of the special referee as it relates to the assignment of RKC's rights.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
ATTORNEYS FOR ALEA LONDON LIMITED

Columbia, South Carolina
March 11, 2011

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Perceval, II,

Defendants.

ORDER OF REFERENCE
FOR SUPPLEMENTAL
PROCEEDINGS

FILED
HORRY COUNTY
2010 JAN 27 AM 10:28
MELANIE HUGGINS-WARD
CLERK OF COURT

It appearing that pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure*, that this action is one which may be referred to the Master-In-Equity or a Special Referee for supplemental proceedings in regard to a money judgment entered by this Court; NOW, THEREFORE;

IT IS ORDERED that this action be and the same hereby is referred to Nate Fata., Esquire, Horry County, South Carolina, to take the testimony arising under the pleadings and to make his finding of fact and conclusions of law with the authority to enter final judgment pursuant to Rule 53(e), *SCRCP*. Any appeal from the final judgment entered by Nate Fata, Esquire shall be to the

A.H.G.
S.C. Court of Appeals

Resident

Presiding Judge
Fifteenth Judicial Circuit

Dated: 10/13/ 2009
C. Murray, South Carolina

¹⁰ A hearing has been scheduled in the above-mentioned case for Feb. 9, 2009, at 10:00 o'clock A.m. before Nate Fata, Esquire.

EXHIBIT 2

From: Anderson General Insurance MB

843 236 3510

09/06/2010 09:00

#591 P.011/073

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A NO. 2005-CP-26-4134

Elisa Narruhn,

Plaintiff,

vs.

RKC Entertainment, LLC d/b/a The
Red Room and Ardon Perceval, II,

Defendants.

ORDER

FILED
HORRY COUNTY
2010 MAR -8 PM 12:13
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter is before me pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* for supplemental proceedings. By Order dated October 13, 2009, Steven H. John, Resident Judge for the Fifteenth Judicial Circuit, referred this matter to me with a hearing to be held on February 9, 2010. Present at the hearing was Plaintiff's counsel, Gene M. Connell, Jr., who advised the court that on January 26, 2010 he had mailed to Richard Cronce, the Registered Agent for RKC Entertainment, LLC, a copy of the Order of Judgment, Order of Reference for Supplemental Proceedings and notice of the hearing date. The notice of the hearing date was mailed to Richard Cronce at both of his addresses.

At the hearing, Richard Cronce failed to appear and the court proceeded to hear the case. Previously, the Circuit Court, Judge J. Michael Baxley presiding, had issued an Order of Judgment against RKC Entertainment LLC in the amount of Six Million an 00/100 (\$6,000,000.00) Dollars. Plaintiff's counsel has requested that the court issue an order assigning any rights RKC Entertainment, LLC or Richard Cronce has against their liability insurance carrier to the Plaintiff/Judgment Creditor. Plaintiff's counsel has further asked that if any funds are collected through this assignment that such amount be credited against the Judgment.



NA "Exhibit A"

From: Anderson General Insurance HB

843 236 3510

09/06/2010 09:00

#591 P.012/073

At the hearing, I was presented with a copy of an insurance policy that Plaintiff's counsel had received from the Anderson General Insurance Agency on July 27, 2009. This insurance policy, which is part of the record, lists The Red Room as the Assured and the Insurer is Alea London Limited.

The court has reviewed the Plaintiff's counsel's request that any right the Defendant had against Alea London Limited Insurer be assigned as a "chose in action to the Plaintiff." The court believes that this is an appropriate subject of supplemental proceedings and further recognizes that this is an attempt to collect anything from the Defendant which may be of value to satisfy the Judgment of the Plaintiff.

Accordingly,

IT IS ORDERED that any and all claim by RKC Entertainment LLC against Alea London Limited Insurers is assigned to the Plaintiff under Policy Number ALT047106.

IT IS FURTHER ORDERED that any and all right, title and claim which RKC Entertainment LLC may have against Alea London Limited Insurers for failure to pay the claim, defend the claim, or to investigate the claim and for any other claim that RKC Entertainment LLC may have against Alea London Limited is hereby assigned to the Plaintiff Elisa Narruhn.

IT IS FURTHER ORDERED that should the Plaintiff collect any monies from Alea London Limited that these monies shall be used to offset the Six Million and 00/100 (\$6,000,000.00) Dollars Judgment filed in this court on July 9, 2009.

AND IT IS ORDERED.



Nafe Fata, Special Referee
Fifteenth Judicial Circuit

Dated: March 3, 2009
Surf Cove Beach South Carolina.

EXHIBIT 3

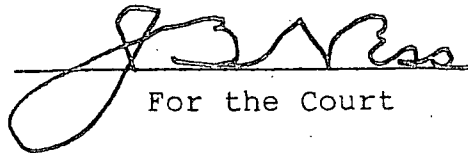
The Supreme Court of South Carolina

O R D E R

Pursuant to the provisions of Section 4, Article V,
South Carolina Constitution,

IT IS ORDERED, that upon the filing by any party of a
post-trial motion, in jury or non-jury actions, under Rules 50,
52, 59, or 60(a), SCRCP, the party shall within ten (10) days
provide a copy of the motion to the trial judge.

IT IS FURTHER ORDERED, that all post-trial motions shall
be disposed promptly by written order of the trial judge but no
later than sixty (60) days after the filing of such motions. The
Chief Judge for Administrative Purposes in each Circuit shall
assure compliance with this Administration Order.

 C.J.
For the Court

Columbia, South Carolina

May 22, 1986.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-264112

Elisa Narruhn,

Plaintiff,

vs.

Alea London Limited and Anderson
General Insurance,

Defendants.

PLAINTIFF'S ANSWERS TO
REQUESTS TO ADMIT

TO: MARK S. BARROW AND MARK V. GENDE, ATTORNEYS FOR DEFENDANT
ALEA LONDON LIMITED:

The Plaintiff, in response to Defendant Alea London Limited's Requests to Admit, states as follows:

1. Please admit that the Plaintiff suffered the injury on which her \$6,000,000.00 award is based as a result of an assault and/or battery that occurred on or about April 9, 2005 at The Red Room in Myrtle Beach, South Carolina.

ANSWER:

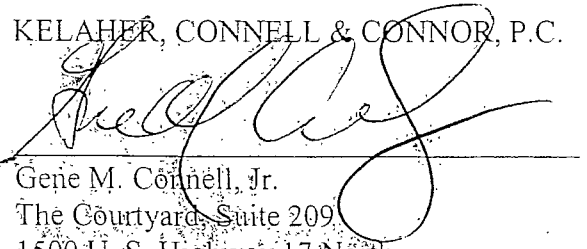
Denied.

2. Please admit that the attached policy of insurance (policy number ALT047106; Bates Numbers Alea 656-719) is a policy of insurance purchased to provide coverage for The Red Room in Myrtle Beach, South Carolina.

ANSWER:

Admitted.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina, 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

May 2, 2011
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

Elisa Narruhm,

Plaintiff

v.

Alea London Limited and Anderson
General Insurance,

Defendants

Civil Action No.: 2010-CP-26-4112

DEFENDANT ALEA LONDON
LIMITED'S MOTION TO DETERMINE
THE SUFFICIENCY OF PLAINTIFF'S
ANSWER TO ALEA LONDON
LIMITED'S REQUESTS TO ADMIT

TO: GENE M. CONNELL, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND
TO THE PLAINTIFF ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE, that the Defendant by its undersigned attorneys, will move before the Presiding Judge of the The State of South Carolina, County of Horry, on the tenth (10th) day after service hereof, or as soon as counsel may be heard, for an Order, pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure for an Order of the Court in Civil Action No. 2005-CP-26-4134, seeking to determine the sufficiency of Plaintiff's Answer to Defendant Alea London Limited's Requests to Admit No. 1 attached hereto as Exhibit A.

The basis for this motion is that there is ample evidence in the possession of the Plaintiff a reasonable inquiry into which should have resulted in Plaintiff admitting the Request to Admit No. 1.

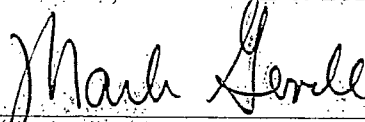
This motion may be supported by a Memorandum of Law, Affidavits, or any other material in the record.

Defendant Alea London Limited represents that it has not consulted with counsel prior to filing this Motion because consultation with counsel would serve no useful purpose.

(Signature page will follow)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR ALEA LONDON LIMITED

Columbia, South Carolina

May 5, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2010-CP-26-4112

Elisa Narruhn Respondent,
v.
Alea London Limited and Anderson
General Insurance Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

October 18, 2011

/s/Mark V. Gende

Mark S. Barrow
Mark V. Gende
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2010-CP-26-4112

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SC Court of Appeals

Elisa Narruhn Respondent

v.

Alea London Limited and Anderson
General Insurance Defendant

Of whom, Alea London Limited is Appellant

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Respondent Elisa Narruhn by depositing a copy of it in the United States Mail, postage prepaid, on November 14, 2011, addressed to her attorney of record, Gene M. Connell, Jr., Esquire, Kelaher, Connell & Connor, P.C., 1500 U.S. Highway 17 North, The Courtyard, Suite 209, Post Office Box 14547, Surfside Beach, SC 29587-4547 and on Defendant Anderson General Insurance by depositing a copy of it in the United States Mail, postage prepaid, on November 14, 2011, addressed to their attorney of record, Susan Taylor Wall, Esquire, Parker Poe Adams & Bernstein L.L.P., 200 Meeting Street, Suite 301, Charleston, SC 29401

November 14, 2011



Mark S. Barrow
Mark V. Gende
William R. Calhoun, Jr.
SWEENEY WINGATE AND BARROW, P.A.
Post Office Box 12129
Columbia, S.C. 29211
(803) 256-2233
Attorneys for Appellant Alea London Limited

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2010-CP-26-4112

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SC Court of Appeals

Elisa Narruhn

Respondent.

v.

Alea London Limited and Anderson General
Insurance,

Defendants,

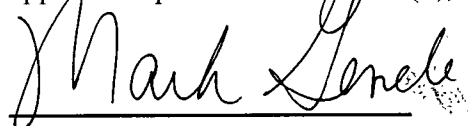
Of whom, Alea London Limited is the,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that the Record on Appeal complies with Rule 210(b), SCARC.

October 18, 2011



Mark S. Barrow

Mark V. Gende

William R. Calhoun, Jr.

SWEENEY WINGATE AND BARROW, P.A.

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Attorneys for Appellant

ORIGINAL