

Vol. I

2009-143546

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 13 2009

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Opinion No. 4605 (S.C. Ct. App. filed August 6, 2009)

Auto-Owners Insurance Company, ...Petitioner,

v.

Samuel W. Rhodes, Piedmont Promotions, Inc.,

Marion L. Eadon d/b/a C&B Fabrication, C&B

Fabrications, Inc., and Low Country Signs, Inc., ...Respondents.

APPENDIX

Volume 1

ELLIS, LAWHORNE & SIMS, P.A.

JOHN M. MCCANTS

1501 Main Street, 5th Floor

Columbia, South Carolina 29202

(803) 254-4190

GALLIVAN WHITE & BOYD, P.A.

A. JOHNSTON COX

Post Office Box 7368

Columbia, South Carolina 29202

(803) 779-1833

ATTORNEYS FOR PETITIONER

Other Counsel of Record:

Hoover C. Blanton

McCutchen, Blanton, Hopkins & Campbell, LLP

Post Office Drawer 11316

Columbia, South Carolina 29211-1316

William O. Sweeney

Sweeney Wingate & Barrow, PA

Post Office Box 12129

Columbia, South Carolina, 29211

Creighton B. Coleman

Coleman & Tolen, LLC

Post Office Box 1006

Winnsboro, South Carolina 29180

Attorneys for Respondent Marion L.

Eadon d/b/a C&B Fabrication, C&B

Fabrications, Inc. and Low Country

Signs, Inc.

Attorneys for Respondents Samuel W. Rhodes
and Piedmont Promotions, Inc

TABLE OF CONTENTS

Record on Appeal	0001-1342
Appendix to the Record on Appeal.....	1343-1355
Final Brief of Appellant Auto-Owners Insurance Company	1356-1416
Final Brief of Respondents Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc.....	1417-1469
Final Brief of Respondents Marion L. Eadon d/b/a C&B Fabrication, C&B Fabrications, Inc. and Low Country Signs.....	1470-1522
Final Reply Brief of Appellant Auto-Owners Insurance Company.....	1523-1550
Opinion No. 4605 of the S.C. Court of Appeals filed August 6, 2009	1551-1566
Petition for Rehearing of Appellant Auto-Owners Insurance Filed August 21, 2009.....	1567-1603
Order Denying Petition for Rehearing from the S.C. Court of Appeals issued September 23, 2009	1604-1605

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

11-11-002

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No. 02-CP-46-2369

Auto-Owners Insurance Company, ... Appellant,
v.

Samuel W. Rhodes, Piedmont Promotions, Inc.,
Marion L. Eadon d/b/a C&B Fabrication, C&B
Fabrications, Inc., and Low Country Signs, Inc., ... Respondents,

RECORD ON APPEAL

A. JOHNSTON COX
JOHN M. MCCANTS
1501 Main Street, 6th Floor
Post Office Box 2285
Columbia, SC 29202
(803) 254-4190
ATTORNEYS FOR APPELLANT
AUTO-OWNERS INSURANCE COMPANY

CREIGHTON B. COLEMAN
McCutchen Blanton Rhodes Johnston, LLC
Post Office Box 1006
Winnsboro, SC 29180
(803) 635-6884
ATTORNEYS FOR RESPONDENT
SAMUEL E. RHODES AND PIEDMONT
PROMOTIONS, INC.

HOOVER C. BLANTON
McCutchen Blanton Johnson & Barnette
Post Office Drawer 11209
Columbia, SC 29211
(803) 255-0997
ATTORNEYS FOR RESPONDENT
SAMUEL E. RHODES AND PIEDMONT
PROMOTIONS, INC.

WILLIAM O. SWEENY
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR MARION L. EADON,
C&B FABRICATIONS, AND LOW
COUNTRY SIGNS, INC.

INDEX

	<u>Page</u>
Order filed June 30, 2003 Denying Auto-Owners Motion to Intervene	1
Order filed June 6, 2005 Denying Motions for Summary Judgment	7
Order filed August 3, 2005 Denying Motion for Summary Judgment.....	10
Order filed November 7, 2006	13
Supplemental Order dated March 23, 2007 regarding Declaratory Judgment	61
Revised Supplemental Order dated March 30, 2007	63
Judgment Regarding Stipulation of Agreement filed June 27, 2006.....	65
Summons and Complaint filed October 14, 2002	66
Answer of Samuel W. Rhodes dated January 14, 2003	112
First Amended Complaint filed January 17, 2003	119
Answer and Counterclaim of Defendants Eadon, C&B Fabrications, and Low Country Signs, Inc. dated January 17, 2003	135
Reply of Auto-Owners Insurance Company filed January 31, 2003	142
Amended Complaint filed March 14, 2003.....	147
Amended Notice of Motion and Motion to Intervene on behalf of Auto Owners Insurance Company filed April 21, 2003	154
Answer to the First Amended Complaint of Marion L. Eadon filed July 17, 2003	202
Motion to Amend Answer and Counterclaim filed September 7, 2004 ...	213
Auto Owners' Motion to Intervene	220

Auto Owners' Request for Special Verdict and/or General Verdict Accompanied by Written Interrogatories filed June 9, 2004	228
Plaintiffs' Response to Defendant's Post-Trial Motions filed October 1, 2004.....	231
Motion for Summary Judgment of Eadon, C&B Fabrication, Inc. and Low Country Signs, Inc. dated February 14, 2005.....	243
Brief of Defendants Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. dated February 15, 2005	245
Memorandum in Support of Motion for Summary Judgment of Defendants Marion Eadon, C&B Fabrication, Inc. and Low Country Signs, Inc. and in Opposition to Plaintiff's Motion for Summary Judgment.....	408
Defendants Marion Eadon, C&B Fabrication, Inc. and Low Country Signs, Inc.'s Memorandum in Opposition to Plaintiff's Motion to Amend Its Previously-Amended Complaint	609
Second Amended Complaint filed July 18, 2005	635
Answer of Defendants Marion Eadon, C&B Fabrication, Inc. and Low Country Signs, Inc. to Plaintiff's Second Amended Complaint.....	716
Defendant Marion Eadon d/b/a C&B Fabrication's Position Regarding Exclusions in the Policy dated June 30, 2006	723
Defendant Marion Eadon d/b/a C&B Fabrication's Position Regarding Coverage Under the Policy dated July 12, 2006	731
Plaintiff's Trial Brief on Issue of Damages filed July 14, 2006	745
Defendant Marion Eadon d/b/a C&B Fabrication's Position Regarding Whether the Judgment as Rendered is Covered dated July 24, 2006 ...	765
Plaintiff's Trial Brief Regarding Whether Marion L. Eadon Meets the Definition of an Insured Under the Terms of the Insurance Policy dated July 24, 2006	781
Defendant Marion L. Eadon's Motion for Costs and Fees of Defending This Declaratory Action dated November 15, 2006	995
Notice of Motion and Motion to Alter or Amend Judgment, or in the Alternative, for a New Trial dated November 21, 2006	998

Amended Notice of Motion and Motion to Alter or Amend Judgment, or in the Alternative, for a New Trial dated November 22, 2006	1011
Notice of Motion and Supplemental Rule 59 Motion and/or in the Alternative, Rule 60(b)(2), (4) and (5) Motion for Relief from the Order or Motion to Stay filed January 3, 2007	1022
Notice of Appeal filed April 10, 2007	1029
Responses to the Plaintiff's Request to Admit by Defendants Samuel W. Rhodes and Piedmont Promotions, Inc.	1086
Defendant Marion L. Eadon's Response to Plaintiff's Request to Admit	1090
Plaintiff's Response to the First Request for Admission to Plaintiff by Defendants Samuel W. Rhodes and Piedmont Promotions, Inc.	1091
Testimony	
Deposition Testimony of Marion L. Eadon dated June 13, 2003 Direct Examination by Hoover C. Blanton Pages 93, 97	1094
Deposition Testimony of Samuel W. Rhodes, Jr. dated May 3, 2004 Direct Examination by Ms. Griffin Page 44-45	1097
Deposition Testimony of Marion L. Eadon dated January 17, 2006 Direct Examination by Johnston Cox Pages 12-20, 23-24, 26-27, 32-35, 37, 44-45, 47-53, 60	1100
Deposition Testimony of Michael Watson dated April 4, 2006 Direct Examination by Hoover Blanton Pages 49-50, 62-65	1129
Transcripts	
Transcript of Record dated January 22, 2004 before the Honorable S. Jackson Kimball – Page 6	1136

Volume I of the Transcript of Record of Jury Trial before R. Markley
Dennis:

Rhodes/Direct Examination by Creighton Coleman Pages 49-56, 58-63, 70, 72-76, 82-83, 86-91, and 94-96.....	1138

Volume II of the Transcript of Record of Jury Trial before R. Markley
Dennis:

Rhodes/Direct Examination by Creighton Coleman Pages 112-113, 116	1170
Rhodes/Cross-Examination by Griffin Page 117.....	1174
Campbell/Direct Examination by Blanton Pages 237, 249-250, and 255-263.....	1175

Volume III of the Transcript of Record of Jury Trial before R. Markley
Dennis :

Mr. Durden/Direct Examination by Creighton Coleman Pages 17, 22, 27-29	1187
Judge's comments Pages 74-75.....	1193
Mr. Melvin/Direct by Ms. Griffin Pages 95-97, 101-102	1195
Mr. Melvin/Cross by Mr. Coleman pages 111-115	1200
Mr. Eadon/Direct by Ms. Griffin Pages 128-132, 134-135	1205
Mr. Eadon/Cross by Mr. Blanton Pages 140, 142-145, 150-163, 167.....	1212
Mr. Benniger/Cross by Mr. Blanton Pages 178-180.....	1232

Volume IV of Transcript of Record of Jury Trial before R. Markley
Dennis:

Testimony between Judge and Attorneys Pages 313, 315, 317, 318, 335-336	1235
Jury Charge Page 381	1242

Transcript of Record dated June 27, 2006 before Judge Lee S. Alford

Testimony between Judge and Attorneys Page 3 1243

Exhibits

Plaintiff's Trial Exhibit 4 - C&B Fabrication Proposal submitted
to Rhodes 1245

Plaintiff's Trial Exhibit 5A – Check No. 1791 1246

Plaintiff's Trial Exhibit 6 – TEG Plat 1248

Plaintiff's Trial Exhibit 8A – Letter dated December 29, 2000
from Rhodes to Eadon 1249

Plaintiff's Trial Exhibit 8B – Letter to Piedmont Promotions
from Eadon 1250

Plaintiff's Trial Exhibit 14 – Letter dated January 23, 2001
from SCDOT to Rhodes..... 1251

Plaintiff's Trial Exhibit 16 – Letter dated February 15, 2001
from SCDOT to Rhodes 1252

Plaintiff's Trial Exhibit 46 – Deposits Tax Year 2000 1257

Plaintiff's Trial Exhibit 47 – Copy of checks numbered 0551,
0552 and 12970..... 1258

Plaintiff's Trial Exhibit 48 – C&B's Statement of Account 1259

Plaintiff's Trial Exhibit 49 – Loan Notice with handwritten note 1275

Plaintiff's Trial Exhibit 50 – Statements from SEFL..... 1276

Defendant's Trial Exhibit 24 – Check to C&B from Piedmont 1277

Defendant's Trial Exhibit 25 – Check to C&B from Piedmont 1278

Exhibit 1 to Carl Anders' Deposition – Letter to C&B from Carl
Anders dated February 8, 2001 1279

Exhibit 2 to Carl Anders' Deposition – Letter to C&B from Carl
Anders dated May 1, 2001..... 1284

Exhibit 3 to Carl Anders' Deposition – Letter to C&B from Carl Anders dated May 22, 2001	1287
Exhibit 5 to Carl Anders' Deposition – Letter to C&B from Carl Anders dated February 8, 2002.....	1288
Exhibit 6 to Carl Anders' Deposition – Letter to Marion Eadon From Trevor Bedell dated September 25, 2002.....	1290
Miscellaneous	
General Liability Notice of Occurrence Claim dated January 23, 2001	1294
Letter from Marion Eadon to Piedmont Promotions dated December 29, 2000	1295
Insurance Policy effective September 17, 2000 to September 17, 2001	1296
Certificate of Counsel	1340
Certificate of Service	1341

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
C. A. No. 01-CP-20-334

Samuel W. Rhodes, Jr. and
Piedmont Promotions, Inc.,

Plaintiffs,

v.

Marion L. Eadon, d/b/a C & B
Fabrication,

Defendant.

ORDER

JUL 30 10 11 AM '03
CLERK OF COURT
FAIRFIELD COUNTY
SOUTH CAROLINA
BEEBECKHAM

Auto-Owners Insurance Company (Auto-Owners) has instituted a Declaratory Judgment action in the Court of Common Pleas for York County, South Carolina in which it seeks a declaration of its rights and obligations under a policy of liability insurance issued by it to C & B Fabrications, Inc. and Low Country Signs, Inc. in relation to the claims made by the Plaintiffs in the instant action against the Defendant Marion L. Eadon, d/b/a C & B Fabrication. The Plaintiffs in the instant action, Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc., Marion L. Eadon, C & B Fabrications, Inc., and Low Country Signs, Inc., are named as Defendants in the York County Declaratory Judgment action.

Auto-Owners moves to permit it "to intervene in this action for the sole purpose of submitting at the trial of this case a special verdict form or a general verdict form accompanied by Answers to Interrogatories pursuant to South Carolina Rule of Civil Procedure 49." The Plaintiffs filed their written response to the Motion to Intervene for the limited purpose stated in the Motion asserting that:

- (a) The motion does not meet the criteria for intervention;
- (b) To submit special interrogatories as proposed would unnecessarily complicate the jury's deliberation;
- (c) The special interrogatories appear to be designed to and could have the resulting effect of causing the jury to perceive that they are being interrogated about issues that go beyond the facts of the case;
- (d) The proposed special interrogatories would have the effect of injecting into the jury's deliberations issues that otherwise do not exist;
- (e) The proposed special interrogatories, whether designed to do so or not, have the potential for creating great mischief if submitted to the jury.

The proposed special interrogatories are twelve in number with one of them having thirteen sub-parts. They are specific and detailed questions about each of the separate causes of action in the Complaint, including the basis for any verdict for the Plaintiffs, the amount of any damages and the amount of any punitive damages as to each separate cause of action. The Motion was heard and briefs of the parties were submitted to the Court on July 10, 2003.

Rule 24 S.C.R.C.P. does not contain any language suggesting partial or limited intervention as is proposed by Auto-Owners. The reason for the absence of such language is no mystery.

The term "intervention" with reference to judicial proceedings is the act by which a third party, called an intervenor, becomes a party in a suit pending between other persons. It has been described as a method by which an outsider with an interest in an action may come into the action as a party on his own application, and it has been said that an intervention is a proceeding by which a person, not originally a party to an action, is permitted to and does become a party to the pending proceeding for the protection of some right or interest alleged by him to be affected by the proceeding. ...

The effect of intervention is to make the intervenor a full participant in the lawsuit, as if he or she were an original party, and renders the intervenor

vulnerable to complete adjudication of the issues in litigation between the intervenor and the adverse party. [59 Am Jur 2d, 578, Parties, Section 160]

The Supreme Court of Maine has held that a person who intervenes in a pending action becomes a party to that action and, as a general rule, *has the same rights and liabilities as the original parties* (emphasis added). New England Whitewater Center, Inc. v. Department of Inland Fisheries and Wildlife, 550 A.2d 56, 59 (Me. 1988).

VA 43
Courts in other jurisdictions have reached a similar conclusion. The Court of Appeals for the District of Columbia held that when a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party. Schneider v. Dumbarton Developers, Inc., 767 F.2d 1007, 1017 (C.A.D.C. 1985). Several courts have held that intervention is the proceeding by which a person, not originally a party to an action, is permitted to and does *become a party to the pending proceeding* for the protection of some right or interest alleged by him to be affected by the proceeding. Jack Wood Construction Co., Inc. v. Ford, 522 S.W.2d 408, 413 (Ark. 1975); Whaley v. State ex rel. Bland, 82 So.2d 187, 189-190 (Ala. 1955).

The expectation that an "intervenor" becomes a party to the action for all purposes is implicit in the language of Rule 24(c) S.C.R.C.P. that the motion "shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." The only "pleadings" allowed under Rule 7 S.C.R.C.P. are: complaint; answer; reply to counterclaim; answer to cross-claim; cross-claim; third-party complaint; third-party answer; court ordered reply to answer or third-party answer; and reply to affirmative defenses. A proposed pleading was not submitted by Auto-Owners with its Motion. When this omission was pointed out by the Plaintiffs, Auto-Owners submitted at the hearing a proposed "Answer,

Counterclaim and Cross-Claim on behalf of Auto-Owners. The tendered Answer, Counterclaim and Cross-Claim by Auto-Owners states in the first paragraph:

"Paragraphs 1-62 of the Complaint are not directed toward this Defendant and therefore, require no response from this Defendant."

Accordingly, by the language of its own tendered "pleading" Auto-Owners acknowledges that none of the allegations of the Complaint are directed toward it and it has no response to it. This acknowledgment is accurate. This acknowledgment could be the sole basis for disposition of its Motion because it acknowledges the absence of controverted issues between Auto-Owners and the Plaintiffs under the Complaint of the Plaintiffs in this case. It acknowledges that Auto-Owners seeks to inject new and additional issues not created by the pleadings between the Plaintiffs and the Defendant in this case. Auto-Owners does not assert any right against any existing party in this action. Its presence is unnecessary to the decision of any factual or legal issue created by the pleadings in this case. In addition, the prayer of the tendered Answer, Counterclaim and Cross-Claim by Auto-Owners is merely a repetition of its Motion when it says:

Auto-Owners prays that this court allow it to intervene as a Defendant in the action for the sole-purpose of submitting special interrogatories to the jury as described above.

The Plaintiffs' contention that Auto-Owner's proposed intervention "for the sole purpose" of submitting the proposed special verdict form with the lengthy and suggestive interrogatories, unrelated to issues in the lawsuit, has the potential for great mischief, is not without merit. It is the duty of the trial judge to confine the issues submitted to the jury to those made by the pleadings. Hendricks v. American Fire and Casualty Company, 247 S.C. 479, 148 S.E.2d 162 (1966).

The proposed "special interrogatories", seeking a specific dollar figure as to each cause of action and as to punitive damages as to each cause of action alleging punitive damages, is in obvious conflict with the holding of Smith v. Strickland, 314 S.C. 192, 442 S.E.2d 207 (Ct. App. 1994). In that case the trial judge awarded a specific dollar amount as damages for each separate cause of action. The Court of Appeals reversed. As to that practice, the pertinent language from the Smith opinion follows:

In South Carolina, a plaintiff is generally permitted to assert all viable causes of action, whether they are consistent or not. *Inman v. Imperial Chrysler-Plymouth*, 303 S.C. 10, 397 S.E.2d 774 (Ct. App. 1990). A plaintiff, however, can have only one recovery for a single wrong. *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986).

VA#5
Here the trial court found for the plaintiffs on each of their four causes of action or theories of recovery and awarded actual damages on each one, trebling them on the fourth. Basic to each cause of action were the trial court's findings that the "[p]laintiffs suffered economic losses and will suffer losses in the future totaling Six Hundred Seventy-five Thousand Seven Hundred Sixty-Two and 34/100 (\$675,762.34) Dollars" and that "[t]hese losses were the result of [their] investment in the [basement waterproofing system] franchise.

The plaintiffs are entitled to recover their actual damages only one time. See *Nichols v. State Farm Mut. Auto Ins. Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983) (a plaintiff can recover only once for his or her actual damages). To allow them to recover actual damages four times (once as part of trebled damages) would mean the plaintiffs would receive multiple recoveries for a single wrong, which in this instance was the sale to the plaintiffs of a business opportunity by the defendants, who, fraudulently and deceptively, either acted or omitted to act, including in ways prescribed by the Business Opportunity Sales Act and embraced within the Unfair Trade Practices Act.

As with actual damages, a plaintiff can recover damages that are punitive in nature only once, either as expressly-designated punitive damages or as trebled damages, where their recovery concerns a single wrong.

Here the Plaintiffs seek damages for a single wrong, injury to real estate and the consequences flowing therefrom. The Plaintiffs allege they are entitled to recover for those

injuries under any one or all of the theories alleged in their Complaint but they seek recovery of their damages (actual and punitive) only once.

Even were the Motion to Intervene not made for a limited purpose as is the case here, Rule 24(b) is clear that:

In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Auto-Owners' Motion to Intervene for the limited purpose stated is denied.

IT IS SO ORDERED.



Kenneth G. Goode
Presiding Judge

Winnsboro, South Carolina

July 29, 2003

FILED-RECEIVED
STATE OF SOUTH CAROLINA,) IN THE COURT OF COMMON PLEAS
2005 JUN -6 PM 12:03

County of York

DAVID HAMILTON
J.C.C.P. & GS C.A. No. 2002-CP-46-2369
YORK COUNTY, SC

Auto-Owners Insurance Company,)
Plaintiff)

Order

v.)

Samuel W. Rhodes, Piedmont)
Promotions, Inc. and Marion L.)
Eadon, C&B Fabrications, Inc.)
And Low Country Signs, Inc.,)
Defendants)

This matter is before the Court on three summary judgment motions as follows:

1. The defendants, Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., move for summary judgment on the issue of Eadon doing business as C&B Fabrications for damages awarded in the underlying action, Rhodes v. Eadon d/b/a C&B Fabrications, C.A. No. 2001-CP-20-334 (Fairfield County).
2. The defendants, Samuel L. Rhodes and Piedmont Promotions, Inc. move for summary judgment finding that the policy of insurance issued by plaintiff covers the event upon which the verdict of the jury in the Rhodes action was rendered.
3. Plaintiff moves for summary judgment on two grounds:
 - a. That damages were not awarded against an insured as defined by the policy. Furthermore, the jury conclusively determined that Marion L. Eadon was not acting on behalf of, or as an officer of, a corporation insured by the plaintiff.
 - b. As a matter of law, the damages awarded were not caused by an occurrence and are excluded by the policy.

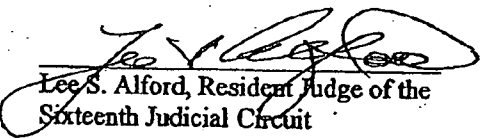
Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions on file and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56 (c), SCRPC.

#1
2005

This order will address all of the motions for summary judgment set out herein except the second part of plaintiff's motion on the issue of "occurrence" which will be addressed in a subsequent order.

The Court denies each of the motions for summary judgment addressed herein. The Court finds that there are disputed factual issues which are material to the coverage issues. Summary judgment would therefore not be appropriate at this time on any of these motions.

It Is So Ordered.



Lee S. Alford, Resident Judge of the
Sixteenth Judicial Circuit

York, SC
June 6 2005

#2
28A-

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

AUTO OWNERS INS CO

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 02-CP-46-2369

SAMUEL W RHODES
PIEDMONT PROMOTIONS INC
MARION L EADON
C & B FABRICATIONS INC
LOW COUNTRY SIGNS INC

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

ORDER

Dated at YORK, South Carolina, this 6 day of JUNE, 2005.

S/ LEE S. ALFORD
PRESIDING JUDGE

This judgment was entered on the 6 day of JUNE, 2005, and a copy mailed first class this 6 day of JUNE, 2005 to attorneys of record or to parties (when appearing pro se) as follows:

✓ A JOHNSTON COX

ATTORNEY(S) FOR THE PLAINTIFF(S)

CREIGHTON COLEMAN - *Hoover C. Blanton*
WILLIAM O SWEENEY

ATTORNEY(S) FOR THE DEFENDANT(S)

DAVID HAMILTON
CLERK OF COURT

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT

**Auto-Owners Insurance Company,
Plaintiff**

ORDER

C.A. No. 2002-CP-46-2369

VS

**Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L. Eadon
d/b/a C&B Fabrication, C&B
Fabrications, Inc., and Low Country
Signs, Inc.,
Defendants.**

FILED-RECEIVED
2005 AUG -3 PM 3:53
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Plaintiff moved for Summary Judgment in the above-entitled matter on two grounds. The Court denied the first ground in an order dated June 6, 2005. The Court did not rule on the other ground, which was deferred until now.

The plaintiff moves for Summary Judgment on the ground that "as a matter of law, the damages were not caused by an occurrence and are excluded by the policy."

Summary Judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to judgment as a matter of law. Summary judgment is improper if the parties dispute the inferences to be drawn from the facts, even if the facts themselves are not in dispute. Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Osborne ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

HI
CBA

The Court finds that Summary Judgment would not be proper in this case on the issue of whether there was an "occurrence" within the terms of the policy which is the subject of this action. The Court finds that there is, at the least, a dispute of the facts on this issue.

An accident undisputedly occurred when a sign erected by C&B Fabrications fell across I-77 subsequent to attempts to repair it made by C&B Fabrications at the direction of Marion L. Eadon.

The affidavit of Carl Anders avers that the Plaintiff, Auto Owners Insurance Company, paid invoices including:

- (a) \$300.00 for cutting the fallen sign into manageable sections while on the interstate;
- (b.) \$1,500.00 for removing the fallen sign from its property and repairing fences; and
- (c.) \$4,552.35 from the Department of Transportation for removing the fallen sign from the highway.

Also, the Plaintiff paid a bill from Varnadores Garage and Towing for removal of the fallen sign from the highway in the amount of \$7,100.00.

The sign could have accidentally hit the automobile of a passing motorist on I-77 when it fell which, in turn, could have resulted in property damage and personal injury to a third person.

There is at least some evidence that the sign accidentally fell because of negligent construction and repair by C&B Fabrications. Summary Judgment would therefore not

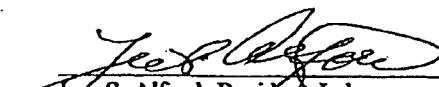
#2
20#

2

be appropriate on the issue of whether or not there was an "occurrence" within the terms of the subject insurance policy. This Motion for Summary Judgment is denied.

The damages covered by the subject insurance policy remain as a possibly Summary Judgment ruling.

AND IT IS SO ORDERED.


Lee S. Alford, Resident Judge
Sixteenth Judicial Circuit

August 3, 2005
York, South Carolina

#3
006

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

CALENDAR NO. 02-CP-46-2369

Auto-Owners Insurance Company,)

Plaintiff,)

v.)

ORDER

Samuel W. Rhodes, Piedmont)

Promotions, Inc. and Marion L.)

Eadon d/b/a C&B Fabrication,)

C&B Fabrications, Inc. and)

Low Country Signs, Inc.,)

Defendants.)

FILED-RECEIVED
BOOK PAGE
Nov 7 4 08 PM '06
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

In this Declaratory Judgment (DJ) action the Plaintiff Auto-Owners Insurance Company (Auto-Owners) seeks a "judgment declaring whether: Auto-Owners has a duty to indemnify Marion L. Eadon d/b/a C&B Fabrication for the damages awarded against Marion L. Eadon d/b/a C&B Fabrication in Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. v. Marion L. Eadon d/b/a C&B Fabrication, Civil Action Number 01-CP-20-334." (Second Amended Complaint). Based upon the evidence and the applicable law the Court finds and concludes that the Auto-Owners policy of liability insurance insures Marion L. Eadon d/b/a C&B Fabrication for the judgment rendered in the civil action in Fairfield County, South Carolina, by Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. v. Marion L. Eadon d/b/a C&B Fabrication, having Civil Action Number 01-CP-20-334.

FACTUAL BACKGROUND

Samuel W. Rhodes, Jr. (Rhodes) is the sole owner and stockholder of Piedmont

#1
EB

Promotions, Inc.(Piedmont), a South Carolina S- Corporation. Rhodes and Piedmont own or lease outdoor advertising space in various locations. Rhodes obtained permits in the name of Piedmont from the South Carolina Department of Transportation (SCDOT) to erect three outdoor advertising signs on real estate owned by Rhodes in Fairfield County adjacent I-77. Rhodes had conversations with Marion L. Eadon (Eadon) and also met with Eadon at his place of business in Manning, South Carolina and discussed having the signs made. Eadon personally assured Rhodes that the signs would be correctly designed, fabricated and installed and he personally would stand behind the work. Thereafter a written proposal dated July 9, 1999 by C&B Fabrication (C&B) to design, fabricate, deliver and install three outdoor signs on the Rhodes real estate was submitted to Rhodes by C&B. The proposal was on the letterhead of C&B Fabrication. Nothing on the proposal indicates that C&B is a corporation. The proposal by C&B was for \$155,460.00 but was negotiated down to \$153,960.00. This revised proposal was accepted by Rhodes on August 4, 1999. When the proposal was accepted by Rhodes he paid one-half the agreed price to C&B. On February 8, 2000 a second payment check to C&B was made by Rhodes and on February 22, 2000 the third and final check to C&B was made when the installation of the signs was completed by C&B. When Rhodes made the final payment to C&B he requested, as a condition of making the final payment, a copy of the engineering drawings for the signs. On February 22, 2000, Tracy Benenhaley, C&B's man on the erection site, furnished Rhodes a copy of the drawings purporting to be the ones from which the signs had been fabricated. These drawings were prepared by Thompson Engineering Group, L.L.P. of Athens, Tennessee for "C&B Fabrication" and were dated July 13, 1999. Nothing on the drawing indicates C&B is a

corporate entity. The signs were approximately 500 feet apart.

In December 2000, approximately ten months later, the middle sign was discovered leaning toward I-77. Rhodes made repeated, urgent demands that Eadon correct the leaning sign, inspect the other two signs and make any needed corrections to them. On or about Wednesday, January 17, 2001 Eadon sent a crew which made adjustments to the leaning sign. Rhodes was on the premises when Eadon's personnel were correcting the leaning sign. He requested that they inspect the other two signs and was assured by them that they would do so.

Three days later on the afternoon of January 20, 2001, one of the signs fell on I-77 across both southbound traffic lanes. The sign that fell was the southernmost sign, not the previously leaning middle sign. SCDOT orally required Rhodes to immediately take down the remaining two signs because of safety concerns. Pursuant to Rhodes' demand, Eadon had one of the remaining signs taken down but refused to take down the last sign. Rhodes had the last sign taken down. On January 23, 2001 the SCDOT gave written notice of cancellation of all three outdoor advertising billboard permits.

On February 8, 2001, Auto-Owners sent a reservation of rights letter to Eadon pertaining to the "claim" in which it stated that "we are unsure if an occurrence as defined by your policy has taken place." The reservation of rights letter further quoted policy provisions including four policy exclusions. The letter included the statement "The company reserves the right under the policy to deny coverage to you or anyone claiming coverage under the policy." Auto-Owners paid several claims for damages caused by the sign that fell, some to the SCDOT and some to Piedmont Promotions. On August 2, 2001,

Auto-Owners wrote Rhodes saying: "As I explained to you on the phone, we do insure C&B Fabrications but their liability policy does not have coverage for most of the expenses that will be incurred by someone in this loss. We have coverage for resulting damages that this sign has caused and I have enclosed a draft to you in the amount of \$1800.00. ... We will also have coverage for the expenses that the SCDOT has billed you for and I have paid that bill directly to them."

THE UNDERLYING ACTION

On December 12, 2001 Rhodes and Piedmont instituted a civil action (Rhodes action) in the Court of Common Pleas for Fairfield County, South Carolina against Marion L. Eadon, d/b/a C&B Fabrication (Eadon or C&B). In that action they alleged damages to the real estate owned by Rhodes and lost income by Piedmont as a proximate result of the negligent design, fabrication, and erection of the signs by C&B and its negligent failure to discover and correct the defective condition of the signs after notice was given of one of the signs leaning, all of which resulted in the fall of one of the signs; the mandate by SCDOT that the remaining two signs be taken down because of safety concerns and cancellation of the three sign permits.

As the liability insurer, Auto-Owners retained counsel to defend the action by Rhodes and Piedmont against Marion L. Eadon d/b/a C&B Fabrication. On February 8, 2002, Auto-Owners sent a reservation of rights letter to Eadon saying that a defense of this suit by Rhodes and Piedmont was under a reservation of rights. The letter stated in part: "We will be defending presently due to the claim of damage to real property that is alleged in the suit papers. Should the claim of damage to real property be dismissed, there is a strong

likelihood that we will no longer be providing a defense to you." The reservation of rights letter also stated that: "All rights, terms, conditions and exclusions in your policy are in full force and effect and are completely reserved."

THE D J ACTION

On October 14, 2002, Auto-Owners filed the current DJ action naming as Defendants, Samuel W. Rhodes, Piedmont Promotions, Inc., Marion L. Eadon, C&B Fabrications, Inc., and Low Country Signs, Inc. The Complaint quoted policy provisions pertaining to property damage, occurrence, your product, your work, and four exclusions (k, l, m and n). The Complaint alleged that "by reason of the provisions of the insurance policy and the applicable laws" the policy provides no coverage to and no obligation to defend the Rhodes action. The Complaint sought a stay of the Rhodes action pending resolution of the DJ action. The Complaint does not allege or contend that Marion L. Eadon d/b/a C&B Fabrication is not an insured under the policy, only that the policy does not insure for the events which precipitated the Rhodes action. It raised issues only as to whether there had been an occurrence and whether four exceptions applied.

Five months later, on March 14, 2003, Auto-Owners filed an Amended Complaint in this DJ action. There is nothing in its Amended Complaint that raises any issue or presents any question as to whether Marion L. Eadon, d/b/a C&B Fabrication is insured under its policy. The Amended Complaint, like the original Complaint, referenced only the issues of occurrence and the four mentioned exclusions.

Auto-Owners' Amended Complaint, as did its original Complaint, alleges that "Marion L. Eadon d/b/a C&B Fabrications, Inc. completed and installed the signs in February

of 2000." (Paragraph 6). Auto-Owners' Amended Complaint alleges that it issued its policy "to C&B Fabrications, Inc. and Low Country Signs, Inc., which included property damage liability coverage, subject to certain conditions and exclusions set forth in the policy." (Paragraph 10). Auto-Owners' Amended Complaint also alleges that its "policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to the described law suit, by reason of the provisions of the insurance policy." (Paragraph 19). The only "provisions" of the policy mentioned in the Amended Complaint are "occurrence" and four exclusions. No issue is raised in the Amended Complaint as to Marion L. Eadon d/b/a C&B Fabrication not being insured under the policy. The Amended Complaint abandoned the contention of no duty to defend and abandoned the request to stay the underlying action.

BOTH ACTIONS

On June 20, 2003 an Amended Complaint was filed in the Rhodes action. The Rhodes action Amended Complaint alleged (Paragraph 20 e):

As a consequence of having to remove the signs pursuant to the mandate of the South Carolina Department of Transportation, permanent fixtures on the Plaintiff's real property had to be removed which has resulted in significant injury to the Plaintiff's real property and has significantly impaired its value and usefulness, which injury cannot be replaced or repaired under the current mandates of the South Carolina Department of Transportation prohibiting the use of signs at this location.

At the Rhodes trial there was evidence that the SCDOT refused Rhodes and Piedmont's request for permits to re-erect signs at the location. There was evidence that the signs were permanent fixtures and a part of the real estate and intended to be permanent. An expert real estate appraiser testified as to the damage to the real estate. An expert economist testified as to the consequential damages resulting from the loss of the revenue the signs

#6
C&B

would have produced.

On December 18, 2003, Auto-Owners filed a Motion for Summary Judgment in the DJ action. That Motion was heard by the Court on January 22, 2004 and denied.

While the Rhodes action was pending, on March 6, 2003, Auto-Owners filed a Notice of Motion and Motion to Intervene in the Rhodes action against Marion L. Eadon, d/b/a C&B Fabrication to be permitted to submit special interrogatories. That Auto-Owners Motion contained the statement:

Auto-Owners Insurance Company issued an insurance policy to the Defendant [Marion L. Eadon d/b/a C&B Fabrication] with liability coverage for the period of time relevant to this action (the "Policy").

Auto-Owners' Motion further stated that Auto-Owners had filed an action in York County "requesting that the Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against the Defendant." The Motion says without any qualification or limitation that its DJ action in York County is seeking a declaration of the rights and obligations of Auto-Owners "in relation to the claims made by the Plaintiffs in this action [Rhodes and Piedmont] against the Defendant [Marion L. Eadon d/b/a C&B Fabrication]. The Motion further states without qualification or limitation that Auto-Owners had "issued an insurance policy to the Defendant [Marion L. Eadon d/b/a C&B Fabrication] with liability coverage for the period of time relevant to this action."

Thereafter on April 21, 2003 Auto-Owners filed an Amended Notice of Motion and Motion to Intervene in the Rhodes action against Marion L. Eadon d/b/a C&B Fabrication in which Auto-Owners again stated

Auto-Owners Insurance Company issued an insurance policy to the Defendant [Marion L. Eadon d/b/a C&B Fabrication] with liability coverage for the period of time relevant to this action (the "Policy").

In its Amended Notice of Motion and Motion to Intervene Auto-Owners again stated that its DJ action in York County was to have that "Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs [Rhodes and Piedmont] in this action against the Defendant [Marion L. Eadon d/b/a C&B Fabrication]".

At the hearing on the Motion to Intervene in the Rhodes action, Auto-Owners submitted its Memorandum dated July 9, 2003 in which it again stated that Auto-Owners "is the insurance carrier for the Defendant [Marion L. Eadon d/b/a C&B Fabrication]. Auto-Owners also stated in its Memorandum (p.4) that "the Defendants [Marion L. Eadon d/b/a C&B Fabrication] have claimed Auto-Owners is obligated to indemnify them under their commercial general liability policy for any amount for which they are found liable to the Plaintiffs. And, pursuant to the terms of the policy, Auto-Owners' liability for indemnification, if any, will depend upon which claims the jury finds that the Defendants are liable to the Plaintiff." Auto-Owners further stated in its Memorandum of July 9, 2003: "The same factual issue being determined by the jury - the amount of monetary loss sustained for each type of damage claimed - is at issue in both the present action between the Plaintiff [Rhodes and Piedmont] and the Defendants [Marion L. Eadon d/b/a C&B Fabrication] and the Declaratory Judgment action between the Defendants and Auto-Owners."

Thus, the thrust of Auto-Owners' Motion to Intervene and the basis for it was that it needed to determine which causes of action the jury found in favor of the Plaintiffs and the amount and type of damages pertaining to each. The assertion was that it needed to

H.S.
2308

determine whether damages awarded were under any cause of action covered by its policy. It asserted that the same factual issue existed in the DJ action. The Amended Complaint in the Rhodes action contained eleven alleged causes of action.

The Rhodes action was tried the week of August 30, 2004. At the end of the four-day trial the jury returned a verdict for the Plaintiffs under the Negligence cause of action for \$3,000,000 actual damages and \$3,500,000 punitive damages. On the Contract cause of action and the Implied Warranty cause of action Plaintiffs' verdicts for \$5,000 actual damages in each were awarded. No other causes of action were submitted to the jury. Rhodes and Piedmont elected to recover on the Negligence cause of action in which the jury rendered the \$6,500,000 verdict. Judgment was entered by the Clerk of Court on the jury's verdict on September 2, 2004. As a consequence of the trial and the result of the jury verdict and the judgment entered thereon, the only cause of action upon which judgment has been entered is the negligence cause of action. It clearly is one covered by the policy. The reasons Auto-Owners advanced in moving for intervention have all been resolved factually by the jury's verdict and the judgment entered on it. The Defendant's post-trial motions were denied.

The Court and the parties concurred in deferring trial of this DJ action until after the trial of the Rhodes action. This DJ action was on the jury trial roster as the first case for the September 13, 2004 term. On September 3, 2004, Auto-Owners served a Motion for Continuance. The basis for the Motion to Continue was Auto-Owners' position that it needed a transcript of the Rhodes trial which would be relevant to issues in the DJ action. Over the objection of all Defendants the Court granted the requested continuance to enable

Auto-Owners to obtain a transcript of the Rhodes action trial. Also on September 3, 2004, Auto-Owners filed its Motion to Serve a Second Amended Complaint.

On January 14, 2005, Auto-Owners filed its second Motion for Summary Judgment. On February 15, 2005 the Defendants filed Motions for Summary Judgment. The Defendants opposed Auto-Owners' Motion to Amend its Amended Complaint. No proposed Amended Complaint was submitted with Auto-Owners' Motion to Amend. In its Memorandum in Support of its Motion to Amend it proposed two general areas. First: a change in the language of its Complaint from "Marion L. Eadon d/b/a C&B Fabrications, Inc." to "Marion L. Eadon d/b/a C&B Fabrication." Second: whether "Marion L. Eadon d/b/a C&B Fabrication is an insured" under its policy. The Motion to Amend was extensively briefed by all parties and conferences and arguments on the Motion were heard by the Court. The Court allowed the Motion to Amend in an Order dated June 5, 2005. Auto-Owners served its Second Amended Complaint on July 15, 2005.

The Court had conferences with counsel for the parties, the Summary Judgment Motions were extensively briefed and arguments presented. The Court denied the Summary Judgment Motions in Orders issued August 3, 2005.

In this DJ action the Defendants requested a jury trial on disputed facts. The Court found that the only factual issue for the jury concerned an ambiguity in the names of the business entities intended by the parties to be covered in the insurance contract. This issue arose by reason of the Second Amended Complaint which put in issue the question of whether Marion L. Eadon d/b/a/ C&B Fabrication is insured under the policy for the judgment obtained in the Rhodes action. The remaining issues as to policy terms and

provisions, particularly the four exclusions, were to be decided by the Court. The case was scheduled and called for trial on June 26, 2006. A jury was drawn and excused until the following day. The Court was provided with a transcript of the Rhodes trial and with deposition transcripts from the Rhodes trial and the DJ action. The Court was also furnished additional briefing by the parties. The Court has been receptive and generous to the parties in permitting the submission of all evidence pertinent and relevant to issues raised by the parties. The Court has been deliberate and purposeful in permitting the parties to make their desired submissions addressing the issues in the case. The Court reviewed the trial and deposition transcripts that afternoon and evening.

The jury returned the second day but prior to submission of any evidence the parties entered into a Stipulation as to the jury factual issue and the Stipulation was entered on the record.

Stipulation

For purposes of this Declaratory action only, the named insureds on Auto-Owners' policies are reformed to C&B Fabricators, Inc. and Lowcountry Signs & Fabrication, Inc. both d/b/a C&B Fabrication, trade name of these corporations.

The jury was then dismissed with the consent of all parties. The Court requested the submission of final briefs from the parties on the issues to be resolved by the Court. That was done.

THE POLICY PROVISIONS

I.

Generally

"An action to determine coverage under an insurance policy is an action at law." State

Farm Fire and Casualty Company v. Barrett, 340 S.C. 1, 530 S.E.2d 132, 134 (Ct. App. 2000). "The construction of the [insurance] contract is a matter of law for the Court." Winchester v. United Insurance Company, 231 S.C. 438, 99 S.E.2d 34, 36 (1957); The construction of a written instrument is, in the first instance, a question of law for the Court. Campbell v. Bi-Lo, Inc., 301 S.C. 448, 392 S.E.2d 477, 479 (Ct. App. 1990.) Whether a contract's language is ambiguous is a question of law. Southern Atlantic Financial Services Inc. v. Middleton, 356 S.C. 444, 590 S.E.2d 27 (Ct. App. 2002).

Rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed. This rule of construction inures to the benefit of the insured...

McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993)

When a policy is "susceptible to more than one reasonable interpretation, one of which would provide coverage, this court must hold as a matter of law in favor of coverage." (Emphasis added.)

S.C. State Budget and Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643, 647 (1991); McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993); Goldston v. State Farm Mutual Automobile Insurance Company, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004).

Exclusions in an insurance policy are always construed most strongly against the insurer. (Cites omitted.) Moreover, the insurer bears the burden of establishing the exclusion.

Boggs v. Aetna Casualty & Surety Company, 272 S.C. 460, 252 S.E.2d 565, 568 (1979).

II.

Occurrence

There was an occurrence because there was an accident. The policy says the insurance applies to property damage only if the "property damage" is caused by an

"occurrence" that takes place in the coverage territory. [Section I; Coverage A, 1, b, (1) (page 1)]. "Occurrence" means an accident." [Section V 9 (page 13)].

Occurrence, as defined in the policy is an accident.

The CGL policy may, however, provide coverage in cases where faulty workmanship causes a third-party bodily injury or damage to other property, *not in cases where faulty workmanship damages the work product alone.* (Emphasis in original).

L-J, Inc. v. Bituminous Fire and Marine Insurance Company, 366 S.C. 117, 621 S.E.2d 33 (2005), footnote 4.

A general liability insurance policy typically does not cover claims of faulty workmanship, but instead covers claims of faulty workmanship that causes an accident. (Emphasis added.)

Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996).

In L-J, Inc. v. Bituminous Fire and Marine Insurance Company, 366 S.C. 117, 621 S.E.2d 33 (2005) (hereinafter Bituminous) the Supreme Court held that faulty workmanship, standing alone, which resulted in damage only to the work-product itself, does not constitute an occurrence under a CGL policy. In that case a contractor constructed roads in a development which deteriorated within four years because of faulty workmanship. The developer sued the contractor who sought coverage under its policy for the deteriorated roads. The Court held that the only damage was to the roads. The roads were the work-product of the contractor. The only damage sustained was to that work-product. There was no damage to other property. The damages sustained (whether by the contractor or by the developer, or both) was solely to the roads. That was the contractor's work-product/workmanship only. In distinguishing between a claim where only the work-product

sustained damage, and a claim where there was damage to other property, the Supreme Court cited the case of High Country Assocs. v. New Hampshire Ins. Co., 648 A.2d 474 (N.H.1994). The South Carolina Supreme Court had this to say about the New Hampshire case:

In *High Country Assocs.*, the court held that a CGL provided coverage for property damage caused by continuous exposure to moisture when the complaint alleged negligent construction that resulted in property damage and not merely negligent construction damaging only the work product itself. *Id.* at 477. The complaint in *High Country Assocs.* alleged:

[a]ctual damage to the buildings caused by exposure to water seeping into the walls that resulted from the negligent construction methods of High Country Associates. The damages claimed are for the water-damaged walls, not the diminution in value or cost of repairing work of inferior quality. Therefore, the property damage described in the amended writ, caused by continuous exposure to moisture through leaky walls, is not simply a claim for the contractor's defective work.

Id. As a result, the court held that the plaintiffs' alleged negligent construction was the result of an occurrence, rather than an allegation of faulty or defective work. *Id.* at 478.

In the present case [Bituminous], the complaint did not allege property damage beyond the improper performance of the task itself. The complaint alleged breach of contract, breach of warranty, and negligence. However, each of the claims repeated verbatim the same allegation - faulty workmanship in completing the project. As a result, the insurance policy will not stand to cover liability for the Contractor's contract liability for a claim that was for money damages to compensate for the defective work.

Bituminous, 366 S.C. at 123-24, 621 S.E.2d at 36. Citation of the New Hampshire High Country Associates case as reflecting a factual circumstance affording coverage under a CGL policy appears to parallel the factual situation in the Rhodes action. In the New Hampshire High Country case the negligent construction methods resulted in water damage.

#14
2008

to the buildings. In our case the defective design, fabrication and inspection (when one sign was discovered leaning) which proximately caused the sign to fall and the mandated (by public authority) removal, because of safety concerns, of the other two signs, caused damage to the real estate and loss of use of the signs. As cited *infra.*, p. 19, the Policy defines, "property damage" to include loss of use. The claim here is "not simply a claim for the contractor's defective work" but the resulting damages beyond the defective work, caused by the defective work, to property other than the defective work itself. The property damage sustained by Rhodes was not merely negligent construction damaging only the work product [one sign] - itself.

The jury verdict in the Rhodes action confirms that there were property damages caused by the work product and not merely damage to the work product itself. The work product itself (the three signs) cost \$153,960.00. The jury found actual damages of 3.0 million dollars as a consequence of the faulty workmanship and inspection which damaged the property of a third-party.

In the High Country Associates case, a homeowners' association sued High Country Associates who had constructed and sold condominium units which the members of the association owned. The association alleged that High Country "negligently and carelessly failed to employ good design and construction standards and practices with respect to the exterior walls, and failed to exercise reasonable care and skill in the design, specification and materials, construction, supervision and inspection of such exteriors. The damage alleged was that moisture has entered through the seams of the vertical siding on the exterior walls of the townhouse buildings and around the windows and decks and has been trapped within, resulting in widespread, saturation, rotting and decay of the sheathing and damage to

structural studding and loss of structural integrity, and such moisture has in turn seriously rotted the vertical siding through which such moisture had penetrated. In reversing the Trial Court's grant of summary judgment to the insurer in that DJ action and holding that the allegations of the underlying complaint did allege an "occurrence" within the meaning of the policy, the New Hampshire Supreme Court unanimously said:

The Association alleged actual damage to the buildings caused by exposure to water seeping into the walls that resulted from the negligent construction methods of High Country Associates. The damages claimed are for the water - damaged walls, not the diminution in value or cost of repairing work of inferior quality. Therefore, the property damage described in the amended writ, caused by continuous exposure to moisture through leaky walls, is not simply a claim for the contractor's defective work. Instead, the plaintiff in the underlying suit alleged negligent construction that resulted in property damage, rather than merely negligent construction....

High Country, 648 A.2d at 477.

The New Hampshire Supreme Court cited an earlier case from that Court, M.

Mooney Corporation v. United States Fidelity and Guaranty Co., 136 N.H. 463, 618 A.2d

793 (1992) as follows:

In Mooney, the general contractor for a fifty-two unit condominium project sought coverage under its liability insurance policy for damages alleged in an underlying suit for negligent construction of the condominium units. Part of the damage alleged was that after the units were sold to individual buyers, one unit was damaged by a chimney fire. An inspection revealed charring adjacent to the fireplaces in four other units, and improper construction of fireplaces, causing the State fire marshal to prohibit use of the fireplaces in all units pending correction of the hazard. *Id.* at 465, 618 A.2d at 794. Following appeal, the majority opinion held that loss of use of the fireplaces was causally linked to the fire in one unit and constituted property damage caused by an occurrence.

Id. at 478.

The factual similarities of the Mooney case to the instant case are striking. In

Mooney only one unit was damaged by a chimney fire. In the instant case only one sign fell.

In Mooney an inspection by the fire marshal revealed charring adjacent to fireplaces in four other units. For this reason the fire marshal prohibited use of the fireplaces in all fifty-two units pending correction of the hazard. In the instant case the permitting agency of the SCDOT required the other two signs to be taken down and prevented their re-erection because of crucial, imperative safety concerns for the motoring public. In Mooney the loss of use of all the fireplaces was causally linked to the fire in only one unit and constituted property damage caused by an occurrence. In the instant case the loss of use of the remaining two signs and the consequential damages flowing therefrom was causally linked to the sign that fell and constituted property damage caused by an occurrence.

The Nebraska case of Auto-Owners Insurance Company v. Home Pride Companies, Inc., 268 NEB 528, 684 N.W.2d 571 (August 6, 2004) is informative. The opinion states "the main issue on appeal is whether a standard commercial general liability (GCL) insurance policy covers an insured contractor for the faulty workmanship of a subcontractor that is hired." 684 N.W. 2d at 574. [The case did not turn on the issue of the work being done by the subcontractor as distinguished from the general contractor.] The subcontractor installed shingles on apartment buildings. The owners claimed that the contractor "failed to install the shingles in a workman-like manner and that such faulty workmanship caused substantial and material damage to the roof structures and buildings." Auto-Owners denied coverage on the ground that "the faulty workmanship of a subcontractor is not an 'occurrence' under a GCL policy." The trial court granted summary judgment in favor of Auto-Owners. The Supreme Court of Nebraska reversed the trial court and held that summary judgment should have been granted in favor of the insured contractor. The Nebraska Supreme Court noted

that the issue was one of first impression in Nebraska. After reviewing cases from various jurisdictions the Court stated:

We conclude that faulty workmanship, standing alone, is not covered under a standard GCL policy because it is not a fortuitous event. Important here, although faulty workmanship, *standing alone*, is not an occurrence under a GCL policy, an accident caused by faulty workmanship is a covered occurrence. (Cites omitted) Stated otherwise, although a standard GCL policy does not provide coverage for faulty workmanship that damages only the resulting work product, if faulty workmanship causes bodily injury or property damage to something other than the insured's work product, an unintended and unexpected event has occurred, and coverage exists.

Home Pride, 684 N.W.2d at 577-78.

The Nebraska Supreme Court cited the case of High Country Associates v. New Hampshire Insurance Company, 139 N.H. 39, 648 A.2d 474 (1994). In citing the High Country Associates case the Nebraska Supreme Court said:

The court then went on to point out that the homeowners' association's petition not only requested compensation to repair and replace the poorly constructed exterior walls, but also requested compensation for the water damage that allegedly occurred as a result of the builders' faulty workmanship, including the decay of the sheathing, harm to the structural studding, loss of structural integrity, and damage to the vertical siding. Determining that these consequential damages constituted accidental damage to property other than the insured's own work product, the court held that the homeowners' association had made out a claim for property damage caused by an occurrence and that therefore, the insurer was obligated to provide coverage for the insured builder.

684 N.W.2d at 578.

Stating the factual circumstances of the case before it, the Nebraska Supreme Court said:

[The contractors] negligently installed shingles on a number of apartments, which caused the shingles to fall off. Additionally, the amended petition alleged that as a consequence of the faulty work, the roof structures and

buildings have experienced substantial damage. This latter allegation represents an unintended and unexpected consequence of the contractors' faulty workmanship and goes beyond damages to the contractors' own work product. Therefore, the amended petition properly alleged an occurrence within the meaning of the insurance policy.

684 N.W.2d at 578-79.

Auto-Owners has admitted there was an "occurrence". When Auto-Owners' First Summary Judgment Motion was heard (and denied) on January 22, 2004, counsel for Auto-Owners stated to the Court:

The one sign that fell down and caused damages to the highway department and what not, I would contend that would be an occurrence because it is something that caused physical damage, a defect that caused physical damage to other property. (Transcript p.6, lines 4-8). (Emphasis added.)

An outdoor advertising sign falling on an interstate highway is an accident. The judgment in the Rhodes action establishes that there was an occurrence.

III. Property Damage

Insuring agreement 1a says (page 1):

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.

Paragraph 12 of the policy says (pages 13 and 14):

"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 shall be deemed to occur at the time of the "occurrence" that caused it.

The jury in the Rhodes action found as a fact that both physical injury to the real estate and loss of use of that real estate had occurred as a consequence of the sign falling.

The Rhodes real estate is certainly "tangible property." The three signs were fixtures and a permanent part of the property. The use of that property, which included the advertising signs as a part of it, generated revenue. With the signs no longer a part of the property there is a resulting "loss of use" of that property. Moreover, even had the real estate (tangible property) not sustained physical injury, there is a "loss of use of tangible property [the signs] that is not physically injured." [Policy Paragraph 12b.] Accordingly, even had the real estate not sustained physical injury, there has been a loss of use of that real estate. The policy language expressly includes each circumstance (physical injury or loss of use) as "property damage".

The plain, ordinary meaning of "damages" is monies paid on an insured's loss, in this case, from property damage. An "ordinary" meaning of the term is not a legalistic one dependent on whether the damages are classified as legal versus equitable. (Cite omitted.) "The policy language, 'all sums which the insured shall become legally obligated to pay as damages because of property damage,' can reasonably be interpreted to cover any claim asserted against the insured arising out of property damage, which requires the expenditure of money, regardless of whether the claim can be characterized as legal or equitable in nature." (Cite omitted). "To give words in an insurance contract a technical meaning simply by reading them 'in the insurance context,' would render meaningless our law's requirement that words be given their ordinary meaning unless a technical meaning is plainly intended." (Emphasis added.)

Helena Chemical Company v. Allianz Underwriters Insurance Company, 357 S.C. 631, 594 S.E.2d 455 (2004). Helena has significant parallels to the instant case. It was an insurance coverage case. Helena was in the business of formulating, distributing and selling agricultural chemicals to the farming industry. It had three sites in South Carolina that the

20
HJH

Environmental Protection Agency (EPA) and the South Carolina Department of Health and Environmental Control (DHEC) required the clean-up of polluted soil. Helena conducted the clean-ups under threat of EPA and DHEC action if it refused to do so. Helena then sought reimbursement from its insurers for "legal defense costs and over \$8 million for 'responding to and addressing' the claims made by the EPA and DHEC." The insurers denied Helena coverage for the monies expended for the clean-ups. Helena instituted a Declaratory Judgment action seeking reimbursement for all costs incurred. The trial court granted summary judgment in favor of the insurers because (1) Helena's clean-up costs were not "damages"; and (2) Helena's claims fell under the insurance policies' pollution exclusion. The Helena trial court followed the holding of two Fourth Circuit opinions: Maryland Cas. Co. v. Armco, Inc., 822 Fed.2d 1348 (4th Cir. 1987) and Cincinnati Ins. Co. v. Milliken and Co., 857 Fed. 2d 979 (4th Cir. 1988). On Appeal, the South Carolina Supreme Court said "We specifically reject the reasoning of *Armco* and *Milliken*." The Supreme Court reversed the trial court as to the damages ruling and held that "the plain, ordinary meaning of 'damages' includes environmental clean-up costs. The Supreme Court affirmed the trial court's ruling that the pollution exclusion policy provision applied because there was no evidence that the discharge of the pollutants " was sudden and accidental." Accordingly, the teaching of *Helena* is that it corrects a mis-perception that the holding of *Armco* and *Milliken* (4th Cir. opinions) apply in South Carolina as to what are "damages" under an insurance policy. Of particular importance is the Supreme Court's adoption of language from Bausch & Lomb, Inc. v. Utica Mutual Insurance Company, 625 A.2d 1021 (Md. 1993):

"Policy-holders will, instead, reasonably infer that the insurer's pledge to pay damages to apply generally to compensatory outlays of various kinds, including expenditures made to comply with administrative orders or formal injunctions. The ordinary person understands 'damages' as meaning money paid to make good an insured loss in this context, environmental response costs fall within that definition." (Emphasis added).

Helena, 357 S.C. at 638, 594 S.E.2d at 458.

The "claims" against Helena were the demands by public authority (EPA and DHEC) that Helena clean up the polluted soil. Helena's damages were the costs of complying with those "claims". In the instant case when the sign fell on Interstate 77, public authority then asserted "claims". The South Carolina Department of Transportation (SCDOT) (1) mandated that the fallen sign be removed from the traffic thoroughfare. It also (2) mandated that the remnants of the fallen sign be removed from its adjacent right-of-way. It also (3) mandated that the two remaining signs be taken down because they were a public safety hazard. These mandates were "claims". Compliance with these "claims" per public authority required "the expenditure of money" (*Helena*). Helena's costs in compliance with mandates by public authority constituted "property damage" covered by its policy which Helena's insurer would have been required to pay but for the pollution exclusion in the policy. In the instant case the costs of removing the fallen sign is a claim covered by Auto-Owners' policy. In fact, it has acknowledged that claim as being covered and has paid some of the costs associated with removing the fallen sign from the traffic lanes and from the right-of-way. Under the holding of *Helena*, Marion L. Eadon d/b/a C&B Fabrication has suffered "property damage" by reason of the two remaining signs having to be taken down at the mandate of public authority because they were unsafe. As to these two signs, which had to

be taken down at public mandate because of safety concerns, Marion L. Eadon d/b/a C&B Fabrication has become obligated to pay those costs as damages. One of those two signs C&B Fabrication took down in compliance with the public mandate. Under the holding of *Helena*, C&B Fabrication is entitled to payment from Auto-Owners for that loss. As to the second sign that had to be taken down in compliance with the public mandate, which cost has been paid by Rhodes, C&B Fabrication has become legally obligated to pay because of the *Rhodes* judgment. Accordingly, under the parallels of *Helena*, damage resulting from the sign which fell, which precipitated the removal of the remaining two signs, is "property damage."

The damages proven and awarded in the *Rhodes* action are unusually large. It is difficult to obtain permits to erect these outdoor advertising signs along the Interstate highways and once permits are obtained they are valuable. Rhodes and Piedmont were required by the permitting authority to take down the two signs which did not fall because they were a safety hazard to the public. Rhodes and Piedmont lost their permits for the three signs and are not permitted by the permitting authority to re-erect signs. This represented substantial losses both to Rhodes and to his S-Corporation Piedmont. The jury found that the diminution in value of Rhodes' property and the Piedmont loss of income were foreseeable results of the negligence in the design, fabrication and corrective repairs just three days before a sign fell. The jury found that this was negligence of Marion L. Eadon d/b/a C&B Fabrication and awarded Rhodes and Piedmont actual and punitive damages.

"Property damage" included "the costs of inspection, testing and the removal of the hazardous asbestos material" from school buildings. Kershaw County Board of Education

v. United States Gypsum Company, 302 S.C. 390, 396 S.E.2d 369 (1990). Property damage alleged and proved in the Rhodes action was damage to the real estate and the costs of removal of the signs. Damage to the real estate included physical injury in that its physical features were altered and changed (permanent fixtures were removed) and it was left with residual buried (twenty-eight feet in poured concrete) metal stumps (twenty-one feet above-ground) and wreckage of the sign remnants which will be costly to remove. The loss of use of the signs was "property damage" also.

Although it arose under the commercial code, the holding of the Court in Gasque v. Eagle Machine Company Limited, 270 S.C. 499, 243 S.E.2d 831 (1978), is informative:

The issue then is whether damages in the form of diminution in value of the defective product and consequential economic loss constitute damage to the property of Appellant within the meaning of Code Section 36-2-318.... Diminution in value of the subject product and consequential loss of profits occasioned by its defective performance constitute property damage.

Gasque, 270 S.C. at 503, 243 S.E.2d at 832.

IV.

Exclusion k

Policy exclusion k has no practical application under the facts here. Exclusion k provides as follows:

This insurance does not apply to:

* * *

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

Policy, pp. 1, 4.

C&B Fabrication's "product" was the signs, the purchase price of which was \$153,960. Exclusion k would, therefore, at most, exclude \$153,960 in damages. However,

#24
600

the Rhodes jury's verdict for \$6.5 Million on the negligence cause of action inferably did not include this amount, as Mr. Rhodes presented evidence of damages for the loss of use of the billboards that amounted to a present value of \$4,212,386, Trial Transcript, vol. II at p. 256, plus damage to the real property. On the other hand, the Rhodes jury awarded \$5,000 damages for the breach of contract claim. Exclusion k is intended to preclude coverage for economic losses to an insured based on his having to fulfill contractual obligations, Fisher v. American Family Mut. Ins. Co., 579 N.W.2d 599, 605-06 (N.D. 1988), so its effect here would be to exclude the loss for which the Rhodes jury awarded \$5,000 damages. In the context of a \$6.5 Million judgment, the exclusion, therefore, has no practical impact. Exclusion k, moreover, has no exception or qualification based on the products-completed operations hazard.

V.

Exclusion l

Policy exclusion l does not apply under the facts here. Policy exclusion l reads (Policy page 4):

"Property damage" to "your work" arising out of it or any part of it and including 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.

The language of exclusion l substitutes the words "your work" for the words "your product" which appear in exclusion k, just discussed. Exclusion l does, however, specifically address the products-completed operations hazard, which is different from exclusion k.

The claim is not for damage to "your work" [the signs]. The claim is for damage to the real estate. That is the sole basis for the jury verdict. Even so, were the exclusion applied

H25
2016

to "your work" [the signs], then the excluded damages would be only the value of the product. The purchase price of the signs was \$153,960.00. That would be the only excluded damage to "your work" if the exclusion applies. However, Auto-Owners seeks to eliminate all coverage because it contends there was damage to "your work [or product]" [one of the signs, not all three]. That is not what the law is. In the case of Kennedy v. Columbia Lumber and Manufacturing Company, Inc., 299 S.C. 335, 384 S.E.2d 730 (1989) the Supreme Court made clear the circumstances under which tort liability is incurred:

Where a purchaser buys a product which is defective and physically harms him, his remedy is in either tort or contract. This is so, the analysis provides, because his losses are more than merely "economic." ...

If a builder performs construction in such a way that he violates a contractual duty *only*, then his liability is only contractual. If he acts in a way to violate a legal duty, however, his liability is both in contract and in tort. ...

A violation of a building code violates a legal duty for which a builder can be held liable in tort for proximately caused losses. *Terlinde*, 275 S.C. 399, 271 S.E.2d 770, imposes a legal duty on builders to undertake construction commensurate with industry standards. Where a building code or industry standard does not apply, public policy further demands the imposition of a legal duty on a builder to refrain from constructing housing that he knows or should know will pose serious risk of physical harm. ...

A cause of action in negligence will be available where a builder has violated a legal duty, no matter the type of resulting damage. ...

A builder may be liable to a home buyer in tort despite the fact that the buyer suffered only "economic losses" where: (1) the builder has violated an applicable building code; (2) the builder has deviated from industry standards; (3) the builder has constructed housing that he knows or should know will pose serious risks of physical harm.

Kennedy, 299 S.C. at 345-47, 384 S.E.2d 736-38.

The Rhodes action verdict proved that Marion L. Eadon d/b/a C&B Fabrication (1) violated the applicable building codes; (2) deviated from industry standards; and (3)

constructed signs that posed serious risk of physical harm. Proof of only one of these violations qualifies the tort action. Rhodes and Piedmont proved all three. Three times the breach of a legal duty was proven. (Trial testimony of Plaintiffs' expert structural engineer, Alan Campbell: sign was not built according to design; sign did not meet industry standards; sign did not meet code requirements; sign defective and not capable of withstanding code-prescribed wind loads; sign fell because it did not meet building code and industry standard requirements: Trial transcript, pp. 249-250; 9/30/04). The threefold breach of legal duty resulted in damage to real estate.

A general liability insurance policy typically does not cover claims of faulty workmanship, but instead covers claims of faulty workmanship that causes an accident. (Emphasis added.)

Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996).

In Century Indemnity Company v. Golden Hills Builders, Inc., 348 S.C. 559, 561 S.E.2d 355 (2002), the Supreme Court answered questions certified to it by the Fourth Circuit Court of Appeals as to coverage under a CGL Policy. In answering a certified question the Supreme Court held that the faulty workmanship exclusion prevented coverage under the policy under the facts. The Court was then asked to answer the question whether coverage was restored by the products-completed operations hazards provision of the policy. The Court said:

The policy provides that the faulty workmanship exclusion does not apply to "property damage" included in the "products-completed operations hazard" provision. This provision states:

11. a. "Products-completed operations hazard" includes all ...
"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.

b. "Your work" will be deemed completed at the earliest of the following times:

(1) When all of the work called for in your contract has been completed. ...

(3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Under this provision, the products-completed operations hazard does not include "property damage" which arose out of Insured's products that were still in Insured's physical possession, as was the case here because Insured still had physical possession of the home. *B.L.G. Enterprises, Inc., supra* (when contract is unambiguous, clear, and explicit, it must be construed according to terms parties have used).

Further, the products-completed operations hazard does not include "property damage" which arose out of Insured's work that had not yet been completed. The work had clearly not been completed at the end of the policy period.

Golden Hills, 348 S.C. at 567-68, 561 S.E.2d at 359. Again, the damages awarded by the Rhodes jury were not for damage to "your work" but for damage to the Rhodes real estate.

In Century the Supreme Court held that the products-completed operation hazard did not afford coverage for two reasons: (1) the property damage arose out of the insured's products that were still in the insured's physical possession and (2) the property damage arose out of the insured's work that had not yet been completed. These two factual circumstances prevented the applicability of the products-completed operations hazard. Otherwise, the products-completed operations hazards would have restored coverage had the insured not been in physical possession of its product and had the insured's work been completed before the damage. Applying the same test in the instant case the insured no longer had physical possession of its product and the insured had completed all the work on its project. The products-completed operations hazard language in Auto-Owners' policy in

#28
Cob

the instant case is verbatim the same, including the paragraphs and sub-paragraph numbers and the format. (Auto-Owners' policy page 13).

As to both exclusion k and exclusion l, if either precludes coverage because the damage to other property arose out of "your product" or arose out of "your work", then there would never be a covered claim under the policy because the policy insures the very thing these two exclusions purport to exclude because every claim will of necessity arise out of "your product" or "your work". That is what the policy insures. The policy insures only that. Eliminating those two areas eliminates all coverage. That creates the classic ambiguity. When that ambiguity exists there is coverage as a matter of law.

Isle of Palms purchased a liability insurance policy to protect itself against claims for damage to property of others caused by its negligence. The declarations page of the policy included "exterminator" in the list of covered general liability hazards, and the premium was based primarily on Isle of Palms' receipts from its exterminating business. To give effect to the professional liability exclusion would render the policy virtually meaningless, because it would exclude coverage for all claims arising from Isle of Palms' exterminating services, the very risk contemplated by the parties. See *Canal Ins. Co. v. Insurance Co. of N. Am.*, ____ S.C. ____, 431 S.E.2d 577 (1993) (refusing to construe exclusion to prohibit coverage for the only vehicle contemplated by the parties). The internal inconsistency created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured renders the policy ambiguous, and we must resolve that ambiguity in favor of coverage. *South Carolina Budget & Control Bd. v. Prince*, 304 S.C. 241, 403 S.E.2d 643 (1991); *Millstead v. Life Ins. Co. of Virginia*, 256 S.C. 449, 182 S.E.2d 867 (1971) (ambiguity in exclusion should be resolved in favor of coverage). Accordingly, we refuse to interpret the exclusion so as to bar claims for property damage caused by Isle of Palms' negligence in performing its exterminating services. (Emphasis added).

Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C.12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996).

In the Rhodes action, not only were there allegations of damage beyond the work product of C&B Fabrication, there was proof of damage to the real estate of Rhodes and consequential damage to Piedmont Promotions from the loss of revenue from the signs. Because the signs may not be re-erected, the damage "cannot be repaired or restored by simply [replacing the signs]" (Auto-Owners Insurance Company v. Home Pride Companies, Inc., 268 NEB 528, 684 N.W.2d 571 (August 6, 2004)). The consequential damage to the real estate cannot be undone. Accordingly, the "your work" and "impaired property" exclusions do not apply in the instant case any more than they applied in the Auto Owners Insurance Company v. Home Pride Companies, Inc. case. The Nebraska Auto-Owners case was decided the month before the verdict in the Rhodes action.

Exclusion l does not apply.

VI.

Exclusion m

Policy exclusion m does not apply under the facts here. Policy exclusion m says

"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 ...

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.

(Policy, page 4):

Exclusion m does not apply because there was a sudden and accidental physical injury to "your product" and "your work" after it had been put to its intended use which resulted in "loss of use of other property". The fall of the sign on the interstate was sudden.

#30
2016

The fall of the sign on the interstate was accidental. The fall of the sign on the interstate resulted in physical injury to the sign. Auto-Owners has acknowledged that the sign had been put to its intended use. The sudden, accidental fall of the sign resulted in "loss of use of other property" (the use of the property and the signs to produce rental income). Accordingly, the exclusion within exclusion m applies. Even in the absence of the effectiveness of the exclusionary provision in exclusion m, it still would not be applicable.

Definition 5 defines "impaired property" as follows:

"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.

(Policy, p. 11)

The tangible property is the real estate. It can still "be used". It is not "less useful" because it incorporates "your product" or "your work". It is not the existence of "your product" or "your work" that makes it less useful. It is the inability to erect signs on the property that makes it "less useful". This circumstance is not because "your product" or "your work" is "incorporated" into the real estate. It is a consequence of what "your product"

and "your work" did to the real estate that makes it "less useful".

Furthermore, the "repair, replacement, adjustment or removal of 'your product'" would not restore the property to full use because no signs can be re-erected under the present circumstances. Accordingly, the real estate is not "impaired property" as defined in the policy.

The case of Standard Fire Insurance Company v. Chester - O'Donley & Associates, Inc., (TN Ct. App. 1998) 972 S.W.2d 1, dealt with the coverage of a CGL policy and discussed several provisions generally, including their historical origin. One was the "impaired property" exclusion [exclusion "m" in Auto-Owners' policy]. That Court said:

This exclusion was first included in commercial general liability policies in 1966 and was later amended and refined in 1973, 1986, and 1990. It narrows coverage for claims involving the reduced usefulness or impairment of property other than the insured's. (Cites omitted). The exclusion targets situations where a defective product, after being incorporated into the property of another, must be replaced or removed at great expense thereby causing loss of use of the property. (Cites omitted).

The effect of the "impaired property" exclusion is to bar coverage for loss of use claims (1) when the loss was caused solely by the insured's failure to provide work of the quality or performance capabilities called for by the contract and (2) when there has been no physical injury to property other than the insured's work itself. **The exclusion does not apply if there is damage to property other than the insured's work**, (cite omitted), or if the insured's work cannot be repaired or replaced without causing physical injury to other property.

Chester-O'Donley & Assoc., 972 S.W. 2d at 9-10 (Emphasis added)/

Glens Falls Insurance Company v. Donmac Golf Shaping Company, Inc., 203 Ga App. 508, 417 S.E.2d 197 (Ga. Ct. App. 1992) was a DJ action construing a comprehensive general liability insurance policy. In that case the developer of a golf course learned after its

construction that it had occurred on Federally protected wetlands and that substantial portions of the project had been built on wetlands without the necessary permits in violation of Federal law. The developer sued the engineering firm responsible for the engineering work and the architect who designed the project and the contractor who built the project. The developer alleged "out of pocket expenses to mitigate the illegal wetland development in that he had been required to undertake restoration and preservation of certain areas within the project; to eliminate certain proposed residential loss in the project, and to purchase additional land outside the project for similar preservation purposes." The developer also alleged damage in that substantial reduction in the fair market value of the project had occurred. Damages of five million dollars were sought. (The contract price of the project was 1.2 million dollars). The Trial Court and the Court of Appeals held that there was coverage under the policy and that exclusions "m" and "n" did not apply. [Exclusions "m" and "n" are identical with exclusions "m" and "n" in Auto-Owners' policy in the instant case.] In holding that these exclusions did not apply under the facts the Georgia Court of Appeals said:

The exclusions from coverage for property damage contained in paragraphs (j.), (m.) and (n.) and other similar exclusions in the CGL policy are generally referred to as "business risk" exclusions, and are designed to exclude coverage for defective workmanship by the insured causing damage to the project itself. (Cites omitted.) The principle behind such exclusions is based on the distinction made between two kinds of risk incurred by a contractor such as Domnac. The first is the business risk borne by the contractor to replace or repair defective work to make the building project conform to the agreed contractual requirements. This type of risk is not covered by the CGL policy, and the "business risk" exclusions in the policy make this clear. (Cite omitted). The second is the risk that the defective or faulty workmanship will cause injury to people or damage to other property. Because of the potentially limitless liability associated with this risk, it is the type for which CGL coverage is contemplated. (Cite omitted). "While it may be true that the same neglectful craftsmanship can be the cause of both a business

expense of repair and a loss represented by damage to persons and property, the two consequences are vastly different in relation to sharing the cost of such risks as a matter of insurance underwriting.... The risk intended to be insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than to the product or completed work itself, and for which the insured may be found liable. The insured, as a source of goods or services, may be liable as a matter of contract law to make good on products or work which is defective or otherwise unsuitable because it is lacking in some capacity. This may even extend to an obligation to completely replace or rebuild the deficient product or work. This liability, however, is not what the coverages in question are designed to protect against. The coverage [applicable under the CGL policy] is for tort liability for ... [injury to persons and damage to other property] and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained...." (Cite omitted).

Here, the policy exclusions applicable to property damage at paragraphs (j.), (m.) and (n.) exclude coverage for damage to or impairment of the project as a result of defective work done by Donmac. (Cite omitted). The complaint by the developer is not that Donmac failed to construct the project in a workmanlike manner according to the specifications provided to it, but that it negligently built part of the project on federally protected wetlands. Under the allegations of the developer's complaint, the failure of Donmac to identify the wetlands and comply with the governing federal regulations in its construction of the project is set forth as both a breach of contract claim and a tort claim. A contractor who undertakes a construction project is required by law to exercise ordinary care not to endanger the persons or property of others. This legal duty is imposed on the contractor by the express or implied contractual relationship created when the contractor undertakes the project. The breach of this legal duty, imposed by contract, but existing in law apart from the contractual obligation, may constitute both a tort arising from the contract, and a breach of the contractual relationship itself. (Cite omitted). "[I]n such [tort] cases the injury to the plaintiff has been an independent injury over and above the mere disappointment of plaintiff's hope to receive his contracted-for benefit." (Cite omitted). The damages alleged and the recovery sought by the developer as a result of alleged acts and omissions by Donmac far exceed the full contract price of approximately 1.2 million dollars paid to Donmac for its completed construction work. The developer's suit does not attempt to regain its original contracted-for benefit by seeking reconstruction of the project with proper consideration given to the wetlands and the applicable federal regulations. The suit proceeds from the premise that the project has been built, the damage done, and the developer is entitled

to reimbursement for damages incurred as a result of the alleged negligence. In seeking recovery for expenses of restoration and preservation of damaged wetlands at the project site, purchase and restoration of off-site wetland areas, elimination of certain encroaching areas of the project, and the resulting diminution in the fair market value of the property, the developer seeks recovery for damages over and above the scope of the benefits it contracted for with Donmac. (Cites omitted)

By contrast, the damages sought by the developer against Donmac are not directly related to the cost of repairing and replacing deficiencies in Donmac's work on the project -- and therefore excluded from the CGL coverage as business risks -- but rather are claims beyond the scope of the contractual expectations for additional tort damages caused by the alleged deficiencies in Donmac's performance.

Glens Falls, 417 S.E.2d at 200-01. Exclusion m does not apply.

VII.

Exclusion n

Exclusion n does not apply under the facts here. Policy exclusion n says (Policy, page 4):

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.

The damages awarded in the Rhodes action are not for loss, cost or expense for loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of "your product", "your work", or "impaired property". The damages were to the real estate

as a consequence of the event of the sign falling and the resulting mandate of the SCDOT requiring the other two signs to be removed. The loss claimed is not for damage to "your product" or "your work". The loss is damage to the real estate.

Exclusion n was also addressed by the Tennessee Court of Appeals in Standard Fire Insurance Company v. Chester - O'Donley & Associates, Inc., (TN Ct. App. 1998) 972

S.W.2d 1. The Tennessee Court said:

The "sistership" exclusion in Standard Fire's policy withdraws coverage for claims involving

[d]amages 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.

This provision first appeared in commercial general liability policies in 1966 and takes its name from the occurrences in the aircraft industry where enormous loss-of-use claims resulted from the grounding of all airplanes of the same type because one airplane crashed, and its "sisterships" were suspected of having a common defect. (Cites omitted).

The exclusion is designed to shield insurers from liability for the costs associated with unanticipated product recalls. (Cites omitted). It does not apply to claims involving losses resulting from the failure of the insured's product or work, (cite omitted) or to claims that are not based on the withdrawal or recall of the insured's own product or work. (Cites omitted).

The removal of defective products that failed after their installation does not come within the sistership exclusion of the insured's general liability policy because there has been no general withdrawal of similar products from the general marketplace. (Cites omitted). Based upon the undisputed facts, the "sistership" exclusion does not apply in this case because there is no evidence of a general recall of similar products or materials from the marketplace. (Emphasis added.)

Chester - O'Donley & Assoc., 972 S.W. 2d at 10-11.

Another case applying the same result to the "work performed" and "sistership" exclusions is Erie Insurance Exchange v. Colony Development Corporation, 136 Oh App 3d 406, 736 N.E.2d 941 (1999) In an action for damages arising out of the design, construction and sale of a condominium complex the liability insurer brought a DJ action to determine coverage under a CGL policy. The Trial Court held there was no duty to defend and no coverage but the Court of Appeals reversed, saying:

The complaint alleges various damages, principally to the condominium units and common areas themselves, but the complaint also alleges damages to the surrounding landscape including death of and damage to major trees, excessive erosion, and excessive accumulation of water. ...

The Association's allegations of property damage caused by Colony's negligence in constructing and designing the condominium complex reasonably fall within the policy's definition of property damage caused by an occurrence, i.e. an accident. ... Here, the Association's complaint includes allegations that Colony's conduct by itself or through agents, in constructing and designing the condominium complex was negligent, in other words, fell below the standard of care but nonetheless was not done with the intent or expectation of causing harm. As such, the Association's allegations reasonably fall within the policy's general liability coverage for property damage caused by an occurrence.

Erie, 736 N.E. 2d at 947.

As to the "work-performed exclusion" the Court said:

The exclusion, however, operates to exclude coverage only for damage to the work of the insured; it does not exclude coverage for collateral damage to other property. ...

However, some of the damages alleged in the underlying action do not appear from the complaint to be damages to the condominium units or common areas. In particular, the Association alleges damages to the surrounding landscape, including erosion and death of major trees.

Id. At 948-49 (Emphasis added).

As to the "sistership" exclusion (the language being identical with the language in

#37
288

Auto-Owners' exclusion "n") the Ohio Court said:

As noted by this Court before "[c]ourts have interpreted this 'sistership' exclusion to require a recall from the market in order for insurance coverage to be excluded." (Cite omitted) When such a recall occurs, damages are excluded by this provision for the removal from the market of "sister" products to prevent future failures. **"However, damages claimed for the initial failure would not be excluded."**

Id. at 950 (Emphasis added.)

In Auto-Owners v. Home Pride Companies, Inc., 268 Neb. 528, 684 N.W.2d 571

(2004), The Nebraska Supreme Court there dealt with the Auto-Owners policy exclusions for damages to (2) "your work" or (3) "impaired property". [Identical terms in an apparently identical policy as the one in the instant Auto-Owners' case, exclusion n.] The Court said:

[E]xclusion "n(2)" does not serve to exclude Appletree and Peterson's damage claim because their claim extends beyond the cost to simply repair and replace the contractors' work, i.e., to reshingle the roofs. As previously noted, Appletree and Peterson allege that the contractors' faulty workmanship resulted in substantial damage to the roof structures and buildings. Therefore their claimed damages to the roof structures and buildings fall outside of the exclusion.

Similarly, in regard to exclusion "n(3)," the policy states that the property is not "impaired" unless it is capable of being restored by the "repair, replacement, adjustment or removal of ... 'your work'; or ... [y]our fulfilling the terms of the contractor agreement." Therefore, because damage to the roof structures and buildings cannot be repaired or restored by simply reshingling the apartment roofs, they are not "impaired property" within the meaning of exclusion "n(3)."

Home Pride, 684 N.W.2d at 579-80. Exclusion n does not apply.

VIII.

Covered Damages

#38
400

Auto-Owners contends that none of the damages awarded by the jury in the Rhodes action are covered by the policy. It also argues alternatively that the policy excludes damages to the signs themselves. Auto-Owners further argues that only the sign that fell sustained damage. Rhodes and Piedmont have consistently maintained that all the damage was to the real estate. Based upon evidence presented in the Rhodes action, the jury found that once installed in the real estate (buried twenty-eight feet in concrete) the signs were permanent fixtures and intended to be so. They were no longer tangible personal property but became a part of the real property into which they had become embedded. Auto-Owners contends that the signs maintain their separate characteristics (your product) under policy language and that the policy excludes coverage for damage to "your product". The Defendants do not concede that this is an accurate interpretation of the policy.

However, solely for the purposes of this Declaratory Judgment action only, the Defendants all stipulate that damage to the sign which fell is not covered under the policy. Auto-Owners has consistently contended that there was no damage to the other two signs. However, as pointed out previously, the policy definition of property damage includes

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. (Emphasis added.) [Paragraph 12b, page 14 of the policy].

Accordingly, by policy definition the two signs that did not fall did sustain property damage because their use was lost. However, for purposes of this DJ action only, the Defendants all stipulate that \$153,960.00 of the actual damages verdict in the Rhodes action, which represents the total purchase price of all three signs, not just the one sign that fell, are not covered by Auto-Owners' policy. This stipulation does not include damages awarded

#39
200

in the Rhodes action for the loss of use of the signs and the cost of removal. All other damages awarded in the Rhodes action are covered within the policy limits, including punitive damages.

THE INSURED

The Judgment entered in the Rhodes action is against "Marion L. Eadon d/b/a C&B Fabrication." The policy as issued shows the insured as "C&B Fabrications Inc & Low Country Signs Inc". The address shown in the policy is "RR 2 Box 835 Manning, SC." No corporation existed as "C&B Fabrications Inc." Marion L. Eadon had chartered a corporation C&B Fabricators, Inc. There was no "Low Country Signs Inc" corporation. Eadon had chartered a corporation "Lowcountry Signs & Fabrication, Inc." On June 27, 2006, in open Court, the parties entered into the factual Stipulation quoted *supra*, p. 11, that C&B Fabrication is a trade name of the corporations.

Eadon was the sole owner and stockholder of these two S-Corporations that he chartered. Eadon had only one sign business. The business was conducted in the name "C&B Fabrication." Eadon had a bank account in the name of "Marion L. Eadon, Jr. d/b/a C&B Fabrications, Rt 2 Box 825, Manning, SC." (Rhodes action, Plaintiffs' Exhibit 49). A statement of deposits for the tax year 2000 was prepared in the name of "C&B Fabrication, Rt 2, Box 825, Manning, SC." (Rhodes action, Plaintiffs' Exhibit 46) The deposit slips for the sign payment checks were printed "C&B Fabrication." (Eadon's Trial Testimony Transcript Vol. III, pp. 142-144.) There was a bank account in the name of "C&B Fabrication, d/b/a Low Country Sign Fabrication, Inc., Rt 2, Box 825, Manning, SC." (Rhodes action, Plaintiffs' Exhibit 48) Checks were issued on that account over a period of

#40
EAD

months printed "C&B Fabrication d/b/a Low Country Sign Fabrication, Inc. Rt 2, Box 825, Manning, SC." Checks were also issued "Low Country Sign Fabrication Inc, Rt 2, Box 825, Manning, SC." (Rhodes action, Plaintiffs' Exhibit 47) These names were used interchangeably by Eadon in his sign business. In his Rhodes action testimony, Eadon used the several names interchangeably. As noted previously, the corporations were sub-chapter S-Corporations and tax returns reflecting the income and expenses of the business conducted under the trade name, C&B Fabrication, were filed in the corporate names. Eadon was the sole shareholder and conducted all business on behalf of these entities. In the business dealings with Rhodes, Eadon's written communications were shown as "C&B Fabrication". That was a trade name of the corporation C&B Fabricators, Inc. It also was a trade name of Lowcountry Signs & Fabrication, Inc. after it was chartered May 1, 2000 and at the time Eadon's personnel corrected the middle leaning sign and inspected the remaining two signs on or about January 17, 2001, three days before the sign fell on the Interstate.

In 1998 Eadon purchased a liability policy with Auto-Owners in which the name of the insured was "C&B Fabrications, Inc." No such entity existed. In 1999 Eadon purchased a renewal of the policy with Auto-Owners again naming the insured "C&B Fabrications, Inc." Each policy's term expired in September. May 1, 2000 Eadon chartered "Lowcountry Signs & Fabrication, Inc." The Auto-Owners policy was renewed for the third year in September 2000. At that time "Low Country Signs Inc" was added to the policy. No such entity existed.

Eadon purchased insurance to insure his sign business operation. He had only one sign business operation. He obviously thought he was covered. He expected to be covered.

The names in the policy were not what was intended. That error, whether the fault of Eadon, the agency through whom the policies were obtained, or the insurer, or the fault of no one, is irrelevant. The same policy would have been issued in whatever name or entity requested. Whether the name was corporate or individual made no difference. The status of the insured (corporate or individual) was not the relevant factor. The nature of the risk (the type of operation) insured determined the premium. The premium would be the same whether the insured was a corporation or individual. (Michael Watson deposition, pp.63-65.) The file of the issuing agent reflected that Eadon had previously insured his business as "M.L. Eadon d/b/a C&B Fabrications"; and "Marion L. Eadon d/b/a C&B Fabrications." (Michael Watson deposition, pp. 62-63). Marion L. Eadon, M.L. Eadon, and Marion L. Eadon, Jr. are one and the same. These identities were also used interchangeably in the business. (Trial Transcript Vol III, p. 140).

The Policy Declarations Page says the policy insured the "sign mfg." business (Code 59058 for premium rating). It says the policy insured the "Sign Erection, Installation or Repair" business and "Prod/Comp. Op" business (Code 98993 for premium rating). That is what Eadon operated. He had only one sign business although he used the several names interchangeably. The intent of the parties (Eadon and Auto-Owners) was to insure the sign business. The fact that his sign business operation was not correctly named in the policies for three years should not deny him what he reasonably expected to get. Nothing Eadon did in the manner he labeled or styled his sign business was illegal or immoral. There was no intent to mislead or deceive in obtaining the policies for three successive years. Eadon is not trying to stretch the policy to get something he did not intend to obtain. He is not trying to

obtain something he is not entitled to. He is not trying to get insurance without paying the premium. He should not be denied the benefit of the policy he purchased to insure his sign business because the insureds named in the policy were not correct. The information written on the insurance application form was done by an employee of the issuing agent. The signature under the "Applicant's Statement" on the form is that of "Marion Eadon." Each time where the form asks for the "insured" the name written in is "Marion Eadon." (Michael Watson deposition, pp. 51-53). Eadon testified on his deposition:

Q: "When you applied for liability insurance for your operations as a sign designer, fabricator, and installer did you expect the liability insurance to cover that operation in whatever name or style it was being operated?"

A: "Yes."

Q: "When you got the liability insurance policy from Auto-Owners did you expect it to insure your operations as a sign designer, fabricator and installer in whatever name or style it was being operated?"

A: "Yeah." (Eadon deposition, p.60).

Under the Stipulation, C&B Fabrication is a trade name for Eadon's sign business.

Eadon was the sign business. The judgment is against the trade name C&B Fabrication.

Under the Stipulation the trade name is insured.

"One of the primary objectives of the law of contracts "is to carry out the reasonable expectations of the parties."

Kennedy v. Columbia Lumber and Manufacturing Company, Inc., 299 S.C. 335, 384 S.E.2d 730, 733 (1989).

In answering a certified question, in Joe Harden Builders, Inc. v. Aetna Casualty & Surety Company, 326 S.C. 231, 486 S.E.2d 89, 91 (1997), the Supreme Court said: "We conclude this interpretation of the policy best meets the fair expectations of the parties under

the language of the policy.”¹ The expectations of the parties are important. Additionally, under the Policy’s definition of “Who is an Insured,” Mr. Eadon qualified as an insured. The Policy defines “insureds” to include, for a corporation, its “executive officers and directors ... with respect to their duties as ... officers or directors.” Policy, p.7. The charge to the jury at the Rhodes trial certainly allowed the jury to hold that Mr. Eadon, acting on behalf of his corporation, operating under its trade name, was personally liable. Trial Transcript, vol. IV, pp. 354-356, 361, 365. The Rhodes jury’s verdict was against Mr. Eadon doing business as C&B Fabrication, which is stipulated to be the corporations named in the Policy. If Mr. Eadon was liable in doing business as either of the named insured corporations, his liability was certainly “with respect to his duties as an officer” of said corporation. He testified that everything he did in the outdoor advertising business was under the corporations he chartered. While the Policy is not ambiguous in the context of this case, if it were ambiguous, that ambiguity would be resolved in favor of coverage. W.N. Leslie, Inc. v. Travelers Ins. Co., 264 S.C. 408, 413, 215 S.E.2d 448, 450 (1975).

Auto-Owners was, moreover, aware of the C&B Fabrication name usage by Eadon.

¹ In Allstate Insurance Company v. Mangum, 299 S.C. 226, 383 S.E.2d 464 (Ct. App. 1989) the Court of Appeals declined to apply the doctrine of reasonable expectations because the trial judge failed to pass on the issue. In Ex parte United Services Automobile Association v. Moore, 365 S.C. 50, 614 S.E.2d 652 (Ct. App. 2005) the Court of Appeals said the doctrine of reasonable expectations “has been rejected in South Carolina” and cited Allstate v. Mangum. The opinion in United Services Automobile Association did not mention Kennedy v. Columbia Lumber and Manufacturing Company, Inc. nor did it mention Joe Harden Builders v. Aetna Casualty & Surety Company, both of which were decided by the Supreme Court after Allstate v. Mangum. Accordingly, the statement in United Services Automobile Association is clearly not consistent with the statements of the Supreme Court.

A printed C&B Fabrication check was issued to Auto-Owners for an insurance premium.
(Michael Watson deposition, pp. 49-50.)

Even Auto-Owners has used the names interchangeably. In its original Complaint in this action, Auto-Owners alleged (Paragraph 5, page 2) that Rhodes "contracted defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. to fabricate, deliver and install three outdoor advertising billboard signs." In Paragraph 5 of its original Complaint, Auto-Owners alleged that "Marion L. Eadon d/b/a C&B Fabrications, Inc. completed and installed the signs." In Paragraph 9 of its original Complaint, Auto-Owners alleged that the action had been brought by Rhodes and Piedmont against "Marion L. Eadon d/b/a C&B Fabrications, Inc. arising out of the construction and fall of the sign." Five months later, on March 14, 2003, Auto-Owners filed an Amended Complaint in this action with the identical allegations. "The conduct of the parties is entitled to great weight in interpreting an ambiguous contract." Langston v. Niles, 265 S.C. 445, 219 S.E.2d 829, 834 (1975); "Subsequent conduct of the parties, after executing a contract, is admissible to show their intent." Mass Corporation v. Thompson, 62 NC App., 31, 302 S.E.2d 271, 275 (1983); Management Systems Associates, Inc. v. McDonnell Douglas Corporation (4th Cir., - NC; 1985) 762 F.2d 1161, 1171; "Generally speaking, the practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling, influence." Old Colony Trust Company v. City of Omaha, 230 U.S. 100, 33 S.Ct. 967 (1913).

What is stated in McCall v. IKON, d/b/a IKON Educational Services, 363 S.C. 646, 611 S.E.2d 315 (Ct. App. 2005) is pertinent:

A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and the courts should not put themselves in the position of failing to recognize what is apparent to everyone else.

Griffin v. Capital Cash, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992). It has long been recognized that a corporation may be known by several names in the transaction of its general business. See Long v. Carolina Banking Co., 193 S.C. 225, 239, 8 S.E.2d 326, 332 (1939). "If a corporation has acquired a name by usage, an adjudication against it by the name so acquired is valid and binding." Id. "If [a corporation] is sued in a name under which it transacts business, the process will ordinarily be sufficient to bring it before the court." Griffin, 310 S.C. at 292, 423 S.E.2d at 146. "The misnomer of a corporation in a notice, summons, or other step in a judicial proceeding is immaterial if it appears the corporation could not have been, or was not, misled." Id. Furthermore, use of a trade name will not invalidate the judgment if the misnomer does not cause the corporation prejudice. Long, 193 S.C. at 239, 8 S.E.2d at 332.

Auto-Owners has not been prejudiced by the interchangeable use of the names. It has known all the circumstances from the beginning. It defended Marion L. Eadon d/b/a C&B Fabrication for over two and a half years to a jury verdict in the Rhodes action. Only after the verdict in the Rhodes action did it first contend that it does not insure Marion L. Eadon d/b/a C&B Fabrication. It has always known who and what was insured. It insured Eadon's sign business; C&B Fabrication. Upon reading the transcripts of the Rhodes action trial and the depositions it was quite apparent to the Court that Eadon conducted his sign business under the trade name of C&B Fabrication. He contracted with Rhodes to build the signs in the name of C&B Fabrication. He contracted with other businesses in the same way. There was no evidence that any contracts were in the names listed in the insurance policy nor in the reformed corporate names in the policy pursuant to the Stipulation of the parties. Had that

issue been submitted to the jury with the identical evidence as presented to the Court the Court may well have had to direct a verdict. The strong probability is that the jury would have reached the same decision as the Court on that factual issue.

FINDINGS AND CONCLUSIONS

Based upon the evidence and the applicable law the Court finds and concludes:

- I. There was an occurrence within the meaning and application of that term in the Auto-Owners policy.
- II. There was property damage within the meaning and application of that term in the Auto-Owners policy.
- III. Exclusions k, l, m, and n do not apply within the meaning and terms of the Auto-Owners policy.
- IV. Marion L. Eadon d/b/a C&B Fabrication is insured under the words of the Auto-Owners policy and in accordance with the actual or implied expectations of both Auto-Owners and Mr. Eadon for the judgment obtained in the Rhodes action, including actual and punitive damages, except for the \$153,960.00 cost of the three signs, up to the policy limits.
- V. Interest accrues on the full amount of the judgment, ² until Auto-Owners has "paid, offered to pay, or deposited in Court the part of the judgment that is within the applicable limit of insurance." (Policy supplementary payments, paragraph 7, page

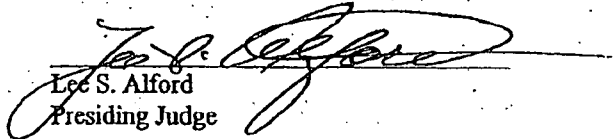
²

The Court is informed that the Rhodes action is on Appeal and the result of that Appeal will determine if there is any change or modification in the Judgment or the amount of the Judgment in the Rhodes action.

#47
20A

6.) Interest is at the legal rate pursuant to S.C. Code Ann. §34-31-20(B) as amended in 2005.

IT IS SO ORDERED.


Lee S. Alford
Presiding Judge

November 7, 2006

#48
60h

STATE OF SOUTH CAROLINA)
County of York)

Auto-Owners Insurance Company,)
Plaintiff)

v.)

Samuel W. Rhodes, Piedmont)
Promotions, Inc., and Marion L.)
Eadon d/b/a C&B Fabrication,)
C&B Fabrication, Inc., and Low)
Country Signs, Inc.,)
Defendant)

In The Court of Common Pleas

C.A. No. 2002-CP-46-2369

Supplemental Order

This Court previously issued an order in this declaratory judgment action on November 7, 2006. Plaintiff, Auto-Owners Insurance Company, timely filed a Motion to Alter or Amend Judgment, or In The Alternative, For A New Trial. Thereafter, the South Carolina Court of Appeals reversed and remanded the underlying action captioned Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. v. Marion L. Eadon, d/b/a C&B Fabrication. The South Carolina Appeals Court ruled the trial judge erred in denying the Defendant's / Appellant's Motion for Change of Venue in an unpublished opinion number 2006-UP-413 filed December 15, 2006. In the November 7, 2006 order this Court ruled the judgment in the underlying case was covered subject to the limits of the insurance agreement with the exception of the cost to replace the advertising signs themselves which is "work product" under an exclusion in the insurance policy.

Plaintiff then moved for relief from the November 7, 2006 order or to have the order stayed. The Defendant/Respondent in the underlying action has petitioned the South Carolina Court of Appeal for reconsideration of its December 15, 2006 ruling which is now pending. If the Court of Appeals declines to reconsider its ruling, the

41
225

Defendant/Respondent would then have the option to petition the South Carolina Supreme Court for Writ of Certiorari to review the ruling of the Court of Appeals.

If the ruling by the South Carolina Appeals Court remains unchanged, the case would be remanded for a new trial in a different venue.

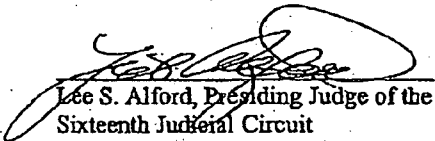
Section 1-A-1-A as follows: "We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance policy applies."

It follows, a fortiori, that if the judgment for money damages in favor of Rhodes and Piedmont Promotions, Inc. against Marion L. Eadons d/b/a C&B Fabrication is vacated there are no sums that the insured is legally obligated to pay as damages. Therefore, Items IV and V of the Findings and Conclusions in this Court's order would be void and of no effect.

The remaining three items in the Findings and Conclusions of the order together with the other findings of the order shall remain in effect.

Plaintiff filed a motion for reconsideration of the Court's order citing numerous grounds which the Court finds are adequately addressed by the order and the Court declines to change the order with the exception of the judgment in the Rhodes case set forth herein. Plaintiff's Motion for a New Trial is denied.

It Is So Ordered.


Lee S. Alford, Presiding Judge of the
Sixteenth Judicial Circuit

York, S.C.
March 23, 2007

#2

STATE OF SOUTH CAROLINA)
County of York)
Auto-Owners Insurance Company,)
Plaintiff)
v.)
Samuel W. Rhodes, Piedmont)
Promotions, Inc., and Marion L)
Eadon d/b/a C&B Fabrication,)
C&B Fabrication, Inc., and Low)
Country Signs, Inc.,)
Defendant)

In The Court of Common Pleas

C.A. No. 2002-CP-46-2369

Revised Supplemental Order

The Supplemental Order of this Court dated March 22, 2007 in the above entitled matter is hereby withdrawn. This amended Supplemental Order is substituted in its place. This Court previously issued an order in this declaratory judgment action on November 7, 2006. Plaintiff, Auto-Owners Insurance Company, timely filed a Motion to Alter or Amend Judgment, or In The Alternative, For A New Trial. Thereafter, the South Carolina Court of Appeals reversed and remanded the underlying action captioned Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. v. Marion L. Eadon, d/b/a C&B Fabrication. The South Carolina Appeals Court ruled the trial judge erred in denying the Defendant's / Appellant's Motion for Change of Venue in an unpublished opinion number 2006-UP-413 filed December 15, 2006. In the November 7, 2006 order this Court ruled the judgment in the underlying case was covered subject to the limits of the insurance agreement with the exception of the cost to replace the advertising signs themselves which is "work product" under an exclusion in the insurance policy.

Plaintiff then moved for relief from the November 7, 2006 order or to have the order stayed. The Defendant/Respondent in the underlying action has petitioned the South Carolina Court of Appeal for reconsideration of its December 15, 2006 ruling which is now pending. If the Court of Appeals declines to reconsider its ruling, the

#1
2008

Defendant/Respondent would then have the option to petition the South Carolina Supreme Court for Writ of Certiorari to review the ruling of the Court of Appeals.

If the ruling by the South Carolina Appeals Court remains unchanged, the case would be remanded for a new trial in a different venue.

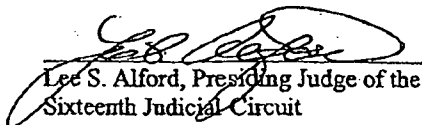
Section 1-A-1-A as follows: "We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance policy applies."

It follows, a fortiori, that if the judgment for money damages in favor of Rhodes and Piedmont Promotions, Inc. against Marion L. Eadons d/b/a C&B Fabrication is vacated there are no sums that the insured is legally obligated to pay as damages. Therefore, Items IV and V of the Findings and Conclusions in this Court's order would be void and of no effect, with the exception that the legal conclusion that Marion L. Eadon d/b/a C&B Fabrication is insured under the terms of the policy and in accordance with the intention of coverage by the parties – remains in full force and effect.

The remaining three items in the Findings and Conclusions of the order together with the other findings of the order shall remain in effect.

Plaintiff filed a motion for reconsideration of the Court's order citing numerous grounds which the Court finds are adequately addressed by the order and the Court declines to change the order with the exception of the judgment in the Rhodes case set forth herein. Plaintiff's Motion for a New Trial is denied.

It Is So Ordered.


Lee S. Alford, Presiding Judge of the
Sixteenth Judicial Circuit

HC
2007
York, S.C.
March 30, 2007

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

FILED-RECEIVED
BOOK _____ PAGE _____

JUN 27 11 45 AM '06

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

JUDGMENT IN A CIVIL CASE

CASE NO: 2002CP4602369

Auto Owners Insurance Co vs. Samuel W Rhodes

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

*THE ATTORNEYS FOR ALL PARTIES ENTERED INTO A
STIPULATION OF FACTS & AGREEMENT OF THE ISSUE
TO BE DECIDED BY THE JURY.*
Dated at York, South Carolina, this 27th day of June, 2006.

Court Reporter:

[Signature]
PRESIDING JUDGE -

This judgment was entered on the 27th day of June, 2006, and a copy mailed first class this 27th day of June, 2006, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Alfred Johnston Cox Ellis Lawhome &
Sims, PA P.O. Box 2285 Columbia, SC
29202

William O. Sweeny III Sweeny Wingate &
Barrow, PA P.O. Box 12129 Columbia, SC
29211
Hoover C. Blanton McCutchen B.
Johnson & Barnette, LLP P.O. Drawer 11209
Columbia, SC 29211-1209
Creighton B. Coleman Coleman & Tolen, LLC
P.O. Box 1006 Winnsboro, SC 29180

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

CPFORM4M

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Auto-Owners Insurance Company,

Plaintiff,

v.

Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L.
Eadon, C&B Fabrications, Inc. and
Low Country Signs, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 02CP46-2369

SUMMONS
(Declaratory Judgment Action)

DAVID HAMILTON
C.C.R. & G.S.
YORK COUNTY, SC

2002 OCT 14 AM 11:57

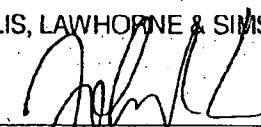
FILED-RECEIVED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorney, A. Johnston Cox, ELLIS, LAWHORNE & SIMS, P.A., 1501 Main Street, Fifth Floor, Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated at Columbia, South Carolina, on the 11th day of October, 2002.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1330 Lady Street, Fourth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 02CP46-2369

Auto-Owners Insurance Company,)
Plaintiff,)

v.)

Samuel W. Rhodes, Piedmont)
Promotions, Inc. and Marion L.)
Eadon, C&B Fabrications, Inc. and)
Low Country Signs, Inc.,)
Defendants.)

COMPLAINT
(Declaratory Judgment Action)

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2002 OCT 14 AM 11:57

FILED-RECEIVED

The Plaintiff, Auto-Owners Insurance Company ("Auto-Owners"), respectfully alleges:

1. The Plaintiff, Auto-Owners, is an insurance company organized and existing under the laws of the State of Michigan and is duly authorized to do business and write insurance policies in the state of South Carolina.

2. The Defendant, Samuel W. Rhodes, is a citizen and resident of the State of South Carolina, County of York and is the sole owner of Defendant Piedmont Promotions, Inc. The Defendant Piedmont Promotions, Inc. is a South Carolina corporation.

3. The Defendant, Marion L. Eadon, is a citizen and resident of the State of South Carolina, County of Clarendon. The Defendants C&B Fabrications, Inc. and Low Country Signs, Inc. were, in 1999, South Carolina corporations with their principal place of business in Manning, South Carolina.

4. Auto-Owners brings this action pursuant to S.C. Code Ann. § 15-53-10, et seq. and South Carolina Rule of Civil Procedure 57, and alleges that an actual and justiciable controversy exists between the parties as is set forth in this Complaint.

5. Upon information and belief, on August 4, 1999, Defendants, Samuel W. Rhodes and Piedmont Promotions, Inc. contracted Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. to fabricate, deliver, and install three outdoor advertising billboard signs on the Plaintiff's real property in Fairfield County South Carolina.

6. Upon information and belief, Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. completed and installed the signs in February 2000. The signs were put to their intended use by the Plaintiff at that time.

7. Upon information and belief, on January 20, 2001, one of the three signs fell across Interstate Highway I-77.

8. Upon information and belief, on January 23, 2001, the South Carolina Department of Transportation ordered the remaining two signs removed at once, because they were also leaning toward the interstate.

9. Defendants Samuel W. Rhodes and Piedmont Promotions, Inc. have commenced a civil action in the Court of Common Pleas for Fairfield County, South Carolina, alleging various causes of action against Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. arising out of construction and eventual collapse/removal of the signs. The action is styled, Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc v. Marion L. Eadon d/b/a C&B Fabrication, Civil Action number 01-CP-20-334. A copy of the Complaint in this action is attached as "Exhibit A" hereto and adopted by reference herein.

10. On September 17, 2000, Plaintiff issued and delivered a Commercial General Liability Policy ("Policy"), policy number 036064416, to C&B Fabrications, Inc. and Low Country Signs, Inc., which included property damage liability coverage, subject to certain conditions and exclusions as set forth in the policy. A certified copy of this policy is attached to this Complaint, is labeled "Exhibit B," and is adopted herein by this reference:

11. The Policy contains the following applicable provisions:

(a) "We will pay those sums that the insured becomes legally obligated to pay as damages because of...'**property damage**' to which this insurance applies." See, 1(a).

(b) "This insurance applies to...'**property damage**' only if: (1) ...the '**property damage**' is caused by an '**occurrence**' that takes place in the '**coverage territory**'; and (2)...'**property damage**' occurs during the **policy period**." See 1(b).

12. The term "property damage" is defined by the Policy as "physical injury to tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured." See 12(a) and (b).

13. The term "occurrence" is defined in the policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

14. The term "your product" is defined in the policy as, "any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by: you...." In addition, "your product" includes "warranties or representations made

at any time with respect to the fitness, quality, durability, performance or use of 'your product.'"

15. The term "your work" is defined in the policy as, "(a) work or operations performed by you or on your behalf; and (b) materials, parts or equipment furnished in connection with such work or operations." In addition, "your work" includes "(a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of 'your work'; and (b) the providing or failure to provide warnings or instructions."

16. The policy also contains, among others, the following exclusions:

(a) Exclusion k, which states, "This insurance does not apply to 'property damage' to 'your product' arising out of it or any part of it."

(b) Exclusion l, which states, "This insurance does not apply to 'property damage' to 'your work' arising out of it or any part of it and including in the 'products-completed operations hazard'."

(c) Exclusion m, which states, "This insurance does not apply to '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'; . . . 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."

(d) Exclusion n, which states,

This insurance does not apply to . . . Damages claimed for any loss, cost or expense incurred by you or other 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 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.

17. The Defendants, Marion L. Eadon d/b/a C&B Fabrications, Inc., sought defense and coverage under the Policy as a result of the above reference action.

18. Auto-Owners Insurance Company has provided Marion L. Eadon d/b/a C&B Fabrications, Inc. with a defense and has done so under a reservation of rights.

19. Upon information and belief, Plaintiff's policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to the described lawsuit, by reason of the provisions of the insurance policy and the applicable laws; further, upon information and belief, Plaintiff has no obligation to defend Marion L. Eadon d/b/a C&B Fabrications, Inc. in the described action or any other actions that may be instituted based upon the described events.

20. Upon information and belief, stay of any proceedings described above, docket number 01-CP-20-334, in the Fairfield County Court of Common Pleas, pending the outcome of this action would promote the efficient resolution of the issues in action number 01-CP-20-334.

21. There exists between the parties a controversy, and Plaintiff is entitled to a declaration of its rights and responsibilities under the described policy of insurance.

WHEREFORE, having set forth its Complaint, Plaintiff prays that this Court inquire more fully into the matters alleged herein and issue its Order and judgment declaring:

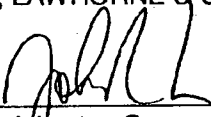
- a. That Plaintiff's policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to any injuries or damages arising out of the events described in the Complaint filed

in Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc v. Marion L. Eadon d/b/a C&B Fabrication, civil action number 01-CP-20-334; and

- b. That Plaintiff has no obligation to defend Marion L. Eadon d/b/a C&B Fabrications, Inc. in the litigation bearing docket number 01-CP-20-334; and
- c. That the proceedings in civil action number 01-CP-20-334 be stayed, pending resolution of the issues in this lawsuit; and
- d. For such other and further relief as the Court may provide.

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.

By: 

A. Johnston Cox
Post Office Box 2285
1330 Lady Street, 4th Floor
Columbia, South Carolina 29202
(803) 254-4190

ATTORNEYS FOR THE PLAINTIFF

Owners

Page 1

55039 (11-87)

Issued 08-17-2000

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

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS

CD

POLICY TERM
12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

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

COMMON POLICY INFORMATION

COINSURANCE CLAUSE

BUSINESS DESCRIPTION: Sign Mfg.

ENTITY: Corporation

PROGRAM: Industrial/Processing

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PART(S):	PREMIUM
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.	
COMMERCIAL PROPERTY COVERAGE	\$172.00
COMMERCIAL GENERAL LIABILITY COVERAGE	6,521.00
TOTAL	\$6,693.00

FORMS THAT APPLY TO ALL COVERAGE PARTS SHOWN ABOVE (EXCEPT GARAGE LIABILITY, DEALER'S
BLANKET, COMMERCIAL AUTOMOBILE, IF APPLICABLE)
55003 (01-87) IL0017 (11-85)

A 7% MULTI-POLICY DISCOUNT APPLIES
Countersigned By: _____

I certify that this policy was assembled from
available records as a representation of coverage
that was in effect for the policy period shown.

Date

7-2-02

Owners

Page 1

54104 (07-87)

Issued 08-17-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE

16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS

CB

POLICY TERM

12:01 a.m. 12:01 a.m.

09-17-2000 to 09-17-2001

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

COMMERCIAL PROPERTY COVERAGE

COVERAGES PROVIDED

INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.

LOCATION 001

ADDITIONAL FORMS THIS LOCATION: None

LOC 001 BLDG 001

2

OCCUPIED AS: Sign Manufacturer

COVERAGE: Personal Prop.

Limit of Insurance \$30,000

CAUSES OF LOSS

Basic Group I

Basic Group II

Special

Special Including Theft

COINSURANCE

80%

80%

80%

80%

DEDUCTIBLE

\$250

250

250

250

RATE

0.206

0.084

0.043

0.239

PREMIUM

\$62.00

25.00

13.00

72.00

OPTIONAL COVERAGE:

Replacement Cost

ADDITIONAL FORMS THIS BUILDING: IL0249 (06-89) IL0003 (11-85) CP0090 (07-88)
CP0010 (10-91) CP1030 (10-91)

SECURED INTERESTED PARTIES: None

RATING INFORMATION

Territory: 140

Program: Industrial/Processing

Class Code: 6810

County: Clarendon

Construction: Non-Comb

Specific Rate - Contents: 0.229

Protection Class: 06

LOCATION 001 PREMIUM

\$172.00

Owners

Page 1

55040 (11/87)

Issued 08-17-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS

CB

POLICY TERM

12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

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

COMMERCIAL GENERAL LIABILITY COVERAGE

LIMITS OF INSURANCE

General Aggregate Limit	\$1,000,000
(Other Than Products-Completed Operations)	
Products-Completed Operations Aggregate Limit	1,000,000
Personal And Advertising Injury Limit	1,000,000
Each Occurrence Limit	1,000,000
Fire Damage Limit	100,000 Any One Fire
Medical Expense Limit	10,000 Any One Person

"General Aggregate Limit" shown above, is reinstated once per policy period at no
additional charge, in accordance with form 55050.

AUDIT TYPE: Annual Audit

FORMS THAT APPLY TO LIABILITY: 55118 (08-91) 55146 (07-96) 55091 (01-89)
IL0021 (11-85) 55029 (07-87) CG0001 (11-88) IL0249 (06-89) 55137 (06-92)
IL0017 (11-85) 55050 (07-87) 55064 (07-87) CL175 (02-86) 55069 (01-88)
CG2147 (09-89) 55167 (11-95)

LOCATION OF PREMISES YOU OWN, RENT OR OCCUPY

LOC 001 BLDG 001

TERRITORY: 001 COUNTY: Clarendon

Classification	Subline	Premium Basis	Rates	Premium
CODE 00501 Commercial General Liability Plus Endorsement Included At 7% Of The Premises Operation Premium	Prem/Op	Prem/Op Prem Inc	Inc	Inc
CODE 59058 Sign Mfg. - Noc	Prem/Op Prod/Comp Op	Gross Sales 1,127,333 1,127,333	Each 1000 .290 1.590	\$327.00 \$1,792.00
CODE 98993 Sign Erection, Installation Or Repai	Prem/Op Prod/Comp Op	Payroll 106,902 106,902	Each 1000 23.711 17.463	\$2,535.00 \$1,867.00

LOCATION 001 PREMIUM

\$6,521.00

QUICK REFERENCE COMMERCIAL GENERAL LIABILITY COVERAGE PART

READ YOUR POLICY CAREFULLY

The Commercial General Liability Coverage Part in your policy consists of Declarations, a Coverage Form (either CG 00 01 or CG 00 02), Common Policy Conditions and Endorsements, if applicable. Following is a Quick Reference indexing of the principal provisions contained in each of the components making up the Coverage Part, listed in sequential order, except for the provisions in the Declarations which may not be in the sequence shown.

DECLARATIONS

- Named Insured and Mailing Address
- Policy Period
- Description of Business and Location of Premises
- Limits of Insurance
- Forms and Endorsements applying to the Coverage Part at time of issue

COVERAGE FORM (CG 00 01 or CG 00 02)

SECTION I - COVERAGES

- Coverage A - Bodily Injury and Property Damage Liability

- Insuring Agreement

- Exclusions

- Coverage B - Personal and Advertising Injury Liability

- Insuring Agreement

- Exclusions

- Coverage C - Medical Payments

- Insuring Agreement

- Exclusions

- Supplementary Payments

SECTION II - WHO IS AN INSURED

SECTION III - LIMITS OF INSURANCE

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

- Bankruptcy

- Duties in the Event of Occurrence, Claim or Suit

- Legal Action Against Us

- Other Insurance

- Premium Audit

- Representations

- Separation of Insureds

- Transfer of Rights of Recovery Against Others to Us

- When We Do Not Renew (applicable to CG 00 02 only)

- Your Right to Claim and "Occurrence" Information (applicable to CG 00 02 only)

SECTION V - EXTENDED REPORTING PERIODS (applicable to CG 00 02 only)

SECTION VI - DEFINITIONS (SECTION V IN CG 00 01)

Includes copyrighted material of Insurance Services Office, Inc., with its permission
Copyright, Insurance Services Office, Inc., 1982, 1984, 1986.

Agency Code 16-0070-00

Policy Number 984616-36064416

COMMON POLICY CONDITIONS (IL 00 17)

Cancellation
Changes
Examination of Your Books and Records
Inspections and Surveys
Premiums
Transfer of Your Rights and Duties under this Policy

ENDORSEMENTS (If Any)

Includes copyrighted material of Insurance Services Office, Inc., with its permission
Copyright, Insurance Services Office, Inc., 1982, 1984, 1986.

55167 (11-95)
COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES or
CONTRACTORS (Form B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization (Additional Insured):
ELLER MEDIA, SANGER & ALTGELT

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

1. WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.
2. The following is added to **LIMITS OF INSURANCE** (Section III):
 8. The limits of liability for the additional insured are those specified in the written contract or agreement between the insured and the owner, lessee or contractor, not to exceed the limits provided in this policy. These limits are inclusive of and not in addition to the limits of insurance shown in the Declarations.

COMMUNICABLE DISEASE EXCLUSION
Commercial General Liability Coverage Form

55137 (6-92)

It is agreed:

1. The following exclusion is added and applies to:
 - a. COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY;
 - b. COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY; and
 - c. COVERAGE C. MEDICAL PAYMENTS.

2. **EXCLUSION**

This policy does not apply to "bodily injury", "personal injury" or medical expenses for "bodily injury" arising out of or resulting from the transmission of any communicable disease by any "insured".

All other policy terms and conditions apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT - RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following exclusion is added to COVERAGE A (Section I):

a. "Bodily 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" 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.

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

c. "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 "personal injury" as a result of (1) through (3) above.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55146 (7-96)

UPSET AND OVERSPRAY COVERAGE

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

It is agreed the coverage for "property damage" liability with respect to your operations is extended as follows:

1. COVERAGE

We will pay those sums which you become legally obligated to pay for "property damage" caused directly by immediate, abrupt and accidental:

- a. upset, overturn or collision of your "mobile equipment" while transporting; or
- b. "overspray" during your application or dispersal of;

"pollutants" which are intended for and normally used in your operations. The operations must be in compliance with local, state, and federal ordinances and laws.

This is not an additional amount of insurance and does not increase the LIMITS OF INSURANCE stated in the Declarations.

2. EXCLUSIONS

- a. With regard only to the coverage provided by this endorsement, SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, f. is deleted and replaced by the following:

- f. 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".

- b. The following exclusion is added under SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:

- o. This coverage does not apply to "overspray" resulting from aerial application or dispersal of "pollutants".

All other policy exclusions apply.

3. DEDUCTIBLE

Any deductible provision of the policy which is applicable to Property Damage Liability coverage applies to this coverage extension.

4. DEFINITIONS

The following definitions apply in addition to those in the policy.

"Overspray" means spray, from a device specifically designed for spray application or dispersal, that goes beyond the entire area of intended application or dispersal.

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

All other policy terms and conditions apply.

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 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 - 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 any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in 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 payments 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"; and

- (2) The "bodily injury" or "property damage" occurs during the policy period.

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

2. Exclusions.

This insurance does not apply to:

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

- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of

liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
 - (2) That the insured would have in the absence of the contract or agreement.
- c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
- (1) Causing or contributing to the intoxication of any person;
 - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

- d. Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- e. "Bodily injury" to:
 - (1) An employee of the insured arising out of and in the course of employment by the insured; or
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (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. (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;
 - (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 any insured or 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:
 - (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured; contractor or subcontractor; or

- (II) 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.

Subparagraphs (a) and (d) (i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (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 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 from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, 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, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;

- (2) A watercraft you do not own that is:

- (a) Less than 26 feet long; and

- (b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (Section V.8.).

- h. "Bodily injury" or "property damage" arising out of:

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

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

- i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

- j. "Property damage" to:

- (1) Property you own, rent or occupy;

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of 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.

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. "Property damage" to "your product" arising out of it or any part of it.
- l. "Property damage" to "your work" arising out of it or any part of it and including 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. "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. 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.

Exclusions c. through n. do not apply to damage by fire to premises rented to you. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (SECTION III).

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 injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate

any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in 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 under Coverage 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:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions.

This insurance does not apply to:

a. "Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or

- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

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 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. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefit law or similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. 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

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

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. 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.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on the part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

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, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and

their spouses are also insureds, but only with respect to the conduct of your business.

- c. An organization other than a partnership or joint venture, you are insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
- a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:
 - (1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or
 - (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or
 - (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
 - b. Any person (other than your employee), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this 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 of joint venture, 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 injury" or "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 or joint venture 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 injury" and all "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 Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.

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

2. Duties In The Event Of Occurrence, 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, settlement or defense of the claim or "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

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

3. 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 claimant's legal representative.

4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverage 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 any of the other insurance, whether primary, excess, contingent or on any other basis:

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

(2) That is Fire insurance for premises rented to you; or

(3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

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

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. 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 term 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. "Advertising injury" means injury arising out of one or more of the following offenses:

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:

(1) The injury or damage arises out of:

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

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

(2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

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

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

6. "Insured contract" means:

- a. A lease of premises;
- 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.

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies any person or organization 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;
 - b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
 - c. 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 b. above and supervisory, inspection or engineering services; or
 - d. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.
7. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or

- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

8. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, 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 and lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing;
- (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise and lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

10. "Personal injury" means, other than "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 by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

11. a. "Products-completed operations hazard"

includes all "bodily injury" and "property damage" 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.

b. "Your work" will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
- (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. "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 shall be deemed to occur at the time of the "occurrence" that caused it.
13. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
14. "Your product" means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or

- (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, 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.

15. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55118 (8-91)

**POLLUTION EXCLUSION ENDORSEMENT
PERSONAL INJURY LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Under SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY, 2. EXCLUSIONS, exclusion c. is added:

c. (1) "Personal Injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;

(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 any insured or 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:

(i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or

(ii) if the operations are to test for, monitor, clean up, remove, con-

tain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d) (i) do not apply to "personal injury" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(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 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 from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, 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, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

All other policy terms and conditions apply.

Includes copyrighted material of Insurance Services
Office, Inc., with its permission
Copyright, Insurance Services Office, 1982, 1988

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55029 (7-87)

ABSOLUTE ASBESTOS EXCLUSION ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

No coverage is provided by this policy for any claim, suit, action or proceeding against the insured arising out of the discharge, dispersal, release, escape or inhalation of any asbestos related particle, dust, irritant, contaminant, pollutant, toxic element or material.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55050 (7-87)

REINSTATEMENT OF THE GENERAL AGGREGATE LIMIT

It is agreed:

The following is added to SECTION III - LIMITS OF INSURANCE:

If the General Aggregate limit is exhausted, as a result of losses occurring during the policy period because of payment of judgments or settlements, we will reinstate that aggregate limit for losses occurring during the same policy period. We will reinstate such limit only once for each policy period. Further, our liability:

1. with respect to any one occurrence, shall never exceed the aggregate limit; or
2. with respect to all occurrences during the policy period, shall never exceed two times the aggregate limit.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55064 (7-87)

MOTOR VEHICLE LAWS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

It is agreed the following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS:

We will provide coverage:

1. up to the minimum required limits; and
2. subject to all the terms and conditions of the policy;

to comply with any motor vehicle insurance law to the extent such law applies to the "mobile equipment" covered by this coverage part.

All other terms and conditions of the policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**CONTRACTUAL COVERAGE AMENDATORY
ENDORSEMENT**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE FORM.

It is agreed:

Under Section I - COVERAGE A, Item 2 Exclusions:

Exclusion b. is deleted and replaced by the following:

- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
 - (1) Assumed in a contract or agreement that is an "insured contract". However, if the insurance under this policy does not apply to the liability of the insured, it also does not apply to such liability assumed by the insured under an "insured contract".
 - (2) That the insured would have in the absence of the contract or agreement.

All other terms and conditions of the policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY PLUS ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

It is agreed the insurance provided under this Coverage Part is amended as follows:

1. **EXTENDED WATERCRAFT COVERAGE**

Under COVERAGE A - 2. Exclusions, exclusion g.(2) is deleted and is replaced by the following:

- (2) A watercraft you do not own that is:
 - (a) Less than 50 feet long; and
 - (b) Not being used to carry persons or property for a charge;

2. **NONOWNERSHIP/HIRED AUTO COVERAGE**

Coverage for "bodily injury" and "property damage" liability provided under COVERAGE A is extended as follows under this item, but only if you do not have any insurance available to you which affords the same or similar coverage:

Coverage

We will pay those sums the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" arising out of the maintenance or use of an "auto" you do not own or which is not registered in your name, but which is used in your business.

Exclusions

With respect to this coverage, the exclusions which apply to Coverage A, other than exclusions a., d., f. and i. and the Nuclear Energy Liability Exclusion Endorsement, are replaced by the following:

The coverage does not apply to:

- (1) Liability assumed by the insured under any contract or agreement.
- (2) "Property damage" to:
 - (a) property owned or being transported by, or rented or loaned to the insured; or
 - (b) property in the care, custody or control of the insured;other than property damage to a residence or a private garage by a private passenger "auto" covered by this coverage.
- (3) "Bodily injury" to:
 - (a) An employee of the insured arising out of and in the course of employment by the insured; or

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

This exclusion applies:

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

This exclusion does not apply to:

- (a) Liability assumed by the insured under an "insured contract".
- (b) "Bodily injury" to any employee of the insured arising out of and in the course of his domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

Who Is An Insured

It is agreed with respect to this coverage, the section WHO IS AN INSURED is deleted and replaced by the following:

WHO IS AN INSURED

Each of the following is an insured with respect to this coverage:

1. You.
2. Any partner or executive officer of yours.
3. Any person using the "auto" and any person or organization legally responsible for the use of an "auto" not owned by such person or organization, provided the actual use is with your permission.

None of the following is an insured:

1. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment.
2. Any person using the "auto" and any person other than you, legally responsible for its use with respect to an "auto" owned or registered in the name of:
 - a. such person; or
 - b. any partner or executive officer of yours or a member of his or her household; or
 - c. any employee or agent of yours who is granted an operating allowance of any sort for the use of such "auto".
3. Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate.
4. The owner or lessee (of whom you are a sublessee) of a hired "auto" or the owner of an "auto" you do not own or which is not registered in your name which is used in your business or any agent or employee of any such owner or lessee.
5. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

Additional Definitions

The following definition applies to this coverage:

"Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".

Limits of Insurance

It is agreed with respect to this coverage only, the section LIMITS OF INSURANCE is deleted and replaced by the following:

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. If the Limits of Insurance shown in the Declarations:
 - a. are shown only as an Each Occurrence Limit, the Each Occurrence Limit:
 - (1) is the most we will pay for; and
 - (2) applies to:

the sum of damages under Coverage A for "bodily injury" and "property damage" arising out of any one "occurrence"; or
 - b. are shown in the Declarations as an Each Person Limit and an Each Occurrence Limit:
 - (1) the Each Person Limit is the most we will pay under Coverage A for "bodily injury" sustained by any one person; and
 - (2) the Each Occurrence Limit:
 - (a) is the most we will pay for, and
 - (b) applies separately to:
 - 1) damages covered under Coverage A for "bodily injury"; and
 - 2) damages covered under Coverage A for "property damage";
arising out of any one "occurrence".

The limits which apply to this Coverage 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.

3. BROADENED SUPPLEMENTARY PAYMENTS COVERAGE

Under SUPPLEMENTARY PAYMENTS - COVERAGES A. and B.:

- a. item 2., the amount we will pay for the cost of bail bonds is increased from \$250 to \$500.
- b. item 4., the amount we will pay the actual loss of earnings is increased from \$100 per day to \$150 per day.

4. PRODUCTS-COMPLETED OPERATIONS AGGREGATE REINSTATEMENT

The following is added to the section LIMITS OF INSURANCE:

If the Products-Completed Operations Aggregate limit is exhausted, as a result of losses occurring during the policy period because of payment of judgments or settlements, we will reinstate that aggregate limit for losses occurring during the same policy period. We will reinstate such limit only once for each policy period. Further, our liability:

- a. with respect to any one occurrence, shall never exceed the aggregate limit; or
- b. with respect to all occurrences during the policy period, shall never exceed two times the aggregate limit.

5. PERSONAL INJURY EXTENSION COVERAGE

- a. Under the section DEFINITIONS, the following is added to the definition for "Personal Injury":
 - f. discrimination and humiliation.
- b. Under COVERAGE B - 2. Exclusions, the following exclusion is added:
 - c. Any alleged or actual "personal injury" if directly or indirectly related to the past, present or prospective employment of any person or persons by an insured.

All other terms and conditions of the policy apply.

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.

COMMON POLICY CONDITIONS

IL 00 17 11 85

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. EXAMINATIONS 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:

Agency Code 16-0070-00

Policy Number 984616-36064416

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.

IL 02 49 06 89

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**SOUTH CAROLINA CHANGES -
CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
COMMERCIAL CRIME COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETE OPERATIONS LIABILITY COVERAGE PART

- A. Paragraphs 2. and 3. of CANCELLATION Common Policy Condition are replaced by the following:
2. We may cancel this policy by mailing or delivering to the first Named Insured and the agent, if any, written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
 3. We will mail or deliver our notice to the first Named Insured's and agent's last known addresses.
- B. The following is added to the CANCELLATION Common Policy Condition:
7. CANCELLATION OF POLICIES IN EFFECT FOR 90 DAYS OR MORE

If this policy has been in effect for 90 days or more, or is a renewal or continuation of a policy we issued, we may cancel this policy only for one or more of the following reasons:
 - a. Nonpayment of premium;
 - b. Material misrepresentation of fact which, if known to us, would have caused us not to issue the policy;
 - c. Substantial change in the risk assumed, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing the policy;
 - d. Substantial breaches of contractual duties, conditions or warranties; or
 - e. Loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of South Carolina.

Prior to cancellation for reasons permitted in this item e., we will notify the Commissioner, in writing, at least sixty days prior to such cancellation and the Commissioner will, within thirty days of such notification, approve or disapprove such action.

Any notice of cancellation will state the precise reason for cancellation.
- C. The following is added and supersedes any provisions to the contrary.
- NONRENEWAL**
1. if we decide not to renew this policy, we will mail or deliver written notice of nonrenewal to the first Named Insured and agent, if any, at least 30 days before:
 - a. The expiration date of this policy, if the policy is written for a term of one year or less; or
 - b. An anniversary date of this policy, if the policy is written for a term of more than one year or for an indefinite term.

Agency Code 16-0070-00

Policy Number 984616-36064416

However, we will not refuse to renew a policy issued for a term of more than one year, until expiration of its full term, if anniversary renewal has been guaranteed by additional premium consideration.

2. Any notice of nonrenewal will be mailed or delivered to the first Named Insured's and agent's last known addresses. If notice is mailed, proof of mailing will be sufficient proof of notice.
3. Any notice of nonrenewal will state the precise reason for nonrenewal.

Owners

Page 1

(IL 1201 11-85)

Issued 11-09-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

Change Endorsement Effective 09-17-2000

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

POLICY NUMBER 984616-36064416-00

ADDRESS

Company
Bill

POLICY TERM

12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

DESCRIPTION OF CHANGE

COMMERCIAL PROPERTY COVERAGE PART IS AMENDED AS FOLLOWS:
LOC #2 BLDG #1 IS ADDED AT 1731 NORTH MAIN STREET, STE G, SUMMERVILLE,
SC 29483 AS AN OFFICE. PERSONAL PROPERTY LIMIT OF INSURANCE IS \$3,000
80% COINSURANCE, \$250 DED. VALUATION OF REPLACEMENT COST AND CAUSE OF
LOSS SPECIAL WITH THEFT APPLY.

TRANSACTION NUMBER: 002

ENDORSEMENT PREMIUM: ADDITIONAL

\$79.00

I certify that this policy was assembled from
available records as a representation of coverage
that was in effect for the policy period shown.

Date

7.2.02

Owners

Page 1

(IL 1201 11-85)

Issued 12-05-2000

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

TAILORED PROTECTION POLICY DECLARATIONS

Change Endorsement Effective 11-02-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS

Company
Bill

POLICY TERM	
12:01 a.m.	12:01 a.m.
09-17-2000	to 09-17-2001

DESCRIPTION OF CHANGE

THE POLICY HAS BEEN AMENDED TO DELETE THE FOLLOWING LOCATION:

LOC #2- 1731 NORTH MAIN ST #G, SUMMERVILLE SC

TRANSACTION NUMBER: 003

ENDORSEMENT PREMIUM: RETURNED

\$69.00

I certify that this policy was assembled from
available records as a representation of coverage
that was in effect for the policy period shown.

Date

7-2-02

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CALENDAR NO. 02-CP-46-2369
	)	
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	
v.	)	ANSWER
	)	
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. and Marion L.	)	
Eadon, C&B Fabrications, Inc.,	)	
and Low Country Signs, Inc.,	)	
	)	
Defendants.	)	
	)	

The Defendant Samuel W. Rhodes, Jr. (misnamed Samuel W. Rhodes in the Summons and Complaint) and Piedmont Promotions, Inc. answer the Complaint as follows:

FOR A FIRST DEFENSE

1. They deny each and every allegation contained in the Complaint except those hereinafter specifically admitted.
2. On information and belief they admit Paragraph 1 of the Complaint.
3. Upon correction of his name to Samuel W. Rhodes, Jr., they admit Paragraph 2 of the Complaint.
4. As to Paragraph 3 of the Complaint, they admit that the Defendant Marion L. Eadon is a citizen and resident of Clarendon County, South Carolina. They admit that the Defendant Low Country Signs, Inc., was in 1999 a South Carolina corporation with its principal place of business in Manning, South Carolina. They deny that C & B Fabrications, Inc. was or is a South Carolina corporation.

5. As to Paragraph 4 of the Complaint they admit that a justiciable controversy exists between the parties.

6. As to Paragraph 5 of the Complaint they admit only that pursuant to a written proposal submitted by Marion L. Eadon, d/b/a C & B Fabrication, which Samuel W. Rhodes, Jr. agreed to on August 4, 1999, Marion L. Eadon, d/b/a C & B Fabrication, committed to "fabricate, deliver and install" three outdoor advertising billboard signs on real property of Samuel W. Rhodes, Jr. in Fairfield County, South Carolina.

7. As to Paragraph 6 of the Complaint they admit only that Marion L. Eadon, d/b/a C & B Fabrication fabricated and delivered the three signs to the designated real property in Fairfield County, South Carolina approximately October, 1999 and began to install them and completed the installation approximately February, 2000. They admit that thereafter the signs were put to their intended use.

8. They admit Paragraph 7 of the Complaint.

9. As to Paragraph 8 of the Complaint they admit that on January 23, 2001 the South Carolina Department of Transportation gave written notice of cancellation of all three outdoor advertising billboard permits and mandated immediate removal of the remaining two signs which had not fallen. This mandate to remove the remaining two signs had previously been given orally by the South Carolina Department of Transportation to Samuel W. Rhodes, Jr. after the sign fell across the Southbound lanes of Interstate I-77 on January 20, 2001.

10. As to Paragraph 9 of the Complaint they admit that Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. commenced a civil action in the Court of Common Pleas for Fairfield County, South Carolina alleging various causes of action against Marion L. Eadon,

d/b/a C & B Fabrication, which action arises out of the fabrication, delivery and installation of the three signs, the fall of one sign across the Southbound lanes of Interstate I-77, and the mandated removal of the remaining two signs and cancellation of the permits by the South Carolina Department of Transportation. They admit the action is styled as stated in Paragraph 9 of the Complaint.

11. As to Paragraph 10 of the Complaint they admit, on information and belief, that a liability policy was issued. This belief is based upon the representation of Marion L. Eadon to Samuel W. Rhodes, Jr. that he had liability insurance covering his operation. These Defendants have no information as to the policy or policy numbers assigned and can neither admit nor deny the allegations of the Complaint pertaining to the specific policy but submit that issue to the fact finder.

12. As to Paragraphs 11, 12, 13, 14, 15 and 16 of the Complaint, they admit only that the quoted language is contained in the copy of the policy appended to the Complaint in this action. They do not admit that the quoted language is the only pertinent or applicable language in the policy which may determine coverage or non-coverage under the facts.

13. As to Paragraphs 17 and 18 of the Complaint, they have no information sufficient to form a belief as to those allegations and therefore deny them.

14. Paragraph 19 of the Complaint is denied.

15. Paragraph 20 of the Complaint is denied.

16. As to Paragraph 21 of the Complaint they admit that a justiciable controversy exists between the parties and that a declaration of rights and obligations is appropriate.

FOR A SECOND DEFENSE

17. That as to the allegation in Paragraph 20 of the Complaint and the prayer for relief based thereon, for a stay of the underlying proceeding in the Court of Common Pleas for Fairfield County, South Carolina, these Defendants invoke and assert laches because the Plaintiff has delayed instituting its Declaratory Judgment action until almost a year after the Fairfield County action was instituted and it has been filed a sufficient time to enable it be reached for trial. In addition, whether or not there is insurance coverage under the Plaintiff's policy will not be dispositive of the Fairfield County action because it must be resolved on its merits regardless of the question of insurance coverage.

FOR A THIRD DEFENSE

18. On information and belief, the Plaintiff's policy of insurance does provide coverage to Marion L. Eadon, d/b/a C & B Fabrication for the events alleged in the Complaint in the action in the Court of Common Pleas for Fairfield County, South Carolina, Docket Number 01-CP-20-334.

19. Accordingly, these Defendants ask for a declaration that the said policy does afford insurance coverage.

FOR A FOURTH DEFENSE

20. On information and belief, the Plaintiff in this action retained the attorneys which entered a defense on behalf of Marion L. Eadon, d/b/a C & B Fabrication in the action in the Court of Common Pleas for Fairfield County, South Carolina, instituted by Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. In that action; in response to the Rule 33(4) SCRCF form interrogatory to "set forth the names and addresses of all insurance companies

which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy", the answer to that interrogatory in that action was:

Auto-Owners Insurance Company, Policy Limits \$1,000,000. A copy of the policy is attached hereto.

21. There was no statement or contention in that answer to the form interrogatory that there was a coverage issue or question or that defense of the action was being made under a reservation of rights.

22. By reason of the foregoing, the failure to set forth a contention or claim that there was a coverage issue or that the action was being defended under a reservation of rights the Plaintiff has, through counsel retained by it in that action, waived any issue of coverage and any issue of a duty to defend the action.

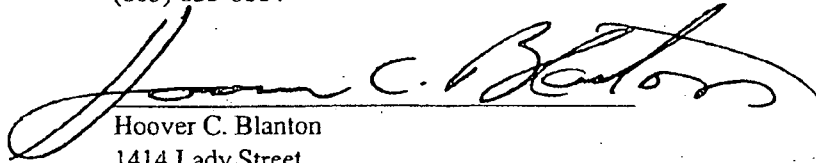
WHEREFORE having answered the Complaint, these Defendants pray that:

a. the Court issue a judgment declaring that there is insurance coverage for the events alleged in the underlying action in the Court of Common Pleas for Fairfield County, South Carolina ;

b. These Defendants be awarded attorney fees and expenses for defending this action; and

c. For such other relief as the proof may justify.

Creighton B. Coleman
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180
(803) 635-6884



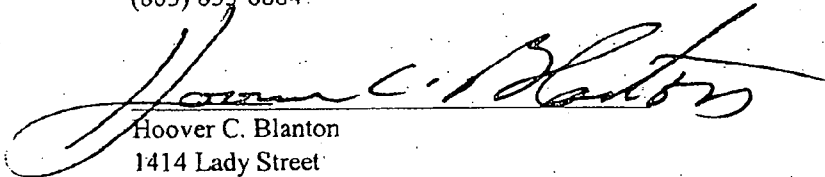
Hoover C. Blanton
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209
(803) 799-9791

**ATTORNEYS FOR THE DEFENDANTS
SAMUEL W. RHODES, JR. AND
PIEDMONT PROMOTIONS, INC.**

January 14, 2003

THESE DEFENDANTS DEMAND A TRIAL BY JURY.

Creighton B. Coleman
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180
(803) 635-6884



Hoover C. Blanton
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209
(803) 799-9791

**ATTORNEYS FOR THE DEFENDANTS
SAMUEL W. RHODES, JR. AND
PIEDMONT PROMOTIONS, INC.**

January 14, 2003

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) CALENDAR NO. 02-CP-46-2369

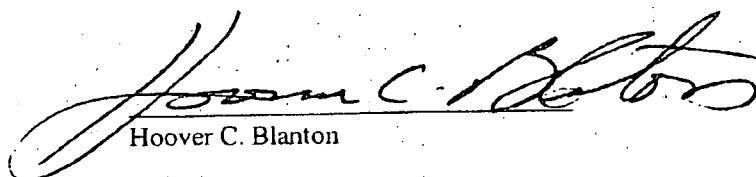
Auto-Owners Insurance Company,)
Plaintiff,)
vi.)

CERTIFICATE OF SERVICE

Samuel W. Rhodes, Piedmont)
Promotions, Inc. and Marion L.)
Eadon, C&B Fabrications, Inc.,)
and Low Country Signs, Inc.,)
Defendants.)

I, Hoover C. Blanton, of McCutchen Blanton Johnson & Barnette, L.L.P., do hereby
certify that a copy of the ANSWER was served on counsel for the Plaintiff, by mailing a
copy thereof, in the United States mail, first class postage prepaid, and return address clearly
indicated on said envelope this the 14th day of January, 2003, addressed as follows:

A. Johnston Cox, Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202


Hoover C. Blanton

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
C. A. NO. 01-CP-20-334

Samuel W. Rhodes, Jr. and)
Piedmont Promotions, Inc.,)
)
Plaintiffs,)

v.)

Marion L. Eadon, d/b/a C & B)
Fabrication,)
)
Defendant.)

FIRST AMENDED COMPLAINT

(Breach of Contract)
(Breach of Warranty)
(Strict Liability)
(Fraudulent Breach of Contract)
(Fraud)
(Constructive Fraud)
(Negligent Misrepresentation)
(Negligence)
(Bad Faith)
(Nuisance)
(UTPA)
(Jury Trial Requested)

FILED
JUL 17 12 22 PM '03

The Plaintiffs above-named complaining of the Defendant above-named, allege:

1. The Plaintiff, Piedmont Promotions, Inc., is a South Carolina Corporation. The Plaintiff, Samuel W. Rhodes, Jr. is a citizen and resident of York County, South Carolina and is the sole owner of the Plaintiff, Piedmont Promotions, Inc., (hereinafter collectively "Plaintiff").

2. The Defendant, Marion L. Eadon, is a citizen and resident of South Carolina and at all times relevant hereto was doing business as C&B Fabrication.

3. This Action arises out of a transaction involving injuries to real property situated in Fairfield County, South Carolina.

4. In March, 1999, the Plaintiff applied to the South Carolina Department of Transportation for three permits to erect outdoor advertising billboard signs on real property of the Plaintiff, adjacent Interstate Highway I-77 in Fairfield County, South Carolina, between State Highways S-34 and S-59.

5. On May 6, 1999, the South Carolina Department of Transportation granted the Plaintiff the three requested permits to erect three outdoor advertising billboard signs on the Plaintiff's real property in Fairfield County, South Carolina adjacent Interstate Highway I-77. The tag permit numbers granted the Plaintiff for the three signs are 04-20-426994; 04-20-426995; and 04-20-426996.

6. The Plaintiff paid the required application fees to the South Carolina Department of Transportation to obtain the requested permits.

7. Pursuant to a written proposal submitted by the Defendant to the Plaintiff, which the Plaintiff agreed to on August 4, 1999, the Defendant committed to "fabricate, deliver, and install" the three outdoor advertising billboard signs on the Plaintiff's real property in Fairfield County, South Carolina for the total price of One Hundred Fifty-Three Thousand, Nine Hundred Sixty Dollars and 00/100 (\$153,960.00). On August 4, 1999 the Plaintiff paid the Defendant the agreed initial payment of Seventy-Six Thousand, Eight Hundred Eighty Dollars and 00/100 (\$76,880.00).

8. The Defendant fabricated and delivered the three signs on the Plaintiff's real property in Fairfield County, South Carolina approximately October, 1999 and began to install them and completed the installation approximately February, 2000. A second payment was made by the Plaintiff to the Defendant on February 8, 2000 of Thirty-Eight Thousand, Four Hundred Forty Dollars and 00/100 (\$38,440.00). When the signs were erected, the Plaintiff made the third and final payment to the Defendant on February 22, 2000 of Thirty-Eight Thousand, Four Hundred Forty Dollars and 00/100 (\$38,440.00).

9. When installed, each sign became a fixture on, and a part of, the Plaintiff's real

property consequently enhancing the value and usefulness of the real property.

10. At the time the Plaintiff made the final payment to the Defendant, the Plaintiff requested that he be furnished a copy of the engineering drawings from which the signs had been fabricated. At that time, the Defendant gave to the Plaintiff a set of engineering drawings prepared by Thompson Engineering Group, LLC of Athens, Tennessee for C&B Fabrication, dated July 13, 1999. The Defendant represented to the Plaintiff at that time that the signs had been fabricated in accordance with the Thompson Engineering Group engineering drawings dated July 13, 1999, prepared for C&B Fabrication. The Thompson Engineering Group drawings specified that the foundation for each sign was to be a six foot by twenty-eight foot, six inch deep augured footing with poured concrete around it.

11. In December, 2000, it was observed that one of the three signs was leaning towards Interstate Highway I-77 and this was reported to the Defendant who was requested to correct the leaning and to inspect the other two signs and make any needed corrections to them. On or about Wednesday, January 17, 2001, the Defendant made adjustments to the sign that was leaning and purportedly checked the other two signs.

12. On the afternoon of Saturday, January 20, 2001, at approximately 5:30 P.M., one of the signs fell on Interstate Highway I-77 into both southbound traffic lanes. The sign that fell was not the sign that was leaning previously.

13. The South Carolina Department of Transportation orally informed the Plaintiff to take down the remaining two signs. The Plaintiff called the Defendant and requested him to take down the remaining two signs. The Defendant sent a crew and crane and took down one of the signs but refused to take down the remaining sign because he said he knew he was going

to be sued anyway.

14. On January 23, 2001, the South Carolina Department of Transportation gave Plaintiff written notice of cancellation of all three outdoor advertising billboard permits No. 04-20-426994; 04-20-426995; and 04-20-426996. This notice (as had the prior oral notice) mandated that the Plaintiff remove immediately the remaining two signs which had not fallen. As a consequence of the mandate from the South Carolina Department of Transportation, the Plaintiff had the remaining sign taken down at a cost of approximately \$7,500.00.

15. The Plaintiff has received an invoice for the cost of cutting the fallen sign into manageable sections while on Interstate Highway I-77 in the amount of Three Hundred and 00/100 (\$300.00) Dollars which he has paid. The Plaintiff has also received an invoice in the amount of One Thousand, Five Hundred and 00/100 (\$1,500.00) Dollars as the cost of moving the fallen sign back onto the Plaintiff's real property which he has paid.

16. Subsequent to February 14, 2001, the Plaintiff received an invoice from the South Carolina Department of Transportation in the amount of Four Thousand Five Hundred Fifty-two and 35/100 Dollars (\$4,552.35) charging the Plaintiff for the cost of removing the fallen sign from Interstate Highway I-77.

17. Subsequent to the fall of the sign on January 20, 2001, the engineer who prepared the drawings for the Defendant, from which the signs were to be fabricated, inspected the removed signs, still on the Plaintiff's real property in Fairfield County, and confirmed from his visual on-site inspection, gross and serious deficiencies, flaws, and defects in the material used and in the workmanship of the signs which were concluded to be the cause of the collapse of the sign onto Interstate Highway I-77.

18. The deficiencies, flaws, and defects in the signs as fabricated included the following:

a) The Thompson Engineering plans called for an overall sign height of 127 feet. The in fact height was 158 feet which was an increase of thirty-one feet. That was an increase in height of over twenty-four percent.

b) The foundation for each sign was to be a six foot diameter by twenty-eight foot, six inch deep augured footing, which was for a 127 foot overall height sign. For a 158 foot high sign, the height of the sign installed, the foundation should have been seven foot diameter by thirty foot, six inches deep.

c) The base column pipe material was only one-half inch diameter thickness and the Thompson Engineering plans called for three-quarter inch thickness.

d) The Thompson Engineering plans called for the base column pipe to be fifty-four inches in diameter but the pipe actually used was sixty inch diameter pipe. The sixty inch diameter pipe would call for insertion of the second stage column of pipe into the base column pipe a distance of one and one-half times the diameter of the pipe, to wit, ninety inches of inserted depth. There was only sixty inches inserted depth of the signs installed.

e) Sub-standard splice connections were made in the fabrication or installation process.

f) The pipe sizes in the column were sub-standard and did not meet minimum code requirements which created the eventuality of a collapse at some point in time.

g) The signs as fabricated and erected failed to follow and comply with the Thompson Engineering drawings for these signs and resulted in over-stressing the signs as follows: seventy-seven percent (77%) in the base column; 101% in the second stage; ninety-eight percent (98%) in the third stage; and eight percent (8%) in the fourth stage.

h) The signs were not designed and fabricated in accordance with generally accepted design and engineering practices.

19. On information and belief, the immediate precipitating cause of the sign falling was the failure of the joint between the base column and the second column because of incomplete or inadequate insertion depth of the second column into the base column and sub-standard welding on the ring plates.

20. As a direct and proximate result of the foregoing, the Plaintiff has sustained injury and damage as follows:

- a) by having to remove the signs as aforesaid;
- b) the Plaintiff now has lost the opportunity to erect and maintain as an economic enterprise on his real property in Fairfield County the outdoor advertising billboard signs adjacent Interstate Highway I-77 as a consequence of the cancellation of the three permits by the South Carolina Department of Transportation;
- c) the Plaintiff has lost the certainty of the revenue from the advertising that the signs would have displayed for years to come;
- d) the Plaintiff has paid for three signs which are worthless to him because they cannot be used; They cannot be used because they were not built according to the design plans and as built they are non-functional, useless, unsafe, and hazardous;

e) As a consequence of having to remove the signs pursuant to the mandate of the South Carolina Department of Transportation, permanent fixtures on the Plaintiff's real property had to be removed which has resulted in significant injury to the Plaintiff's real property and has significantly impaired its value and usefulness, which injury cannot be replaced or repaired under the current mandates of the South Carolina Department of Transportation prohibiting the use of signs at this location.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

21. The foregoing allegations of Paragraphs 1-20 are incorporated herein by reference the same as if set forth verbatim.

22. At the time of the transaction between the Plaintiff and Defendant, the Defendant was fully aware of the purpose for which the signs were being made and that the Plaintiff intended to use them as a business enterprise of selling outdoor billboard advertising to the public to be displayed on the signs. The Defendant knew that this was the sole purpose in obtaining the signs and knew, or should have known, that without the signs serving the intended purpose that they were without benefit or use and, therefore, worthless to the Plaintiff. Accordingly, it was within the contemplation of the parties at the time the transaction was entered in that breach of the contract/purchase order by the Defendant would expose the Defendant for liability for consequential damages in addition to damages for non-performance of the contract/purchase order by the Defendant.

23. By reason of the foregoing, the Defendant has breached the contract/purchase order which has resulted in injury and damage to the Plaintiff as aforesaid.

24. The Plaintiff asks for actual damages against the Defendant in such sum as the evidence may establish.

**FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)**

25. The foregoing allegations of Paragraphs 1-24 are incorporated herein by reference the same as if set forth verbatim.

26. The Defendant impliedly warranted that the signs as fabricated, erected, and sold to the Plaintiff were fit for the particular purpose, use, and function of outdoor advertising billboard signs.

27. By reason of the foregoing the Defendant has breached the implied warranty of fitness for a particular purpose which has resulted in injury and damage to the Plaintiff, as aforesaid, direct and consequential.

28. The Plaintiff asks for actual damages against the Defendant in such sum as the evidence may establish.

**FOR A THIRD CAUSE OF ACTION
(Strict Liability)**

29. The foregoing allegations of Paragraphs 1-28 are incorporated herein by reference the same as if set forth verbatim.

30. The Defendant was at all times material to this Action engaged in the business of fabricating, delivering, and installing outdoor advertising billboard signs of the type the Defendant fabricated, delivered, and installed for the Plaintiff.

31. At all times material to this Action, the Defendant knew that the signs he fabricated, delivered, and installed for the Plaintiff on the Plaintiff's real property in Fairfield

County, South Carolina, were in the condition and were the identical signs which had been fabricated, delivered, and installed by the Defendant on the Plaintiff's real property in Fairfield County.

32. The said signs fabricated, delivered, and installed by the Defendant on the Plaintiff's real property in Fairfield County, South Carolina, were in a defective condition and unreasonably dangerous to persons and property as fabricated, delivered, and installed.

33. At the time the one sign fell on the Southbound traffic lanes of Interstate Highway I-77 in Fairfield County, South Carolina, the signs had not undergone any substantial change in their condition from the condition they were in when fabricated, delivered, and installed by the Defendant.

34. At all times material hereto, it was reasonably foreseeable to the Defendant that the defective and unreasonably dangerous condition of the signs would place persons and their property, such as the Plaintiff, at risk of serious bodily injury or injury to his property.

35. As a direct and proximate result of the defective and unreasonably dangerous condition of the signs fabricated, delivered, and installed by the Defendant, the Plaintiff has suffered injury and damage to his real property as aforesaid for which the Plaintiff asks actual damages against the Defendant in such sum as the evidence may establish.

**FOR A FOURTH CAUSE OF ACTION
(Fraudulent Breach of Contract)**

36. The foregoing allegations of Paragraphs 1-35 are incorporated herein by reference the same as if set forth verbatim.

37. At the time the Defendant erected the signs, he represented to the Plaintiff that

the signs had been made in conformity with the Thompson Engineering drawings for the signs, a copy of which was delivered to the Plaintiff by the Defendant when the final payment was made by the Plaintiff, when the Defendant knew in fact that the signs had not been fabricated in conformity with the Thompson Engineering drawings.

38. But for those representations by the Defendant at the time the signs were erected, and upon which the Plaintiff relied, the Plaintiff would not have paid the Defendant for the signs, nor would he have permitted the signs, as made, to have been erected had he been informed of the true facts by the Defendant.

39. Those false representations by the Defendant were made with the intent to defraud the Plaintiff and constituted a fraudulent act in the breach of his contract to fabricate and erect the signs, which caused the Plaintiff injury and damage, as aforesaid, for which the Plaintiff asks actual and punitive damages against the Defendant in such amount as the evidence may prove.

**FOR A FIFTH CAUSE OF ACTION
(Fraud)**

40. The foregoing allegations of Paragraphs 1-39 are incorporated herein by reference the same as if set forth verbatim.

41. At the time the Defendant erected the signs, he represented that the signs had been made in conformity with the Thompson Engineering drawings for the signs, a copy of which was delivered to the Plaintiff by the Defendant when the final payment was made by the Plaintiff. At the time the representation was made, it was false. The Defendant knew that the representation was false. The Plaintiff was unaware of the falsity of the representation made

by the Defendant at the time. The Defendant intended for the Plaintiff to rely upon and act upon the false representation of the Defendant. The Plaintiff did rely and act upon the false representation of the Defendant at the time, not knowing that the representation was false. The Plaintiff had a right to rely upon the said representation of the Defendant. The representation of the Defendant, which was false, was material to the transaction because had the truth been known, the Plaintiff would not have accepted the signs as fabricated and would not have permitted them to have been installed by the Defendant and would not have paid the Defendant. The Defendant intended to and did deceive the Plaintiff.

42. As a direct and proximate result of the actual fraud and deceit of the Defendant, the Plaintiff has been injured and damaged as aforesaid and seeks actual and punitive damages against the Defendant in such sum as the evidence may prove.

**FOR A SIXTH CAUSE OF ACTION
(Constructive Fraud)**

43. The foregoing allegations of Paragraphs 1-42 are incorporated herein by reference the same as if set forth verbatim.

44. At the time the Defendant erected the signs, he represented that the signs had been made in conformity with the Thompson Engineering drawings for the signs, a copy of which was delivered to the Plaintiff by the Defendant when the final payment was made by the Plaintiff. At the time the representation was made, it was false. The Defendant knew that the representation was false. The Defendant intended for the Plaintiff to rely upon and act upon the representation of the Defendant. The Plaintiff was unaware of the falsity of the representation made by the Defendant at the time. The Plaintiff relied upon the false representation of the

Defendant at the time, not knowing that the representation was false. The Plaintiff had a right to rely upon the said representation of the Defendant. The representation of the Defendant, which was false, was material to the transaction because had the truth been known, the Plaintiff would not have accepted the signs as fabricated and would not have permitted them to have been installed by the Defendant and would not have paid the Defendant.

45. As a direct and proximate result of the constructive fraud of the Defendant, the Plaintiff has been injured and damaged as aforesaid and seeks actual and punitive damages against the Defendant in such amount as the evidence may prove.

**FOR A SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)**

46. The foregoing allegations of Paragraphs 1-45 are incorporated herein by reference the same as if set forth verbatim.

47. At the time the Defendant erected the signs, he represented that the signs had been made in conformity with the Thompson Engineering drawings for the signs. At the time the representation was made, it was false. The Defendant knew that the representation was false. The Defendant had a pecuniary interest in making the false statement to the Plaintiff in that the statement was made to induce the Plaintiff to accept the signs and to pay the Defendant for them. The Defendant owed the Plaintiff a duty of care to see that he communicated truthful information to the Plaintiff and not false information. The Defendant breached his duty of care to the Plaintiff by failing to exercise due care because in the exercise of due care, the Defendant would have communicated truthful information and not false information to the Plaintiff. The Plaintiff justifiably relied upon the false representation of the Defendant, not knowing that the

representation was false. As a consequence, the Defendant negligently misrepresented the truth to the Plaintiff.

48. As a direct and proximate result of the Plaintiff having relied upon the negligent misrepresentation of the Defendant, the Plaintiff has been injured and damaged as aforesaid and seeks actual and punitive damages against the Defendant in such sum as the evidence may prove.

**FOR AN EIGHTH CAUSE OF ACTION
(Negligence)**

49. The foregoing allegations of Paragraphs 1-48 are incorporated herein by reference the same as if set forth verbatim.

50. The Defendant was negligent, reckless, and willful in failing to exercise due care in fabricating the signs in accordance with the Thompson Engineering drawings for the signs and in failing to inform the Plaintiff of the alteration of the signs from the design plans and in failing to warn the Plaintiff of the increased hazard of the signs as fabricated and erected in their non-conforming condition, in failing to design and fabricate the signs in accordance with generally accepted design and engineering practice, and in failing to properly inspect and correct the sign which fell when he inspected the other leaning sign a few days prior to the sign falling, thereby subjecting the Plaintiff and the public to the hazard of unsafe signs, one of which actually fell on Interstate Highway I-77 as a result of the Defendant's failure to exercise due and reasonable care in fabricating, erecting and inspecting the signs.

51. As a direct and proximate result of the Defendant's negligence, recklessness, and willfulness, the Plaintiff has sustained injury and damage as aforesaid and seeks actual and

punitive damages in such sum as the evidence may prove.

**FOR A NINTH CAUSE OF ACTION
(Bad Faith)**

52. The foregoing allegations of Paragraphs 1-51 are incorporated herein by reference the same as if set forth verbatim.

53. The conduct of the Defendant breached the implied covenant of good faith and fair dealing, which is bad faith.

54. As a direct and proximate result of the Defendant's bad faith the Plaintiff has been injured and damaged as aforesaid and seeks recovery of actual and punitive damages against the Defendant in such amount as the evidence may prove.

**FOR A TENTH CAUSE OF ACTION
(Nuisance)**

55. The foregoing allegations of Paragraphs 1-54 are incorporated herein by reference the same as if set forth verbatim.

56. The signs as fabricated and erected by the Defendant created an immediate, continuing threat, hazard, and nuisance to the Plaintiff and to the traveling public and Department of Transportation personnel maintaining the interstate highway adjacent to where the signs had been erected by the Defendant.

57. Because of the immediate ongoing threat, hazard, and nuisance created by the signs, one of them in fact fell on Interstate Highway I-77, the other two signs were ordered removed by the Department of Transportation to abate the hazard and nuisance.

58. By reason of the foregoing the Plaintiff has been injured and damaged as aforesaid and seeks recovery of damages, actual and punitive, in such an sum as the evidence

may prove.

**FOR AN ELEVENTH CAUSE OF ACTION
(Unfair Trade Practice)**

59. The foregoing allegations of Paragraphs 1-58 are incorporated herein by reference the same as if set forth verbatim.

60. The conduct of the Defendant in the fabrication and erection of the signs, which were not designed and fabricated in accordance with generally accepted design and engineering practice, and which were not fabricated in conformity with the Thompson Engineering drawings delivered to the Plaintiff by the Defendant but which were represented by the Plaintiff as having been fabricated in conformity with the Thompson Engineering drawings, constituted an unfair or deceptive act or practice within the meaning of Section 39-5-10 *et seq.*, S. C. Code Ann., (The Unfair Trade Practices Act) and was conduct having the potential for repetition by the Defendant. The unfair or deceptive act or practice of the Defendant had a direct impact upon the public interest in that the signs as designed, fabricated and erected by the Defendant were an immediate, continuing, and constant threat and hazard to the public using Interstate Highway I-77 and to the Department of Transportation employees maintaining the said highway. One of the flawed signs in fact fell on Interstate Highway I-77, thereby demonstrating an adverse effect on the public interest. The fact that the Defendant knowingly and consciously substituted different material and used a different design for the signs as fabricated and constructed, different from what was required by the Thompson Engineering drawings, delivered to the Plaintiff by the Defendant, demonstrates conclusively that procedures were followed by the Defendant which have the potential for repetition of the unfair and deceptive acts in the future

by the Defendant.

61. By reason of the unfair or deceptive act and practice of the Defendant, the Plaintiff has sustained actual damages as aforesaid in such amount as the evidence may prove.

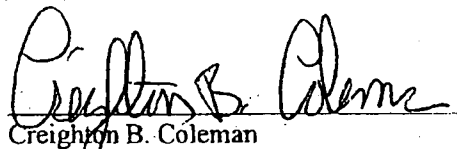
62. By reason of the conduct of the Defendant being in violation of the South Carolina Unfair Trade Practices Act, the Plaintiff is entitled to and demands treble damages, plus costs and attorney fees of this Action.

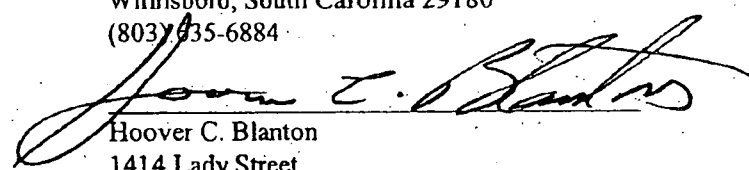
WHEREFORE, the Plaintiff prays for judgment against the Defendant in such amount as the evidence may prove as follows:

- a) Actual damages and costs as to each Cause of Action;
- b) Punitive damages also as to the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action;
- c) Treble damages and attorney fees and costs as to the Eleventh Cause of Action.

JURY TRIAL REQUESTED

The Plaintiffs request a trial by Jury.


Creighton B. Coleman
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180
(803) 735-6884


Hoover C. Blanton
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209
(803) 799-9791

January 2, 2003

ATTORNEYS FOR THE PLAINTIFFS

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF YORK) FOR THE SIXTEENTH CIRCUIT

Auto-Owners Insurance Company,) CASE NO. 02-CP-46-2369
)
 Plaintiff,)
vs.) ANSWER AND COUNTERCLAIM ON
) BEHALF OF DEFENDANTS MARION
) L. EADON, C&B FABRICATIONS,
) INC. AND LOW COUNTRY
) SIGNS, INC.
)
Samuel W. Rhodes, Piedmont)
Promotions, Inc. and Marion L. Eadon,)
C&B Fabrications, Inc. and Low)
Country Signs, Inc.,)
 Defendants.)

COMES NOW the Defendant, Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., by and through its undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the Court:

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. The allegation in Paragraph 1 of the Plaintiff's Complaint is admitted on knowledge and belief.

3. These Defendants admit that Samuel W. Rhodes is a citizen and resident of South Carolina. This Defendant does not have sufficient knowledge or information to admit or deny the other allegations in Paragraph 2 of the Plaintiff's Complaint, so they are denied.

4. The allegations in Paragraphs 3, 4, 5, 6, 7, 8, and 9 of the Plaintiff's Complaint are admitted, except that it is not admitted that there is a genuine controversy, as implied in Paragraph 4 and it is denied that Auto-Owners Insurance Company put the signs to their intended use, as stated by Paragraph 6.

5. The allegations in Paragraph 10 of the Plaintiff's Complaint are admitted and the allegations in Paragraphs 11, 12, 13, 14, 15, and 16 of the Plaintiff's Complaint are admitted to the extent that they are consistent with the certified policy included by reference in Paragraph 10 and denied to the extent that they differ with the certified policy.

6. The allegations in Paragraphs 17 and 18 of the Plaintiff's Complaint are admitted.

7. The allegations in Paragraph 19, 20, and 21 of the Plaintiff's Complaint are denied. Defendant agrees that a stay of the Fairfield County Court proceedings would best secure justice.

FOR A SECOND DEFENSE

(Waiver)

8. The allegations contained in Paragraphs 1 through 7 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

9. The Plaintiff, having agreed to defend Defendants in the underlying action, has waived its right to deny a defense to Defendants.

FOR A THIRD DEFENSE

(Equitable Estoppel)

10. The allegations contained in Paragraphs 1 through 9 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

11. The Plaintiff has represented to Defendants at least twice that it would provide a

defense to Defendants in the underlying tort action.

12. Defendants relied on Plaintiff's representation that the latter would provide a defense and have continued to rely on that assurance for almost two years.

13. It would be to Defendants' extreme detriment and prejudice if Plaintiff were to withdraw its defense at this late date, after Defendants have relied on the Plaintiff's repeated assurance that it would defend the action. Any attorney hired by Defendants would be at a tremendous disadvantage in trying to catch up with two years of litigation, which would in all probability be an insurmountable handicap.

14. Neither of Plaintiff's reservation of rights letters states that it reserved a right to stop defending Defendants.

15. Plaintiff is therefore, in equity, estopped from terminating its defense of Defendants.

FOR A FOURTH DEFENSE

(Ratification)

16. The allegations contained in Paragraphs 1 through 15 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

17. The Plaintiff, after initially stating that it would defend under a reservation of rights on or about February 8, 2001, has ratified its agreement to defend Defendants by its words and actions in the subsequent two years, to include paying part of the claims against Defendants.

18. Having ratified the agreement to defend by its actions, the Plaintiff should not be heard now to renounce the agreement.

FOR A FIRST COUNTERCLAIM

(Bad Faith)

19. The responses and allegations contained in Paragraphs 1 through 18 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

20. Defendants, in purchasing the liability insurance policy, purchased two different benefits: a defense of actions against it and coverage of certain damages. Under South Carolina law these are two distinct benefits.

21. Plaintiff has duty to defend if the underlying complaint raises any possibility of coverage. The underlying complaint raises a clear possibility of coverage. The underlying complaint clearly raises a possibility of coverage.

22. If an underlying complaint raises some uncovered claims as well as some possibly covered claims, the liability insurance company has the duty to defend its insured against all of the allegations in the complaint.

23. Under South Carolina law, an insurer's duty to defend does not end when it pays all that the policy requires it to pay. The Plaintiff policy here states that the duty to defend its insured ends when the insurer "has used up the applicable limit of insurance in the payment of judgments or settlements."

24. Plaintiff knows, or is deemed to know, South Carolina law about the duty to defend.

25. Plaintiff is, in bad faith, attempting to cause the Defendant to forfeit this valuable right for which it has paid and to which Defendant is entitled by the very words of the policy.

26. The Defendants-Counterclaimants are, therefore, entitled to actual damages in the

amount that they have been required to spend to defend this declaratory action, to such other actual damages as the evidence will show and for punitive damages for the intentional tort of bad faith.

FOR A SECOND COUNTERCLAIM

(Breach of Contract)

27. The responses and allegations contained in Paragraphs 1 through 26 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

28. Defendant contracted with Plaintiff for the latter to provide a defense of liability claims made by third parties against the Defendant.

29. The contract provided that the "duty to defend end[s] when we have used up the applicable limit of insurance in the payment of judgments or settlements."

30. The Plaintiff has not used up its applicable limit of coverage in the payment of judgments or settlements.

31. Plaintiff has breached, and is continuing to breach, its contract with the Defendants in that it has stated that it has no further duty to defend.

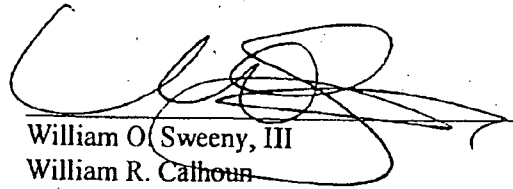
32. Defendant is, therefore, entitled to consequential damages, including the cost of having to defend this declaratory action.

WHEREFORE, having fully answered, the Defendants and Counterclaimants pray that the Court dismiss the Plaintiff's Complaint; that a jury award them actual and punitive damages on their counterclaims; that the Court award them the costs and fees associated with this action; and for such other and further remedy as in the opinion of the Court is fair and just.

Answer to DJ action
01-CP-20-334

The Defendants and Counterclaimants demand a jury trial.

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read 'William O. Sweeney, III', is written over a horizontal line.

William O. Sweeney, III
William R. Calhoun
1515 Lady Street
Columbia, South Carolina 29211
(803)256-2233

Attorneys for Defendants Marion L. Eadon,
C&B Fabrications, Inc. and Low Country
Signs, Inc.

Columbia, South Carolina
January 17, 2003

CERTIFICATE OF SERVICE

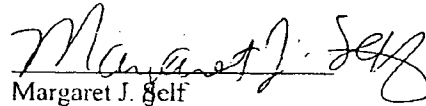
I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., do hereby certify that I have served a copy of the foregoing Answer in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

A. Johnston Cox, Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202

Hoover C. Blanton, Esquire
McCutchen, Blanton, Rhodes & Johnson
Post Office Box 11209
Columbia, South Carolina 29211-1209

Creighton B. Coleman, Esquire
McCutchen, Blanton, Rhodes & Johnson
Post Office Box 1006
Winnsboro, South Carolina 29180

Catherine Garbee Griffin, Esquire
Baker, Ravenel & Bender
Post Office Box 8057
Columbia, South Carolina 29202


Margaret J. Self

Columbia, South Carolina
January 17, 2003

STATE OF SOUTH CAROLINA

COUNTY OF YORK

2003 JAN 31 AM 10:16

IN THE COURT OF COMMON PLEAS

Auto-Owners Insurance Company, **DAVID HAMILTON**
C.C.P. & G.S. CIVIL ACTION NO.: 02-CP-46-2369
YORK COUNTY, SC

Plaintiff,

v.

Samuel W. Rhodes, Piedmont
promotions, Inc. and Marion L.
Eadon, C&B Fabrications, Inc. and
Low Country Signs, Inc.,

Defendants.

REPLY

The Plaintiff, Auto-Owners Insurance Co. replies to the Answer and Counterclaim of Defendants, Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc. herein as follows:

FOR A FIRST DEFENSE

1. Each and every paragraph of the Defendant's answer and counterclaim not hereinafter admitted, qualified or explained is denied.
2. Paragraphs 1 through 18 of the Answer require no response from this Defendant. To the extent that they apply any wrong doing or breach of contract on the part of the Plaintiff, they are denied.
3. As to Paragraph 19, of the Counterclaim the Defendant reiterates its responses to Paragraphs 1 through 18 as if repeated herein verbatim.
4. The allegations contained in Paragraphs 20 constitute a statement of law. The allegations in Paragraph 20 are admitted to the extent that they are consistent with South Carolina law and denied to the extent that they differ from South Carolina law.
5. Paragraph 21 is denied.

6. The allegations in Paragraph 22 are admitted to the extent that they are consistent with South Carolina law and denied to the extent that they differ from South Carolina law.

7. The allegations in Paragraph 23 are admitted to the extent that they are consistent with South Carolina law and denied to the extent that they differ from South Carolina law. As for the remaining allegations Paragraph 23, the defendant graves reference to the policy as best evidence of the term and conditions of the policy. To the extent that the allegations contained in Paragraph 23 are inconsistent with, contradictory to, or broader than the terms and conditions as stated in the policy, they are denied.

8. Paragraph 24 is admitted.

9. Paragraphs 25 and 26 are denied and strict proof demanded thereof.

10. As to Paragraph 27, the Plaintiff's responses to the allegations contained in Paragraphs 1 through 26 of the Answer and Counterclaim are hereby realleged as if set forth herein verbatim.

11. As to Paragraphs 28 and 29, the Defendant graves reference to the applicable policy as best evidence of the terms and conditions of the policy. To the extent that the allegations contained in Paragraph 28 and 29 are inconsistent with, contradictory to, or broader than the terms and conditions as stated in the policy, they are denied.

12. As to Paragraph 30, it is admitted that the Plaintiff has not used up its applicable limit of coverage in the payment of judgments or settlements at this time.

13. The allegations in Paragraphs 31 and 32 are denied.

FOR A SECOND DEFENSE

The Defendant fails to state facts sufficient to constitute a cause of action against the Plaintiff.

WHEREFORE, having fully answered the Counterclaim of the Defendant Marion Eadon, Defendant prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR THE DEFENDANT

Columbia, South Carolina

1/29, 2003

STATE OF SOUTH CAROLINA **FILED-RECEIVED** IN THE COURT OF COMMON PLEAS
COUNTY OF YORK **2003 JAN 31 AM 10:16** CIVIL ACTION NO.: 02-CP-46-2369

Auto-Owners Insurance Company **DAVID HAMILTON**
C.C.C.P. & G.S.
Plaintiff, **YORK COUNTY, SC**

v.

Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L.
Eadon, C&B Fabrications, Inc. and
Low Country Signs, Inc.,

Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Defendant, does hereby certify that service of the attached **Reply to the Answer and Counterclaim of the Defendants** in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 29th day of January, 2003, addressed as follows:

Creighton B. Coleman, Esquire
MCCUTCHEN, BLANTON, RHODES
& JOHNSON, LLL
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180

Hoover C. Blanton, Esquire
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
1730 Main Street
Post Office Box 8057
Columbia, South Carolina 29202

William Sweeney, Esquire
SWEENEY, WINGATE & BARROW, P.A.
P.O. Box 12129
Columbia, South Carolina 29211

Lena T. Younts, Esquire
COFFEY & CHANDLER, PA
Post Office Box 1292
Manning, South Carolina 29102

A handwritten signature in cursive script, appearing to read "Jennifer Atkinson", written over a horizontal line.

Jennifer Atkinson
Legal Assistant

COUNTY OF YORK

2003 MAR 14 AM 8:24 CIVIL ACTION NO.: 02-CP-46-2369

Auto-Owners Insurance Company
Plaintiff, DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

v.

Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L.
Eadon, C&B Fabrications, Inc. and
Low Country Signs, Inc.,

Defendants.

AMENDED COMPLAINT
(Declaratory Judgment Action)

The Plaintiff, Auto-Owners Insurance Company ("Auto-Owners"), respectfully
alleges:

1. The Plaintiff, Auto-Owners, is an insurance company organized and existing under the laws of the State of Michigan and is duly authorized to do business and write insurance policies in the state of South Carolina.
2. The Defendant, Samuel W. Rhodes, is a citizen and resident of the State of South Carolina, County of York and is the sole owner of Defendant Piedmont Promotions, Inc. The Defendant Piedmont Promotions, Inc. is a South Carolina corporation.
3. The Defendant, Marion L. Eadon, is a citizen and resident of the State of South Carolina, County of Clarendon. The Defendants C&B Fabrications, Inc. and Low Country Signs, Inc. were, in 1999, South Carolina corporations with their principal place of business in Manning, South Carolina.

4. Auto-Owners brings this action pursuant to S.C. Code Ann. § 15-53-10, et seq. and South Carolina Rule of Civil Procedure 57, and alleges that an actual and justiciable controversy exists between the parties as is set forth in this Complaint.

5. Upon information and belief, on August 4, 1999, Defendants, Samuel W. Rhodes and Piedmont Promotions, Inc. contracted Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. to fabricate, deliver, and install three outdoor advertising billboard signs on the Plaintiff's real property in Fairfield County South Carolina.

6. Upon information and belief, Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. completed and installed the signs in February 2000. The signs were put to their intended use by the Plaintiff at that time.

7. Upon information and belief, on January 20, 2001, one of the three signs fell across Interstate Highway I-77.

8. Upon information and belief, on January 23, 2001, the South Carolina Department of Transportation ordered the remaining two signs removed, because they were also leaning toward the interstate.

9. Defendants Samuel W. Rhodes and Piedmont Promotions, Inc. have commenced a civil action in the Court of Common Pleas for Fairfield County, South Carolina, alleging various causes of action against Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. arising out of construction and eventual collapse/removal of the signs. The action is styled, Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. v. Marion L. Eadon d/b/a C&B Fabrication, Civil Action number 01-CP-20-334. A copy of the Complaint in this action is attached as "Exhibit A" hereto and adopted by reference herein.

10. On September 17, 2000, Plaintiff issued and delivered a Commercial General Liability Policy ("Policy"), policy number 036064416, to C&B Fabrications, Inc. and Low Country Signs, Inc., which included property damage liability coverage, subject to certain conditions and exclusions as set forth in the policy. A certified copy of this policy is attached to this Complaint, is labeled "Exhibit B," and is adopted herein by this reference.

11. The Policy contains the following applicable provisions:

(a) "We will pay those sums that the insured becomes legally obligated to pay as damages because of...'**property damage**' to which this insurance applies." See, 1(a).

(b) "This insurance applies to...'**property damage**' only if: (1) ...the '**property damage**' is caused by an '**occurrence**' that takes place in the '**coverage territory**'; and (2)...'**property damage**' occurs during the **policy period**." See 1(b).

12. The term "property damage" is defined by the Policy as "physical injury to tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured." See 12(a) and (b).

13. The term "occurrence" is defined in the policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

14. The term "your product" is defined in the policy as, "any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by: you...." In addition, "your product" includes "warranties or representations made

at any time with respect to the fitness, quality, durability, performance or use of 'your product.'"

15. The term "your work" is defined in the policy as, "(a) work or operations performed by you or on your behalf; and (b) materials, parts or equipment furnished in connection with such work or operations." In addition, "your work" includes "(a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of 'your work'; and (b) the providing or failure to provide warnings or instructions."

16. The policy also contains, among others, the following exclusions:

(a) Exclusion k, which states, "This insurance does not apply to 'property damage' to 'your product' arising out of it or any part of it."

(b) Exclusion l, which states, "This insurance does not apply to 'property damage' to 'your work' arising out of it or any part of it and including in the 'products-completed operations hazard'."

(c) Exclusion m, which states, "This insurance does not apply to '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'; . . . 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."

(d) Exclusion n, which states, This insurance does not apply to . . . Damages claimed for any loss, cost or expense incurred by you or other for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal

or: (1) your product; (2) your work; or (3) impaired property: if such product, work or property is withdrawn 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.

17. The Defendants, Marion L. Eadon d/b/a C&B Fabrications, Inc., sought defense and coverage under the Policy as a result of the above reference action.

18. Auto-Owners Insurance Company has provided Marion L. Eadon d/b/a C&B Fabrications, Inc. with a defense and has done so under a reservation of rights.

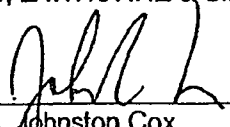
19. Upon information and belief, Plaintiff's policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to the described lawsuit, by reason of the provisions of the insurance policy and the applicable laws.

20. There exists between the parties a genuine controversy, and Plaintiff is entitled to a declaration of its rights and responsibilities under the described policy of insurance.

WHEREFORE, having set forth its Complaint, Plaintiff prays that this Court inquire more fully into the matters alleged herein and issue its Order and judgment declaring:

- a. That Plaintiff's policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to any injuries or damages arising out of the events described in the Complaint filed in Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc v. Marion L. Eadon d/b/a C&B Fabrication, civil action number 01-CP-20-334; and;
- b. For such other and further relief as the Court may provide.

ELLIS, LAWHORNE & SIMS, P.A.

By: 

A. Johnston Cox
Post Office Box 2285
1330 Lady Street, 4th Floor
Columbia, South Carolina 29202
(803) 254-4190

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

3/12, 2003

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
2003 MAR 14 AM 8:24

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 02-CP-46-2369

Auto-Owners Insurance Company, DAVID HAMILTON
C.C.C.P. & G.S.
Plaintiff, YORK COUNTY, SC

v.

CERTIFICATE OF SERVICE

Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L.
Eadon, C&B Fabrications, Inc. and
Low Country Signs, Inc.,

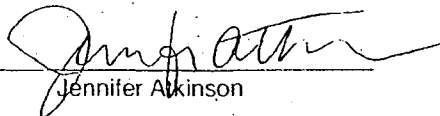
Defendants.

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Defendant, does hereby certify that service of the attached AMENDED COMPLAINT in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 12th day of March, 2003, addressed as follows:

Creighton B. Coleman, Esquire
MCCUTCHEN, BLANTON, RHODES
& JOHNSON, LLL
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180

Hoover C. Blanton, Esquire
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209

William Sweeney, Esquire
SWEENEY, WINGATE & BARROW, P.A.
P.O. Box 12129
Columbia, South Carolina 29211


Jennifer Atkinson

STATE OF SOUTH CAROLINA)
APR 21 1 49 PM '03) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD)
FAIRFIELD COUNTY)
CLERK OF COURT)
BETTY JO DECKHAM)

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

v.

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

CIVIL ACTION NO.: 01-CP-20-334

**AMENDED NOTICE OF MOTION AND
MOTION TO INTERVENE ON BEHALF
OF AUTO-OWNERS INSURANCE
COMPANY**

TO: HOOVER C. BLANTON AND CREIGHTON COLEMAN, ATTORNEYS FOR
THE PLAINTIFF AND CATHARINE G. GRIFFIN, ATTORNEY FOR THE
DEFENDANTS:

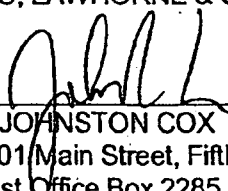
YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Auto-
Owners Insurance Company will move before the Presiding Judge of the Sixth
Judicial Circuit at the Fairfield County Courthouse, Winnsboro, South Carolina, as
soon as counsel may be heard, or at such time and place as may be set by the
Court, for an Order pursuant to S.C.R.C.P. 24(a) or 24(b), allowing Auto-Owners
Insurance Company ("Auto-Owners") to intervene in this action for the sole purpose
of submitting at the trial of this case a special verdict form or a general verdict form
accompanied by answer to interrogatories pursuant to South Carolina Rule of
Civil Procedure 49.

Auto-Owners Insurance Company issued an insurance policy to the
Defendant with liability coverage for the period of time relevant to this action (the
"Policy"). Auto-Owners has filed a declaratory judgment action, entitled, Auto-
Owners Insurance Company v. Samuel W. Rhodes, Piedmont Promotions, Inc. and

Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., filed in the York County Court of Common Pleas, civil action #02-CP-46-2369, requesting that the Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against the Defendant. Therefore, Auto-Owners has an interest in the subject of the action. In addition, if Auto-Owners is not permitted to submit a special verdict form to the jury, the disposition of the action may impair or impede Auto-Owners' ability to protect its interest in the event that the jury returns a general verdict against the Defendant. Furthermore, Auto-Owners interests are not adequately represented by the existing parties. Auto-Owners is informed and believes such request will not otherwise prejudice the adjudication of the rights of the original parties to the action since the verdict form is the only thing effected.

This Motion is based upon the pleadings filed in this case, rules of Court, the attached special interrogatories and such other matters as may be properly presented to the Court at the time of the hearing.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina
April 17, 2003

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Samuel W. Rhodes, Jr., and Piedmont
Promotions, Inc.,

Plaintiff,

v.

Marion L. Eadon, d/b/a C&B Fabrication,
Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 01-CP-20-334

CERTIFICATE OF SERVICE

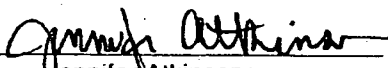
Mar 21 1 49 PM '03
CLERK OF COURT
J. BETTY JO EMMAN

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Defendant, does hereby certify that service of the attached Amended Notice of Motion and Motion to Intervene along with copies of the filed Summons and Complaint in Auto-Owners insurance v. Samuel W. Rhodes, et al on behalf of Auto-Owners Insurance Company in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 17th day of April, 2003, addressed as follows:

Creighton B. Coleman, Esquire
MCCUTCHEN, BLANTON, RHODES
& JOHNSON, LLL
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180

Hoover C. Blanton, Esquire
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
1730 Main Street
Post Office Box 8057
Columbia, South Carolina 29202


Jennifer Atkinson

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Auto-Owners Insurance Company,

Plaintiff,

v.

Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L.
Eadon, C&B Fabrications, Inc. and
Low Country Signs, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 02CP46-2369

SUMMONS

(Declaratory Judgment Action)

DAVID HAMILTON
C.C. C.P. & G.S.
YORK COUNTY, SC

2002 OCT 14 AM 11:57

FILED-RECEIVED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorney, A. Johnston Cox, ELLIS, LAWHORNE & SIMS, P.A., 1501 Main Street, Fifth Floor, Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated at Columbia, South Carolina, on the 11th day of October, 2002.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX

1330 Lady Street, Fourth Floor

Post Office Box 2285

Columbia, South Carolina 29202

TEL: (803) 254-4190

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Auto-Owners Insurance Company,

Plaintiff,

v.

Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L.
Eadon, C&B Fabrications, Inc. and
Low Country Signs, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 02CP46-2369

COMPLAINT

(Declaratory Judgment Action)

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2002 OCT 14 AM 11:58

FILED-RECEIVED

The Plaintiff, Auto-Owners Insurance Company ("Auto-Owners"), respectfully alleges:

1. The Plaintiff, Auto-Owners, is an insurance company organized and existing under the laws of the State of Michigan and is duly authorized to do business and write insurance policies in the state of South Carolina.

2. The Defendant, Samuel W. Rhodes, is a citizen and resident of the State of South Carolina, County of York and is the sole owner of Defendant Piedmont Promotions, Inc. The Defendant Piedmont Promotions, Inc. is a South Carolina corporation.

3. The Defendant, Marion L. Eadon, is a citizen and resident of the State of South Carolina, County of Clarendon. The Defendants C&B Fabrications, Inc. and Low Country Signs, Inc. were, in 1999, South Carolina corporations with their principal place of business in Manning, South Carolina.

4. Auto-Owners brings this action pursuant to S.C. Code Ann. § 15-53-10, et seq. and South Carolina Rule of Civil Procedure 57, and alleges that an actual and justiciable controversy exists between the parties as is set forth in this Complaint.

5. Upon information and belief, on August 4, 1999, Defendants, Samuel W. Rhodes and Piedmont Promotions, Inc. contracted Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. to fabricate, deliver, and install three outdoor advertising billboard signs on the Plaintiff's real property in Fairfield County South Carolina.

6. Upon information and belief, Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. completed and installed the signs in February 2000. The signs were put to their intended use by the Plaintiff at that time.

7. Upon information and belief, on January 20, 2001, one of the three signs fell across Interstate Highway I-77.

8. Upon information and belief, on January 23, 2001, the South Carolina Department of Transportation ordered the remaining two signs removed at once, because they were also leaning toward the interstate.

9. Defendants Samuel W. Rhodes and Piedmont Promotions, Inc. have commenced a civil action in the Court of Common Pleas for Fairfield County, South Carolina, alleging various causes of action against Defendant Marion L. Eadon d/b/a C&B Fabrications, Inc. arising out of construction and eventual collapse/removal of the signs. The action is styled, Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. v. Marion L. Eadon d/b/a C&B Fabrication, Civil Action number 01-CP-20-334. A copy of the Complaint in this action is attached as "Exhibit A" hereto and adopted by reference herein.

10. On September 17, 2000, Plaintiff issued and delivered a Commercial General Liability Policy ("Policy"), policy number 036064416, to C&B Fabrications, Inc. and Low Country Signs, Inc., which included property-damage liability coverage, subject to certain conditions and exclusions as set forth in the policy. A certified copy of this policy is attached to this Complaint, is labeled "Exhibit B," and is adopted herein by this reference.

11. The Policy contains the following applicable provisions:

(a) "We will pay those sums that the insured becomes legally obligated to pay as damages because of...'**property damage**' to which this insurance applies." *See, 1(a).*

(b) "This insurance applies to...'**property damage**' only if: (1) ...the '**property damage**' is caused by an '**occurrence**' that takes place in the '**coverage territory**'; and (2)...'**property damage**' occurs during the **policy period**." *See 1(b).*

12. The term "property damage" is defined by the Policy as "physical injury to tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured." *See 12(a) and (b).*

13. The term "occurrence" is defined in the policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

14. The term "your product" is defined in the policy as, "any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by: you...." In addition, "your product" includes "warranties or representations made

at any time with respect to the fitness, quality, durability, performance or use of 'your product.'"

15. The term "your work" is defined in the policy as, "(a) work or operations performed by you or on your behalf; and (b) materials, parts or equipment furnished in connection with such work or operations." In addition, "your work" includes "(a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of 'your work'; and (b) the providing or failure to provide warnings or instructions."

16. The policy also contains, among others, the following exclusions:

(a) Exclusion k, which states, "This insurance does not apply to 'property damage' to 'your product' arising out of it or any part of it."

(b) Exclusion l, which states, "This insurance does not apply to 'property damage' to 'your work' arising out of it or any part of it and including in the 'products-completed operations hazard'."

(c) Exclusion m, which states, "This insurance does not apply to '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'; . . . 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."

(d) Exclusion n, which states,

This insurance does not apply to . . . Damages claimed for any loss, cost or expense incurred by you or other 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 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.

17. The Defendants, Marion L. Eadon d/b/a C&B Fabrications, Inc., sought defense and coverage under the Policy as a result of the above reference action.

18. Auto-Owners Insurance Company has provided Marion L. Eadon d/b/a C&B Fabrications, Inc. with a defense and has done so under a reservation of rights.

19. Upon information and belief, Plaintiff's policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to the described lawsuit, by reason of the provisions of the insurance policy and the applicable laws; further, upon information and belief, Plaintiff has no obligation to defend Marion L. Eadon d/b/a C&B Fabrications, Inc. in the described action or any other actions that may be instituted based upon the described events.

20. Upon information and belief, stay of any proceedings described above, docket number 01-CP-20-334, in the Fairfield County Court of Common Pleas, pending the outcome of this action would promote the efficient resolution of the issues in action number 01-CP-20-334.

21. There exists between the parties a controversy, and Plaintiff is entitled to a declaration of its rights and responsibilities under the described policy of insurance.

WHEREFORE, having set forth its Complaint, Plaintiff prays that this Court inquire more fully into the matters alleged herein and issue its Order and judgment declaring:

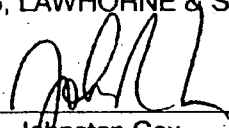
- a. That Plaintiff's policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to any injuries or damages arising out of the events described in the Complaint filed

in Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc v. Marion L. Eadon d/b/a C&B Fabrication, civil action number 01-CP-20-334; and

- b. That Plaintiff has no obligation to defend Marion L. Eadon d/b/a C&B Fabrications, Inc. in the litigation bearing docket number 01-CP-20-334; and
- c. That the proceedings in civil action number 01-CP-20-334 be stayed, pending resolution of the issues in this lawsuit; and
- d. For such other and further relief as the Court may provide.

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.

By: 

A. Johnston Cox
Post Office Box 2285
1330 Lady Street, 4th Floor
Columbia, South Carolina 29202
(803) 254-4190

ATTORNEYS FOR THE PLAINTIFF

Owners

Page 1

55039 (11-87)

Issued 08-17-2000

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

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81
INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

POLICY NUMBER 984616-36064416-00

ADDRESS

CB

POLICY TERM
12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

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

COMMON POLICY INFORMATION

COINSURANCE CLAUSE

BUSINESS DESCRIPTION: Sign Mfg.

ENTITY: Corporation

PROGRAM: Industrial/Processing

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PART(S):	PREMIUM
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.	
COMMERCIAL PROPERTY COVERAGE	\$172.00
COMMERCIAL GENERAL LIABILITY COVERAGE	6,521.00
TOTAL	\$6,693.00

FORMS THAT APPLY TO ALL COVERAGE PARTS SHOWN ABOVE (EXCEPT GARAGE LIABILITY, DEALER'S
BLANKET, COMMERCIAL AUTOMOBILE, IF APPLICABLE)
55003 (01-87) IL0017 (11-85)

A 7% MULTI-POLICY DISCOUNT APPLIES
Countersigned By: _____

I certify that this policy was assembled from
available records as a representation of coverage
that was in effect for the policy period shown.

Shirley Horn
Date 7-2-02

Owners

Page 1

54104 (07-87)

Issued 08-17-2000

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

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

CB

POLICY TERM
12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

ADDRESS

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

COMMERCIAL PROPERTY COVERAGE

COVERAGES PROVIDED

INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF
INSURANCE IS SHOWN.

LOCATION 001

ADDITIONAL FORMS THIS LOCATION: None

LOC 001 BLDG 001

OCCUPIED AS: Sign Manufacturer

COVERAGE: Personal Prop.

Limit of Insurance \$30,000

CAUSES OF LOSS	COINSURANCE	DEDUCTIBLE	RATE	PREMIUM
Basic Group I	80%	\$250	0.206	\$62.00
Basic Group II	80%	250	0.084	25.00
Special	80%	250	0.043	13.00
Special Including Theft	80%	250	0.239	72.00

OPTIONAL COVERAGE:

Replacement Cost

ADDITIONAL FORMS THIS BUILDING: IL0249 (06-89) IL0003 (11-85) CP0090 (07-88)
CP0010 (10-91) CP1030 (10-91)

SECURED INTERESTED PARTIES: None

RATING INFORMATION

Territory: 140
Program: Industrial/Processing
Class Code: 6810

County: Clarendon
Construction: Non-Comb
Specific Rate - Contents: 0.229
Protection Class: 06

LOCATION 001 PREMIUM

\$172.00.

Owners

Page 1

55040 (11/87)

Issued 08-17-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LDW COUNTRY SIGNS INC

ADDRESS

CB

POLICY TERM

12:01 a.m. 12:01 a.m.

09-17-2000 to 09-17-2001

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

COMMERCIAL GENERAL LIABILITY COVERAGE

LIMITS OF INSURANCE

General Aggregate Limit	\$1,000,000
(Other Than Products-Completed Operations)	
Products-Completed Operations Aggregate Limit	1,000,000
Personal And Advertising Injury Limit	1,000,000
Each Occurrence Limit	1,000,000
Fire Damage Limit	100,000 Any One Fire
Medical Expense Limit	10,000 Any One Person

"General Aggregate Limit" shown above, is reinstated once per policy period at no additional charge, in accordance with form 55050.

AUDIT TYPE: Annual Audit

FORMS THAT APPLY TO LIABILITY: 55118 (08-91) 55146 (07-96) 55091 (01-89)
IL0021 (11-85) 55029 (07-87) CG0001 (11-88) IL0249 (06-89) 55137 (06-92)
IL0017 (11-85) 55050 (07-87) 55064 (07-87) CL175 (02-86) 55069 (01-88)
CG2147 (09-89) 55167 (11-95)

LOCATION OF PREMISES YOU OWN, RENT OR OCCUPY

LOC 001 BLDG 001 Rr

TERRITORY: 001

Classification	Subline	Premium Basis	Rates	Premium
CODE 00501 Commercial General Liability Plus Endorsement Included At 7% Of The Premises Operation Premium	Prem/Op	Prem/Op Prem Inc	Inc	Inc
CODE 59058 Sign Mfg. - Nec	Prem/Op Prod/Comp Op	Gross Sales 1,127,333 1,127,333	Each 1000 .290 1.590	\$327.00 \$1,792.00
CODE 98993 Sign Erection, Installation Or Repair	Prem/Op Prod/Comp Op	Payroll 106,902 106,902	Each 1000 23.711 17.463	\$2,535.00 \$1,867.00

LOCATION 001 PREMIUM

\$6,521.00

QUICK REFERENCE

COMMERCIAL GENERAL LIABILITY COVERAGE PART

READ YOUR POLICY CAREFULLY

The Commercial General Liability Coverage Part in your policy consists of Declarations, a Coverage Form (either CG 00 01 or CG 00 02), Common Policy Conditions and Endorsements, if applicable. Following is a Quick Reference Indexing of the principal provisions contained in each of the components making up the Coverage Part, listed in sequential order, except for the provisions in the Declarations which may not be in the sequence shown.

DECLARATIONS

- Named Insured and Mailing Address
- Policy Period
- Description of Business and Location of Premises
- Limits of Insurance
- Forms and Endorsements applying to the Coverage Part at time of issue

COVERAGE FORM (CG 00 01 or CG 00 02)

SECTION I - COVERAGES

- Coverage A - Bodily Injury and Property Damage Liability

- Insuring Agreement

- Exclusions

- Coverage B - Personal and Advertising Injury Liability

- Insuring Agreement

- Exclusions

- Coverage C - Medical Payments

- Insuring Agreement

- Exclusions

- Supplementary Payments

SECTION II - WHO IS AN INSURED

SECTION III - LIMITS OF INSURANCE

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

- Bankruptcy

- Duties in the Event of Occurrence, Claim or Suit

- Legal Action Against Us

- Other Insurance

- Premium Audit

- Representations

- Separation of Insureds

- Transfer of Rights of Recovery Against Others to Us

- When We Do Not Renew (applicable to CG 00 02 only)

- Your Right to Claim and "Occurrence" Information (applicable to CG 00 02 only)

SECTION V - EXTENDED REPORTING PERIODS (applicable to CG 00 02 only)

SECTION VI - DEFINITIONS (SECTION V IN CG 00 01)

Agency Code 16-0070-00

Policy Number 984616-36064416

COMMON POLICY CONDITIONS (IL 00 17)

Cancellation

Changes

Examination of Your Books and Records

Inspections and Surveys

Premiums

Transfer of Your Rights and Duties under this Policy

ENDORSEMENTS (If Any)

Includes copyrighted material of Insurance Services Office, Inc., with its permission
Copyright, Insurance Services Office, Inc., 1982, 1984, 1988.

55167 (11-85)
COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES or
CONTRACTORS (Form B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization (Additional Insured):
ELLER MEDIA, SANGER & ALTGELT

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

1. WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that Insured by or for you.
2. The following is added to **LIMITS OF INSURANCE** (Section III):
 8. The limits of liability for the additional insured are those specified in the written contract or agreement between the Insured and the owner, lessee or contractor, not to exceed the limits provided in this policy. These limits are inclusive of and not in addition to the limits of insurance shown in the Declarations.

COMMUNICABLE DISEASE EXCLUSION
Commercial General Liability Coverage Form

55137 (6-92)

It is agreed:

1. The following exclusion is added and applies to:
 - a. COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY;
 - b. COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY; and
 - c. COVERAGE C. MEDICAL PAYMENTS.
2. **EXCLUSION**

This policy does not apply to "bodily injury", "personal injury" or medical expenses for "bodily injury" arising out of or resulting from the transmission of any communicable disease by any "insured".

All other policy terms and conditions apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT - RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following exclusion is added to COVERAGE A (Section I):

- o. "Bodily 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" 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.

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

- c. "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 "personal injury" as a result of (1) through (3) above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55146 (7-88)

UPSET AND OVERSPRAY COVERAGE

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

It is agreed the coverage for "property damage" liability with respect to your operations is extended as follows:

1. COVERAGE

We will pay those sums which you become legally obligated to pay for "property damage" caused directly by immediate, abrupt and accidental:

- a. upset, overturn or collision of your "mobile equipment" while transporting; or
- b. "overspray" during your application or dispersal of;

"pollutants" which are intended for and normally used in your operations. The operations must be in compliance with local, state, and federal ordinances and laws.

This is not an additional amount of insurance and does not increase the LIMITS OF INSURANCE stated in the Declarations.

2. EXCLUSIONS

- a. With regard only to the coverage provided by this endorsement, SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, f. is deleted and replaced by the following:

- f. 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".

- b. The following exclusion is added under SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:

- a. This coverage does not apply to "overspray" resulting from aerial application or dispersal of "pollutants".

All other policy exclusions apply.

3. DEDUCTIBLE

Any deductible provision of the policy which is applicable to Property Damage Liability coverage applies to this coverage extension.

4. DEFINITIONS

The following definitions apply in addition to those in the policy.

"Overspray" means spray, from a device specifically designed for spray application or dispersal, that goes beyond the entire area of intended application or dispersal.

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

All other policy terms and conditions apply.

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 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 - 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 any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in 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 payments 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"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

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

2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of

liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
 - (2) That the insured would have in the absence of the contract or agreement.
- c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
- (1) Causing or contributing to the intoxication of any person;
 - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

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

- e. "Bodily injury" to:

- (1) An employee of the insured arising out of and in the course of employment by the insured; or
- (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (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. (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;
- (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 any insured or 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:
 - (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or

- (II) 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.

Subparagraphs (a) and (d) (I) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (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 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 from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, 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, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;

- (2) A watercraft you do not own that is:

- (a) Less than 26 feet long; and

- (b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (Section V.8.).

- h. "Bodily injury" or "property damage" arising out of:

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

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

- i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

- j. "Property damage" to:

- (1) Property you own, rent or occupy;

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of 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.

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. "Property damage" to "your product" arising out of it or any part of it.
- l. "Property damage" to "your work" arising out of it or any part of it and including 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. "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. 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.

Exclusions c. through n. do not apply to damage by fire to premises rented to you. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (SECTION III).

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 injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate

any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in 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 under Coverage 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:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions.

This insurance does not apply to:

a. "Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the Insured; or

- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the Insured would have in the absence of the contract or agreement.

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

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 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. To any Insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefit law or similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. 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

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

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. 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.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on the part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

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, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and

their spouses are also insureds, but only with respect to the conduct of your business.

- c. An organization other than a partnership or joint venture, you are insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
 - a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:
 - (1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or
 - (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or
 - (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
 - b. Any person (other than your employee), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this 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 or joint venture, 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 injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

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

3. 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 claimant's legal representative.

4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverage 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 any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire Insurance for premises rented to you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

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

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. 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 term 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.

8. 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. "Advertising injury" means injury arising out of one or more of the following offenses:

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:

(1) The injury or damage arises out of:

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

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

(2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

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

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

If such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

6. "Insured contract" means:

- a. A lease of premises;
- 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.

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies any person or organization 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;
 - b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
 - c. 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 b. above and supervisory, inspection or engineering services; or
 - d. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.
7. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or

- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

- B. "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 and lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing;
- (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise and lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

10. "Personal Injury" means, other than "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 by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

11. a. "Products-completed operations hazard"

Includes all "bodily injury" and "property damage" 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.

b. "Your work" will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
- (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. "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 shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

14. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(1) You;

(2) Others trading under your name; or

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

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

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, 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.

15. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55118 (8-91)

POLLUTION EXCLUSION ENDORSEMENT PERSONAL INJURY LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Under SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY, 2. EXCLUSIONS, exclusion c. is added:

c. (1) "Personal Injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;

(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 any insured or 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:

(i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or

(ii) If the operations are to test for, monitor, clean up, remove, con-

tain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d) (i) do not apply to "personal injury" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(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 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 from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, 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, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

All other policy terms and conditions apply.

Includes copyrighted material of Insurance Services
Office, Inc., with its permission
Copyright, Insurance Services Office, 1982, 1988

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55029 (7-87)

ABSOLUTE ASBESTOS EXCLUSION ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

No coverage is provided by this policy for any claim, suit, action or proceeding against the insured arising out of the discharge, dispersal, release, escape or inhalation of any asbestos related particle, dust, irritant, contaminant, pollutant, toxic element or material.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55050 (7-87)

REINSTATEMENT OF THE GENERAL AGGREGATE LIMIT

It is agreed:

The following is added to SECTION III - LIMITS OF INSURANCE:

If the General Aggregate limit is exhausted, as a result of losses occurring during the policy period because of payment of judgments or settlements, we will reinstate that aggregate limit for losses occurring during the same policy period. We will reinstate such limit only once for each policy period. Further, our liability:

1. with respect to any one occurrence, shall never exceed the aggregate limit; or
2. with respect to all occurrences during the policy period, shall never exceed two times the aggregate limit.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55084 (7-87)

MOTOR VEHICLE LAWS

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

It is agreed the following is added to COMMERCIAL GENERAL LIABILITY CONDITIONS:

We will provide coverage:

1. up to the minimum required limits; and
2. subject to all the terms and conditions of the policy;

to comply with any motor vehicle insurance law to the extent such law applies to the "mobile equipment" covered by this coverage part.

All other terms and conditions of the policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**CONTRACTUAL COVERAGE AMENDATORY
ENDORSEMENT**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE FORM.

It is agreed:

Under Section I - COVERAGE A, Item 2 Exclusions:

Exclusion b. is deleted and replaced by the following:

- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
 - (1) Assumed in a contract or agreement that is an "insured contract". However, if the insurance under this policy does not apply to the liability of the insured, it also does not apply to such liability assumed by the insured under an "insured contract".
 - (2) That the insured would have in the absence of the contract or agreement.

All other terms and conditions of the policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY PLUS ENDORSEMENT

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE COMMERCIAL GENERAL LIABILITY COVERAGE PART.

It is agreed the insurance provided under this Coverage Part is amended as follows:

1. **EXTENDED WATERCRAFT COVERAGE**

Under COVERAGE A - 2. Exclusions, exclusion g.(2) is deleted and is replaced by the following:

(2) A watercraft you do not own that is:

(a) Less than 50 feet long; and

(b) Not being used to carry persons or property for a charge;

2. **NONOWNERSHIP/HIRED AUTO COVERAGE**

Coverage for "bodily injury" and "property damage" liability provided under COVERAGE A is extended as follows under this item, but only if you do not have any insurance available to you which affords the same or similar coverage:

Coverage

We will pay those sums the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" arising out of the maintenance or use of an "auto" you do not own or which is not registered in your name, but which is used in your business.

Exclusions

With respect to this coverage, the exclusions which apply to Coverage A, other than exclusions a., d., f. and i. and the Nuclear Energy Liability Exclusion Endorsement, are replaced by the following:

The coverage does not apply to:

(1) Liability assumed by the insured under any contract or agreement.

(2) "Property damage" to:

(a) property owned or being transported by, or rented or loaned to the insured; or

(b) property in the care, custody or control of the insured;

other than property damage to a residence or a private garage by a private passenger "auto" covered by this coverage.

(3) "Bodily Injury" to:

(a) An employee of the insured arising out of and in the course of employment by the insured; or

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

This exclusion applies:

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

This exclusion does not apply to:

- (a) Liability assumed by the insured under an "insured contract".
- (b) "Bodily injury" to any employee of the insured arising out of and in the course of his domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

Who Is An Insured

It is agreed with respect to this coverage, the section WHO IS AN INSURED is deleted and replaced by the following:

WHO IS AN INSURED

Each of the following is an insured with respect to this coverage:

1. You.
2. Any partner or executive officer of yours.
3. Any person using the "auto" and any person or organization legally responsible for the use of an "auto" not owned by such person or organization, provided the actual use is with your permission.

None of the following is an insured:

1. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment.
2. Any person using the "auto" and any person other than you, legally responsible for its use with respect to an "auto" owned or registered in the name of:
 - a. such person; or
 - b. any partner or executive officer of yours or a member of his or her household; or
 - c. any employee or agent of yours who is granted an operating allowance of any sort for the use of such "auto".
3. Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate.
4. The owner or lessee (of whom you are a sublessee) of a hired "auto" or the owner of an "auto" you do not own or which is not registered in your name which is used in your business or any agent or employee of any such owner or lessee.
5. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

Additional Definitions

The following definition applies to this coverage:

"Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".

Limits of Insurance

It is agreed with respect to this coverage only, the section LIMITS OF INSURANCE is deleted and replaced by the following:

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. If the Limits of Insurance shown in the Declarations:
 - a. are shown only as an Each Occurrence Limit, the Each Occurrence Limit:
 - (1) is the most we will pay for; and
 - (2) applies to:

the sum of damages under Coverage A for "bodily injury" and "property damage" arising out of any one "occurrence"; or
 - b. are shown in the Declarations as an Each Person Limit and an Each Occurrence Limit:
 - (1) the Each Person Limit is the most we will pay under Coverage A for "bodily injury" sustained by any one person; and
 - (2) the Each Occurrence Limit:
 - (a) is the most we will pay for; and
 - (b) applies separately to:
 - 1) damages covered under Coverage A for "bodily injury"; and
 - 2) damages covered under Coverage A for "property damage"; arising out of any one "occurrence".

The limits which apply to this Coverage 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.

3. BROADENED SUPPLEMENTARY PAYMENTS COVERAGE

Under SUPPLEMENTARY PAYMENTS - COVERAGES A. and B.:

- a. Item 2., the amount we will pay for the cost of bail bonds is increased from \$250 to \$500.
- b. Item 4., the amount we will pay the actual loss of earnings is increased from \$100 per day to \$150 per day.

4. PRODUCTS-COMPLETED OPERATIONS AGGREGATE REINSTATEMENT

The following is added to the section LIMITS OF INSURANCE:

If the Products-Completed Operations Aggregate limit is exhausted, as a result of losses occurring during the policy period because of payment of judgments or settlements, we will reinstate that aggregate limit for losses occurring during the same policy period. We will reinstate such limit only once for each policy period. Further, our liability:

- a. with respect to any one occurrence, shall never exceed the aggregate limit; or
- b. with respect to all occurrences during the policy period, shall never exceed two times the aggregate limit.

5. PERSONAL INJURY EXTENSION COVERAGE

- a. Under the section DEFINITIONS, the following is added to the definition for "Personal Injury":

- f. discrimination and humiliation.

- b. Under COVERAGE B - 2. Exclusions, the following exclusion is added:

- c. Any alleged or actual "personal injury" if directly or indirectly related to the past, present or prospective employment of any person or persons by an insured.

All other terms and conditions of the policy apply.

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 State 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.

Agency Code 16-0070-00

Policy Number 984616-36064416

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.

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

v.

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 01-CP-20-334

**SPECIAL INTERROGATORIES/VERDICT
FORM**

If the jury finds in favor of the Plaintiffs and awards damages on any of their claims against the Defendant, then the jury should make the specific findings set out below as to each of the Plaintiff's claims:

1. Do you find that the Defendant breached its contract with the Plaintiffs and that such breach of contract proximately caused the Plaintiffs' damages? YES or NO (circle one)
If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the breach of contract of the Defendant? \$ _____
2. Do you find that the Defendant breached an implied warranty of fitness and that such breach of warranty proximately caused the Plaintiffs' damages? YES or NO (circle one)
If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the breach of warranty of the Defendant? \$ _____
3. Do you find that the signs fabricated, delivered and installed by the Defendant were in a defective condition and unreasonably dangerous to persons and property as fabricated delivered an installed? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the defective condition of the signs? \$ _____

4. Do you find that the Defendant fraudulently breached its contract in representing that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such fraudulent breach of contract proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the fraudulent breach of contract of the Defendant? \$ _____
5. Do you find that the Defendant committed fraud in representing that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such fraud proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the fraud committed by the Defendant? \$ _____
6. Do you find that the Defendant committed constructive fraud in representing that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such constructive fraud proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the constructive fraud committed by the Defendant? \$ _____
7. Do you find that the Defendant negligently misrepresented that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such negligent misrepresentation proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the negligent misrepresentation of the Defendant? \$ _____
8. Do you find that the Defendant was negligent in failing to exercise due care in fabricating the signs in accordance with the engineering drawings for the signs and in failing to notify the Plaintiff of the alteration of the signs from the design plans and that such

negligence proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the negligence of the Defendant? \$ _____

9. Do you find that the Defendant breached the implied covenant of good faith and fair dealing inherent in any contract and that such breach proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the breach of the implied covenant of good faith and fair dealing of the Defendant? \$ _____
10. Do you find that the Defendant's actions created a nuisance to the Plaintiff and that such nuisance proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the nuisance created by the Defendant? \$ _____
11. Do you find that the Defendant's actions constitute unfair or deceptive acts or practices within the meaning of S.C. Ann. § 39-5-10 (the South Carolina Unfair Trade Practices Act) and that the unfair or deceptive acts proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the unfair or deceptive acts or practices of the Defendant? \$ _____
12. If you found that the Plaintiff was entitled to an award of damages under any theory listed above, please inform the Court what, if any, damages you awarded for the following (The total of the damages listed below in parts (a) through (g) must equal the total of the damages listed above):
- (a) Cost of removal of the two signs erected under permits 04-20-426995
\$ _____;
- (b) Cost of removal and clean up related to the collapse of the sign erected under permit 04-20-426994 \$ _____;

(c) Loss of revenue from the advertising that the signs would have displayed

\$ _____;

(d) Refund of purchase price of the three signs \$ _____;

(e) Decrease in value of real property upon which sign that collapsed was erected

\$ _____;

(f) Decrease in value of real property upon which the two signs that were removed were erected \$ _____;

(g) Total Punitive damages, if any \$ _____.

(h) If you awarded punitive damages against the Defendant, under which cause(s) of action were they awarded and in what amounts?

(1) Fraudulent Breach of Contract \$ _____.

(2) Fraud \$ _____.

(3) Constructive Fraud \$ _____.

(4) Negligent Misrepresentation \$ _____.

(5) Willful, Reckless Conduct \$ _____.

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Samuel W. Rhodes, Jr., and Piedmont
Promotions, Inc.,

Plaintiff,

v.

Marion L. Eadon, d/b/a C&B Fabrication,
Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 01-CP-20-334

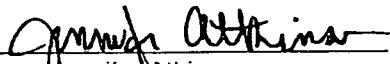
CERTIFICATE OF SERVICE

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Defendant, does hereby certify that service of the attached Amended Notice of Motion and Motion to Intervene along with copies of the filed Summons and Complaint in Auto-Owners insurance v. Samuel W. Rhodes, et al on behalf of Auto-Owners Insurance Company in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 17th day of April, 2003, addressed as follows:

Creighton B. Coleman, Esquire
MCCUTCHEN, BLANTON, RHODES
& JOHNSON, LLL
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180

Hoover C. Blanton, Esquire
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
1730 Main Street
Post Office Box 8057
Columbia, South Carolina 29202


Jennifer Atkinson

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
C/A No: 01-CP-20-334

Samuel W. Rhodes, Jr., and)
Piedmont Promotions, Inc.,)
Plaintiffs,)

-vs-

Marion L. Eadon, d/b/a C&B)
Fabrication,)
Defendant.)

ANSWER TO THE FIRST AMENDED
COMPLAINT
(JURY TRIAL DEMANDED)

FILED
JUL 17 9 21 AM '03
CLERK OF COURT
JAMES H. HARRIS
CLERK OF COURT

Defendant,, Marion L. Eadon, improperly identified as Marion L. Eadon d/b/a C&B
Fabrication, answers the first amended complaint of the plaintiff as follows:

FOR A FIRST DEFENSE

1. Denies each and every allegation of the first amended complaint not herein
specifically admitted, qualified or explained.

2. Admits, upon information and belief, the allegations of paragraph one (1) of the first
amended complaint.

3. Admits that Marion Eadon is a citizen and resident of South Carolina, but denies the
remaining allegations of paragraph two (2) of the first amended complaint.

4. Does not have sufficient information to form a belief as to the truth of the allegations
of paragraph three (3) of the first amended complaint, and therefore denies the same and demands
strict proof thereof.

5. Does not have sufficient information to form a belief as to the truth of the allegations
of paragraphs four (4), five (5) and six (6) of the first amended complaint, and therefore denies the

same and demands strict proof thereof.

6. Denies the allegations of paragraph seven (7) of the first amended complaint and further alleges that Eadon individually did not make the proposal to Rhodes, but C&B Fabricators, Inc. submitted a proposal to Rhodes.

7. Denies the allegations of paragraph eight (8) of the first amended complaint as it relates to Marion Eadon.

8. Denies the allegations of paragraph nine (9) of the first amended complaint.

9. Denies the allegations of paragraph ten (10) of the first amended complaint as it relates to Marion Eadon.

10. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), subparts (a) through (g), nineteen (19) of the first amended complaint, and therefore denies the same and demands strict proof thereof.

11. Denies the allegations of paragraph twenty (20), subparts (a) through (e), of the first amended complaint.

12. Realleges and reasserts its responses to paragraphs one (1) through twenty (20) of the first amended complaint in response to paragraph twenty-one (21) of the first amended complaint as if fully reiterated herein verbatim.

13. Denies the allegations of paragraphs twenty-two (22), twenty-three (23), and twenty-four (24) of the first amended complaint.

14. Realleges and reasserts its responses to paragraphs one (1) through twenty-four (24) of the first amended complaint in response to paragraph twenty-five (25) of the first amended

complaint as if fully reiterated herein verbatim.

15. Denies the allegations of paragraphs twenty-six (26), twenty-seven (27) and twenty-eight (28) of the first amended complaint.

16. Realleges and reasserts its responses to paragraphs one (1) through twenty-eight (28) of the first amended complaint in response to paragraph twenty-nine (29) of the first amended complaint as if fully reiterated herein verbatim.

17. Denies the allegations of paragraphs thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34) and thirty-five (35) of the first amended complaint.

18. Realleges and reasserts its responses to paragraphs one (1) through thirty-five (35) of the first amended complaint in response to paragraph thirty-six (36) of the first amended complaint as if fully reiterated herein verbatim.

19. Denies the allegations of paragraph thirty-seven (37) of the first amended complaint.

20. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph thirty-eight (38) of the first amended complaint, and therefore denies the same and demands strict proof thereof.

21. Denies the allegations of paragraph thirty-nine (39) of the first amended complaint.

22. Realleges and reasserts its responses to paragraphs one (1) through thirty-nine (39) of the first amended complaint in response to paragraph forty (40) of the first amended complaint as if fully reiterated herein verbatim.

23. Denies the allegations of paragraphs forty-one (41) and forty-two (42) of the first amended complaint.

24. Realleges and reasserts its responses to paragraphs one (1) through forty-two (42) of

the first amended complaint in response to paragraph forty-three (43) of the first amended complaint as if fully reiterated herein verbatim.

25. Denies the allegations of paragraphs forty-four (44) and forty-five (45) of the first amended complaint.

26. Realleges and reasserts its responses to paragraphs one (1) through forty-five (45) of the first amended complaint in response to paragraph forty-six (46) of the first amended complaint as if fully reiterated herein verbatim.

27. Denies the allegations of paragraphs forty-seven (47) and forty-eight (48) of the first amended complaint.

28. Realleges and reasserts its responses to paragraphs one (1) through forty-eight (48) of the first amended complaint in response to paragraph forty-nine (49) of the first amended complaint as if fully reiterated herein verbatim.

29. Denies the allegations of paragraphs fifty (50) and fifty-one (51) of the first amended complaint.

30. Realleges and reasserts its responses to paragraphs one (1) through fifty-one (51) of the first amended complaint in response to paragraph fifty-two (52) of the first amended complaint as if fully reiterated herein verbatim.

31. Denies the allegations of paragraphs fifty-three (53) and fifty-four (54) of the first amended complaint.

32. Realleges and reasserts its responses to paragraphs one (1) through fifty-four (54) of the first amended complaint in response to paragraph fifty-five (55) of the first amended complaint as if fully reiterated herein verbatim.

33. Denies the allegations of paragraphs fifty-six (56), fifty-seven (57) and fifty-eight (58) of the first amended complaint.

34. Realleges and reasserts its responses to paragraphs one (1) through fifty-eight (58) of the first amended complaint in response to paragraph fifty-nine (59) of the first amended complaint as if fully reiterated herein verbatim.

35. Denies the allegations of paragraphs sixty (60), sixty-one (61) and sixty-two (62) of the first amended complaint.

FOR A SECOND DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

36. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, 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 a meaningful standard and is inconsistent with due process guarantees.

FOR A THIRD DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

37. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FOURTH DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

38. That the plaintiff's claim for punitive damages violates the equal protection clause

of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A FIFTH DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

39. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SIXTH DEFENSE TO THE
SEVENTH AND EIGHTH CAUSES OF ACTION

40. The negligence, recklessness, willfulness and wantonness of the Plaintiff, combining and concurring with this Defendant, if any, and the same is denied, was a direct and proximate cause of the Plaintiff's injuries and damages and without which the same would not have occurred, and was greater in proportion to that of the Defendant, if any, and same is denied, and, therefore, the Plaintiff may not recover from this Defendant for any of their alleged injuries or damages complained of in the first amended complaint. This Defendant, therefore, expressly pleads the contributory and comparative negligence, recklessness, willfulness and wantonness of the Plaintiff as a bar to any recovery against this Defendant.

As an alternative, this Defendant is entitled to a reduction of damages based upon the percentage of the Plaintiff's negligence, recklessness, willfulness and wantonness.

FOR A SEVENTH DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

41. Plaintiff has failed to set forth sufficient facts to constitute a cause of action for strict liability, fraudulent breach of contract, fraud, constructive fraud, bad faith, nuisance and unfair trade practices.

FOR AN EIGHTH DEFENSE TO ALL CAUSES OF ACTION

42. The plaintiff has failed to set forth sufficient facts to constitute a cause of action against this defendant.

FOR A NINTH DEFENSE

43. Plaintiff has failed to mitigate his damages.

FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION

44. The economic loss rule bars the plaintiff's action because the plaintiff did not suffer any injury to his person or property.

FOR AN ELEVENTH DEFENSE TO THE TENTH CAUSE OF ACTION

45. The plaintiff does not have standing to bring a cause of action for nuisance.

FOR A TWELFTH DEFENSE TO THE TENTH CAUSE OF ACTION

46. The plaintiff has failed to allege that defendant unreasonably interfered with his property, and that the interference is potentially recurring.

FOR A THIRTEENTH DEFENSE TO THE ELEVENTH CAUSE OF ACTION

47. Plaintiff's private contract with C&B Fabricators, Inc. does not affect the public interest, and, therefore, the cause of action for Unfair Trade practices should be dismissed.

FOR A FOURTEENTH DEFENSE TO ALL CAUSES OF ACTION

48. Defendant pleads collateral estoppel as a complete defense in this matter because the

issues raised by the plaintiffs have been litigated and directly determined in an administrative proceeding and the matter or facts directly in issue were necessary to support the first judgment. Therefore, the plaintiffs are barred by the doctrine of collateral estoppel in relitigating these issues.

FOR A FIFTEENTH DEFENSE TO ALL CAUSES OF ACTION

49. Defendant pleads affirmatively that the plaintiffs' business was a sham and, thus, any business loss claimed by the plaintiffs would be solely as a result of a sham operation and not recoverable because it requires that the court enforce an illegal contract.

FOR A SIXTEENTH DEFENSE TO ALL CAUSES OF ACTION

50. Defendant pleads fraud as an affirmative defense in light of the sham business of the plaintiffs.

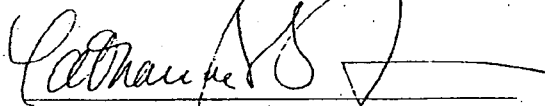
FOR A SEVENTEENTH DEFENSE TO ALL CAUSES OF ACTION

51. Defendant pleads the illegality of the conduct of the plaintiff in obtaining the billboard permits as a complete bar to any cause of action.

FOR AN EIGHTEENTH DEFENSE

52. Defendant pleads estoppel as a complete defense.

WHEREFORE, having fully answered the first amended complaint, defendants pray for the dismissal of same, costs and such other and further relief as this Court deems just and proper.



Catharine G. Griffin
Baker, Ravenel & Bender, L.L.P.
P. O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant

Columbia, South Carolina

July 6, 2003

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)
)
Samuel W. Rhodes, Jr., and)
Piedmont Promotions, Inc.,)
)
Plaintiffs,)
)
-vs-)
)
Marion L. Eadon, d/b/a C&B)
Fabrication,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
C/A No: 01-CP-20-335

334

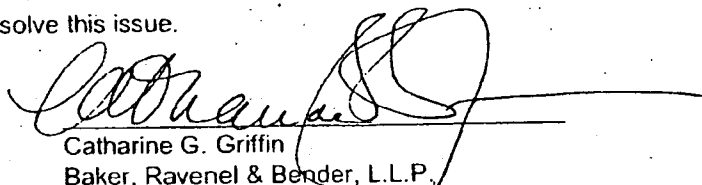
MOTION TO COMPEL

NOV 10 9 26 AM '03
CLERK OF COURT
BETTY JO BRANTLEY

TO: CREIGHTON COLEMAN AND HOOVER BLANTON, ATTORNEYS FOR THE
PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that the defendant, Marion L. Eadon, by and through his undersigned attorney, will move as soon as practicable before this honorable court for an order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling the plaintiff's full responses to the defendant's interrogatories and request for production. Defendant has requested the tax returns of Piedmont Promotions. Plaintiff has objected, claiming that the tax returns are not relevant to any issue. Defendant seeks the tax returns because they may lead to the discovery of admissible evidence. The plaintiff is claiming economic loss as a result of the falling of a billboard sign. The tax returns would be discoverable.

Defendant certifies that he has consulted with the plaintiff's attorney before filing this motion to compel and was unable to resolve this issue.


Catharine G. Griffin
Baker, Ravenel & Bender, L.L.P.
P. O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant

Columbia, South Carolina
November 10, 2003

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

Samuel W. Rhodes, Jr. and)
Piedmont Promotions, Inc.,)

Plaintiffs,)

v.)

Marion L. Eadon, d/b/a C & B)
Fabrication,)

Defendant.)

IN THE COURT OF COMMON PLEAS
C. A. No. 01-CP-20-334

**NOTICE OF MOTION AND
MOTION FOR PARTIAL JUDGMENT
ON THE PLEADINGS
BY PLAINTIFFS**

NOV 20 4 59 PM '03
FAIRFIELD COUNTY
CLERK
BETTY BECKHAM

TO: CATHERINE G. GRIFFIN, ESQUIRE AND BAKER, RAVENEL & BENDER,
L.L.P., AS ATTORNEYS FOR THE DEFENDANT:

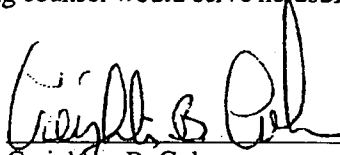
YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 12(c) and related rules of the *South Carolina Rules of Civil Procedure*, the Plaintiffs move the Court for judgment on the pleadings as to the Defendant's fifteenth, sixteenth, and seventeenth defenses in his Answer to First Amended Complaint dated July 16, 2003 on the grounds and for the reasons and in the particulars hereinafter set forth.

YOU WILL PLEASE TAKE NOTICE FURTHER that the undersigned, as attorneys for said Plaintiffs, request the Court to hear the said motion on the 10th day following service hereof at 10:00 a.m., or at such other time as the Court may declare the motion to be heard.

The motion is upon the grounds that the stated defenses in the Defendant's Answer to the Amended Complaint are based upon alleged fraud and an alleged sham operation and alleged illegal contract between the Plaintiffs and the South Carolina Department of Transportation to which the Defendant was not and is not a party and even if the facts or conclusions alleged in the said defenses are true, which the Plaintiffs deny, they would not

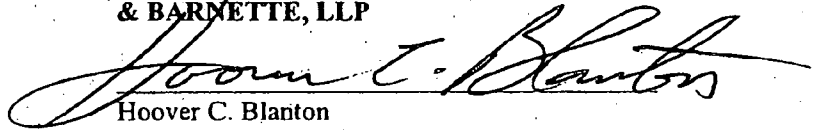
constitute the breach of any legal duty owed the Defendant by the Plaintiffs and the Defendant has no standing to assert the alleged breach of any legal duty the Plaintiffs owe or may have owed to a third party.

Pursuant to Rule 11(a), SCRCP, the undersigned counsel for the Plaintiffs hereby affirm that consultation with opposing counsel would serve no useful purpose.



Creighton B. Coleman
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180
(803) 635-6884

**McCUTCHEN BLANTON JOHNSON
& BARNETTE, LLP**



Hoover C. Blanton
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209
(803) 799-9791

ATTORNEYS FOR THE PLAINTIFF

November 12, 2003

FOR THE SIXTEENTH CIRCUIT

CASE NO. 02-CP-46-2369

**MOTION TO AMEND ANSWER &
COUNTERCLAIM**

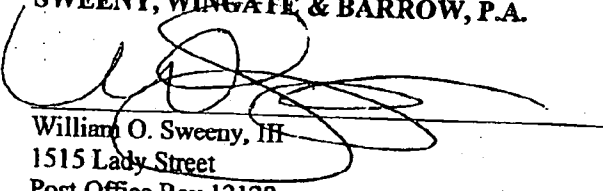
vs.

Defendants.

FILED-RECEIVED
SEP 7 10 13 AM '04

This motion is made under Rule 15, SCRPC, and is based on recent developments in the underlying tort case. The Plaintiff will not be unfairly prejudiced and the interests of justice will be served by granting cause to amend.

SWEENEY, WINGATE & BARROW, P.A.



William O. Sweeney, III
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233

Attorneys for Eadon, C&B and Low Country Signs

Columbia, South Carolina

September 1, 2004

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for, do hereby certify that I have served a copy of the foregoing Motion in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

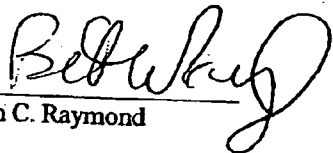
Alfred Johnston Cox
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202

Hoover C. Blanton, Esquire
McCutchen, Blanton, Johnson & Barnette, LLP
Post Office Box 11209
1414 Lady Street
Columbia, South Carolina 29211-1209

Catharine H. Griffin
Baker, Ravenel & Bender, LLP
Post Office Box 8057
Columbia, South Carolina 29202

Creighton B. Coleman
McCutchen, Blanton, Rhodes & Johnson
120 W. Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180

Columbia, South Carolina
September 1, 2004


Beth C. Raymond

FILED-RECEIVED
SEP 7 10 19 AM '04
CLERK OF COURT
COLUMBIA COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

) THE COURT OF COMMON PLEAS

) FOR THE SIXTEENTH CIRCUIT

Auto-Owners Insurance Company,

Plaintiff,

vs.

Samuel W. Rhodes, Piedmont
Promotions, Inc. and Marion L. Eadon,
C&B Fabrications, Inc. and Low
Country Signs, Inc.,

Defendants.

CASE NO. 02-CP-46-2369

AMENDED ANSWER AND
COUNTERCLAIM ON BEHALF OF
DEFENDANTS MARION L. EADON,
C&B FABRICATIONS, INC. AND
LOW COUNTRY SIGNS, INC.

2003 JUL -2 AM 11:17
CLERK OF COURT
C.C.D. 11-15
YORK COUNTY, SC

COMES NOW the Defendant, Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., by and through its undersigned attorneys, answering the Amended Complaint of the Plaintiff, would allege and show unto the Court:

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. The allegation in Paragraph 1 of the Plaintiff's Complaint is admitted on knowledge and belief.

3. These Defendants admit that Samuel W. Rhodes is a citizen and resident of South Carolina. This Defendant does not have sufficient knowledge or information to admit or deny the other allegations in Paragraph 2 of the Plaintiff's Complaint, so they are denied.

4. The allegations in Paragraphs 3, 4, 5, 6, 7, 8, and 9 of the Plaintiff's Complaint are admitted, except that it is not admitted that there is a genuine controversy, as implied in Paragraph 4 and it is denied that Auto-Owners Insurance Company put the signs to their intended use, as stated by Paragraph 6.

5. The allegations in Paragraph 10 of the Plaintiff's Complaint are admitted and the allegations in Paragraphs 11, 12, 13, 14, 15, and 16 of the Plaintiff's Complaint are admitted to the extent that they are consistent with the certified policy included by reference in Paragraph 10 and denied to the extent that they differ with the certified policy.

6. The allegations in Paragraphs 17 and 18 of the Plaintiff's Complaint are admitted.

7. The allegations in Paragraph 19 and 20 of the Plaintiff's Complaint are denied.

FOR A SECOND DEFENSE

(Ratification)

8. The allegations contained in Paragraphs 1 through 7 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

9. The Plaintiff, after initially stating that it would defend under a reservation of rights on or about February 8, 2001, has ratified its agreement to defend Defendants by its words and actions in the subsequent two years, to include paying part of the claims against Defendants.

10. Having ratified the agreement to defend by its actions, the Plaintiff should not be heard now to renounce the agreement.

FOR A FIRST COUNTERCLAIM

(Breach of Contract)

(Coverage of Consequential Damage)

11. The allegations contained in Paragraphs 1 through 10 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

12. The blowing over of the sign caused consequential damages, such as blocking the highway and having to remove the blockage from the highway. The insurance contract covers such consequential damages.

13. These Defendants, to Plaintiff's knowledge, have incurred costs to rectify the consequential damages.

14. Plaintiff has not paid Defendants for any of the costs they have incurred for rectifying consequential damages, thereby breaching their contract with the Defendants.

15. Defendants are entitled for payment from Plaintiff of the amounts they have incurred in rectifying consequential damages and the costs incurred in collecting the amounts due under the contract.

FOR A SECOND COUNTERCLAIM

(Bad Faith)

16. The allegations contained in Paragraphs 1 through 15 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

17. Plaintiff has been informed that Defendants have expended many thousands of dollars to rectify the consequential damages in the cited incident.

18. Plaintiff knows that it owes reimbursement to Defendants for the costs of rectifying such consequential damages.

19. Plaintiff has refused to pay the amount that it knows it owes.

20. Failure of an insurance company to pay an amount that it knows it owes is bad faith.

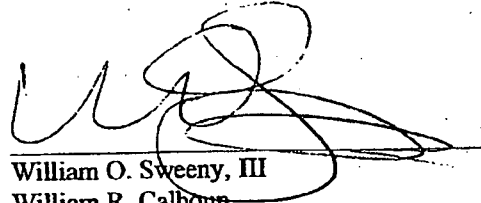
Answer to DJ action
01-CP-20-334

21. Defendants, because of Plaintiff's bad faith refusal to pay amounts that it knows it owes are entitled to their actual damages and punitive damages in an amount to be determined by jury.

WHEREFORE, having fully answered, the Defendants pray that the Court dismiss the Plaintiff's Amended Complaint; that a jury award them actual and punitive damages on their counterclaims; that the Court award them the costs and fees associated with this action; and for such other and further remedy as in the opinion of the Court is fair and just.

The Defendants demand a jury trial.

SWEENEY, WINGATE & BARROW, P.A.



William O. Sweeney, III
William R. Calhoun
1515 Lady Street
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Defendants Marion L. Eadon,
C&B Fabrications, Inc. and Low Country
Signs, Inc.

Columbia, South Carolina
June __, 2003

STATE OF SOUTH CAROLINA)
JAN 21 1 49 PM '03) IN THE COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD)
JAMES D. JOHNSON)
CLERK OF COURT)
BETTY JO ZECKHAM)

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

v.

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

CIVIL ACTION NO.: 01-CP-20-334

AMENDED NOTICE OF MOTION AND
MOTION TO INTERVENE ON BEHALF
OF AUTO-OWNERS INSURANCE
COMPANY

TO: HOOVER C. BLANTON AND CREIGHTON COLEMAN, ATTORNEYS FOR
THE PLAINTIFF AND CATHARINE G. GRIFFIN, ATTORNEY FOR THE
DEFENDANTS:

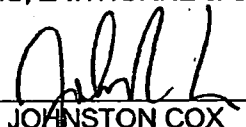
YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Auto-
Owners Insurance Company will move before the Presiding Judge of the Sixth
Judicial Circuit at the Fairfield County Courthouse, Winnsboro, South Carolina, as
soon as counsel may be heard, or at such time and place as may be set by the
Court, for an Order pursuant to S.C.R.C.P. 24(a) or 24(b), allowing Auto-Owners
Insurance Company ("Auto-Owners") to intervene in this action for the sole purpose
of submitting at the trial of this case a special verdict form or a general verdict form
accompanied by answer to interrogatories pursuant to South Carolina Rule of
Civil Procedure 49.

Auto-Owners Insurance Company issued an insurance policy to the
Defendant with liability coverage for the period of time relevant to this action (the
"Policy"). Auto-Owners has filed a declaratory judgment action, entitled, Auto-
Owners Insurance Company v. Samuel W. Rhodes, Piedmont Promotions, Inc. and

Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., filed in the York County Court of Common Pleas, civil action #02-CP-46-2369, requesting that the Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against the Defendant. Therefore, Auto-Owners has an interest in the subject of the action. In addition, if Auto-Owners is not permitted to submit a special verdict form to the jury, the disposition of the action may impair or impede Auto-Owners' ability to protect its interest in the event that the jury returns a general verdict against the Defendant. Furthermore, Auto-Owners interests are not adequately represented by the existing parties. Auto-Owners is informed and believes such request will not otherwise prejudice the adjudication of the rights of the original parties to the action since the verdict form is the only thing effected.

This Motion is based upon the pleadings filed in this case, rules of Court, the attached special interrogatories and such other matters as may be properly presented to the Court at the time of the hearing.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina
April 17, 2003

of a defect, deficiency, inadequacy or dangerous condition in Defendants' product or work; and damage expected or intended by the defendants. If a general verdict is rendered in this case, it will be difficult at a later stage for both Auto-Owners and the Court to determine what portion of any damages assessed against the defendants are covered or fall under a policy exclusion. On the other hand, if Auto-Owners is permitted to intervene for the limited purpose of requesting specific findings after the jury renders a general verdict, the doctrine of judicial economy will be promoted and Auto-Owners' interest protected.

Discussion

I. Auto-Owners should be permitted to intervene as a matter of right.

Auto-Owners should be allowed to intervene in this action pursuant to Rule 24 (a)(2). Although South Carolina courts have not directly addressed intervention by an insurance carrier in circumstances similar to this case, our Supreme Court has interpreted "the rules to permit liberal intervention particularly where as here, judicial economy will be promoted by the declaration of the rights of all parties who may be affected." Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712, 714 (1990). In addition, the Supreme Court has stated that lower courts "must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2). Each case will be examined in the context of its unique facts and circumstances." *Id.*

Rule 24(a)(2) provides that

Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his

ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Accordingly, a party moving to intervene under Rule 24 (a)(2) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *Id.*

A court must consider the following factors in determining whether a motion to intervene is timely:

1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

Ex parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661, 664 (1993). "The court must consider all the circumstances in each case, not just to what point the suit has progressed. The most important consideration in reviewing the decision is whether the delay prejudiced the parties." Holsey v. Armour & Co., 743 F.2d 199 (4th Cir. 1984).

Timeliness is not an issue here because of the limited nature of Auto-Owners' proposed involvement in this case. All Auto-Owners is requesting is that the court submit special interrogatories to the jury after the verdict, if the verdict is against the Defendants. This will not require the Plaintiffs to offer any additional evidence to prove their case against the Defendants. It will not require any party to engage in any additional discovery or result in any delay of the trial of this case. Therefore, granting intervention will in no way prejudice any party to the action.

As to Auto-Owners' interest in the subject transaction, the Defendants have claimed Auto-Owners is obligated to indemnify them under their commercial general liability policy for any amount for which they are found liable to the Plaintiffs. And, pursuant to the terms of the policy, Auto-Owners' liability for indemnification, if any, will depend upon which claims the jury finds that the Defendants are liable to the Plaintiff. (See Policy.) Therefore, the issues determined in this action may determine the extent that the Defendants claim Auto-Owners is liable to them for indemnification; consequently, Auto-Owners' financial interest in the rights to be determined in this action warrant intervention. See Berkeley Elec. Co-op. v. Town of Mt. Pleasant, 394 S.E.2d 712, 716 (1980).

Clearly, without intervention, the disposition of the action may impair Auto-Owners' ability to protect its interest. As discussed in Berkeley, a "prospective intervenor demonstrate that without its intervention, the disposition of the case may impair or impede its ability to protect its interest. To meet that requirement, a party need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene." Berkeley, 394 S.E.2d at 715. If the jury returns a general verdict without specifying what the damages are for, Auto-Owners' ability to determine which damages are covered under its policy may be destroyed.

Furthermore, Auto-Owners' interests are not adequately being represented by any other party to the action. As noted in Berkeley, the burden of showing that its asserted interests are not represented by any other party is "minimal," and the party need only show that the representation of its interests "may be" inadequate. Id. Clearly, no other party to this action has any interest in requesting the jury specify the damages awarded in this case. Therefore, Auto-Owners meets all of the requirements for intervention as of right and should be allowed to intervene.

II. **Permissive Joinder under Rule 24(b)(2)**

If the Court finds that Auto-Owners is not permitted to intervene as a matter of right, the Court should allow permissive joinder under Rule 24(b)(2). Rule 24(b) states that a party is entitled to intervene when the moving party's claim or defense and the main action have a question of law or fact in common. See, South Carolina Tax Comm'n v. Union County Treasurer, 368 S.E.2d 72, 75 (S.C. Ct. App. 1988); S.C.R.C.P. 24(b)(2). Permissive intervention is wholly discretionary and a trial court's ruling would be reversed only for an abuse of discretion. Rule 24(b) is based upon the same theory as permissive joinder of parties – including all parties with common questions of law or fact in the same action promotes judicial economy. *Id.*

The case at bar is typical of the type of case for which the permissive intervention rule was designed. See, Knapp v. Hankins, 106 F.Supp. 43 (D.C. Ill. 1952) (courts have allowed insurance companies to intervene in cases where they might otherwise have brought a subsequent declaratory judgment action to determine their liability). Rule 24(b) was designed for the situation where "the prospective intervenor might institute or be called upon to defend a separate proceeding that would substantially duplicate the one in question." South Carolina Tax Comm'n, 368 S.E.2d at 75-76.

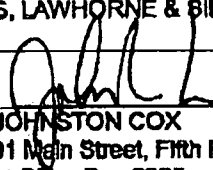
Here, the court should allow Auto-Owners to intervene because the same factual issue being determined by the jury – the amount of monetary loss sustained for each type of damage claimed – is at issue in both the present action between the Plaintiff and the Defendants, and the declaratory judgment action between the Defendants and Auto-Owners.

Furthermore, Rule 24(b) provides that the Court should consider whether the intervention of Auto-Owners would "unduly delay or prejudice the adjudication of the rights of the original parties." See, S.C.R.C.P. 24(b). Here, intervention will cause no delay and no prejudice. First, no additional discovery would be required because the Plaintiff must prove each element of any claim as to which the jury awards damages, and the special interrogatories

will be consistent with the proof required of the Plaintiff. There will be no prejudice to the existing parties because intervention would have no effect on the pending action until after the jury reaches a verdict.

Allowing Auto-Owners to intervene will not cause a delay in this action or prejudice the original parties, and it would further the interests of judicial economy by reducing and possibly eliminating the issues to be determined by a jury in the declaratory judgment action. Therefore, the Court should grant Auto-Owners' motion to intervene, and Auto-Owners should be added as a defendant in this action for the limited purpose of submitting a special verdict form and special interrogatories to the jury.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina
7/9, 2003

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

v.

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 01-CP-20-334

JUN 9 11 55 AM '04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

**REQUEST FOR A SPECIAL VERDICT AND/OR GENERAL VERDICT
ACCOMPANIED BY WRITTEN INTERROGATORIES
PURSUANT TO S.C.R.C.P. 49**

Auto-Owners Insurance Company ("Auto-Owners"), by and through the undersigned counsel, does hereby request that the Court provide a special verdict form to the jury and/or a general verdict form accompanied by written Interrogatories.

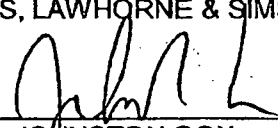
Auto-Owners Insurance Company issued an insurance policy to C&B Fabrications, Inc. with liability coverage for the period of time relevant to this action (the "Policy"). Auto-Owners is providing a defense to Marion L. Eadon, d/b/a C&B Fabrication in this civil action pursuant to a reservation of rights. Auto-Owners has also commenced a declaratory judgment action, entitled, Auto-Owners Insurance Company v. Samuel W. Rhodes, Piedmont Promotions, Inc. and Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., filed in the York County Court of Common Pleas, civil action #02-CP-46-2369, requesting that the Court declare the

rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against Marion L. Eadon, d/b/a C&B Fabrication.

For the purposes of judicial efficiency to avoid potential duplication of trials and to protect interests, Auto-Owners requests the Court submit appropriate forms to the jury pursuant to S.C.R.C.P. 49 for the jury to differentiate potentially alleged covered and non-covered losses alleged to be caused by the Defendant. Auto-Owners requests that the Court prepare these forms at such time during the course of the trial as is appropriate based upon the evidence presented at trial.

Respectfully Submitted,

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina

6/8, 2004

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

v.

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 01-CP-20,384

CERTIFICATE OF SERVICE

JUN 9 11 56 AM '04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Plaintiff, does hereby certify that service of the attached Request for a Special Verdict and/or General Verdict Accompanied by Written Interrogatories Pursuant to S.C.R.C.P. 49 in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 8th day of June, 2004, addressed as follows:

Creighton B. Coleman, Esquire
MCCUTCHEN, BLANTON, RHODES
& JOHNSON, LLL
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180

Hoover C. Blanton, Esquire
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209

Catharine G. Griffin, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, South Carolina 29211


Jennifer J. Rutirka

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
C. A. No. 01-CP-20-334

Samuel W. Rhodes, Jr. and)
Piedmont Promotions, Inc.,)
Plaintiffs,)

v.)

Marion L. Eadon, d/b/a C & B)
Fabrication,)
Defendant.)

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S POST-TRIAL
MOTIONS**

OCT 1 9 15 AM '04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

The Defendant makes four motions:

1. For Judgment Notwithstanding the Verdict as to the Eighth Cause of Action (Negligence);
 2. Alternatively for a New Trial on the Eighth Cause of Action;
 3. Alternatively for a New Trial Nisi Remittitur on the Eighth Cause of Action;
- and
4. For a Post Trial Review of the Punitive Damages Verdict "to determine if the award is unconstitutional and violative of due process guarantees."

JUDGMENT NOT WITHSTANDING THE VERDICT

The evidence established conclusively a case of negligence, gross negligence and recklessness. But for the Defendant's contention that he personally was not an actor in designing, making, erecting and inspecting the signs, the Court indicated that a directed verdict as to liability in favor of the Plaintiffs would have been granted. The jury resolved

the factual issue in favor of the Plaintiffs that the Defendant was doing business as C&B Fabrication. By reason of the jury's resolution of that factual issue, the Court can now view the Motion for Judgment Notwithstanding the Verdict as of the time the Motion for a Directed Verdict was made free of that now-resolved factual issue. Inasmuch as the Motion for Judgment Notwithstanding the Verdict is merely a renewal of the Motion for Directed Verdict the Motion should be denied.

MOTION FOR NEW TRIAL

1. The Defendant's first three grounds for a new trial pertain to the non-admission of proffered evidence about the Administrative Law Judge order and contentions that the signs were illegal. That proposed evidence was properly excluded. It sought to bar recovery based upon the doctrine of collateral estoppel. Under the facts of this case, collateral estoppel had no proper place. Collateral estoppel was discussed at length, including the facts and authorities in the context of this case, in the Plaintiffs' Trial Brief submitted to the Court before the trial began. That discussion is incorporated by reference to avoid repetition.

Since it [collateral estoppel] is grounded upon concepts of fairness, it should not be rigidly or mechanically applied thus, even if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine's application may be precluded.

State v. Bacote, 331 S.C. 328, 503 S.E.2d 161 (1998).

The Defendant's contention in its ground three that the Plaintiffs had "opened the door" to the issue, by presenting evidence that the Plaintiffs had requested that the sign permits be reissued, is misdirected. It was because of the Defendant's contention that the

Plaintiffs failed to mitigate damages that this evidence was necessary. In the absence of that evidence having been presented by the Plaintiffs, the Defendant would have contended that the Plaintiffs made no effort to have the permits reissued. It was the mitigation defense, invoked by the Defendant, that made this evidence necessary.

2. The Defendant's ground that Duke Durden was not qualified to give an opinion as an expert real estate appraiser, is without merit. Duke Durden did his investigation and prepared a lengthy written report (59 pages) with copies of documents referenced in his report appended thereto. He is a State Certified General Real Estate Appraiser. He has practiced his calling for many years. He lives in Fairfield County. He is familiar with land and land values in Fairfield County. He has served on the Fairfield County Planning Commission, including service as Chairman. He has performed thousands of appraisals.

A copy of Mr. Durden's report was furnished defense counsel. Thereafter defense counsel deposed Mr. Durden at length about all aspects of his report. Defense counsel also cross-examined Mr. Durden at length during the trial, both as to his qualifications and as to his report (a copy of which defense counsel had in hand during much of the cross-examination). During the cross-examination, Plaintiffs' counsel made no objection to any question asked him by defense counsel. Full opportunity and total latitude were allowed on the cross-examination of Mr. Durden. Mr. Durden was not a creature from the swamp snuck in under the cover of darkness through the cellar of the Courthouse the night before the trial as a surprise witness. What his anticipated testimony would be and the basis upon which his opinions rested were well known and published beforehand both in his written report and on his deposition.

South Carolina Evidence Rule 702 says:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Durden qualified in each category "by knowledge, skill, experience, training, [and] education." He was previously qualified and had testified previously as an expert witness in civil litigation in South Carolina.

The qualification of a witness as an expert in a particular field is within the sound discretion of the trial judge. ... In any event, where an expert's testimony is "based upon facts... sufficient to form a basis for an opinion..." it is within the province of the jury to determine its probative value.

Smoak v. Liebherr-America, Inc., 281 S.C. 420, 315 S.E.2d 116, 118 (1984). Recently the Court of Appeals said in the case of Thomas Sand Company v. Colonial Pipeline Company, 349 S.C. 402, 563 S.E.2d 109, 113 (Ct. App. 2002):

"The test for qualification is a relative one that is dependant on the particular witness's reference to the subject" (Cite omitted). "The term 'expert' has many lights and shadows. It can denote a man who is a recognized authority and, perhaps as accurately, a fellow who once went to the city. At what point between these two extremes he will be allowed to express an opinion on the witness stand will be for the trial judge to decide in the first instance."

Because he met the criteria for an expert real estate appraiser, Duke Durden was properly qualified as an expert witness in this case.

3. The Defendant's grounds 5, 6 and 7 assign error in failing to give certain charges requested by the Defendant. No exceptions were taken by the Defendant to the charge as given. (Rule 51 SCRCP.) In any event, the failure to give the requested charges was not prejudicial. The request to charge about criteria in a condemnation proceeding would

have been inappropriate because this is not a condemnation case. The jury was informed, through the evidence presented, that the South Carolina Department of Transportation was condemning a portion of the property. There was no mystery or secret about this. It was in the mix of information and facts the jury had to reach its decision. The requested charge about a non-conforming sign was inappropriate. Under the evidence, but for the sign falling, the signs would have remained, whether or not non-conforming. The request pertaining to the "economic loss rule" was properly denied. The inapplicability of the economic loss rule in this case was discussed at length in the Plaintiffs' Trial Brief and is incorporated herein by reference to avoid repetition.

CLAIMED EXCESSIVE VERDICT

The Defendant's contention that the verdict was excessive because "it included damages for future loss of profits which were not within the required standard of certainty" ignores both the proof and the applicable law. The issue was not whether future profits were lost. That is a given under the facts. The challenge is whether the proof was sufficient. The Plaintiffs submit that it was more than sufficient. The Plaintiffs' economic expert presented three tables of projected potential income, based upon different scenarios. The jury did not adopt the smallest nor the largest in terms of dollar figures that were presented.

The Defendant's contention that the expenses of Piedmont Promotions, Inc. should have off-set future profits, was and is a contention only. That contention was at the heart of Dr. Teel's effort at minimizing, in his view, future profits. However, there were multiple flaws in his presentation. Damage to the real estate and damage to Piedmont because of cessation of revenue from the leases of customers renting space on these three signs were the

Plaintiffs' damages. Merely because the Defendant sought to compromise and confuse the issue by dragging in the overall business operations of Piedmont and to demean Piedmont as a "risky" business [Dr. Teel] could not have the effect of changing the facts. The claim was for revenues lost as a consequence of these three signs being down. This was demonstrated in the cross-examination of Dr. Teel as to whether his opinion of future profits would be the same had the signs been owned by "Widow Jones" and were they her only asset and source of income. In any event, the collateral source rule (which was correctly charged the jury) protects a damaged plaintiff from being denied full recovery from the tortfeasor because the injured plaintiff may realize payment or offset for some of his actual losses from a collateral source (in this instance a claimed tax benefit by reason of having depreciated and/or deducted the value of the signs as a casualty loss on income tax returns).

More telling, however, is the testimony of the Defendant's expert, Dr. Teel. Dr. Teel did his study and analysis and gave his view of what the lost profits should be. In doing so, however, he candidly acknowledged on cross-examination that the methodology employed by him and employed by the Plaintiffs' expert, and others in the economic field, was exactly what they did. That is: they made projections into the future as to what anticipated profits would be, based upon experience and the information available. Dr. Teel acknowledged that this is a routine and common practice in the financing field by lending institutions when determining the merit of loans in proposed profit-making ventures. Simply stated, it is the way things are done. Dr. Teel also candidly acknowledged that there were "other ways" of doing the projections other than the way he did them.

The Plaintiffs' tried. They did their best to present a rational, feasible, realistic projection of lost profits. Dr. Teel did an expert job in attempting to minimize those lost profits. The jury, as the fact finder, made a decision based upon all the evidence presented.

The basic measure of actual damages is the amount needed to compensate the Plaintiff for the losses proximately caused by the Defendant's wrong so that the Plaintiff will be in the same position he would have been in if there had been no wrongful injury. Actual damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the Defendant. ... However, proof of amount of loss with absolute or mathematical certainty is not required. Ralph King Anderson, Jr., South Carolina Requests to Charge - Civil, 2002 §13-2.

Two major areas of damage were experienced by the Plaintiffs. Damage to real estate and loss of current and prospective income from rental of the signs.

Under South Carolina law, "[t]he general rule is that in case of an injury of a *permanent* nature to real property ... the proper measure of damages is the diminution of the market value by reason of that injury, or in other words, the difference between the value of the land before the injury and its value after the injury.

Yadkin Brick Company, Inc. v. Materials Recovery Company, 339 S.C. 640, 529 S.E.2d 764 (Ct. App. 2000); Peoples Federal Savings & Loan Association v. Resources Planning Corporation, 358 S.C. 460, 596 S.E.2d 51(2004).

The law does not require absolute certainty of data upon which lost profits are to be *estimated*, but all that is required is such reasonable certainty that damages may not be based wholly on speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy.

Petty v. Weyerhaeuser Company, 288 S.C. 349, 342 S.E.2d 611 (Ct. App. 1986).

The Court correctly charged the jury on the law applicable to damages and prospective profits. No exception has been taken by the Defendant to the Court's charge on damages to real property and as to prospective profits.

In any event, where the wrongdoer creates a situation that makes proof of the exact amount of damages difficult, juries are allowed to act upon probable and inferential as well as direct and positive proof. Powers v. Calvert Fire Insurance Company, 216 S.C. 309, 57 S.E.2d 638 (1950); Johnston v. Brown, 290 S.C. 141, 348 S.E.2d 391 (Ct. App. 1986).

The Plaintiffs proved both past and future lost income and lost profits as a direct result of the sign falling and the remaining two signs having to be taken down at the mandate of the SCDOT because of legitimate safety concerns for the traveling public.

A verdict will not be set aside for excessiveness unless there is a showing that the verdict is a result of caprice, passion, prejudice or other considerations outside the evidence. Norton v. Ewaskio, 241 S.C. 557, 129 S.E.2d 517 (1963). Where the amount of the verdict bears a reasonable relationship to the character and extent of the injury and damage sustained, it is not excessive. Watson v. Wilkinson Trucking Co., 244 S.C. 217, 136 S.E.2d 286 (1964); Oliver v. Blackney, 244 S.C. 565, 137 S.E.2d 772 (1964); Baughman v. South Carolina Insurance Company, 249 S.C. 106, 152 S.E.2d 733 (1967); Cohen v. Allendale CocaCola Bottling Co., 291 S.C. 35, 351 S.E.2d 897 (Ct. App. 1986).

As to the Defendant's ground that the verdict indicated passion, caprice or prejudice or some other influence outside the evidence, one would have to reject the evidence presented by the Plaintiffs and consider only the evidence presented by the Defendant to

arrive at such a conclusion. The verdict was certainly responsive to the evidence. In fact, a verdict two or three times the amount of actual damages that were awarded by the jury would have been supported by the evidence. Under the evidence presented, the jury's verdict was more than supported. Under the facts it was more than justified.

PUNITIVE DAMAGES

Punitive damages are recoverable when the evidence shows a willful, wanton or malicious invasion of the rights of the Plaintiff and "the test by which a tort is to be characterized as reckless, willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the Plaintiff's rights." (Emphasis added)

Fennell v. Littlejohn, 240 S.C. 189, 125 S.E.2d 408, 413 (1962) (Verdict for \$2,000.00 actual damages and \$8,000.00 punitive damages [4 to 1 ratio]). The test has been more than met in this case. As required, the test has been met by clear and convincing evidence.

1. The design plans for the signs were not followed;
2. No design plans were followed;
3. Building code requirements were not met;
4. Industry standards were not met;
5. Thinner and weaker (1/2 inch thick instead of 3/4 inch thick) material was used;
6. More sections of pipe were used than the design plans called for which created a hinge effect at the splices;
7. The base section of pipe was too short to sustain the stresses caused by the additional sections and the methodology of splicing and welding;
8. Only two interior rings on each splice were installed instead of the minimum three

rings required;

9. The insertion depth (embedment) at each splice was too shallow and insufficient.
10. The method and style of welding the sections was inadequate and deficient;
11. The cap ring at each splice was not larger than the receiving pipe, which prevented having a more effective weld.
12. Failing to adequately inspect and repair the sign deficiencies when inspections and repairs were done two or three days before a sign fell.

The Defendant implemented all of the defects in the sign towers as constructed. This was not the first sign the Defendant had constructed. The Defendant had obtained drawings for signs he had made before and had used a design engineer in Athens, Tennessee (Thompson Engineering Group) and had "stacks" of drawings prepared by this engineering firm for previous signs constructed by the Defendant. This demonstrates, along with other evidence, that the Defendant was not a novice in building signs. Accordingly, the decision not to follow the Thompson drawings was a **conscious** decision. It was not mere inadvertence or oversight. The decision to use oversized or undersized pipe was a **conscious** decision. The decision to use a shorter section base pipe was a **conscious** decision. The decision to have only two interior rings instead of a minimum of three was a **conscious** decision. The decision to use a cap ring which was not larger than the receiving pipe at the splice (which would have permitted a more effective weld) was a **conscious** decision. The decision to use one-half inch diameter metal instead of the called for three-quarter inch diameter metal was a **conscious** decision. The decision to use a shorter base pipe instead of the longer base pipe was a **conscious** decision. The decision to use more sections and splices

(calling for more rings and stouter welding) was a **conscious** decision.

The question naturally surfaces as to **why** an informed and experienced sign builder would pursue such egregious practices. It is submitted that the evidence furnishes the only inference which explains (but does not excuse) why it was done. The construction and erection of the signs was completed on February 22, 2000. In his December 29, 2000 fax letter to Sam Rhodes, Mr. Eadon said that C&B Fabricators (not C&B Fabrication) went out of business April 3, 2000 (Plaintiffs' Exhibit 8B).¹ That was six weeks after the signs were erected. According to the Defendant's economist, C&B Fabricators, Inc. was not a successful business and that is why it stopped doing business. Mr. Eadon reportedly lost one

¹ It was C&B Fabricators, Inc. which stopped doing business April 3, 2000, not C&B Fabrication. Mr. Eadon has been consistent in what happened to C&B Fabrication, both on his deposition and in his testimony at the trial. He testified in both instances that C&B Fabrication (not a corporate entity but a name in which Mr. Eadon was doing business) merged into Lowcountry Signs & Fabrication. Lowcountry Signs & Fabrication was chartered May 1, 2000 (just four weeks after C&B Fabricators, Inc. ceased doing business). Mr. Eadon testified, both on his deposition and at the trial that C&B Fabrication merged into Lowcountry Signs & Fabrication. Documents introduced into evidence, bank statements and cancelled checks, confirmed "C&B Fabrication d/b/a Lowcountry Sign Fabrication, Inc. ". Mr. Eadon identified checks signed by him in September 2000 as "C&B Fabrication D/B/A Lowcountry Sign Fabrication Inc." (Plaintiffs' Exhibit 47). That was over five months after C&B Fabricators, Inc. stopped doing business on April 3, 2000, according to Mr. Eadon's letter of December 29, 2000. Mr. Eadon confirmed that Lowcountry Signs was later dissolved. C&B Fabricators, Inc. is still in existence as a corporation. It has not been dissolved. The contention of the defense, in the pleadings and other pre-trial documents submitted to the Court has advanced the contention that C&B Fabrication and C&B Fabricators, Inc. are one and the same. However, that has never been the case. The testimony of Mr. Eadon, both on his deposition and at the trial confirm the true circumstance, to wit, that C&B Fabrication (not ever a corporate entity) did business as Lowcountry Signs and Lowcountry Signs thereafter was chartered and later dissolved. The "contention of the defense" that C&B Fabricators, Inc. and C&B Fabrication were one and the same was a misdirection ploy. The jury followed the path of accuracy in this case based upon solid evidence, not upon contentions.

and a half million dollars. Accordingly, C&B Fabricators, Inc. was a failing business at the time the signs were made. The Defendant elected, in that circumstance, to use inventory remnant material to make signs to cut his losses. That is a reasonable inference and the only plausible one under the evidence presented. The Defendant offered no other explanation.

The Defendant knew at the time these signs were being made from inventory remnants that they were going to be erected alongside Interstate 77. The Defendant knew their height would reach the travel lanes of Interstate 77. The Defendant knew, or at least should have known, that such shabby and impermissible construction was a hazard not only to Sam Rhodes but to the motoring public. Yet the Defendant pursued erecting these disasters-waiting-to-happen. As the evidence revealed, as constructed and as erected, those signs were going to fall down. It was only a matter of when. The "when" occurred about eleven months after they were put up. In the face of such an indifferent practice, clear and convincing evidence is almost a slam-dunk. A motorist traveling Interstate 77 in South Carolina should not have troubled thoughts as to whether a billboard sign is going to fall on the Interstate because of junk-yard style construction. The South Carolina Department of Transportation officials should not be burdened with the troubling question of whether billboard signs along Interstate 77 have been constructed and erected by shade-tree fabricators without reference to design considerations, code requirements, or industry standards. The tax-payer should not be burdened with the cost of having additional personnel on the State payroll to minutely inspect each outdoor advertising billboard sign to assure that it complies with the minimum requirements. In private enterprise the State should not be burdened with furnishing the fabricator or the owner-to-be with an architect

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) THE COURT OF COMMON PLEAS
) FOR THE SIXTEENTH CIRCUIT

Auto-Owners Insurance Company,) Case No.: 02-CP-46-2369
)

Plaintiff,)

v.)

Samuel W. Rhodes, Jr., Piedmont
Promotions, Inc., Marion L. Eadon,
C&B Fabrications, Inc., and Low
Country Signs, Inc.,)

Defendants.)

MOTION FOR SUMMARY
JUDGMENT OF DEFENDANTS
MARION L. EADON, C&B
FABRICATORS, INC. AND LOW
COUNTRY SIGNS, INC.

TO: A. JOHNSTON COX, ESQUIRE, ATTORNEY FOR PLAINTIFF AUTO-OWNERS INSURANCE COMPANY:

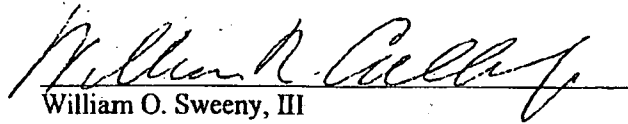
PLEASE TAKE NOTICE that Defendants Marion L. Eadon, C&B Fabricators, Inc., and Law Country Signs, Inc. will move before the Court immediately, and do hereby so move, for an Order granting them summary judgment on the issue of whether the general liability insurance policy sold by Auto-Owners Insurance Company to these Defendants provided coverage to Mr. Eadon for damages awarded against him in the underlying action, Rhodes v. Eadon, d/b/a C&B Fabrications.

This motion is made under Rule 56, SCRPC, on the ground that South Carolina law is clear that insurance policies are to be construed in favor of coverage if that is reasonably possible. Given the evidence and jury instructions in the underlying case, the affidavits submitted herewith and the words of the policy, the policy issued by Auto-Owners in this case provides coverage to Mr. Eadon for the \$6.5 Million judgment awarded against him for actual and punitive damages.

This motion will be supported by affidavits and a memorandum of law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "William R. Calhoun, Jr.", is written over a horizontal line.

William O. Sweeny, III
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANTS MARION
L. EADON, C&B FABRICATORS, INC, AND
LOW COUNTRY SIGNS, INC.**

Columbia, South Carolina

February 14, 2005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CALENDAR NO. 02-CP-46-2369
	)	
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	BRIEF OF DEFENDANTS SAMUEL W.
	)	RHODES, JR. AND PIEDMONT
	)	PROMOTIONS, INC.
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. and Marion L.	)	1. IN SUPPORT OF THEIR MOTION
Eadon, C&B Fabrications, Inc.,	)	FOR SUMMARY JUDGMENT; AND
and Low Country Signs, Inc.,	)	
	)	2. IN OPPOSITION TO PLAINTIFF'S
Defendants.	)	MOTION FOR SUMMARY JUDGMENT
	)	

INTRODUCTION

This is a Declaratory Judgment (DJ) action in which the Plaintiff Auto-Owners Insurance Company (Auto-Owners) seeks a declaration of no coverage under its liability insurance policy issued to C&B Fabrications, Inc. and Low Country Signs, Inc.¹ The Defendants, Samuel W. Rhodes (Rhodes) and Piedmont Promotions, Inc. (Piedmont) ask for a declaration that the Plaintiff's policy of insurance does afford insurance coverage for the events alleged [and proved at the trial] in the Amended Complaint in the underlying action.

These Defendants instituted a civil action in the Court of Common Pleas for Fairfield County, South Carolina against Marion L. Eadon, d/b/a C&B Fabrication (Eadon or C&B) in which they sought recovery for damages to real estate owned by Rhodes and lost income

¹ There was no corporate entity "C&B Fabrications, Inc.". There was no corporate entity "Low Country Signs, Inc.". This will be discussed in detail in this brief.

by Piedmont as a result of C&B having designed, fabricated and erected three outdoor advertising billboard sign towers (sign or signs) in Fairfield County, SC which were negligently designed, fabricated and erected and which defective condition C&B failed to discover and correct on its inspection after notice was given of one of the signs leaning. One of the signs later fell on Interstate I-77 and because of safety concerns the South Carolina Department of Transportation (SCDOT) mandated that Rhodes take down the remaining two signs which was done. The action was tried the week of August 30, 2004. The Plaintiffs proved damages to the real estate and resulting damage to Piedmont because the property it had leased lost income it would have received had the signs remained. At the end of the four-day trial the jury returned a verdict for the Plaintiffs under the Negligence cause of action for \$3,000,000 actual damages and \$3,500,000 punitive damages. On the Contract cause of action and the Implied Warranty cause of action Plaintiffs' verdicts for \$5,000 actual damages in each were awarded. No other causes of action were submitted to the jury. Rhodes and Piedmont elected to recover on the Negligence cause of action in which the jury rendered the \$6,500,000 verdict. Judgment was entered by the Clerk of Court on the jury's verdict on September 2, 2004. The Defendant's post-trial motions were denied.

In this DJ action the Defendants Rhodes and Piedmont in their Answer ask for a declaration that the policy affords liability insurance coverage to C&B for the event and resulting damage proximately caused by the negligence, recklessness and willfulness of C&B. The issues are before the Court on cross-motions for Summary Judgment.

FACTUAL BACKGROUND

Rhodes is the sole owner and stockholder of Piedmont, a South Carolina S-Corporation. Rhodes and Piedmont own or lease outdoor advertising space in various

locations. Rhodes obtained permits in the name of Piedmont to erect three outdoor advertising signs on real estate owned by Rhodes in Fairfield County adjacent I-77. A proposal dated July 9, 1999 by C&B to design, fabricate, deliver and install the three outdoor signs was submitted to Rhodes by C&B. The proposal was on the letterhead of C&B Fabrication. Nothing on the proposal indicated that C&B is a corporation. The initial proposal by C&B was for \$155,460.00. This was negotiated downward to \$153,960.00. This revised proposal was accepted by Rhodes on August 4, 1999. When the proposal was accepted by Rhodes he paid one-half the agreed price to C&B. On February 8, 2000 a second payment check to C&B was made by Rhodes and on February 22, 2000 the third and final check to C&B was made when the installation of the fabricated signs was completed by C&B. When Rhodes made the final payment to C&B he requested, as a condition of making the final payment, a copy of the engineering drawings for the signs. On February 22, 2000, Tracy Benenhaley, C&B's man on the erection site, furnished Rhodes a copy of the drawings purporting to be the ones from which the signs had been fabricated. These drawings were prepared by Thompson Engineering Group, L.L.P. of Athens, Tennessee for "C&B Fabrication" and were dated July 13, 1999. Nothing on the drawing indicated C&B is a corporate entity. (See Rhodes' Affidavit)

In December 2000, approximately ten months later, the middle sign was discovered leaning toward I-77. Rhodes reported this to Eadon who was requested to correct the leaning sign and to inspect the other two signs and make any needed corrections to them. On or about Wednesday, January 17, 2001 Eadon had adjustments made to the leaning sign. Rhodes was on the premises when Eadon's personnel were correcting the leaning sign. He requested that they inspect the other two signs and was assured by them that they would do

so.

Rhodes testified that when he was informed that one of the signs was leaning he went to the location and discovered that the middle sign was leaning. He contacted Eadon to have the leaning sign repaired and inspect the other two signs. Rhodes testified on his deposition:

A: I talked to him and Marion. Somehow or another, I don't know if they were together or what, because I called C&B or Marion and this guy calls me back, and so I don't know if they were.

Q: You don't know if they were together or Marion was shutting his business down?

A: Marion ended up sending people to come fix it.

Q: Did someone come out to fix that sign?

A: Yes, sir.

Q: Do you know what repairs were made on that sign?

A: They came out to fix that sign and they were supposed to inspect all signs and make sure there were no problems with any of them.

Q: Do you remember was it C&B or was it Low Country?

A: C&B

Q: They came out, do you remember what they did as far as repairs, if any, they made?

A: When I left the location they had the middle sign hooked up to a crane and they were supposedly restraightening the sign, and assured me there was no danger and that they would inspect all signs and make sure there was no danger, and everything was fine before they left.

Q: Do you recall approximately when this was?

A: That should have been in January of 2001. (pp. 37-38)

Q: Could you tell me factually – you had told me someone came out from C&B to try, apparently failing to repair, but you thought repairing the sign. Do you know the time frame between when they

did that repair that you saw and when the sign actually fell?

A: Would you have a calendar? If not, I can guess.

Q: I won't hold you to it as a firm date, just what you believe.

A: Two days.

Q: Within two days after they were making the repairs?

A: Yes, sir, two or three. (Rhodes deposition, pp. 44-45)

On the afternoon of January 20, 2001, one of the signs fell on I-77 across both southbound traffic lanes. The sign that fell was the southernmost sign, not the one previously leaning, which was the middle sign. The SCDOT required Rhodes to immediately take down the remaining two signs because of safety concerns. On January 23, 2001 the SCDOT gave written notice of cancellation of all three outdoor advertising billboard permits.

THE UNDERLYING ACTION AND ITS JUDGMENT

The Amended Complaint of Rhodes and Piedmont in the underlying action against C&B alleged (Paragraph 11):

In December, 2000, it was observed that one of the three signs was leaning towards Interstate Highway I-77 and this was reported to the Defendant who was requested to correct the leaning and to inspect the other two signs and make any needed corrections to them. On or about Wednesday, January 17, 2001, the Defendant made adjustments to the sign that was leaning and purportedly checked the other two signs.

The Rhodes and Piedmont Amended Complaint alleged (Paragraph 20 e):

As a consequence of having to remove the signs pursuant to the mandate of the South Carolina Department of Transportation, permanent fixtures on the Plaintiff's real property had to be removed which has resulted in significant injury to the Plaintiff's real property and has significantly impaired its value and usefulness, which injury cannot be replaced or repaired under the current mandates of the South Carolina Department of Transportation prohibiting the use of signs at this location.

Rhodes testified on his deposition that as a result of the sign falling and the other signs having to be removed at the mandate of the SCDOT that his real estate has been damaged because "Well, my real estate is not worth what it was with the signs up." (p. 28) Excerpts from Rhodes' deposition are attached as Exhibit 1. Rhodes testified to the same effect at the trial. Also at the trial the Plaintiffs' real estate expert appraiser, C. Duke Durden, testified that as a result of the sign falling and the consequences flowing therefrom that the Fairfield County real estate has been damaged. (See Rhodes' Affidavit). The jury's verdict was based upon evidence of damage to the real estate as a proximate result of the sign falling on I-77 and the consequences therefrom.

In the underlying action, the Court has already faced the issue of the nature of damage which Rhodes and Piedmont sought to recover and, in fact, recovered. The Court refused the Defendant's Motion to change the venue of the action from Fairfield County to Clarendon County (where Eadon resides) because under the allegations of the Complaint, the action was one for "injuries to real property in Fairfield County." When permanently installed on this real estate the three signs became fixtures and a part of the real property. The fixtures made the real property income producing. They were equivalent to a growing crop, a peach orchard or a stand of timber. Damage to growing crops is an injury to real estate. Pierce v. Marion County Lumber Company, 103 S.C. 261, 88 S.E. 135 (1916).

The allegations of the Amended Complaint in the underlying case, reflect that the allegedly defective design, fabrication and erection of the three signs and the subsequent negligent inspection and repair of the three signs, two or three days before one of them fell on I-77, the forced removal by public authority of the remaining two signs, which made the real estate no longer income producing with the fixtures removed and its value reduced,

constitutes "property damage" to real property. The jury's verdict in favor of the Plaintiffs in the underlying action based upon the evidence presented of damage to real property confirms as a matter of fact and as a matter of law for all purposes connected with the instant case that there was in fact "property damage" to real property in Fairfield County as a result of the sign falling on I-77 and the consequences flowing therefrom.

Kershaw County Board of Education v. United States Gypsum Company, 302 S.C. 390, 396 S.E.2d 369 (1990), was an action by the School District against the manufacturer of ceiling plasters containing asbestos which were installed in school buildings. The Supreme Court affirmed the Trial Court's ruling that the economic loss rule did not bar causes of action in negligence and breach of warranty. The District sought "money damages for the costs of inspection, testing, and the removal of the hazardous asbestos material from the school buildings. ... The jury returned a verdict for \$200,000.00 on the negligence cause of action and \$25,000 on the warranty cause of action." The opinion states: [396 S.E.2d 371]

As we noted in *Kennedy*, the economic loss rule is the general rule that there is no tort liability for a product defect if the damage suffered by a plaintiff is only to the product itself. 299 S.C. at 341, 384 S.E.2d at 734. We also noted our difficulty with the economic loss rule generally, and we partially rejected the rule in the residential home building context. *Id.* We have not yet been presented with the question of whether the rule should be so rejected in all contexts, including the commercial arena, and we need not address that issue here, as this case may be disposed of on narrower grounds.

The sole issue which needs to be addressed here is whether the economic loss rule applies when a plaintiff claims and proves "other property damage". We held in *Kennedy* that the rule does not apply where other property damage is proven. 299 S.C. at 341, 384 S.E.2d at 734. In addition, we agree with and adopt the reasoning of the recent District Court decision in *City of Greenville v. W.R. Grace & Co.*, 640 F.Supp. 559 (D.S.C. 1986), *aff'd* 827 F.2d 975 (4th Vir. 1987). In *W.R. Grace*, an asbestos case, the District Court held that the economic loss rule does not preclude an action in tort, for damages sustained where a defendant's product caused damage to other property of the plaintiff. We therefore, need only to follow *Kennedy* and *W.R. Grace* in order to dispose of Gypsum's argument here,

since Kershaw has alleged and offered proof of other property damage.
(Emphasis added.)

The "other property damage" in *Kershaw* was "the costs of inspection, testing and the removal of the hazardous asbestos material." Property damage alleged and proved by Rhodes and Piedmont in the underlying action was damage to the real estate and the costs of removal of the signs. Damage to the real estate included physical damage in that its physical features were altered and changed (permanent fixtures were removed) and it was left with residual buried (twenty-eight feet in poured concrete) metal stumps (twenty-one feet above-ground) and wreckage of the sign remnants which will be costly to remove.

Allegations in the Amended Complaint in the underlying action of defective design and fabrication of the three signs and the subsequent negligent inspection and repair of the three signs, two or three days before one of them fell on I-77, were proved at trial. The forced removal by public authority of the remaining two signs made the real estate no longer income producing with all three permanent fixtures removed, and that fact significantly reduced its value. That constitutes "other property damage" to real property. C&B has been found liable in negligence for that "other property damage."

THE POLICY

The policy obligates Auto-Owners to "pay those sums that the insured becomes legally obligated to pay as damages because of ... 'property damage' to which this insurance applies." [Section I; Coverage A, 1, a (page 1)]. By reason of the verdict in the underlying action, the insured has become legally obligated to pay damages to Rhodes and Piedmont for "property damage".

The policy provides that the insurance applies to property damage only if the "property damage" is caused by an "occurrence" that takes place in the coverage territory.

[Section I; Coverage A, 1, b, (1) (page 1)]. "'Occurrence' means an accident." [Section V, 9 (page 13)]. The verdict in the underlying action establishes that there was an occurrence.

"'Property damage' means:

- a. physical injury to tangible property, including all resulting loss of use of that property. ...
- b. Loss of use of tangible property that is not physically injured.[Section V 12, a., b. (pages 13 and 14)].

Physical injury to tangible property and loss of use of tangible property was proven in the underlying action.

The plain, ordinary meaning of "damages" is monies paid on an insured's loss, in this case, from property damage. An "ordinary" meaning of the term is not a legalistic one dependent on whether the damages are classified as legal versus equitable. (Cite omitted.) "The policy language, 'all sums which the insured shall become legally obligated to pay as damages because of property damage,' can reasonably be interpreted to cover any claim asserted against the insured arising out of property damage, which requires the expenditure of money, regardless of whether the claim can be characterized as legal or equitable in nature." (Cite omitted). "To give words in an insurance contract a technical meaning simply by reading them 'in the insurance context,' would render meaningless our law's requirement that words be given their ordinary meaning unless a technical meaning is plainly intended."

Helena Chemical Company v. Allianz Underwriters Insurance Company, 357 S.C. 631, 594 S.E.2d 455 (2004). Although it arose under the commercial code, the holding of the Court in Gasque v. Eagle Machine Company Limited, 270 S.C. 499, 243 S.E.2d 831 (1978), is informative:

The issue then is whether damages in the form of diminution in value of the defective product and consequential economic loss constitute damage to the property of Appellant within the meaning of Code Section 36-2-318....

Diminution in value of the subject product and consequential loss of profits occasioned by its defective performance constitute property damage.

Auto-Owners' Amended Complaint alleges (Paragraph 19) that its "policy of insurance provides no coverage... with respect to the described lawsuit....". The prayer of the

Amended Complaint is for an Order that the "policy of insurance provides no coverage ... with respect to any injuries or damages arising out of the events described in the Complaint" in the underlying action.

However, the Affidavit of Carl Anders (Anders) Senior Claims Representative of Auto-Owners, submitted with Auto-Owners' First Motion for Summary Judgment (in December, 2003) states that Auto-Owners has in fact paid several invoices for expenses arising out of the sign falling on I-77. If no coverage exists under the policy, then no payments were called for nor should any have been made.

On February 8, 2001 (just nineteen days after the sign fell) Anders wrote C&B in which he said on page one "at this time we are unsure if an occurrence as defined by your policy has taken place." A copy of that February 8, 2001 letter is attached as Exhibit 2. However, when Auto-Owners' First Summary Judgment Motion was heard (and denied) on January 22, 2004, counsel for Auto-Owners stated to the Court:

The one sign that fell down and caused damages to the highway department and what not, I would contend that would be an occurrence because it is something that caused physical damage, a defect that caused physical damage to other property. (Transcript p.6, lines 4-8). (Emphasis added.)

A copy of page 6 of this transcript is attached as Exhibit 3. Auto-Owners has admitted there was an "occurrence".

In addition, Anders wrote Piedmont on August 2, 2001 (over six months after the sign fell) in which he said "we have coverage for resulting damages that this sign has caused and I have enclosed a draft to you in the amount of \$1800.00.... We will also have coverage for the expenses that the SCDOT has billed you for and I have paid that bill directly to them." A copy of this letter is attached as Exhibit 4. In addition, in a letter dated February 8, 2002 Anders wrote Eadon informing him that Auto-Owners was entering a defense to the Rhodes

and Piedmont action under a reservation of rights. In that letter Anders said:

We have paid for what we believe is covered property damage thus far under your Commercial General Liability Policy. We will be defending presently due to the claim of damage to real property that is alleged in the suit papers.... Should the claim of damage to real property be dismissed, there is a strong likelihood that we will no longer be providing a defense to you. (Emphasis added.)

A copy of that Anders letter dated February 8, 2002 is attached as Exhibit 5. Thus, Auto-Owners has acknowledged that it does have coverage for this event. It has acknowledged that it has coverage for "the claim of damage to real property." By reason of the verdict of the jury, upon which judgment has been entered, it is no longer merely a "claim" of damage to real property. As a matter of fact and as a matter of law it has been proven that there was damage to real property. What Auto-Owners seeks to do in this action is to label and package the damage suffered by Rhodes and Piedmont as being damage only to the signs themselves and not damage to the real estate. This is demonstrated by the various exclusions relied upon by Auto-Owners as set forth in its Amended Complaint. (Paragraph 16).

Four policy exclusions are specifically referenced in Paragraph 16 of Auto-Owners' Amended Complaint: Exclusion k; Exclusion l; Exclusion m; and Exclusion n. Auto-Owners contends that its policy does not apply under these exclusions to

- a. "Property damage" to "your product" "arising out of it or any part of it" (Exclusion k);
- b. "Property damage" to "your work" "arising out of it or any part of it" (Exclusion l);
- c. "Property damage" to "impaired property" or property that has not been physically injured, arising out of (1) a defect deficiency, inadequacy or dangerous condition" "your product" or "your work" [but] 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. (Exclusion m);

- d. 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 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. (Exclusion n).

AUTO-OWNERS' PRESENTATION IS FLAWED

The focus of Auto-Owners is on its contention that damage to the fallen sign itself is an excluded area of coverage and because the fallen sign was damaged by its fall, other damage caused by the sign's fall is excluded. Once the signs became fixtures and a part of the real estate, they lost their character as items to be dealt with separately. Auto-Owners fails to recognize the fact that the signs became permanent fixtures and a part of the real estate once erected. As a result of the sign falling and the other two signs having to be taken down the real estate has been robbed of its income-producing status, left with useless embedded concrete stumps to be removed, and thereby damaged. That damage to real property has been proved.

Moreover, if there is no insurance coverage because of property damage to "your product arising out of it or any part of it" (Exclusion k); or "to your work arising out of it or any part of it" (Exclusion l); or for damages for "loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your product, your work, if such work or property is withdrawn from the market because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it" (Exclusion n), then the policy affords no liability insurance under any circumstance.

Liability under the policy, including the products completed operations portion of the policy, is incurred only as a result of (a) "your product, arising out of it or any part of it" or

(b) as a result of "your work arising out of it or any part of it." That is what the insurance was for: to cover liability for damage or injury to other property caused by the product (sign) or "work arising out of it or any part of it." There is nothing else to be insured. If that is not insured, nothing is insured.

The policy specifically has a "products-completed operations" coverage limit of one million dollars. If the product and the work connected with it, including the negligent inspection two or three days before the sign fell, which caused damage to real estate is not covered, then what does the policy cover? The answer is **nothing**! As to the language that the insurance does not apply to property damage to impaired property or property that has not been physically injured arising out of a defect, deficiency, inadequacy or dangerous condition in your product or your work (Exclusion m) this exclusion could not apply in any event. The real estate of Rhodes has been physically injured by the involuntary removal (by one falling and two at the direction of public authority) of the fixtures on it which, before removal, made the real estate income producing and productive. Their removal is a physical injury the same as if growing timber, a peach orchard or growing crop had been destroyed.

Furthermore, the exclusionary language (as to Exclusion m, which has the effect of eliminating Exclusion m from the discussion) that it (Exclusion m) "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" describes facts which confirm that this exclusion "does not apply." That is so because there was a sudden, accidental, physical injury when the sign fell. Auto-Owners admits that the sign had been put to its intended use. (Auto-Owners' Memorandum p.1). This falling sign started the domino effect which resulted in property damage to the real estate because it was thereby robbed of its income producing status because it no longer had its revenue-producing signs and the real

estate was left with useless twenty-eight feet buried concrete stumps and useless twenty-one feet above-ground metal columns.

Auto-Owners is silent about coverage under its policy applicable to a critical factual circumstance. That circumstance is the fact that Marion L. Eadon d/b/a C&B Fabrication worked on the leaning sign and had it corrected and negligently inspected or failed to inspect the other two signs just two or three days before one of the signs fell. Had the inspection been properly done, it would have detected the about-to-occur sign failure. The failure to inspect and correct a condition in the sign was a separate and independent act of negligence. The correction of the leaning sign and the flawed inspection (or non-inspection) of the sign that fell are not dependent upon the fact that Marion L. Eadon d/b/a C&B Fabrication had also designed, fabricated and installed the signs originally. The negligent inspection (or non-inspection) of the sign that fell was a liability of the negligent inspector whether it was Marion L. Eadon, d/b/a C&B Fabrication or someone else. The negligent inspection (or non-inspection) of the sign was one of the allegations in the Complaint upon which the negligence count rested.

THE LAW

Auto-Owners repeats its contention that there is no liability under the policy because "faulty workmanship, alone, does not constitute 'an accident' and cannot therefore be an 'occurrence.'" (Auto-Owners' Memorandum pp. 14-15). What Auto-Owners ignores, and seeks to avoid addressing, is that the underlying event is not faulty workmanship alone. It was faulty workmanship but it was more than that. The effort by Auto-Owners to limit the application of the facts in this case to its contention that there was damage only to the product itself and which resulted solely from faulty workmanship is contrary to the facts and to the South Carolina law. In the case of Kennedy v. Columbia Lumber and Manufacturing

Company, Inc., 299 S.C. 335, 384 S.E.2d 730 (1989) the Supreme Court made clear the circumstances under which tort liability is incurred:

Where a purchaser buys a product which is defective and physically harms him, his remedy is in either tort or contract. This is so, the analysis provides, because his losses are more than merely "economic." ...

If a builder performs construction in such a way that he violates a contractual duty *only*, then his liability is only contractual. If he acts in a way to violate a legal duty, however, his liability is both in contract and in tort. ...

A violation of a building code violates a legal duty for which a builder can be held liable in tort for proximately caused losses. *Terlinde*, 275 S.C. 399, 271 S.E.2d 770, imposes a legal duty on builders to undertake construction commensurate with industry standards. Where a building code or industry standard does not apply, public policy further demands the imposition of a legal duty on a builder to refrain from constructing housing that he knows or should know will pose serious risk of physical harm. ...

A cause of action in negligence will be available where a builder has violated a legal duty, no matter the type of resulting damage. ...

A builder may be liable to a home buyer in tort despite the fact that the buyer suffered only "economic losses" where: (1) the builder has violated an applicable building code; (2) the builder has deviated from industry standards; (3) the builder has constructed housing that he knows or should know will pose serious risks of physical harm.

In the underlying case Rhodes and Piedmont proved that Marion L. Eadon d/b/a C&B Fabrication (1) violated the applicable building codes; (2) deviated from industry standards; and (3) constructed signs that posed serious risk of physical harm. Proof of only one of these violations qualifies the tort action. Rhodes and Piedmont proved all three. Three times the breach of a legal duty was proven. (Trial testimony of Plaintiffs' expert structural engineer, Alan Campbell: sign was not built according to design; sign did not meet industry standards; sign did not meet code requirements; sign defective and not capable of withstanding code-prescribed wind loads; sign fell because it did not meet building code and industry standard requirements: Trial transcript, pp. 249-250; 9/30/04). The three times

breach of legal duty resulted in damage to real estate.

A general liability insurance policy typically does not cover claims of faulty workmanship, but instead covers claims of faulty workmanship that causes an accident. (Emphasis added.)

Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995).

Auto-Owners cites Stroup Sheet Metal Works, Inc. v. The Aetna Casualty & Surety Company, 268 S.C. 203, 232 S.E.2d 885 (1977). That case did not involve a tort action and did not involve allegations or contentions of negligence. That was the distinguishing factual detail in that case. The opinion repeatedly refers to that circumstance [232 S.E.2d, p. 887]:

There can be no doubt but that this action was one for breach of contract for faulty workmanship. Negligence was not alleged and the complaint may not be characterized as sounding in torts. No occurrence (or accident) as defined in the policy was alleged.

Auto-Owners also cites Laidlaw Environmental Services (TOC), Inc. v. Aetna Casualty & Surety Company of Illinois, 338 S.C. 43, 524 S.E.2d 847 (Ct. App. 1999). Again, that case has no application to the instant case. There were multiple issues in Laidlaw but for purposes pertinent here only one need be mentioned. The following sentence from the opinion makes that clear:

It is undisputed that this policy specifically excludes products-completed operations hazard coverage.

The Laidlaw opinion is quite specific that the insured in that case "specifically rejected such [products-completed operations] coverage." [524 S.E.2d, p. 849]. In the instant case, "it is undisputed that [Auto-Owners'] policy specifically [includes] products-completed operations hazard coverage." The Declarations page of the Auto-Owners policy has a specific entry "products-completed operations aggregate limit: \$1,000,000."

Auto-Owners relies upon the case of L-J, Inc. v. Bituminous Fire and Marine Insurance Company, 2004 WL 1775571 (Decided August 9, 2004). L-J, Inc. is clearly distinguishable on the facts. [Although this opinion was issued over six months ago a petition for rehearing was pending as of January 31, 2005.] The holding in L-J, Inc. is simply that "we find that no 'occurrence' took place as defined by the CGL contract." The Court held that there was "damage to the roadway system only" under those facts. The Court did not make any new law or change any existing law in that case. The Court affirmed existing law (quoting Dean Henderson), saying:

The risk intended to be insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to **property other than to the product** or completed work itself and for which the insured may be found liable. ... (Emphasis in original).

We agree that the CGL policy may provide coverage in cases where faulty workmanship causes bodily injury or property damage to another.

In the instant case there was an occurrence. In the instant case there has been damage to property other than the product itself. The insured has been found liable for that damage. Accordingly, L-J, Inc. supports coverage under Auto-Owners' policy in the instant case.

Exclusions in an insurance policy are always construed most strongly against the insurer. Boggs v. Aetna Casualty & Surety Company, 272 S.C. 460, 252 S.E.2d 565, 568 (1979). If there are any ambiguities or conflicts in documents prepared by a party the provisions of the contract have to be construed favorably to the other party. Mid-Continent Refrigerator Company v. Way, 263 S.C. 101, 208 S.E.2d 31, 33 (1974). "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail. Parker v. Byrd, 309 S.C. 189,

420 S.E.2d 850, 853 (1992). "When a policy is 'susceptible to more than one reasonable interpretation, one of which would provide coverage, this Court must hold as a matter of law in favor of coverage'". S.C. State Budget and Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643, 647 (1991); Goldston v. State Farm Mutual Automobile Insurance Company, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004).

The traditional approach by a liability insurer in a Declaratory Judgment action as to coverage issues is to focus on individual trees, count the growth rings on the trees, and attempt to ignore that the forest exists. Auto-Owners has followed the traditional approach in this case.

It is suggested that the liability insurer's traditional approach misses and ignores the greater and total picture. One or two trees (claimed exclusions) do not constitute the forest. All the trees collectively make it a forest. One or two claimed exclusions cannot have the effect of eliminating the forest. Claimed exclusions must be viewed in the context of the entire policy (the forest). They must be viewed in the context of the facts (as established by the jury verdict and judgment entered) in the underlying civil action against the insured and, most importantly, in the context of the basic purpose for which the liability policy was obtained.

In that connection the case of Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996) is instructive. In that case Isle of Palms Pest Control was sued for fraud and negligence in connection with its having prepared and issued a termite inspection report which was relied upon by the purchaser of a home. It was "alleged that Isle of Palms conducted its inspection in a negligent manner. The Purchaser also included allegations for fraud, breach of contract, unfair trade practices, conspiracy, negligent misrepresentation, and

breach of warranty". Isle of Palms brought a Declaratory Judgment action against its insurer (Monticello) for a declaration that Monticello was obligated to defend and indemnify it in connection with the action by the Purchaser. Monticello contended that the policy did not provide coverage. The Trial Court and the Court of Appeals held that there was coverage under the policy. Excerpts from that opinion follow:

A general liability policy is intended to provide coverage for tort liability for physical damage to the property of others; it is not intended to provide coverage for the insured's contractual liability which causes economic losses. *C.D. Walters*, 281 S.C. at 596-97, 316 S.E.2d at 712. It is for this reason that **a general liability insurance policy typically does not cover claims of faulty workmanship, but instead covers claims of faulty workmanship that causes an accident.** *Id.* Here, however, the faulty workmanship did cause an accident - the improperly performed inspection resulted in continued termite damage. ...

Isle of Palms purchased a liability insurance policy to protect itself against claims for damage to property of others **caused by its negligence.** The declarations page of the policy included "exterminator" in the list of covered general liability hazards, and the premium was based primarily on Isle of Palms' receipts from its exterminating business. **To give effect to the professional liability exclusion would render the policy virtually meaningless, because it would exclude coverage for all claims arising from Isle of Palms' exterminating services, the very risk contemplated by the parties.** See *Canal Ins. Co. v. Insurance Co. of N. Am.*, ____ S.C. ____, 431 S.E.2d 577 (1993) (refusing to construe exclusion to prohibit coverage for the only vehicle contemplated by the parties). **The internal inconsistency created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured renders the policy ambiguous, and we must resolve that ambiguity in favor of coverage.** *South Carolina Budget & Control Bd. v. Prince*, 304 S.C. 241, 403 S.E.2d 643 (1991); *Millstead v. Life Ins. Co. of Virginia*, 256 S.C. 449, 182 S.E.2d 867 (1971) (ambiguity in exclusion should be resolved in favor of coverage). Accordingly, we refuse to interpret the exclusion so as to bar claims for property damage caused by Isle of Palms' negligence in performing its exterminating services. (Emphasis added).

In the underlying action Rhodes and Piedmont have proved that negligence of (the insured) Eadon d/b/a C&B proximately resulted in property damage to them. The underlying action was one for damage to real property as a result of the negligence, recklessness and

willfulness of the Defendant in the manner in which the three signs were designed, fabricated and erected, and in the failure of the Defendant to properly inspect and correct the flawed condition of the signs when it was brought to the attention of the Defendant after one of the signs was discovered leaning toward I-77 and before one of the signs subsequently fell on I-77 two or three days later. Negligent inspection was the tort in Isle of Palms.

In Isle of Palms the Court of Appeals said

because the Purchaser does allege Isle of Palms' negligence resulted in property damage, the policy issued by Monticello does provide coverage for such damage, and Monticello is therefore obligated to defend.

The underlying claim of Rhodes and Piedmont was "for tort liability for physical damage to the property of others." (*Isle of Palms*). That claim was proved by the jury verdict.

Furthermore, the Auto-Owners declarations page of its liability policy has the description of the business which is insured as "sign mfg." On the commercial general liability coverage declarations page it specifically identifies "products-completed operations aggregate limit" and describes the payroll code for "sign erection, installation or repair." The premium is based upon the payroll for this operation. This is the operation (design, fabricate, deliver and install, inspect and repair the three signs) C&B was engaged in which resulted in damage to the real property of Rhodes in Fairfield County as the result of the negligence of C&B. If the exclusions claimed by Auto-Owners are given effect they **"would render the policy virtually meaningless, because it would exclude coverage for all claims arising from [the C&B operation], the very risk contemplated by the parties."** (*Isle of Palms*).

Negligence was alleged by Rhodes and Piedmont. Negligence, recklessness and willfulness was proved! C&B did faulty workmanship (negligent design, fabrication, inspection and repair) which proximately caused an accident (a sign fell) which resulted in

property damage.

A general liability insurance policy typically does not cover claims of faulty workmanship, but instead covers claims of faulty workmanship that causes an accident. (Emphasis added.)

Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996).

The sign which fell on Interstate 77 was an accident. That accident occurred because of negligent design, faulty workmanship, inspection and repair. That is what the general liability policy of Auto-Owners was designed to cover. That is what Eadon expected to get, a general liability policy to cover his operations as a sign designer, fabricator, installer and repairer. That was the business activity insured. That was the purpose for obtaining the insurance.

One of the primary objectives of the law of contracts "is to carry out the reasonable expectations of the parties."

Kennedy v. Columbia Lumber and Manufacturing Company, Inc., 299 S.C. 335, 384 S.E.2d 730, 733 (1989). As to insurance contracts the Court should seek that "interpretation of the policy [which] best meets the fair expectations of the parties under the language of the policy." Joe Harden Builders, Inc. v. Aetna Casualty & Surety Company, 326 S.C. 321, 486 S.E.2d 89 (1997).

C&B FABRICATION IS INSURED UNDER AUTO-OWNERS POLICY

Auto-Owners asserts that "Marion Eadon is not an insured under the terms of the Auto-Owners' insurance policy." (Plaintiff's Memorandum p. 6). This contention, now made by Auto-Owners, is contradictory of all that Auto-Owners has said and done since the date of the occurrence, January 20, 2001, until January 14, 2005, six days short of four years later. The action by Rhodes and Piedmont was instituted against Marion L. Eadon, d/b/a C&B Fabrication. There was no ambiguity and no uncertainty about who was named as the

defendant in that action. In Anders' letter dated February 8, 2002 "certified mail return receipt requested" to Marion Eadon, he acknowledged having received the suit papers "against Marion L. Eadon d/b/a C&B Fabrications." The letter stated that Auto-Owners would be furnishing a defense under a reservation of rights. The thrust of that letter was that because of the claim of damage to real property the defense was being afforded and if the "claim of damage to real property be dismissed, there is a strong likelihood that we will no longer be providing a defense to you." (That letter is appended as Exhibit 5 to this Brief).

There was nothing in the Anders letter which raised any question about Marion L. Eadon d/b/a C&B Fabrication not being insured under the Auto-Owners policy. Indeed, "if the facts alleged in the Complaint fail to bring the case within the policy's coverage, the insurer has no obligation to defend." State Farm Fire & Casualty Company v. Barrett, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000). Accordingly, if Marion Eadon d/b/a C&B Fabrication was not insured under the policy, why did Auto-Owners enter a defense at all? Had Marion L. Eadon d/b/a C&B Fabrication not been insured under its policy Auto-Owners would have said so.

Auto-Owners filed the instant DJ action on October 14, 2002. In its Complaint it did not allege or contend that Marion L. Eadon d/b/a C&B Fabrication was not an insured under its policy. Nothing in its Complaint creates an inference as to that. It raised questions only as to whether there had been an occurrence and whether four exceptions apply.

Five months later, on March 14, 2003, Auto-Owners filed an Amended Complaint in this DJ action. There is nothing in its Amended Complaint that raises any issue or presents any question as to whether Marion L. Eadon, d/b/a C&B Fabrication is insured under its policy. The Amended Complaint, like the original Complaint, referenced only the issue of occurrence and the four mentioned exclusions.

Furthermore, on March 6, 2003, Auto-Owners filed a Notice of Motion and Motion

to Intervene in the underlying action against Marion L. Eadon, d/b/a C&B Fabrication to be permitted to submit special interrogatories. That Motion contained the statement

Auto-Owners Insurance Company issued an insurance policy to the Defendant [Marion L. Eadon d/b/a C&B Fabrication] with liability coverage for the period of time relevant to this action (the "Policy").

Auto-Owners' Motion further stated that Auto-Owners had filed an action in York County "requesting that the Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against the Defendant." The Motion says without any qualification or limitation that its DJ action in York County is seeking a declaration of the rights and obligations of Auto-Owners "in relation to the claims made by the Plaintiffs in this action [Rhodes and Piedmont] against the Defendant [Marion L. Eadon d/b/a C&B Fabrication]. The Motion further states without qualification or limitation that Auto-Owners had "issued an insurance policy to the Defendant [Marion L. Eadon d/b/a C&B Fabrication] with liability coverage for the period of time relevant to this action." A copy of that Notice of Motion and Motion to Intervene by Auto-Owners is appended hereto as Exhibit 6.

Thereafter on April 21, 2003 Auto-Owners filed an Amended Notice of Motion and Motion to Intervene in the underlying action against Marion L. Eadon d/b/a C&B Fabrication in which Auto-Owners again stated

Auto-Owners Insurance Company issued an insurance policy to the Defendant [Marion L. Eadon d/b/a C&B Fabrication] with liability coverage for the period of time relevant to this action (the "Policy").

In its Amended Notice of Motion and Motion to Intervene Auto-Owners again stated that its DJ action in York County was to have that "Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs [Rhodes and Piedmont] in this action against the Defendant [Marion L. Eadon d/b/a C&B Fabrication]". A copy of that Amended

Notice of Motion and Motion to Intervene is appended hereto as Exhibit 7.

At the hearing on the Motion to Intervene in the Fairfield action, Auto-Owners submitted its Memorandum dated July 9, 2003 in which it again stated that Auto-Owners "is the insurance carrier for the Defendant [Marion L. Eadon d/b/a C&B Fabrication]. Auto-Owners also stated in its Memorandum (p.4) that "the Defendants [Marion L. Eadon d/b/a C&B Fabrication] have claimed Auto-Owners is obligated to indemnify them under their commercial general liability policy for any amount for which they are found liable to the Plaintiffs. And, pursuant to the terms of the policy, Auto-Owners' liability for indemnification, if any, will depend upon which claims the jury finds that the Defendants are liable to the Plaintiff." Auto-Owners further stated in its Memorandum of July 9, 2003 (p.5) "The same factual issue being determined by the jury - the amount of monetary loss sustained for each type of damage claimed - is at issue in both the present action between the Plaintiff [Rhodes and Piedmont] and the Defendants [Marion L. Eadon d/b/a C&B Fabrication] and the Declaratory Judgment action between the Defendants and Auto-Owners." A copy of that Memorandum In Support of Motion to Intervene is appended hereto as Exhibit 8.

Thus, the thrust of Auto-Owners' Motion to Intervene and the basis for it was that it needed to determine which causes of action the jury found in favor of the Plaintiffs and the amount and type of damages pertaining to each. The assertion was that it needed to determine whether damages awarded were under any cause of action covered by its policy. It asserted that the same factual issue existed in the DJ action. As a consequence of the trial and the result of the jury verdict and the judgment entered thereon, the only cause of action upon which judgment has been entered is the negligence cause of action. It clearly is one covered by the policy. The reasons Auto-Owners advanced in moving for intervention have all been resolved factually by the jury's verdict and the judgment entered on it. The

Amended Complaint in the underlying action contained eleven alleged causes of action. However, only three of those were submitted to the jury (Breach of Contract, Breach of Warranty and Negligence). The verdict on the Negligence cause of action is the one upon which judgment has been entered. Accordingly, what Auto-Owners stated in its Motion to Intervene Memorandum as the pending issues ["which claims the jury finds that the Defendants are liable to the Plaintiff" and the "amount for which they are found liable to the Plaintiffs"] have now been resolved. Now that those core factual issues have been resolved, Auto-Owners attempts to inject as a new issue its contention that Marion L. Eadon d/b/a C&B Fabrication is not insured under its policy.

Auto-Owners' Amended Complaint alleges that "Marion L. Eadon d/b/a C&B Fabrications, Inc. completed and installed the signs in February of 2000." (Paragraph 6). Auto-Owners' Amended Complaint alleges that it issued its policy "to C&B Fabrications, Inc. and Low Country Signs, Inc., which included property damage liability coverage, subject to certain conditions and exclusions set forth in the policy." (Paragraph 10). Auto-Owners' Amended Complaint also alleges that its "policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrications, Inc. with respect to the described law suit, by reason of the provisions of the insurance policy." (Paragraph 19). The only "provisions" of the policy mentioned in the Amended Complaint are "occurrence" and four exclusions. No issue is raised in the Complaint as to Marion L. Eadon d/b/a C&B Fabrication not being insured under the policy. Accordingly, that is not an issue before the Court.

The Court should not address a matter "either on its own motion, or at the request of counsel which tenders an issue that is not presented by the pleadings." Hendricks v. American Fire & Casualty Company, 247 S.C. 479, 148 S.E.2d 162, 168 (1966). Findings by a Trial Court that "went beyond the issues framed by the pleadings" were set aside.

Furman University v. Glover, 221 S.C. 1, 81 S.E.2d 559, 563 (1954). Moreover, "The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible." Elrod v. All, 243 S.C. 425, 134 S.E.2d 410, 416 (1964); Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322, 323 (Ct. App. 1992). An admission contained in a pleading in one action may be admitted in evidence against the pleader on a trial of another action. Young v. Martin, 254 S.C. 50, 173 S.E. 2d 361 (1970). Perforce the statements in its documents filed in Court, Auto-Owners is bound by its statements.

On December 29, 2003 Auto-Owners filed its first Motion for Summary Judgment. It's Motion for Summary Judgment did not raise or address any issue of Marion L. Eadon d/b/a C&B Fabrication not being an insured under its policy. The Motion for Summary Judgment was heard on January 22, 2004. During that argument and presentation no mention or reference was made or contention advanced that Marion L. Eadon, d/b/a C&B Fabrication was not insured under its policy.

Through counsel selected and furnished by Auto-Owners, Marion L. Eadon, d/b/a C&B Fabrication was defended in the underlying action to a jury verdict in favor of Rhodes and Piedmont and judgment has been entered on that jury verdict. Post-trial motions have been denied. Four months after the judgment was entered in the underlying case, Auto-Owners, for the first time, purports to raise the issue that Marion L. Eadon, d/b/a C&B Fabrication is not insured under its policy.

Auto-Owners' Memorandum refers to "C&B Fabrications, Inc." and "Low Country Signs, Inc." and gives these two names as Defendants in this action. Those are the two names

in the Auto-Owners policy as insureds. In fact, there is no corporate entity named "C&B Fabrications, Inc." In fact, there is no corporate entity named "Low Country Signs, Inc." There is a corporate entity named "Lowcountry Signs & Fabrication, Inc." chartered by Marion L. Eadon on May 1, 2000. A copy of the Articles of Incorporation of Lowcountry Signs & Fabrication, Inc. is attached hereto as Exhibit 9. Auto-Owners acknowledges in a footnote in its Memorandum that there is no corporate entity named "C&B Fabrications, Inc." and then states that ~~the~~ corporation chartered by Eadon is named "C&B Fabricators, Inc." It is true that Eadon chartered a corporation in the name of "C&B Fabricators, Inc." but that was only one of approximately ten corporations or partnerships that Eadon chartered with the Secretary of State of South Carolina. Eadon was quite familiar with the process of chartering corporations for his business operations. (Trial testimony of Eadon's accountant; Transcript pp. 178-180; 9-1-04). In Eadon's letter of December 29, 2000 to Rhodes, when they were addressing the matter of the leaning sign, and before a sign fell on January 20, 2001, Eadon stated that "C&B Fabricators went out of business April 3, 2000." A copy of that letter is attached hereto as Exhibit 10. (See Rhodes' Affidavit).

In its Memorandum Auto-Owners states that Eadon's defense in the underlying action was that "he was acting as an employee, officer or director of a corporation" (Auto-Owners' Memorandum, p.2) and "the jury found that C&B Fabrication was a separate entity from C&B Fabrication, Inc." (Auto-Owners' Memorandum p. 7). These are not accurate statements. The contention advanced by counsel retained by Auto-Owners to defend Eadon was that the wrong entity had been sued. The defense was not on the contention that Eadon had no liability because C&B Fabrication was a corporation. The defense contention was that the wrong entity had been sued, to wit, C&B Fabricators, Inc. was the entity which should have been sued. This is further demonstrated by the March 4, 2002 letter of defense

counsel to Plaintiffs' counsel in which it is stated that "the corporate entity with whom your client was doing business was C&B Fabricators, Inc. ... I ask that you please dismiss Marion Eadon as a defendant in this case and substitute C&B Fabricators, Inc." A copy of that letter is appended hereto as Exhibit 11. The Answer to the Amended Complaint in the underlying action alleged "that Eadon individually did not make the proposal to Rhodes, but C&B Fabricators, Inc. submitted a proposal to Rhodes." (Paragraph 6 of Answer to First Amended Complaint.) A copy of the Answer to the First Amended Complaint is attached hereto as Exhibit 12. The contention was that the transaction was between Rhodes and C&B Fabricators, Inc. There never was a contention or an issue as to whether C&B Fabrication was a corporate entity. There never was any evidence or treatment at the trial about "C&B Fabrication, Inc." To be clear beyond any question, there was never an issue raised by anyone, anytime, as to whether C&B Fabrication was or was not a corporate entity until now. No one has contended that C&B Fabrication was or is a corporate entity. It never has been a corporate entity. The trial excerpt included in the Auto-Owners Memorandum about non-liability of Eadon for any corporate liability, pertained only to the question submitted to the jury of whether the transaction was (1) between Rhodes and C&B Fabricators, Inc. or (2) between Rhodes and Marion L. Eadon d/b/a C&B Fabrication. Because the jury found (correctly so under clear facts) that the transaction was not between Rhodes and C&B Fabricators, Inc., the exchange about non-liability of Eadon as a corporate officer is moot. It has no relevance perforce the jury's finding that the transaction was between Rhodes and Marion L. Eadon d/b/a C&B Fabrication. Auto-Owners continues to advance a contention that was articulated by counsel retained by it to defend Eadon in the underlying suit that the transaction between Rhodes and Eadon was one between Rhodes and C&B Fabricators, Inc. That ploy was unsuccessful at the trial. The purpose of the ploy was to seek to shift any

liability to a defunct corporate entity which went out of business six weeks after the signs were installed. Had the verdict been rendered against C&B Fabricators, Inc., Auto-Owners would now be saying (correctly so) that C&B Fabricators, Inc. is not named as an insured under its policy. Auto-Owners' treatment of this item again is another misdirection ploy. The jury did find that Marion L. Eadon d/b/a C&B Fabrication was liable in negligence to Rhodes and Piedmont.

Marion L. Eadon was doing business as C&B Fabrication. A copy of a bank statement reflecting that is attached hereto as Exhibit 13. C&B Fabrication was doing business as Low Country Sign Fabrication Inc two weeks after C&B Fabricators, Inc. was no longer in business. Copies of printed checks of C&B Fabrication d/b/a Low Country Sign Fabrication Inc in April and May 2000 are attached hereto as Exhibit 14. [Note that the "Low Country Sign Fabrication Inc" language does not mirror the corporate name "Lowcountry Signs & Fabrication, Inc."] C&B Fabrication d/b/a Low Country Sign Fabrication Inc was still doing business in that name in September and November 2000. (Cancelled checks reflecting that fact are attached hereto as Exhibit 15. Bank statements of C&B Fabrication d/b/a Low Country Sign Fabrication Inc showing activity from April 17, 2000 to November 30, 2000 are attached hereto as Exhibit 16. Bank deposits were made with deposits slips printed "C&B Fabrication". (Eadon's testimony, Trial Transcript pp. 142, 144; 9/1/04). Eadon confirmed in his trial testimony that as of September 2000 "C&B Fabrication was doing business as Low Country Sign Fabrication Inc" (Trial Transcript p. 152; 9/1/04). Eadon testified at the trial that C&B Fabrication merged into Lowcountry Signs which continued to do basically what C&B Fabrication had been doing. (Trial Transcript pp. 158-159; 9/1/04).

The corrective work to the leaning sign and the inspection of the other two signs in

January 2001, two or three days before the sign fell was not done by C&B Fabricators, Inc. because it had been out of business since April 3, 2000, over nine months earlier. C&B Fabrication d/b/a Low Country Sign Fabrication Inc was still in business.

It is clear from the established record that, at the time the Auto-Owners policy was issued on September 17, 2000, Marion L. Eadon was doing business as C&B Fabrication; C& B Fabrication was doing business as Low Country Sign Fabrication Inc. The policy issued by Auto-Owners was obviously intended to cover the operation of C&B Fabrication, which was not a corporate entity, and Lowcountry Signs & Fabrication, Inc. which was a corporate entity. C&B Fabricators, Inc. had been out of business since April 3, 2000 and Lowcountry Signs & Fabrication, Inc was chartered on May 1, 2000. It clearly was not the design or intent of Eadon to acquire insurance for a defunct (C&B Fabricators, Inc.) corporate entity but to acquire the insurance to cover the operation of C&B Fabrication d/b/a Lowcountry Signs & Fabrication, Inc. The bank statements of C&B Fabrication for April to November 2000 show a cash intake of over \$346,000.00. That was the business in operation when the insurance was obtained for the policy year beginning September 17, 2000. The misnomer of the named insureds in the policy can not change the facts.

The evidence is clear. C&B Fabrication was doing business as Low Country Sign Fabrication Inc. Lowcountry Signs & Fabrication, Inc. is a named insured in the policy (albeit the name is a misnomer). C&B Fabrication is named as an insured in the policy (albeit the name is a misnomer). These two entities, one corporate and one individual, were intended to be insured under this policy. They are insured under this policy. The argument by Auto-Owners that because no verdict was rendered against Eadon as a corporate officer of C&B Fabricators, Inc. (a wholly separate, distinct and defunct entity) is merely a misdirection ploy. It is an impermissible stretch that does not accomplish the intended reach.

One of the primary objectives of the law of contracts "is to carry out the reasonable expectations of the parties."

Kennedy v. Columbia Lumber and Manufacturing Company, Inc., 299 S.C. 335, 384 S.E.2d 730, 733 (1989).

Certainly the "reasonable expectations" of Marion L. Eadon in acquiring the Auto-Owners policy was to insure his operation as C&B Fabrication d/b/a Lowcountry Signs & Fabrication, Inc. These are the entities named in the policy (albeit a misnomer). Auto-Owners has not been misled. It has not been misinformed. It has been fully cognizant of all these factors throughout. To permit Auto-Owners to succeed in what it is attempting to do now would be to allow it to afford no insurance coverage to any entity because both insureds names as they appear in the policy have never existed as legal entities. At the same time, the mere misnomer of the names of the insureds should have no effect on the efficacy of the contract of insurance as to the real and intended insureds. Even were the misnomer of the insureds an ambiguity (and these Defendants do not concede that an ambiguity exists as to this) then the "construction which is most favorable to the insured will be adopted."

Goldston v. State Farm Mutual Automobile Insurance Company, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004). That is because:

When a policy is "susceptible to more than one reasonable interpretation, one of which would provide coverage, this court **must hold as a matter of law** in favor of coverage." (Emphasis added.)

S.C. State Budget and Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643, 647 (1991); McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993).

SUMMARY JUDGMENT

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to judgment as a matter of law. However, summary judgment is improper if the parties dispute the inferences to be drawn from the facts even if

the facts themselves are not in dispute. Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Osborne ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

On December 29, 2003 Auto-Owners filed its first Motion for Summary Judgment in this case. The basis for that first Summary Judgment Motion is the same as Auto-Owners' second ground in the instant motion, to wit, that the damages sustained were not caused by an occurrence and also are excluded by the four mentioned policy exclusions. Nothing has changed with respect to that issue and the denial of Summary Judgment as to that issue. It is submitted that the Court need not revisit that issue again on Auto-Owners' Motion for Summary Judgment.

As to the new issue of whether C&B Fabrication is insured under Auto-Owners' policy, it is submitted that the pleadings do not frame the issue. If the issue ever existed it has been waived or Auto-Owners is estopped to assert it. "The scope of risk under an insurance policy can be extended by estoppel if the insurer has misled the insured into believing the particular risk is within the coverage." The Crescent Company of Spartanburg, Inc. v. Insurance Company of North America, 266 S.C. 598, 225 S.E.2d 656, 659 (1976); Standard Fire Insurance Company v. Marine Contracting and Towing Company, 301 S.C. 418, 392 S.E.2d 460 (1990). Even if it were in issue, the contention has no merit under the facts. Auto-Owners' Motion for Summary Judgment should be denied.

"An action to determine coverage under an insurance policy is an action at law." State Farm Fire and Casualty Company v. Barrett, 340 S.C. 1, 530 S.E.2d 132, 134 (Ct. App. 2000). "The construction of the [insurance] contract is a matter of law for the Court."

Winchester v. United Insurance Company, 231 S.C. 438, 99 S.E.2d 34, 36 (1957); The construction of a written instrument is, in the first instance, a question of law for the Court. Campbell v. Bi-Lo, Inc., 301 S.C. 448, 392 S.E.2d 477, 479 (Ct. App. 1990.) Whether a contract's language is ambiguous is a question of law. Southern Atlantic Financial Services, Inc., v. Middleton, 356 S.C. 444, 590 S.E.2d 27 (Ct. App. 2002). "Rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed. This rule of constructions inures to the benefit of the insured.." McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993).

Perforce the principle established and applied in Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996), at the very least an ambiguity exists in Auto-Owners' policy. Because the ambiguity exists "this court must hold as a matter of law in favor of coverage." S.C. State Budget and Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643, 647 (1991); McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993). This principle of law as to insurance coverage has been consistently applied.

Accordingly, we conclude that the policy provisions at issue are ambiguous. (Cite omitted). Therefore, based on the premise that ambiguous or conflicting terms in an insurance contract should be construed in favor of the insured and strictly against the insurer, we affirm the special referee in finding the commercial auto liability coverage section of the National policies provided coverage for Appellant's claims.

Goldston v. State Farm Mutual Automobile Insurance Company, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004).

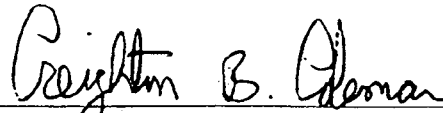
Rhodes and Piedmont's Motion for Summary Judgment should be granted.

CONCLUSION

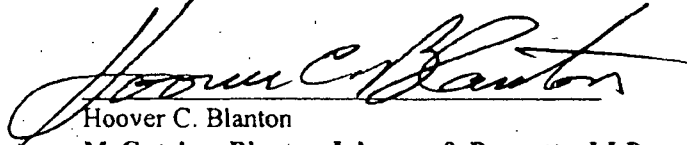
It is submitted that under the proven facts of the underlying action there is coverage under Auto-Owners' policy for the judgment against Marion L. Eadon, d/b/a C&B Fabrication in the underlying action. Auto-Owners' Motion for Summary Judgment should be denied. The Defendants' Motion for Summary Judgment should be granted. The Court should issue its Order ruling that Marion L. Eadon, d/b/a C&B Fabrication is insured under Auto-Owners' policy.

All of which is respectfully submitted.

(signature page attached)



Creighton B. Coleman
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180
(803) 635-6884



Hoover C. Blanton
McCutchen Blanton Johnson & Barnette, LLP
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209
(803) 799-9791

ATTORNEYS FOR THE DEFENDANTS
SAMUEL W. RHODES, JR. AND
PIEDMONT PROMOTIONS, INC.

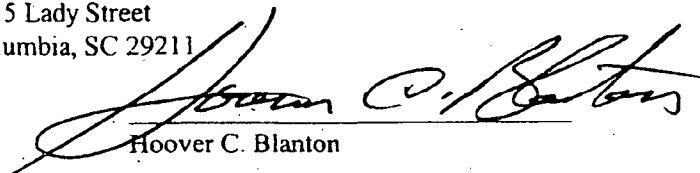
February 15, 2005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CALENDAR NO. 02-CP-46-2369
	)	
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. and Marion L.	)	
Eadon, C&B Fabrications, Inc.,	)	
and Low Country Signs, Inc.,	)	
	)	
Defendants.	)	
	)	

I, Hoover C. Blanton, of McCutchen Blanton Johnson & Barnette, L.L.P., do hereby certify that a copy of the **BRIEF OF DEFENDANTS SAMUEL W. RHODES, JR. AND PIEDMONT PROMOTIONS, INC., (1.) IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT; AND (2.) IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was served on counsel for the Plaintiff and other defense counsel, by mailing a copy thereof, in the United States mail, first class postage prepaid, and return address clearly indicated on said envelope this the **15th** day of **February, 2005** addressed as follows:

A. Johnston Cox, Esquire
 Ellis, Lawhorne & Sims, P.A.
 Post Office Box 2285
 Columbia, South Carolina 29202

William O. Sweeny, III, Esquire
 Sweeny, Wingate & Barrow, P.A.
 Post Office Box 12129
 1515 Lady Street
 Columbia, SC 29211


 Hoover C. Blanton

Owners

Page 1

55039 (11-87)
Issued 08-17-2000

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

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC. &
LOW COUNTRY SIGNS INC

CB

POLICY TERM
12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

ADDRESS

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

COMMON POLICY INFORMATION

COINSURANCE CLAUSE

BUSINESS DESCRIPTION: Sign Mfg.

ENTITY: Corporation

PROGRAM: Industrial/Processing

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PART(S):

PREMIUM

THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

COMMERCIAL PROPERTY COVERAGE
COMMERCIAL GENERAL LIABILITY COVERAGE

\$172.00
6,521.00

TOTAL

\$6,693.00

FORMS THAT APPLY TO ALL COVERAGE PARTS SHOWN ABOVE (EXCEPT GARAGE LIABILITY, DEALER'S
BLANKET, COMMERCIAL AUTOMOBILE, IF APPLICABLE)
55003 (01-87) IL0017 (11-85)

A 7% MULTI-POLICY DISCOUNT APPLIES
Countersigned By: _____

I certify that this policy was assembled from
available records as a representation of coverage
that was in effect for the policy period shown.

Date

EXHIBIT

ROA-Page 0281

Owners

Page 1

54104 (07-87)

Issued 08-17-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS

CB

POLICY TERM
12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

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

COMMERCIAL PROPERTY COVERAGE

COVERAGES PROVIDED

INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF
INSURANCE IS SHOWN.

LOCATION 001

ADDITIONAL FORMS THIS LOCATION: None

LOC 001 BLDG 001

OCCUPIED AS: Sign Manufacturer

COVERAGE: Personal Prop.

Limit of Insurance \$30,000

CAUSES OF LOSS	COINSURANCE	DEDUCTIBLE	RATE	PREMIUM
Basic Group I	80%	\$250	0.206	\$62.00
Basic Group II	80%	250	0.084	25.00
Special	80%	250	0.043	13.00
Special Including Theft	80%	250	0.239	72.00

OPTIONAL COVERAGE:

Replacement Cost

ADDITIONAL FORMS THIS BUILDING: IL0249 (06-89) IL0003 (11-85) CP0090 (07-88)/
CP0010 (10-91) CP1030 (10-91)

SECURED INTERESTED PARTIES: None

RATING INFORMATION

Territory: 140
Program: Industrial/Processing
Class Code: 6810

County: Clarendon
Construction: Non-Comb
Specific Rate - Contents: 0.229
Protection Class: 06

LOCATION 001 PREMIUM

\$172.00

Owners

Page 1

55040 (11/87)

Issued 08-17-2000

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

TAILORED PROTECTION POLICY DECLARATIONS

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81

Renewal Effective 09-17-2000

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

POLICY NUMBER 984616-36064416-00

ADDRESS

CB

POLICY TERM

12:01 a.m. 12:01 a.m.

09-17-2000 to 09-17-2001

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

COMMERCIAL GENERAL LIABILITY COVERAGE

LIMITS OF INSURANCE

General Aggregate Limit	\$1,000,000
(Other Than Products-Completed Operations)	
Products-Completed Operations Aggregate Limit	1,000,000
Personal And Advertising Injury Limit	1,000,000
Each Occurrence Limit	1,000,000
Fire Damage Limit	100,000 Any One Fire
Medical Expense Limit	10,000 Any One Person

"General Aggregate Limit" shown above, is reinstated once per policy period at no additional charge, in accordance with form 55050.

AUDIT TYPE: Annual Audit

FORMS THAT APPLY TO LIABILITY: 55118 (08-91) 55146 (07-96) 55091 (01-89)
1L0021 (11-85) 55029 (07-87) 2G0001 (11-88) 1L0249 (06-89) 55137 (06-92)
1L0017 (11-85) 55050 (07-87) 55064 (07-87) CL175 (02-86) 55069 (01-88)
CG2147 (09-89) 55167 (11-95)

LOCATION OF PREMISES YOU OWN, RENT OR OCCUPY

LOC 001 BLDG 001

TERRITORY: 001 COUNTY: Clarendon

Classification	Subline	Premium Basis	Rates	Premium
CODE 00501 Commercial General Liability Plus Endorsement Included At 7% Of The Premises Operation Premium	Prem/Op	Prem/Op Prem Inc	Inc	Inc
CODE 59058 Sign Mfg. - Noc	Prem/Op Prod/Comp Op	Gross Sales 1,127,333 1,127,333	Each 1000 .290 1.590	\$327.00 \$1,792.00
CODE 98993 Sign Erection, Installation Or Repair	Prem/Op Prod/Comp Op	Payroll 106,902 106,902	Each 1000 23.711 17.463	\$2,535.00 \$1,867.00

LOCATION 001 PREMIUM

\$6,521.00

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 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 - 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 any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in 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 payments 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"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

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

2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of

liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
 - (2) That the insured would have in the absence of the contract or agreement.
- c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
- (1) Causing or contributing to the intoxication of any person;
 - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

- d. Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- e. "Bodily injury" to:
- (1) An employee of the insured arising out of and in the course of employment by the insured; or
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (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. (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;
 - (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 any insured or 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:
 - (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or

- (ii) 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.

Subparagraphs (a) and (d) (i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (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 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 from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, 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, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;

- (2) A watercraft you do not own that is:

- (a) Less than 26 feet long; and

- (b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (Section V.8.).

- h. "Bodily injury" or "property damage" arising out of:

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

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

- i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

- j. "Property damage" to:

- (1) Property you own, rent or occupy;

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of 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.

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. "Property damage" to "your product" arising out of it or any part of it.
- l. "Property damage" to "your work" arising out of it or any part of it and including 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. "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. 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.

Exclusions c. through n. do not apply to damage by fire to premises rented to you. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (SECTION III).

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 injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate

any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in 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 under Coverage 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:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions.

This insurance does not apply to:

a. "Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or

- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

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 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. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefit law or similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. 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

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

- 1. All expenses we incur.
- 2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 3. 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.
- 4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
- 5. All costs taxed against the insured in the "suit".
- 6. Prejudgment interest awarded against the insured on the part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

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, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and

their spouses are also insureds, but only with respect to the conduct of your business.

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

2. Each of the following is also an insured:

- a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:

- (1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

- (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or

- (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).

- b. Any person (other than your employee), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and

- (2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this 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 or joint venture, 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 injury" or "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 or joint venture 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 injury" and all "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 Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.
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 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 the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, 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, settlement or defense of the claim or "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this Insurance may also apply.

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

3. 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 claimant's legal representative.

4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverage 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 any of the other insurance, whether primary, excess, contingent or on any other basis:

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

(2) That is Fire insurance for premises rented to you; or

(3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

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

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. 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 term 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. "Advertising injury" means injury arising out of one or more of the following offenses:

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:

(1) The injury or damage arises out of:

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

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

(2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

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

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

If such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

6. "Insured contract" means:

- a. A lease of premises;
- 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.

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies any person or organization 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;
 - b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
 - c. 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 b. above and supervisory, inspection or engineering services; or
 - d. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.
7. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or

- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

8. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
 - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, 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 and lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing;
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise and lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

10. "Personal injury" means, other than "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 by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

11. a. "Products-completed operations hazard"

includes all "bodily injury" and "property damage" 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.

b. "Your work" will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
- (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. "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 shall be deemed to occur at the time of the "occurrence" that caused it.
13. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
14. "Your product" means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or

- (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, 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.

15. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

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

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

SAMUEL W. RHODES AND)
PIEDMONT PROMOTIONS, INC.,)
PLAINTIFFS,)

DOCKET NO. 01-CP-20-334

V.)

TRANSCRIPT OF RECORD
(JURY TRIAL)
VOLUME I

MARION L. EADON, D/B/A)
C&B FABRICATION,)
DEFENDANT.)

AUGUST 30 - SEPTEMBER 2, 2004
WINNSBORO, SOUTH CAROLINA

BEFORE:

HONORABLE R. MARKLEY DENNIS

APPEARANCES:

FOR THE PLAINTIFFS:

HOOVER C. BLANTON, ESQUIRE
CREIGHTON B. COLEMAN, ESQUIRE

FOR THE DEFENDANT:

CATHARINE GARBEE GRIFFIN, ESQUIRE
AMY MILLIGAN, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

EXHIBIT

1 (PLAINTIFF'S EXHIBIT #2-A, MARKED FOR
2 IDENTIFICATION AND ENTERED INTO EVIDENCE, PERMIT).

3 (PLAINTIFF'S EXHIBIT #2-B, MARKED FOR
4 IDENTIFICATION AND ENTERED INTO EVIDENCE, PERMIT).

5 (PLAINTIFF'S EXHIBIT #2-C, MARKED FOR
6 IDENTIFICATION AND ENTERED INTO EVIDENCE, PERMIT).

7 Q MR. RHODES, I SHOW YOU WHAT'S MARKED PLAINTIFF'S EXHIBITS
8 #2-A, #2-B, AND #2-C. IF YOU CAN, JUST TELL THE JURY WHAT
9 THOSE DOCUMENTS ARE.

10 A THESE ARE PERMITS FROM THE STATE OF SOUTH CAROLINA FOR
11 BILLBOARDS, DOUBLE-FACE, STACKED, B-TYPE SIGNS.

12 Q AND WHO IS THAT LETTER ADDRESSED TO?

13 A PIEDMONT PROMOTIONS.

14 Q AND WHO IS IT FROM?

15 A THE LETTER IS FROM KEITH MELVIN, DIRECTOR OF OUTDOOR
16 ADVERTISING FOR THE SOUTH CAROLINA DEPARTMENT OF
17 TRANSPORTATION.

18 Q AND THOSE LETTERS, WHAT'S THE DATE OF THEM?

19 A MAY 6, 1999.

20 Q AND EACH PERMIT IS SEPARATE IN AND OF ITSELF, IS THAT
21 CORRECT? EACH PERMIT IS SEPARATE?

22 A YES, SIR, YOU HAVE THREE DIFFERENT PERMITS.

23 Q OKAY.

24 MS. GRIFFIN: NO OBJECTION.

25 MR. COLEMAN: MADAM COURT REPORTER, THIS IS

Q ARE YOU AWARE OF HOW THE SIGNS WERE PUT INTO THE GROUND?

A YES. THEY HAD TO DRILL A HOLE 20 SOMETHING FEET, I THINK 27 FEET DEEP, AND THEY PUT THIS POLE IN THERE, AND THEN THEY WOULD PUT CONCRETE AROUND IT. SO IF YOU BUILD A 4-FOOT -- IF YOU PUT A 4-FOOT PIPE IN THERE, FROM MY UNDERSTANDING, AND YOU DRILL MAYBE A 5-FOOT HOLE AND PUT CONCRETE AROUND IT, IF YOU GO THAT DEEP, IT SHOULD NEVER GO ANYWHERE.

Q ONCE THEY WERE INSTALLED IN THE GROUND, WHAT DID YOU CONSIDER THOSE POLES TO BE?

A ONCE THEY WENT IN THE GROUND, THEY GO 27 FEET DEEP. I DEEMED THEM AS A PART OF THE PROPERTY.

Q PART OF THE PROPERTY?

A A PERMANENT FIXTURE OF THE PROPERTY.

Q AT THE TIME THAT THEY WERE INSTALLED, WHO OWNED THE SIGNS?

A WELL, ONCE THEY WERE INSTALLED, I OWNED THE SIGNS.

Q IS THAT REFLECTED IN YOUR LEASE AGREEMENT?

A YES, SIR.

Q WHEN THEY WERE ERECTED, WHEN THE SIGNS WERE ERECTED, SAM, HOW MANY ADVERTISING SPOTS DID YOU HAVE, TOTAL?

A I ENDED UP WITH EIGHT AND I HAD PROSPECTIVE CUSTOMERS ON THE OTHER FOUR. I JUST HADN'T GOTTEN THEM TO SIGN CONTRACTS YET.

MS. GRIFFIN: YOUR HONOR, I OBJECT TO THE SPECULATIVE NATURE OF THAT TESTIMONY.

1 MONEY TAKING THE MIDDLE SIGN DOWN, AND THAT I WAS GOING TO
2 SUE HIM ANYHOW, FOR ME TO TAKE IT DOWN.

3 Q AND WHAT DID YOU DO AS A RESULT OF YOUR CONVERSATION WITH
4 MR. EADON?

5 A I CONTRACTED WITH SOME OTHER PEOPLE TO TAKE THE SIGN DOWN.

6 Q DID YOU GET MANY BILLS ASSOCIATED WITH ALL OF THAT OUT
7 THERE ON THE INTERSTATE?

8 A (WITNESS PAUSING).

9 Q MANY BILLS? DID YOU GET MANY BILLS TO PAY CERTAIN PEOPLE?

10 A YES, I GOT BILLS, YES, SIR.

11 MR. COLEMAN: (COUNSEL SHOWING DOCUMENTS TO MS.
12 GRIFFIN).

13 MS. GRIFFIN: YOUR HONOR, MAY WE APPROACH ABOUT
14 THESE BILLS?

15 THE COURT: SURE.

16 (BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING
17 OF JURY AND COURT REPORTER).

18 MS. GRIFFIN: YOUR HONOR, I'D JUST MAINTAIN MY
19 OBJECTION TO ALL OF THESE EXHIBITS WITH RESPECT TO --

20 THE COURT: BASED ON WHAT WAS STATED OFF THE
21 RECORD?

22 MS. GRIFFIN: YES.

23 THE COURT: I MEAN, OUT OF THE JURY'S PRESENCE?

24 MS. GRIFFIN: YES, SIR.

25 THE COURT: VERY WELL. SUBJECT TO THE CONTINUING

1 OBJECTION TO CERTAIN MATTERS ON WHICH THE COURT HAS
2 ALREADY RENDERED ITS RULING.

3 Q SAM, I'D SHOW YOU EXHIBIT #10-A.

4 A THIS IS A BILL. IT SAYS, "J. A. BRANNON, P.E., RESIDENT
5 MAINTENANCE ENGINEER, S.C.D.O.T., P.O. BOX 261, WINNSBORO,
6 29180, TELEPHONE NUMBER 635-4223, CUTTING SIGN LOOSE ON
7 HIGHWAY I-77, \$300, REMIT BILL TO JAMES THOMAS, 2396 E.
8 BEACH RD., RIDGEWAY, SOUTH CAROLINA 29130, \$300, 803-635-
9 7719, MOBILE 403-0391."

10 Q I WANT TO SHOW YOU WHAT'S MARKED AS #10-B AND ASK YOU IF
11 YOU CAN IDENTIFY THAT.

12 THE COURT: (TO MR. COLEMAN) ONE SECOND, PLEASE.
13 WHAT WAS THE EXHIBIT NUMBER OF WHAT HE JUST
14 PUBLISHED?

15 MR. COLEMAN: THAT'S #10-A, YOUR HONOR.

16 THE COURT: #10-A IS ADMITTED SUBJECT TO
17 OBJECTION OF COUNSEL.

18 (PLAINTIFF'S EXHIBIT #10-A, MARKED FOR
19 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

20 Q I SHOW YOU #10-B.

21 A #10-B IS A CHECK FROM PIEDMONT PROMOTIONS, INC. TO JAMES
22 THOMAS FOR \$300 FOR "CUTTING SIGN LOOSE ON I-77".

23 THE COURT: #10-B IS ADMITTED SUBJECT TO THE
24 OBJECTION OF COUNSEL.

25 (PLAINTIFF'S EXHIBIT #10-B, MARKED FOR

1 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

2 Q AND HAVE YOU EVER BEEN REIMBURSED FOR THAT CHECK?

3 A I MAY HAVE.

4 Q I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT
5 #11. IF YOU CAN, IDENTIFY THAT DOCUMENT.

6 A THIS IS A CHECK FROM PIEDMONT PROMOTIONS, INC. TO LAVERNE
7 COOK FOR \$100, 41, 2000. IT SAYS "BUSH HOG", SIGNED BY ME.

8 THE COURT: (TO MR. COLEMAN) DO YOU WANT THAT
9 ADMITTED?

10 (TO MS. GRIFFIN) DO YOU OBJECT TO #11, WHICH IS
11 A CHECK FROM PIEDMONT?

12 MS. GRIFFIN: YOUR HONOR, UNDER THE SAME REASONS
13 WE DISCUSSED AT THE SIDE BENCH.

14 THE COURT: VERY WELL.

15 PLAINTIFF'S EXHIBIT #11 IS ADMITTED SUBJECT TO
16 OBJECTION.

17 (PLAINTIFF'S EXHIBIT #11, MARKED FOR
18 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

19 Q I SHOW YOU PLAINTIFF'S EXHIBIT #12-A.

20 A #12-A IS FROM THE CRANE CO., INC., P.O. BOX 12222,
21 COLUMBIA, SOUTH CAROLINA 29211, WORK ORDER/INVOICE:
22 PIEDMONT PROMOTIONS, INC., SEVEN HOURS, FOUR HOURS (SEVEN
23 HOURS THE FIRST DAY, FOUR HOURS THE SECOND DAY), PAID CHECK
24 #2221, AMOUNT \$1835.

25 Q THAT'S \$1,835?

1 A THAT'S CORRECT. THIS IS ON 4/3/01.

2 Q OKAY.

3 A AND "PROVIDE INSURANCE, LABOR AND EQUIPMENT TO AID IN SIGN
4 REMOVAL AS REQUESTED."

5 Q I SHOW YOU WHAT'S MARKED AS #12-B, AND IF YOU CAN, IDENTIFY
6 THAT.

7 A THAT'S A CHECK FROM PIEDMONT PROMOTIONS, INC. TO THE CRANE
8 COMPANY DATED 4/3/08, CHECK NUMBER 2221 IN THE AMOUNT OF
9 \$1835 FOR RIGGING.

10 THE COURT: WAIT A MINUTE, #12-A AND #12-B ARE
11 ADMITTED SUBJECT TO OBJECTION OF COUNSEL.

12 (PLAINTIFF'S EXHIBIT #12-A, MARKED FOR
13 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

14 (PLAINTIFF'S EXHIBIT #12-B, MARKED FOR
15 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

16 Q I ASK YOU IF YOU CAN IDENTIFY WHAT IS EXHIBIT #13-A?

17 A #13-A IS FROM MAXIM CRANE WORKS TO PIEDMONT PROMOTIONS,
18 DATED 4/3/01, SIX HOURS TUESDAY, FOUR HOURS WEDNESDAY, CHECK
19 NUMBER 2222, PAID IN FULL, \$5540, PIEDMONT PROMOTIONS, INC.
20 BY SAMUEL W. RHODES, JR.

21 Q I SHOW YOU #13-B AND ASK YOU IF YOU CAN IDENTIFY THAT
22 DOCUMENT.

23 A THAT'S A CHECK TO MAXIM CRANE WORKS FROM PIEDMONT
24 PROMOTIONS, INC., DATED 4/3/01, \$5590, CRANE TAKE-DOWN.

25 Q AND WHAT WERE THOSE CHECKS FOR?

1 A THOSE WERE TO TAKE THE THIRD SIGN DOWN.

2 MR. COLEMAN: AND, YOUR HONOR, I WOULD MOVE FOR
3 THE ADMISSIBILITY OF, I THINK IT WAS, #13-A AND #13-B.

4 THE COURT: SUBJECT TO OBJECTION OF COUNSEL,
5 THEY ARE ADMITTED.

6 (PLAINTIFF'S EXHIBIT #13-A, MARKED FOR
7 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

8 (PLAINTIFF'S EXHIBIT #13-B, MARKED FOR
9 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

10 Q AND WHAT WERE THOSE BILLS FOR, SAM?

11 A TAKING TE THIRD SIGN DOWN, THE NORTHERNMOST SIGN.

12 Q WHO REQUIRED YOU TO TAKE IT DOWN?

13 A THE DEPARTMENT OF TRANSPORTATION, SOUTH CAROLINA DEPARTMENT
14 OF TRANSPORTATION, DEEMED THAT THEY WERE UNSAFE.

15 Q I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT #14
16 AND ASK YOU IF YOU CAN IDENTIFY THAT DOCUMENT?

17 A THIS IS A DOCUMENT FROM THE SOUTH CAROLINA DEPARTMENT OF
18 TRANSPORTATION DATED JANUARY 23, 2001, CERTIFIED MAIL,
19 RETURN RECEIPT REQUESTED, TO MR. SAMUEL W. RHODES, JR.,
20 PIEDMONT PROMOTIONS, INC., P.O. BOX 4234, ROCK HILL, SOUTH
21 CAROLINA 29731.

22 Q DID YOU RECEIVE THAT LETTER?

23 A YES.

24 Q WHAT'S THE DATE OF THAT LETTER?

25 A THE DATE OF THE LETTER IS JANUARY 23, 2001.

1 Q AS A RESULT OF YOUR CONVERSATIONS AND ALSO THAT LETTER, DID
2 THAT PRECIPITATE YOU TAKING DOWN THE THIRD SIGN?

3 A YES, SIR.

4 MR. COLEMAN: YOUR HONOR, I'D MOVE THE
5 ADMISSIBILITY OF THAT LETTER.

6 THE COURT: ANY OBJECTION?

7 MS. GRIFFIN: NO, YOUR HONOR, NO OBJECTION.

8 THE COURT: PLAINTIFF'S EXHIBIT #14 IS ADMITTED
9 INTO EVIDENCE WITHOUT OBJECTION.

10 (PLAINTIFF'S EXHIBIT #14, MARKED FOR
11 IDENTIFICATION AND ENTERED INTO EVIDENCE, LETTER).

12 Q WOULD YOU READ THAT, IF YOU DON'T MIND, SAM?

13 A YES, SIR. THIS IS ADDRESSED TO SAMUEL RHODES, PIEDMONT
14 PROMOTIONS, INC., REGARDING CANCELLATION OF OUTDOOR
15 ADVERTISING BILLBOARD PERMITS 04-20-426994, 04-20-426995,
16 04-20-426996, FAIRFIELD COUNTY. "DEAR MR. RHODES: THE
17 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION HAS DOCUMENTED
18 THAT THE OUTDOOR ADVERTISING STRUCTURE PERMIT #04-20-
19 426994, LOCATED ON I-77 IN FAIRFIELD COUNTY, HAS BEEN
20 COMPLETELY DESTROYED. THE S.C.D.O.T. HAS INVESTIGATED AND
21 CONCLUDED THAT OUTDOOR ADVERTISING STRUCTURES PERMITTED
22 UNDER PERMITS 04-20-426995 AND 04-20-42996 ON I-77 IN
23 FAIRFIELD COUNTY ARE UNSAFE AND PRESENT A HAZARD TO THE
24 MOTORING PUBLIC. PURSUANT TO § 57-25-130, DECLARATION OF
25 PURPOSE, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED,

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD) IN THE COURT OF COMMON PLEAS

SAMUEL W. RHODES AND) DOCKET NO. 01-CP-20-334
PIEDMONT PROMOTIONS, INC.,)

PLAINTIFF,)

V.)

TRANSCRIPT OF RECORD
(JURY TRIAL)
VOLUME II

MARION L. EADON, D/B/A)
C&B FABRICATION,)

DEFENDANT.)

AUGUST 30 - SEPTEMBER 2, 2004
WINNSBORO, SOUTH CAROLINA

BEFORE:

HONORABLE R. MARKLEY DENNIS

APPEARANCES:

FOR THE PLAINTIFF:

HOOVER C. BLANTON, ESQUIRE
CREIGHTON B. COLEMAN, ESQUIRE

FOR THE DEFENDANT:

CATHARINE GARBEE GRIFFIN, ESQUIRE
AMY MILLIGAN, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

THE NEXT QUESTION WE HAVE TO ASK IS, GIVEN THAT WE NEED TO HAVE THE DOLLARS IN TODAY'S DOLLARS, HOW MUCH MONEY WOULD WE HAVE TO HAVE TODAY TO INVEST IT AT A SAFE INTEREST RATE SO THAT IT WOULD COME OUT TO THE \$1.15 MILLION DOLLARS OVER 10 YEARS. AND THAT IS THE PRESENT VALUE COLUMN OF \$946,100. IN OTHER WORDS, IF WE TOOK THE \$946,100 AND INVESTED IT, AND I USED THE SHORT-TERM TREASURY SECURITY RATE, WHICH I BELIEVE FOR THAT PERIOD OF TIME WAS ABOUT 4.33 -- YES, THAT'S CORRECT, 4.33 PERCENT, WHICH IS QUITE A BIT HIGHER THAN IT IS TODAY -- YOU COULD TAKE THE \$946,000 AND INVEST IT AND WITHDRAW EACH YEAR IN AN AMOUNT EQUAL TO WHAT HE HAD RECEIVED IN RENT, LESS HIS COSTS.

Q MOVING TO THE SECOND 20 YEARS, DID YOU DO THE SAME THING, MERELY EXTENDING AT 20 YEARS VERSUS 10?

A YES, SIR. THE NEXT TWO ENTRIES ARE SIMPLY EXTENDING THE EXPECTED LIFE OF THE SIGN, ONE GOING TO 20 YEARS AND, OF COURSE, THE THIRD ONE GOING TO 30 YEARS. AGAIN, THE SECOND COLUMN OF THE \$4,196,647 WOULD BE THE AMOUNT THAT HE WOULD RECEIVE, LESS HIS COSTS, OVER THAT 20 YEAR PERIOD OF TIME, HAD THE SIGNS LIVED FOR 20 YEARS. THE PRESENT VALUE OF THAT IS \$2,470,502, WHICH WOULD BE THE PRESENT VALUE IN TODAY'S DOLLARS.

Q AND WITH RESPECT TO THE THIRD ENTRY, HORIZONTALLY, 30 YEARS IS A REPEAT. IT'S JUST SENDING IT OVER 30 YEARS INSTEAD OF A SHORTER PERIOD?

A YES, SIR. THE ONLY DIFFERENCE IS THAT I AM EXTENDING IT ANOTHER, ADDITIONAL 10 YEARS, WHICH WOULD GIVE US A TOTAL GROSS OF \$12,189,594 AT A PRESENT VALUE OF \$4,212,386.

Q DR. THOMPSON, BEAR WITH ME ON THIS. YOU'RE NOT INTENDING THAT THE SIGNS ARE GOING TO LAST ANY NUMBER OF YEARS. YOU JUST HAVE TO LABEL A COLUMN UP HERE, ISN'T THAT CORRECT?

A THAT'S CORRECT. I AM NOT AN EXPERT ON SIGNS. I SIMPLY READ THEM AS I DRIVE DOWN THE HIGHWAY.

Q SO WE HAVE TO ASSUME 10 YEARS TO GET TO THESE FIGURES, WE HAVE TO ASSUME 20 YEARS TO GET TO THESE, AND WE HAVE TO ASSUME 30 YEARS UNDER THIS FORMULA YOU APPLIED TO THEM TO GET TO THESE FIGURES?

A YES, SIR, THAT'S CORRECT.

Q AND YOU DON'T PURPORT TO PREDICT THAT ANY OF THESE WILL COME TRUE?

A NO, SIR. IN THE TESTIMONY I HEARD, IT COULD HAVE GONE FOR 50 YEARS.

Q I HAD ASKED YOU, PLEASE, TO LOOK AT PLAINTIFF'S EXHIBIT #42-A, WHICH IS LABELED TABLE 2, AND ASK DOES THIS DEPICT ONE OF THE TABLES YOU PREPARED?

A YES, SIR. THIS SCENARIO IS A LITTLE BIT DIFFERENT. BASICALLY WHAT I DID HERE, I USED THE SAME RENTAL RATE THAT EXISTED AT THE TIME THE SIGNS FELL, WHICH GIVES AN AVERAGE OF \$805.72 PER MONTH PER BILLBOARD. I CHANGED THE ASSUMPTIONS A LITTLE BIT FOR COMPARATIVE PURPOSES. I SAID

COUNTY OF FAIRFIELD

SAMUEL W. RHODES, JR., AND
PIEDMONT PROMOTIONS

-VS-

TRANSCRIPT OF RECORD

MARION L. EADON
D/B/A C&B FABRICATION

WEDNESDAY, SEPTEMBER 1, 2004
WINNSBORO, SOUTH CAROLINA

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JR., JUDGE, AND A JURY

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

CREIGHTON COLEMAN, ESQUIRE
HOOVER C. BLANTON, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

CATHERINE G. GRIFFIN, ESQUIRE
AMY MILLIGAN, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

EXHIBIT

1 MS. GRIFFIN: I WOULD OBJECT TO THE VALUE WITH RESPECT
2 TO THE FUTURE INCOME, BECAUSE I DON'T BELIEVE A SUFFICIENT
3 FOUNDATION HAS BEEN LAID.

4 THE COURT: HE'S TESTIFYING, HE WILL TESTIFY. YOU CAN
5 CROSS EXAMINE HIM ON IT. HE'S BEEN QUALIFIED. HE'S GOING
6 TO RENDER HIS EXPERT OPINION IN THAT AREA. OVERRULED.
7 THANK YOU.

8 Q IF YOU WOULD, MR. DURDEN, PLEASE TELL US THE THREE
9 VALUES AND HOW YOU CAME UP WITH THOSE THREE VALUES?

10 A MY OPINION OF VALUE AS OF JANUARY 20, 2001 ---

11 Q THAT WAS THE DATE THE SIGN WAS STILL UP?

12 A THEY WERE STILL UP.

13 Q THAT MORNING.

14 A \$1.8 MILLION. AND MY OPINION OF THE VALUE OF THE
15 PROPERTY AS OF JUNE THE 1ST ---

16 Q LET'S BACK UP. LET'S BACK UP ONE SECOND. I DON'T
17 MEAN TO INTERRUPT YOU. THAT FIGURE YOU USED, YOU USED THE
18 INCOME APPROACH; IS THAT CORRECT?

19 A YES, SIR, I DID A CASH FLOW ANALYSIS, CONVERTED HIS
20 FUTURE BENEFITS THAT HE WOULD RECEIVE INTO A PRESENT DAY
21 VALUE.

22 Q AND THAT'S BASED ON THE LAND AND THE LEASES THAT HE
23 HAD AT THE TIME?

24 A YES, SIR.

25 Q OKAY. GO AHEAD. WHAT WAS THE SECOND VALUE?

1 A TO RENDER AN OPINION ON THE VALUE OF THE PROPERTY AS
2 OF JUNE THE 1ST, 2001, WHICH WOULD HAVE BEEN WHEN THE
3 BILLBOARDS ARE DOWN. IT WOULD HAVE BEEN JUST ON THE LAND
4 ONLY. AND THAT OPINION OF VALUE WAS \$65,500.

5 Q AND HOW DID YOU ARRIVE AT THAT FIGURE?

6 A BY USING THE SALES COMPARISON APPROACH, FINDING THREE
7 SALES OF VACANT UNIMPROVED INDUSTRIAL PROPERTIES, COMPARING
8 SUCH PROPERTY WITH THOSE.

9 Q SIMILAR PROPERTY?

10 A YES, SIR.

11 Q AND THE THIRD -- THE THIRD VALUE?

12 A THAT WAS TO RENDER AN OPINION OF VALUE ON THE PROPERTY
13 AS OF MAY 1, 2004.

14 Q OKAY.

15 A AND THAT VALUE WAS \$64,200.

16 Q NOW, THERE IS A CONDEMNATION PROCEEDING GOING ON WITH
17 REGARD TO THIS LAND. YOU'RE AWARE OF THAT?

18 A YES, SIR.

19 Q AND DID YOU TAKE THAT INTO CONSIDERATION?

20 A IN THE OPINION OF THE VALUE AS OF MAY 1, 2004.

21 Q AND YOU USED THAT ---

22 A YES, SIR.

23 Q --- AND TOOK THAT INTO CONSIDERATION.

24 MR. COLEMAN: BEG THE COURT'S INDULGENCE, SIR.

25 THE COURT: SURE.

1 Q AND ISN'T IT RIGHT THAT INITIALLY HE TOLD YOU THAT HE
2 HAD \$3,000 IN OPERATING EXPENSES AND NOT \$5,000; ISN'T THAT
3 RIGHT?

4 A I THINK HE SAID HIS EXPENSES RAN 3 TO \$5,000.

5 Q AND IN DOING YOUR APPRAISAL OF THIS PROPERTY, ISN'T IT
6 TRUE THAT YOU WERE TO VERIFY THE INFORMATION THAT'S GIVEN
7 TO YOU IN ORDER TO CONDUCT A FAIR AND ACCURATE APPRAISAL OF
8 THIS PROPERTY?

9 A YES, MA'AM, I DID VERIFY SOME DATA.

10 Q NOW, DID YOU VERIFY ANY DATA THAT HAD TO DO WITH THIS
11 BUSINESS?

12 A NO, MA'AM, THAT WAS IRRELEVANT.

13 Q WELL, MR. DURDEN, WOULD YOU AGREE WITH ME THAT THESE
14 SIGNS ARE OWNED BY A BUSINESS; ISN'T THAT RIGHT? PIEDMONT
15 PROMOTIONS?

16 A YES, MA'AM.

17 Q AND SO THE EXPENSES OF OPERATING THIS BUSINESS OF
18 PIEDMONT PROMOTIONS, THAT WOULD BE A RELEVANT CONSIDERATION
19 IN DETERMINING WHAT THE EXPENSES OF THESE SIGNS ARE; ISN'T
20 THAT CORRECT?

21 A NO, MA'AM. I'M JUST APPRAISING SIMPLY THE 9.93 ACRES
22 AND THE THREE SIGNS.

23 Q AND IN APPRAISING THOSE THREE SIGNS YOU TOLD THE JURY
24 THAT YOU DID AN ESTIMATE OF THE GROSS INCOME COMING IN, AND
25 THEN YOU SUBTRACTED OFF THE VACANCY RATE, AND THEN YOU

1 A IT DOES AFFECT THE LAND OWNED BY MR. RHODES. THE
2 RHODES' PROPERTY IS RIGHT HERE. IT'S IDENTIFIED AS TRACT
3 12 ON OUR PLANS. MEMORY SERVES ME CORRECTLY, THE
4 DEPARTMENT NEEDED TO ACQUIRE APPROXIMATELY 2 ACRES FROM
5 THAT PROPERTY.

6 Q AND IN LOOKING AT THE PLANS FOR THIS INTERCHANGE,
7 WOULD THOSE 2 ACRES INCLUDE A PRE-EXISTING STRUCTURE OF A
8 BILLBOARD?

9 A IT INCLUDES THE FOUNDATION OF A FORMER BILLBOARD, YES.

10 Q AND THAT WOULD BE WITHIN THE 2 ACRES THAT THE D.O.T.
11 IS SEEKING TO ACQUIRE; IS THAT RIGHT?

12 A THAT'S CORRECT.

13 Q AND THEN THE REMAINDER OF THE PROPERTY WOULD NOT BE
14 CHANGED BY THE D.O.T. RIGHT OF WAY PROCEDURES?

15 A THAT IS CORRECT.

16 Q WITH RESPECT TO THE BILLBOARD ---

17 (THE WITNESS RETURNS TO THE WITNESS STAND.)

18 Q WITH RESPECT TO THE ONE BILLBOARD THAT WOULD HAVE BEEN
19 SUBJECT TO THIS PROCEDURE WERE IT STILL STANDING, HOW WOULD
20 THE D.O.T. COMPENSATE THE PROPERTY OWNER?

21 A THE LAND OWNER WILL BE PAID BASED ON THE VALUE OF THE
22 PROPERTY BEING ACQUIRED. THE BILLBOARD ITSELF IS
23 CONSIDERED PERSONAL PROPERTY. AND PERSONAL PROPERTY IS
24 PROVIDED FOR THROUGH THE DEPARTMENT'S RELOCATION ASSISTANCE
25 PROGRAM.

1 DOCUMENTATION, ALONG WITH A CHECK FOR A PERMIT FEE AND A
2 APPLICATION FEE, THE DEPARTMENT PROCESSES THE APPLICATION
3 BY FORWARDING DOWN TO OUR COORDINATOR IN THE PARTICULAR
4 DISTRICT. IN THIS PARTICULAR LOCATION THE COORDINATOR
5 WOULD BE IN CHESTER.

6 THE INDIVIDUAL COORDINATOR TAKES THE APPLICATION OUT
7 TO THE LOCATION, WILL ACTUALLY PHYSICALLY VIEW THE LOCATION
8 TO MAKE SURE IT MEETS OUR STATE REQUIREMENT, AND ALSO THE
9 REGULATIONS THAT WE HAVE IN PLACE FOR OUTDOOR ADVERTISING.

10 THE INDIVIDUAL INSURES THAT THERE IS A QUALIFYING
11 ACTIVITY THERE. THE QUALIFYING ACTIVITY HAS TO MEET
12 CRITERIA IN TERMS OF BEING OPEN TO THE PUBLIC, HAVE WATER,
13 TELEPHONE, LIGHTS, ELECTRICITY.

14 THE COORDINATOR ALSO MAKES SURE THAT THERE IS NO OTHER
15 BILLBOARD WITHIN A CERTAIN DISTANCE OF THE SIGN LOCATION.

16 THERE MUST BE A QUALIFYING BUSINESS WITHIN 600 FEET OF
17 THE SIGN LOCATION. AND IF IT'S ON AN INTERSTATE ROUTE,
18 WHICH IS -- WHICH IS THIS LOCATION, THERE CAN BE NO OTHER
19 SIGN WITHIN 500 FEET OF THAT SIGN LOCATION.

20 ONCE THE COORDINATOR COMPLETES HIS REVIEW OF THE
21 LOCATION -- IT COULD TAKE JUST ONE VISIT OR IT MAY TAKE
22 SEVERAL VISITS TO COMPLETE THE REVIEW. ONCE THE
23 COORDINATOR MAKES HIS REVIEW, HE ALONG WITH HIS DISTRICT
24 ENGINEERING ADMINISTRATOR WILL RECOMMEND APPROVAL OR
25 DISAPPROVAL FOR THE APPLICATION.

1 IF THE BUSINESS STAYS IN PLACE FOR 12 MONTHS AND THEN
2 CLOSES A YEAR -- EXCUSE ME, A DAY AFTERWARD, THE SIGN WOULD
3 BE CONSIDERED NON-CONFORMING, BUT IT WOULD BE ALLOWED TO
4 STAY IN PLACE.

5 Q CAN YOU EXPLAIN TO THE JURY WHAT IT MEANS IF A SIGN IS
6 BEING NON-CONFORMING?

7 A A SIGN IS BEING NON-CONFORMING IF IT AT THIS
8 PARTICULAR TIME THAT YOU'RE ADDRESSING THE SIGN DOES NOT
9 MEET OUR STATE LAW, OUR FEDERAL LAW, OR OUR REGULATIONS.

10 Q AND JUST GOING BACK AND STUFF, WHAT DOES IT MEAN TO
11 HAVE A QUALIFYING BUSINESS?

12 A OUR REGULATIONS STATE THAT -- ACTUALLY, GOING ALL THE
13 WAY BACK TO THE HIGHWAY BEAUTIFICATION ACT, DURING THE TIME
14 THAT THE HIGHWAY BEAUTIFICATION ACT CAME ABOUT, IT SAID
15 THAT SIGNS SHOULD BE PLACED IN COMMERCIAL LOCATIONS. AND
16 ONE OF THE IDEALS OF BEING IN A COMMERCIAL LOCATION IS THAT
17 THERE IS A BUSINESS IN THE VICINITY OF THE SIGN.

18 THE COMMERCIAL ACTIVITY FOR THE SIGN LOCATION THAT IS
19 BEING APPLIED FOR HAS TO BE WITHIN 600 FEET OF THE PROPOSED
20 SIGN SIGHT. THAT QUALIFYING ACTIVITY OR COMMERCIAL
21 BUSINESS MUST BE OPEN TO THE PUBLIC AT LEAST 36 HOURS A
22 WEEK. THE QUALIFYING ACTIVITY MUST HAVE A TELEPHONE. IT
23 MUST HAVE RUNNING WATER. IT MUST ALSO BE ACCESSIBLE BY THE
24 PUBLIC. AND IT HAS TO MEET THAT CRITERIA FOR THE FIRST 12
25 MONTHS OF ITS PERMIT PERIOD.

1 Q AND WHAT TYPE OF INSPECTION DOES THE DEPARTMENT OF
2 TRANSPORTATION DO WITH RESPECT TO QUALIFYING BUSINESSES
3 AFTER THE PERMITS ARE ISSUED?

4 A AFTER THE PERMITS ARE ISSUED, THE COORDINATOR WOULD --
5 WHILE HE'S ON HIS REGULAR ROUTES OR HIS REGULAR INVENTORY,
6 HE'LL SWING BY OCCASIONALLY TO TAKE A LOOK AT THE BUSINESS,
7 TO ENSURE THEY'RE STILL IN OPERATION.

8 Q AND DOES THE DEPARTMENT OF TRANSPORTATION CONTINUE
9 THIS PROCESS FOR YEARS AFTER THE PERMITS ARE ISSUED?

10 A NO, WE DO NOT. ONCE THE 12 MONTH PERIOD GOES BY, WE
11 NO LONGER REVIEW THE BUSINESS. THE ONLY TIME WE MAY
12 ADDRESS THE BUSINESS IS DURING THE ANNUAL BILLING, WHEN WE
13 MAKE SURE THAT THE SIGN IS STILL IN PLACE BEFORE WE ISSUE A
14 BILL TO THE OCCUPANT OR THE OWNER. WE'LL ALSO OCCASIONALLY
15 LOOK AT THE SIGN TO MAKE SURE IT'S IN A STATE OF REPAIR.

16 Q AND DURING THOSE ANNUAL BILLINGS OR WHEN YOU
17 POTENTIALLY WOULD OCCASIONALLY GO LOOK AT A SIGN, IF YOU
18 FOUND THAT THE BUSINESS WAS NO LONGER IN OPERATION, WHAT
19 WOULD HAPPEN WITH THE STATE OF THE SIGNS?

20 A IF IT'S AFTER THE 12 MONTH PERIOD, IT WOULD BE A NON-
21 CONFORMING SIGN. BUT IF WE DETERMINE THAT THE SIGN WAS
22 UNSAFE, THEN WE WOULD ADDRESS THAT ISSUE WITH THE SIGN
23 OWNER.

24 Q AND YOU EXPLAINED WHAT A NON-CONFORMING SIGN IS. CAN
25 YOU TELL THE JURY WHAT THE REQUIREMENTS ARE FOR THE OWNER

1 EITHER NORTHERN MOST, SOUTHERN MOST, WOULD BE THE ONE WHICH
2 WOULD BE AFFECTED BY THE RIGHT OF WAY ACTION?

3 A MY UNDERSTANDING IT WOULD BE THE NORTHERN -- NORTHERN
4 BILLBOARD.

5 Q AND THE OTHER TWO BILLBOARDS, WOULD THEIR STATUS IF
6 THEY EXISTED AS OF TODAY WHEN THE RIGHT OF WAY PROJECT WAS
7 GOING THROUGH, WOULD THEIR STATUS CHANGE?

8 A THEY WOULD BE CLASSIFIED AS NON-CONFORMING.

9 Q AND WHY WOULD THEY BE CLASSIFIED AS NON-CONFORMING?

10 A THEY WOULD BE CLASSIFIED AS NON-CONFORMING FOR TWO
11 REASONS AS OF TODAY; THAT WOULD BE ONE BECAUSE THE
12 QUALIFYING BUSINESS IS CLOSED, AND THE OTHER BECAUSE THE
13 TWO REMAINING SIGNS WOULD BE CONSIDERED IN THE RAMP ROOM --
14 OR IN THE RAMP AREA. STATE LAW AND REGULATION REQUIRES
15 THAT ALL SIGNS PERMITTED BE MORE THAN 500 FEET FROM THE
16 EDGE OF THIS RAMP AREA.

17 MS. GRIFFIN: YOUR HONOR, MAY WE APPROACH WITH ONE
18 ISSUE?

19 THE COURT: SURE.

20 (A SIDE BAR CONFERENCE WAS HELD OFF THE RECORD, OUT OF
21 THE HEARING OF THE JURY.)

22 THE COURT: WE'VE HAD A SIDE BAR CONCERNING A MATTER
23 REGARDING THIS WITNESS, WHICH WE WILL TAKE UP AT THE FIRST
24 BREAK. THANK YOU SO MUCH.

25 MS. GRIFFIN: MR. MELVIN, CAN YOU ANSWER ANY QUESTIONS

1 THE COURT: IF YOU WILL PLEASE, SIR, RETURN TO THE
2 STAND. THANK YOU VERY MUCH. AND I WOULD REMIND YOU THAT
3 YOU ARE STILL UNDER OATH. THERE ARE SOME QUESTIONS THAT WE
4 NEED TO ASK OF YOU OUTSIDE OF THE PRESENCE OF THE JURY.

5 (THE WITNESS RETURNS TO THE WITNESS STAND.)

6 THE COURT: MS. GRIFFIN, YOU MAY PROCEED WITH YOUR
7 PROFFER. AND AS I UNDERSTAND, MS. GRIFFIN, FROM THE SIDE
8 BAR, WE TALKED ABOUT THIS PROFFER IS RELATIVE TO MATTERS
9 THAT ARE, I GUESS, BEST SUMMARIZED AND PERTAIN TO COURT'S
10 EXHIBIT NO. 1.

11 MS. GRIFFIN: YES, YOUR HONOR.

12 THE COURT: AND THE CIRCUMSTANCES BEFORE AND AFTER
13 THAT ORDER AS I UNDERSTAND IT.

14 MS. GRIFFIN: YES, YOUR HONOR.

15 THE COURT: VERY WELL. YOU MAY PROCEED.

16 DIRECT EXAMINATION CONTINUED BY MS. GRIFFIN:

17 Q MR. MELVIN, WHEN DID YOU FIRST GO ONTO THE PROPERTY OF
18 MR. RHODES?

19 A WE FIRST WENT ON THE PROPERTY OF MR. RHODES THE
20 WEDNESDAY BEFORE THE SIGNS FELL. AND I THINK THAT MAY HAVE
21 BEEN SOMEWHERE AROUND MAYBE DECEMBER 15 TIME FRAME,
22 THEREABOUTS. WE RECEIVED A CALL THAT A SIGN WAS LEANING ON
23 THE PROPERTY. WE WENT OUT THERE, AS WE WOULD ALWAYS DO, TO
24 INVESTIGATE THE LOCATION.

25 UPON INVESTIGATING THE LOCATION, WE DETERMINED THAT

1 THERE WAS IN FACT A SIGN THAT WAS LEANING, THE MIDDLE OF
2 THE THREE SIGNS.

3 WE CONTACTED MR. RHODES AND INDICATED THAT HE NEEDED
4 TO GET OUT AND MAKE IMMEDIATE REPAIRS ON THE SIGN. WE
5 CONTACTED MR. RHODES AND DISCOVERED THAT HE WAS ALREADY
6 AWARE OF THE SITUATION.

7 HE SAID THAT HE WAS GOING TO GET SOMEONE ON IT AND
8 TAKE CARE OF IT. HE ASKED HOW MUCH TIME HE HAD, DUE TO THE
9 IDEA THAT WE THOUGHT IT WAS A SAFETY ISSUE, WE SAID IT
10 NEEDED TO BE CORRECTED IMMEDIATELY. AND HE SAID HE WOULD
11 DO THAT.

12 ON SATURDAY THE SIGN ACTUALLY FELL. THE SIGN THAT WE
13 WERE ADDRESSING WERE STILL IN PLACE. THE SOUTHERN MOST
14 SIGN FELL ONTO THE RIGHT OF WAY, ACROSS THE FIRST LANE AND
15 INTO THE MEDIAN LANE. THAT SIGN WAS DETERMINED TO BE
16 UNSAFE AND BASICALLY A DESTROYED SIGN. SO WE CANCELLED
17 THAT PERMIT.

18 AFTER REVIEWING THE TWO REMAINING SIGNS, WE DETERMINED
19 THAT THOSE SIGNS WERE BASICALLY UNSAFE ALSO. SO WE
20 CONTACTED MR. RHODES -- ACTUALLY, I TOLD HIM BY TELEPHONE
21 FIRST, AND I FOLLOWED UP WITH A LETTER INDICATING THAT WE
22 WOULD BE CANCELLING THE PERMITS AS BEING UNSAFE.

23 Q WHEN YOU WERE ON THE PREMISES THAT THE BILLBOARDS WERE
24 LOCATED, DID YOU DO AN INVESTIGATION REGARDING THE
25 QUALIFYING BUSINESS?

1 A YES, WE DID. MR. RHODES ASKED COULD HE PUT THE SIGNS
2 BACK UP.

3 WE INDICATED TO MR. RHODES THAT THE LOCATION WAS NON-
4 CONFORMING, AND THE LOCATION ACTIVITY IN TERMS OF THE
5 BUSINESS WAS INTERSTATE AUTO SALES. MY UNDERSTANDING WAS
6 THAT THEY SOLD AUTOMOBILES.

7 DURING OUR INVESTIGATION WE DETERMINED THAT THERE WERE
8 ABOUT APPROXIMATELY 15 CARS ON THE LOT, ALL WERE IN A STATE
9 OF DISREPAIR. THEY HAD FLAT TIRES. THE WINDOWS HAD BEEN
10 BROKEN OUT. SEVERAL APPEARED TO BE AS BEING VANDALIZED.

11 THE LOCATION APPEARED TO HAVE BEEN CUT IN TERMS OF THE
12 GRASS, BUT THERE WAS GRASS GROWING UP AROUND THE VEHICLES
13 WHICH SHOWED THAT THEY HAD BEEN SITTING IN PLACE FOR A LONG
14 TIME.

15 THE QUALIFYING ACTIVITY ITSELF IN TERMS OF THE
16 STRUCTURE WAS A TRAILER. THE TRAILER HAD WINDOWS THAT HAD
17 BEEN BROKEN OUT. SOME WINDOWS WERE OPEN. THE BUSINESS
18 ITSELF WAS OPEN, IT WAS NOT LOCKED. THERE WAS A DESK AND
19 FILE CABINETS. THERE WAS NEWSPAPERS ON THE DESK. AS A
20 MATTER OF FACT, I THINK I TOOK PHOTOS OF THE NEWSPAPER.
21 AND THE NEWSPAPER INDICATED DATES THAT WENT ALL THE WAY
22 BACK FROM OUR ORIGINAL PERMITTING TIME. THE WATER WAS
23 TURNED OFF. THERE WAS NO ELECTRICITY. AND THERE WAS NO
24 PHONE IN THE BUSINESS.

25 FROM THAT REVIEW, WE DETERMINED THAT THE BUSINESS WAS

1 NON-CON -- EXCUSE ME, NON-CONFORMING BECAUSE THERE WAS NO
2 BUSINESS THERE.

3 WE ALSO DID SOME INVESTIGATING IN TERMS OF THE TIME
4 PERIOD THAT THE TELEPHONE AND THE WATER WAS TURNED OFF.
5 AND WE DETERMINED THAT THE RECORDS THAT THEY HAD ACTUALLY
6 BEEN TURNED OFF APPROXIMATELY THREE MONTHS AFTER THE PERMIT
7 WAS ISSUED. THAT WAS FURTHER INFORMATION TO LEAD US TO THE
8 CONCLUSION THAT THE LOCATION WAS NO LONGER CONFORMING AND
9 THE BUSINESS WAS NOT OPEN.

10 Q OKAY. AND DID YOU MAKE A CONCLUSION WITH RESPECT TO
11 WHETHER OR NOT IT WAS A SHAM BUSINESS OR A VIABLE BUSINESS?

12 A OUR POSITION WAS THAT IT WAS A SHAM BUSINESS. WE ALSO
13 FOUND THROUGH OUR INVESTIGATION IN TALKING TO PUBLIC SAFETY
14 THAT THE LICENSE WAS NOT IN EFFECT FOR THAT BUSINESS THERE,
15 WHICH MEANT BASICALLY WE WOULD HAVE NEVER APPROVED THE
16 PERMIT BECAUSE IT HAS TO BE A LEGITIMATE BUSINESS AND IT
17 HAS TO BE OPEN TO THE PUBLIC DOING BUSINESS.

18 Q YOU DISCOVERED THE LICENSE WAS NOT IN EFFECT AS OF
19 WHAT DATE?

20 A THAT I DON'T REMEMBER RIGHT OFFHAND.

21 MS. GRIFFIN: THAT'S ALL I HAVE AT THIS TIME.

22 THE COURT: ALL RIGHT. BEFORE YOU ASKED HIM -- MR.
23 BLANTON, YOU'VE REQUESTED PERMISSION TO ASK THE WITNESS
24 QUESTIONS DURING THE PROFFER, AND YOU CERTAINLY MAY DO SO.
25 BUT BEFORE I DO THAT, YOU OBJECT TO THAT LINE OF TESTIMONY?

1 CORRECT?

2 A YES.

3 Q AND IF THAT SIGN HAD NOT FALLEN, YOU WOULD NOT HAVE
4 GONE TO THAT PIECE OF PROPERTY; IS THAT CORRECT?

5 A CORRECTION. THE SIGN THAT WE ORIGINALLY LOOKED AT WAS
6 NOT THE SIGN THAT FELL.

7 Q I UNDERSTAND. I UNDERSTAND. BUT THE SIGN THAT FELL,
8 WHICH IS DIFFERENT THAN THE ONE THAT WAS LEANING, IF THAT
9 SIGN DID NOT FALL, YOU WOULD NOT HAVE GONE TO THAT
10 LOCATION; IS THAT CORRECT?

11 A INCORRECT. WE WOULD HAVE GONE TO THE LOCATION BECAUSE
12 THE ---

13 Q BECAUSE IT WAS LEANING?

14 A THAT'S CORRECT.

15 Q OKAY. AND UNDER THE NON-CONFORMING USE THAT YOU HAD
16 DESIGNATED, EVEN IF THE SIGN STILL REMAINED STANDING IF
17 THEY WERE NON-CONFORMING, THEY WOULD STILL BE THERE; IS
18 THAT CORRECT? THEY WOULD STILL BE ABLE TO RENT ADVERTISING
19 SPACE; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q OKAY. NOW, THE LICENSE THAT WAS ISSUED -- I WANT TO
22 SHOW YOU WHAT'S MARKED AS ---

23 MR. COLEMAN: I GUESS THIS WOULD BE, YOUR HONOR,
24 PLAINTIFF'S EXHIBIT 32 FOR I.D.

25 THE COURT: VERY WELL.

1 INDICATED. BUT DURING THE REVIEW PERIOD THEY SAID THAT THE
2 LICENSE WAS NOT UP TO DATE.

3 (PAUSE.)

4 Q DO YOU KNOW IF IT WAS AFTER FEBRUARY 2001? ARE YOU
5 AWARE OF THAT?

6 A I AM NOT SURE.

7 Q OKAY. IF WE REMOVE FROM THE FACTUAL EQUATION THAT THE
8 SIGNS WERE LEANING OR THAT THE SIGN FELL, WOULD MR. RHODES
9 STILL HAVE THE PERMIT?

10 A YES.

11 Q WOULD HE STILL BE ABLE TO HAVE THE SIGNS UP THERE OR
12 NOT?

13 A HE WOULD.

14 MR. COLEMAN: THAT'S ALL I HAVE.

15 THE COURT: DID YOU SAY HE WOULD?

16 WITNESS: HE WOULD.

17 THE COURT: OKAY. REDIRECT?

18 REDIRECT EXAMINATION BY MS. GRIFFIN:

19 Q MR. MELVIN, IF THE DEPARTMENT OF TRANSPORTATION HAD
20 GOTTEN TO THIS LOCATION DURING A PERIODIC INSPECTION DURING
21 THE FIRST YEAR AND A HALF FROM MAY OF '99 THROUGH JANUARY
22 OF 2001, IS IT POSSIBLE THAT THEY WOULD HAVE DISCOVERED
23 THAT THE BUSINESS WAS NOT QUALIFIED?

24 A IS THAT BEFORE THE ONE YEAR PERIOD?

25 Q DURING THE ONE YEAR PERIOD, AND THEN I INCLUDED THE

- 1 A MANNING, SOUTH CAROLINA.
- 2 Q AND HOW LONG HAVE YOU LIVED THERE IN MANNING?
- 3 A ALL MY LIFE.
- 4 Q ARE YOU MARRIED?
- 5 A YES.
- 6 Q AND HOW MANY CHILDREN DO YOU HAVE?
- 7 A FIVE.
- 8 Q WHERE DO YOUR CHILDREN LIVE?
- 9 A BEG YOUR PARDON?
- 10 Q WHERE DO YOUR CHILDREN LIVE?
- 11 A TWO LIVE IN MANNING, THE REST LIVE IN COLUMBIA.
- 12 Q AND WHAT IS YOUR EDUCATIONAL BACKGROUND?
- 13 A HIGH SCHOOL AND WINGATE JUNIOR COLLEGE FOR TWO YEARS.
- 14 Q HOW OLD ARE YOU, MR. EADON?
- 15 A 65.
- 16 Q AND DURING YOUR LIFETIME, WHAT KIND OF WORK HAVE YOU
- 17 BEEN INVOLVED IN?
- 18 A A GREAT MANY ASPECTS, FARMING, LABOR BUSINESS, OF
- 19 COURSE, THE SIGN BUSINESS, CAR BUSINESS, PALLET BUSINESS.
- 20 I BELIEVE THAT'S ABOUT ALL.
- 21 Q HOW DID YOU DECIDE TO GO INTO THE SIGN BUSINESS?
- 22 A CHUCK BENENHALEY (PHONETIC) CAME BY TO BUY A CAR, AND
- 23 HE WAS JUST TELLING ME, YOU KNOW, HOW GOOD HE WAS AT
- 24 BUILDING SIGNS AND HOW MUCH EXPERIENCE HE HAD, THE PEOPLE
- 25 THAT HE HAD DONE BUSINESS WITH, AND HE THOUGHT IT WAS A

1 VERY LUCRATIVE BUSINESS IF HE HAD SOME BACKING TO EXPAND
2 HIS BUSINESS, THAT HE THOUGHT HE COULD, YOU KNOW --
3 SOMETHING I COULD DO REAL GOOD, IT WOULD BE A REAL GOOD
4 INVESTMENT, AND THAT'S BASICALLY HOW THE CONVERSATION GOT
5 STARTED.

6 Q DID YOU HAVE ANY EXPERIENCE IN THE SIGN BUSINESS
7 BEFORE MR. BENENHALEY APPROACHED YOU?

8 A NO, MA'AM.

9 Q WHEN DID YOU DECIDE THAT YOU COULD GO INTO THE SIGN
10 BUSINESS?

11 A WELL, I, YOU KNOW, TALKED TO SEVERAL PEOPLE AND THEY
12 SAID HE PROBABLY HAD AS MUCH EXPERIENCE AS ANYBODY THEY
13 KNEW. IN REFERENCE TO THAT AFTER I DECIDED I MAY TAKE A
14 LOOK AT IT, I WENT OUT TO LOOK FOR HIM AND FOUND HIM AT A
15 COMPANY CALLED PERSONA (PHONETIC), WHICH HE WAS PUTTING UP
16 A SIGN. AND HIS WIFE WAS RUNNING THE CRANE AND HE WAS UP
17 THERE. AND I WAS FAIRLY IMPRESSED WITH THE FACT THAT HIS
18 WIFE WAS THERE HELPING HIM. AND IT LOOKED LIKE THEY WERE
19 DOING A GOOD JOB AND CONSCIENTIOUS. AND PERSONA WAS A BIG
20 COMPANY, SO I FIGURED HE MUST BE -- YOU KNOW, KNOW A GOOD
21 BIT ABOUT WHAT HE WAS DOING.

22 Q DO YOU KNOW WHAT KIND OF EXPERIENCE MR. BENENHALEY HAD
23 WITH THE SIGN BUSINESS?

24 A OH, HE HAD BEEN IN IT FOR YEARS. I THINK HE HAD
25 PROBABLY DONE WORK FOR EVERY SIGN COMPANY THAT THERE WAS.

1 OF APPROXIMATELY 65 -- I THINK AROUND PROBABLY 50 TO 60,000
2 SQUARE -- SQUARE FOOT BUILDING.

3 Q DID YOU HAVE TO DO ANY RENOVATIONS TO THAT BUILDING?

4 A YES, MA'AM, WE HAD TO RE-WIRE IT. AND ALSO IT WAS AN
5 OLD LUMBER COMPANY, SO WE -- AND IT WAS OPEN ON ONE END, SO
6 WE HAD TO CLOSE IT UP AND INSTALL DOORS. YOU KNOW, THAT
7 KIND OF STUFF.

8 Q WHAT WAS YOUR POSITION WITHIN THAT COMPANY? WHAT WAS
9 YOUR TITLE?

10 A I GUESS YOU WOULD CALL ME PRESIDENT.

11 Q AND WHAT INVOLVEMENT DID YOU HAVE IN THE RUNNING OF
12 THIS COMPANY?

13 A WELL, SINCE I HAD NO PRIOR KNOWLEDGE, I TRIED TO HIRE
14 PEOPLE, YOU KNOW, SUCH AS CHUCK AND THEN AFTER CHUCK, I LET
15 HIM DO THE HIRING OF THE WELDERS AND THAT KIND OF STUFF.
16 OF COURSE, I HAD THE -- MY SECRETARY. BUT OTHER THAN THAT,
17 HE KIND OF HIRED MOST OF THE PEOPLE BECAUSE HE HAD KNOWN
18 THEM FROM PREVIOUS EXPERIENCES IN THE BUSINESS THAT THEY
19 HAD BEEN IN. SO I KIND OF RELIED ON THEM TO -- YOU KNOW,
20 TO GET THE CERTIFIED WELDERS AND THE PEOPLE THAT YOU HAD TO
21 HAVE.

22 Q WHAT TYPES OF PEOPLE WERE HIRED? WHAT TYPES OF TRADES
23 WERE HIRED TO WORK AT C&B?

24 A MOST OF THESE PEOPLE HAD WORKED WITH DIFFERENT
25 CONSTRUCTION COMPANIES IN THE WELDING ASPECT AND PIPE

1 FITTING AND, YOU KNOW, BASICALLY THAT KIND OF BUSINESS.

2 Q DID YOU GET EQUIPMENT FOR THIS CORPORATION?

3 A YES, MA'AM.

4 Q WHAT TYPE OF EQUIPMENT DID YOU ALL NEED TO RUN THIS
5 BUSINESS?

6 A WELL, YOU HAD TO HAVE WELDING MACHINES, TORCHES,
7 CUTTING TABLES, ALL TYPES OF MEASURED -- YOU KNOW, RULES
8 AND MEASURING EQUIPMENT AND PIPE CUTTING EQUIPMENT, AND
9 JUST NUMEROUS THINGS YOU HAD TO HAVE.

10 Q DID YOU ALL GET ANY HEAVY EQUIPMENT ALSO?

11 A YEAH, IT WAS A GOOD BIT HEAVY EQUIPMENT INVOLVED A
12 LITTLE LATER ON.

13 Q AND WHAT TYPE OF EQUIPMENT DID THE COMPANY BUY LATER
14 ON?

15 A TWO DAIRY DIGGERS, WHICH ARE BIG TRUCKS THAT AUGER THE
16 HOLES, AND THEN A CRANE.

17 Q WHO WAS RESPONSIBLE FOR CHOOSING EQUIPMENT THAT THE
18 CORPORATION NEEDED?

19 A WELL, CHUCK WAS BECAUSE OF THE FACT THAT WE HAD HIRED
20 SOME OF THIS STUFF DONE. AND HE SAID HOW MUCH MONEY YOU
21 COULD SAVE BY OWNING THE EQUIPMENT YOURSELF, SO HE FOUND A
22 DAIRY DIGGER IN TEXAS THAT HE SAID WAS WHAT WE NEEDED. SO
23 HE FLEW OUT AND GOT IT AND DROVE IT BACK.

24 AND ALSO WHEN IT CAME TIME FOR THE CRANE, HE USED SOME
25 PEOPLE IN THE CRANE BUSINESS I THINK FROM OUT OF COLUMBIA.

1 AND HE WENT UP AND LOOKED AT THE CRANE AND SAID, YOU KNOW,
2 THIS WAS THE ONE WE NEEDED TO DO THE JOB THAT WE HAD TO DO.

3 Q HOW DID C&B GET BUSINESS?

4 A WELL, A LOT OF PEOPLE, YOU KNOW, CALL CHUCK ANYWAY FOR
5 REPAIRS AND, YOU KNOW, DIFFERENT THINGS THAT HE HAD DONE.
6 AND I GUESS -- I THINK HE KNEW EVERYBODY IN THE BUSINESS,
7 AND PROBABLY TO THIS DAY HAS AS MUCH KNOWLEDGE ABOUT SIGNS
8 AS I GUESS ANYBODY AROUND, BECAUSE THAT'S ALL HE EVER DID.
9 BUT HE MOSTLY, YOU KNOW, GOT ALL THE CLIENTS BECAUSE I
10 REALLY DIDN'T KNOW HOW TO DISCUSS CERTAIN ASPECTS OF A SIGN
11 THAT HE KNEW ALL -- ALL THE INS AND OUTS OF IT. AND, YOU
12 KNOW, THERE'S PROBABLY 2 OR 300 DIFFERENT VARIATIONS OF
13 SIGNS WHICH -- I MEAN, MOST PEOPLE WOULDN'T HAVE A
14 KNOWLEDGE OF IT.

15 Q DID YOU ASSIST IN ANY WAY IN SELLING THE SIGNS?

16 A NO, BECAUSE THEY DID ALL THE COSTING. YOU KNOW, WHEN
17 -- HIS WIFE ALSO WORKED FOR US. AND THAT WAS BY HIS
18 INSISTENCE -- THAT SHE KNEW BASICALLY THE MATERIALS IT TOOK
19 TO BUILD A SIGN. SO WHEN HE WOULD CALL HER AND TELL HER
20 WHAT KIND OF SIGN THEY WERE BUILDING AND EVERYTHING, SHE
21 KNEW THE TERMINOLOGY OF GETTING THE RIGHT STEEL AND THE
22 RIGHT PIPE AND THE RIGHT WHATEVER. AND THEY HAD BEEN DOING
23 IT SO MANY YEARS. AND SO I FIGURED THEY WERE THE BEST TO
24 HANDLE THAT, ALL OF IT.

25 Q WERE YOU INVOLVED IN ORDERING ANY OF THE MATERIALS FOR

1 THE SIGNS?

2 A NO. I -- I LET THEM DO THAT.

3 Q WERE YOU INVOLVED IN ORDERING ANY BLUE PRINTS?

4 A NO. LIKE I SAY, THEY ALREADY KNEW ALL THAT STUFF AND
5 I DIDN'T, YOU KNOW.

6 Q DID YOU HAVE ANY KNOWLEDGE WHERE YOU COULD HAVE
7 ORDERED A SET OF BLUE PRINTS FOR A SIGN?

8 A NOT REALLY.

9 Q IN THE BUSINESS OF C&B WERE YOU EVER INVOLVED IN
10 DRAFTING ANY OF THE PROPOSALS?

11 A NO, MA'AM.

12 Q WERE YOU INVOLVED IN APPROVING PROPOSALS?

13 A TO A CERTAIN EXTENT. I WOULD LOOK AT THEM. AND, OF
14 COURSE, I WOULD ALWAYS SAY, WELL, CHUCK, YOU KNOW, IS THE
15 COMPANY -- ARE WE GOING TO MAKE ANY MONEY ON THIS DEAL?

16 AND HE WOULD SAY, YEAH, WE WOULD.

17 SINCE I DIDN'T REALLY KNOW WHAT I WAS LOOKING AT, I
18 TAKE HIS WORD FOR IT, THAT HE KNEW WHAT IT COST TO DO THIS.

19 Q GOING BACK TO THE BUILDING THAT YOU LEASED, WAS THERE
20 A SIGN OR ANY INFORMATION ON THE EXTERIOR OF THE BUILDING
21 SAYING WHAT BUSINESS IT WAS?

22 A YES, MA'AM, AFTER PROBABLY I'D SAY A MONTH OR TWO,
23 THEY WENT OUT AND PUT C&B FABRICATION ACROSS THE FRONT OF
24 THE BUILDING, WHICH WOULD HAVE BEEN FACING 301.

25 Q AND WHEN THE PHONE WAS ANSWERED AT C&B, HOW WAS IT

1 ANSWERED?

2 A C&B FAB.

3 Q DID YOU BECOME AWARE THAT SAM RHODES WAS LOOKING AT
4 THE CORPORATION TO FABRICATE SIGNS FOR HIM?

5 A CHUCK BROUGHT SAM DOWN AND I MET HIM.

6 Q HOW MANY TIMES DID YOU MEET HIM?

7 A I DON'T REMEMBER BUT THE ONE TIME. THE ONLY REASON I
8 REMEMBER THAT IS THAT I WAS STANDING OUTSIDE AND HE PULLED
9 UP IN A -- I BELIEVE IT WAS A BLACK MERCEDES, AND I JUST,
10 YOU KNOW -- RUN THROUGH YOUR MIND, MAYBE HE WOULD BE A GOOD
11 CUSTOMER.

12 Q MR. EADON, CAN YOU SEE THIS IF I HOLD IT HERE?

13 A YEAH.

14 Q THIS IS DEFENDANT'S EXHIBIT NO. 14 MARKED FOR
15 IDENTIFICATION.

16 A RIGHT.

17 Q WERE YOU INVOLVED WITH MR. RHODES IN THE CREATION OF
18 THIS PROPOSAL?

19 A NO.

20 Q DID YOU HAVE ANY INPUT AT ALL INTO THE INFORMATION ON
21 HERE WITH RESPECT TO THE STRUCTURE DESCRIPTION?

22 A NO.

23 Q DID YOU HAVE ANY INPUT WITH RESPECT TO THE REBECO
24 (PHONETIC) PANEL, THE LIGHTS, THE INSTALLATION?

25 A NO, MA'AM.

COPY

State of South Carolina)
County of Fairfield)

In The Court of
Common Pleas
01-CP-20-334

SAMUEL W. RHODES, JR.,)
and PIEDMONT PROMOTIONS,)
INC.,)

Plaintiffs,)

vs.)

MARION L. EADON, D/B/A)
C&B FABRICATION,)

Defendant.)

Deposition of
SAMUEL W. RHODES, JR.

January 22, 2003

Deposition on oral examination of SAMUEL W.
RHODES, JR., reported by Sherrie M. White,
Certified Court Reporter and Notary Public in and
for the State of South Carolina and in accordance
with the South Carolina Rules of Civil Procedure,
at the offices of McCutchen, Blanton, Rhodes &
Johnson, LLP, 1414 Lady Street, Columbia, South
Carolina, on Tuesday, January 21, 2003, scheduled
for 10:00 a.m. and commencing at the hour of
10:10 a.m..

Garber Reporting Service

Certified Court Reporters

Post Office Box 12345

EXHIBIT

1

1 Promotions, Inc.'s documents of leasing of the
2 signs in question, so that is why I am asking.
3 Do you know of any injury that you have suffered
4 other than your loss of income to Piedmont
5 Productions for leasing the signs and, of course,
6 the money they put into buying the signs and
7 cleaning up the loss? I have been produced all
8 of that.

9 A. Yes, sir, there is a lot of losses.

10 Q. I know I have been produced documents
11 reflecting cleanup of the signs, original
12 purchase of the signs, and documents reflecting
13 prior rental and, therefore, I imply loss of
14 future rental on the signs. Is there anything
15 that doesn't fall in one of those categories that
16 you are aware of?

17 A. Yes, sir.

18 Q. What would that be?

19 A. Loss of value of real estate.

20 Q. And explain that to me. Explain how
21 you come up with that as a damage, or how you are
22 looking at it.

23 A. Well, my real estate is not worth what
24 it was with the signs up.

25 Q. The same property that we were talking

Garber Reporting Service
Certified Court Reporters
Post Office Box 12348

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

A. The middle sign.

Q. And that estimate was for \$12,240 to repair that sign?

A. Yes, sir.

Q. Did you have any follow-up with Low Country Signs?

A. I talked to him and Marion. Somehow or another, I don't know if they were together or what, because I called C&B or Marion and this guy calls me back, and so I don't know if they were.

Q. You don't know if they were together or Marion was shutting his business down?

A. Marion ended up sending people to come fix it.

Q. Did someone come out to fix that sign?

A. Yes, sir.

Q. Do you know what repairs were made on that sign?

A. They came out to fix that sign and they were supposed to inspect all signs and make sure there were no problems with any of them.

Q. Do you remember was it C&B or was it Low Country?

A. C&B.

Q. They came out, do you remember what

1 they did as far as what repairs, if any, they
2 made?

3 A. When I left the location they had the
4 middle sign hooked up to a crane and they were
5 supposedly restraightening the sign, and assured
6 me there was no danger and that they would
7 inspect all signs and make sure there was no
8 danger, and everything was fine before they left.

9 Q. Do you recall approximately when this
10 was?

11 A. That should have been in January of
12 2001.

13 (DEPOSITION EXHIBIT #6, #7, #8,
14 #9 MARKED FOR IDENTIFICATION.)

15 Q. I have got some correspondence to Mr.
16 Eadon at C&B Fabricators. Exhibit 6 is a
17 December 29th letter. Exhibit 7 is a December
18 29th letter but it is different. Exhibit 8 is a
19 letter from Marion L. Eadon to you dated December
20 29th, and Exhibit 9 is a January 16th letter to
21 Mr. Eadon from you dated January 16th. Let me
22 take a minute and let you look over these.

23 A. (Deponent reviewing document.) Okay.

24 Q. Have you had a chance to look over
25 those letters? Do you recall those letters?

1 the interstate, so there are other things that
2 result that I may not know at this time in the
3 future.

4 Q. What do you mean? What type of things?

5 A. Like it may keep me from getting other
6 signs because of the strained relationship with
7 the Highway Department.

8 Q. Have they told you that or you are just
9 concerned about it?

10 A. No, I am concerned.

11 (DEPOSITION EXHIBIT #15 MARKED
12 FOR IDENTIFICATION.)

13 Q. Exhibit number 15 is dated January
14 23rd, 2001, and according to that letter at this
15 point in time one of the signs had actually
16 fallen out onto the road, is that accurate?

17 A. Yes, sir.

18 Q. Could you tell me factually -- you had
19 told me someone came out from C&B to try,
20 apparently failing to repair, but you thought
21 repairing the sign. Do you know the time frame
22 between when they did that repair that you saw
23 and when the sign actually fell?

24 A. Would you have a calendar? If not, I
25 can guess.

Garber Reporting Service
Certified Court Reporters
Post Office Box 12348
Philadelphia, Pennsylvania 19101

1 Q. I won't hold you to it as a firm date,
2 just what you believe.

3 A. Two days.

4 Q. Within two days after they were making
5 the repairs?

6 A. Yes, sir, two or three.

7 Q. And at that time according to this
8 letter did they say all the signs needed to be
9 removed at that time?

10 A. Yes, sir.

11 Q. And it cancelled the permits if I am
12 reading that accurately?

13 A. That is correct.

14 Q. Were the signs still up at this time or
15 had they already been removed, do you recall?

16 A. We had been told to take them down when
17 the first one fell in the interstate.

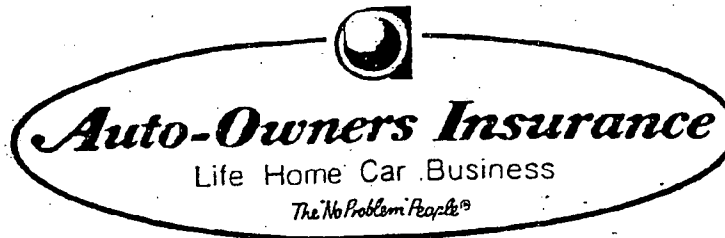
18 Q. I am going to let you look at this for
19 a minute because it looks like it may relate, and
20 I will get to these and mark them, but those are
21 dated 1/20, does that appear when probably the
22 signs were actually moved?

23 A. 1/20 was probably when the sign
24 actually fell.

25 (DEPOSITION EXHIBIT #16 MARKED

Garber Reporting Service
Certified Court Reporters
Post Office Box 12348
Columbia, South Carolina 29211

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
OTHER-OWNERS INSURANCE COMPANY



February 8, 2001

BRANCH CLAIM OFFICE
2000 Center Point Drive, Suite 2200 • P.O. Box 211909
Columbia, SC 29221-6909
(803) 354-9022 FAX (803) 354-9034
Toll Free: (800) 437-0519
WWW.AUTO-OWNERS.COM

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

RESERVATION OF RIGHTS

FIRST CLASS MAIL

C & B Fabrications, Inc. & Low Country Signs, Inc.

RE: Claim No: 36-0473-01
Insured: C & B Fabrications, Inc. & Low Country Signs, Inc.
Date Loss: 01/23/01
Claimant: Sam Rhodes

Dear Mr. Eadon:

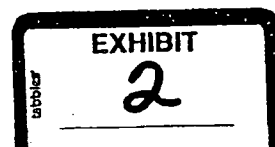
This letter is in regards to the above captioned claim. In order that the company may continue to handle this matter, we want you to know that we are proceeding under a reservation of rights.

We are reserving our rights due to the coverage questions involved in this matter. At this time we are unsure if an occurrence as defined by your policy has taken place. Coverage provided by your policy known as Commercial General Liability Coverage Form is found on page one of that form and is as follows:

SECTION I-COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement.



011

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 any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But,

(1)

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

(2)

Our right and duty to defend end when we have used the applicable limit of insurance in the payments of judgements or settlements under coverage A or B 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-COVERAGE 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"; and

(2)

The "bodily injury" or "property damage" occurs during the policy period.

c.

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

The policy also defines key words such as "property damage" and "occurrence". For your convenience I will quote the policy definitions as found on page 8 through 12 of the policy form:

"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 shall be deemed to occur at the time of the "occurrence" that caused it. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Your Commercial General Liability Policy does contain exclusions which may effect coverage. These exclusions are found on Page 3 of your policy. For your convenience I will quote the exclusions:

- l. "Property damage" to "your work" arising out of it or any part of it and including 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. "Property damage" to "impaired property" or property that has 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 your 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. Damages claimed by any loss, cost or expense incurred by you or others for the loss of

Page Four

Claim No: 36-0473-01

use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

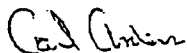
1. "Your product"
2. "Your work"; or
3. "Impaired property"

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

Our continued handling of this matter does not constitute an admission of any kind on the part of the company. No act of any company representative while investigating this matter shall be construed as waiving any company rights. The company reserves the right under the policy to deny coverage to you or anyone claiming coverage under the policy.

I would be pleased to answer any questions you might have concerning our position as outlined in this letter. I look forward to hearing from you soon.

Very truly yours,



Carl Anders
Claims Representative

CA/es

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

AUTO OWNERS INSURANCE)
COMPANY, :

PLAINTIFF,)

VERSUS)

TRANSCRIPT OF RECORD
02-CP-46-2369

SAMUEL W. RHODES,)
MARION L. EADON,)
C&B FABRICATIONS, INC., :
PIEDMONT PROMOTIONS, INC.)
LOW COUNTRY SIGNS, INC. :

JANUARY 22, 2004
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, MASTER IN EQUITY

APPEARANCES:

A. JOHNSTON COX, ESQ.
ATTORNEY FOR PLAINTIFF

HOOVER C. BLANTON, ESQ.
ATTORNEY FOR DEFENDANT RHODES

WILLIAM O. SWEENEY III, ESQ.
ATTORNEY FOR DEFENDANTS EADON, C&B FABRICATIONS,
INC., AND LOW COUNTRY SIGNS, INC.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

EXHIBIT
2

1 EXPENSE TO BE BORNE BY THE INSURED CONTRACTOR IN ORDER TO SATISFY
2 HIS CUSTOMERS.

3 LOOKING AT THIS SITUATION - AND THERE ARE SOME CASES THAT
4 TALK ABOUT THIS - THE ONE SIGN THAT FELL DOWN AND CAUSED DAMAGES
5 TO THE HIGHWAY DEPARTMENT AND WHATNOT, I WOULD CONTEND THAT
6 WOULD BE AN OCCURRENCE BECAUSE IT IS SOMETHING THAT CAUSED
7 PHYSICAL DAMAGE, A DEFECT THAT CAUSED PHYSICAL DAMAGE TO OTHER
8 PROPERTY. BUT THERE HAS BEEN NO OCCURRENCE—

9 THE COURT: WHAT ALL DID YOU PAY FOR OUT OF, ARISING OUT OF
10 THE FIRST ACCIDENT?

11 MR. COX: WE PAID FOR - AND I BELIEVE THAT'S IN—

12 THE COURT: YES.

13 MR. COX: THE FALLING OF THE SIGN, JUDGE, AND THAT IS IN THE
14 AFFIDAVIT OF CARL ANDERS. LET ME SEE IF I CAN FIND THAT. BUT WE
15 PAID— THERE WAS— REMOVING THE SIGN FROM I-77.

16 THE COURT: YEAH. DID YOU PAY ANY OF THE SAME ELEMENTS THAT
17 THEY CLAIM—

18 MR. COX: ALL OF IT.

19 THE COURT: THAT THEY CLAIM THEY'RE DUE IN THIS—

20 MR. COX: YES SIR.

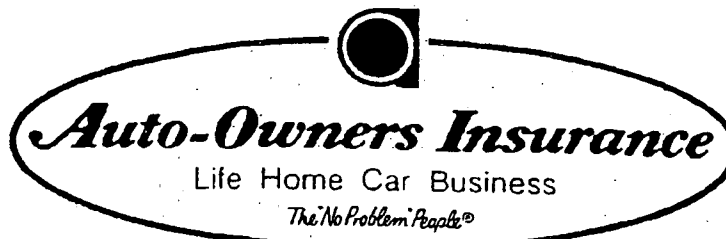
21 THE COURT: —IN THIS ACTION?

22 MR. COX: YES SIR. IN FACT, WE PAID ALL OF THE DAMAGES THAT
23 THEY CLAIMED IN PARAGRAPH FOUR OF THEIR COMPLAINT.

24 THE COURT: WHEN I SAY, THEY, I MEAN....

25 MR. COX: RHODES AND PIEDMONT.

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-OWNERS INSURANCE COMPANY



August 2, 2001

Piedmont Promotions, Inc.
Attn: Sam Rhodes

BRANCH CLAIM OFFICE
2000 Center Point Drive, Suite 2200 • P.O. Box 211509
Columbia, SC 29221-6909
(803) 354-9022 FAX (803) 354-9034
Toll Free: (800) 437-0519
WWW.AUTO-OWNERS.COM

RE: Claim No: 36-473-01
Insured: C & B Fabrications, Inc. & Low Country Signs, Inc.
Date Loss: 1-23-01

Dear Mr. Rhodes:

I have received and reviewed some of the bills that you sent me as a result of the billboard falling on I-77. As I explained to you on the phone, we do insure C & B Fabrications but their liability policy does not have coverage for most of the expenses that will be incurred by someone in this loss. We have coverage for resulting damages that this sign has caused and I have enclosed a draft to you in the amount of \$1800.00. This is for two bills that you sent me, one for cutting the sign loose from I-77 and the other for the damage to the fences from when it fell on them. We will also have coverage for the expenses that the SCDOT has billed you for and I have paid that bill directly to them.

If you have any other bills that come in please forward a copy to me and I will let you know if they are covered. Please give me a description for what the bill is for when you mail it in.

If you have any questions, please feel free to give me a call.

Sincerely,

Carl E. Anders, III
Sr. Claims Representative

CEA/mv

EXHIBIT

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-OWNERS INSURANCE COMPANY



BRANCH CLAIM OFFICE
2000 Center Point Drive, Suite 2200 • P.O. Box 211909
Columbia, SC 29221-6909
803-354-9022 FAX 803-354-9034
Toll Free: 800-437-0519
WWW.AUTO-OWNERS.COM

February 8, 2002

C & B Fabrications, Inc. & Low Country Signs, Inc.
% Marion Eadon

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RE: Insured: C & B Fabrications, Inc. & Low Country Signs, Inc.
Claim No: 36-473-01
Date Loss: 1-23-01
Plaintiffs: Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc.

Dear Mr. Eadon:

Owners Insurance Company has recently been in receipt of suit papers that were filed against Marion L. Eadon dba C & B Fabrications. The plaintiff in this matter is Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. This letter is to let you know that we will be providing a defense to you in this suit and we will be doing so under a reservation of rights. I have referred this file to Attorney Catharine Griffin in Columbia for her to answer and defend. Catharine will be getting in touch with you.

This letter is to also be a supplemental to the past reservation of rights letter that we have sent to you. We have paid for what we believe is covered property damage thus far under your Commercial General Liability Policy. We will be defending presently due to the claim of damage to real property that is alleged in the suit papers. If it is determined that the plaintiffs are entitled to money for the rest of the damages that have not already been paid, we believe those damages would not be covered under your policy. I had previously outlined the exclusions that we would not cover the actual damage to the signs in my past reservation of rights letter to you.



021

Auto-Owners Insurance

Page Two

Claim No: 36-473-01

Should the claim of damage to real property be dismissed, there is a strong likelihood that we will no longer be providing a defense to you. I have talked with your personal attorney, Lena Younts, and have given her a status as to where things are at on this claim.

If you have any further questions about this claim or your policy, feel free to contact me at the telephone number above.

All rights, terms, conditions and exclusions in your policy are in full force and effect and are completely reserved.

Sincerely,

Carl E. Anders, III
Sr. Claims Representative

CEA/mv

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

MAR 6 8 51 AM '03
IN THE COURT OF COMMON PLEAS

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

CIVIL ACTION NO.: 01-CP-20-334

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

NOTICE OF MOTION AND MOTION TO
INTERVENE ON BEHALF OF AUTO-
OWNERS INSURANCE COMPANY

TO: HOOVER C. BLANTON AND CREIGHTON COLEMAN, ATTORNEYS FOR
THE PLAINTIFF AND CATHERINE G. GRIFFIN, ATTORNEY FOR THE
DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Auto-
Owners Insurance Company will move before the Presiding Judge of the Sixth
Judicial Circuit at the Fairfield County Courthouse, Winnsboro, South Carolina, as
soon as counsel may be heard, or at such time and place as may be set by the
Court, for an Order pursuant to S.C.R.C.P. 24(a), allowing Auto-Owners Insurance
Company ("Auto-Owners") to intervene in this action for the sole purpose of
submitting at the trial of this case a special verdict form or a general verdict form
accompanied by answer to interrogatories pursuant to South Carolina Rule of
Civil Procedure 49.

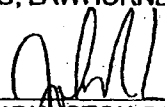
Auto-Owners Insurance Company issued an insurance policy to the
Defendant with liability coverage for the period of time relevant to this action (the
"Policy"). Auto-Owners has filed a declaratory judgment action, entitled, Auto-
Owners Insurance Company v. Samuel W. Rhodes, Piedmont Promotions, Inc. and

EXHIBIT

Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., filed in the York County Court of Common Pleas, civil action #02-CP-46-2369, requesting that the Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against the Defendant. Therefore, Auto-Owners has an interest in the subject of the action. In addition, if Auto-Owners is not permitted to submit a special verdict form to the jury, the disposition of the action may impair or impede Auto-Owners' ability to protect its interest in the event that the jury returns a general verdict against the Defendant. Furthermore, Auto-Owners interests are not adequately represented by the existing parties. Auto-Owners is informed and believes such request will not otherwise prejudice the adjudication of the rights of the original parties to the action since the verdict form is the only thing effected.

This Motion is based upon the pleadings filed in this case, rules of Court, the attached special interrogatories and such other matters as may be properly presented to the Court at the time of the hearing.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina
March 5, 2003

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

MAR 6 8 52 AM '03
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

THE COURT OF COMMON PLEAS

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

CIVIL ACTION NO.: 01-CP-20-334

Plaintiffs,

**SPECIAL INTERROGATORIES/VERDICT
FORM**

v.

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina,
hereby certify this is a true copy of
the original on file in this office.
9/11/04 Betty Jo Beckham
Clerk of Court

If the jury finds in favor of the Plaintiffs and awards damages on any of their claims against the Defendant, then the jury should make the specific findings set out below as to each of the Plaintiff's claims:

1. Do you find that the Defendant breached its contract with the Plaintiffs and that such breach of contract proximately caused the Plaintiffs' damages? YES or NO (circle one)
If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the breach of contract of the Defendant? \$ _____
2. Do you find that the Defendant breached an implied warranty of fitness and that such breach of warranty proximately caused the Plaintiffs' damages? YES or NO (circle one)
If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the breach of warranty of the Defendant? \$ _____
3. Do you find that the signs fabricated, delivered and installed by the Defendant were in a defective condition and unreasonably dangerous to persons and property as fabricated delivered and installed? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the defective condition of the signs? \$ _____

4. Do you find that the Defendant fraudulently breached its contract in representing that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such fraudulent breach of contract proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the fraudulent breach of contract of the Defendant? \$_____
5. Do you find that the Defendant committed fraud in representing that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such fraud proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the fraud committed by the Defendant? \$_____
6. Do you find that the Defendant committed constructive fraud in representing that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such constructive fraud proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the constructive fraud committed by the Defendant? \$_____
7. Do you find that the Defendant negligently misrepresented that the signs had been constructed and erected in conformity with the engineering drawings for the designs and that such negligent misrepresentation proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the negligent misrepresentation of the Defendant? \$_____
8. Do you find that the Defendant was negligent in failing to exercise due care in fabricating the signs in accordance with the engineering drawings for the signs and in failing to notify the Plaintiff of the alteration of the signs from the design plans and that such

negligence proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the negligence of the Defendant? \$_____

9. Do you find that the Defendant breached the implied covenant of good faith and fair dealing inherent in any contract and that such breach proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the breach of the implied covenant of good faith and fair dealing of the Defendant? \$_____

10. Do you find that the Defendant's actions created a nuisance to the Plaintiff and that such nuisance proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the nuisance created by the Defendant? \$_____

11. Do you find that the Defendant's actions constitute unfair or deceptive acts or practices within the meaning of S.C. Ann. § 39-5-10 (the South Carolina Unfair Trade Practices Act) and that the unfair or deceptive acts proximately caused the Plaintiffs' damages? YES or NO (circle one) If your answer is yes, then in what amount do you find that the Plaintiffs were damaged as a result of the unfair or deceptive acts or practices of the Defendant? \$_____

12. If you awarded the Plaintiff damages under any theory listed above, please inform the Court what, if any, damages you awarded for the following (The total damages listed below must match the damages listed above):

(a) Cost of removal of the two signs erected under permits 04-20-426995
\$_____;

(b) Cost of removal and clean up related to the collapse of the sign erected under permit 04-20-426994 \$_____;

(c) Loss of revenue from the advertising that the signs would have displayed
\$_____;

(d) Refund of purchase price of the three signs \$_____;

(e) Decrease in value of real property upon which sign that collapsed was erected
\$_____;

(f) Decrease in value of real property upon which the two signs that were removed were
erected \$_____;

(g) Total Punitive damages, if any \$_____.

(h) If you awarded punitive damages against the Defendant, under which cause(s) of
action were they awarded and in what amounts?

(1) Fraudulent Breach of Contract \$_____.

(2) Fraud \$_____.

(3) Constructive Fraud \$_____.

(4) Negligent Misrepresentation \$_____.

(5) Willful, Reckless Conduct \$_____.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD

MAR 6 8 52 AM '03

CIVIL ACTION NO.: 01-CP-20-334

Samuel W. Rhodes, Jr., and Piedmont
Promotions, Inc.,

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Plaintiff,

CERTIFICATE OF SERVICE

v.

Marion L. Eadon, d/b/a C&B Fabrication,

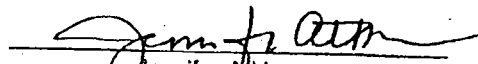
Defendants.

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Defendant, does hereby certify that service of the attached Notice of Motion and Motion to Intervene on behalf of Auto-Owners Insurance Company in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 5th day of March, 2003, addressed as follows:

Creighton B. Coleman, Esquire
MCCUTCHEN, BLANTON, RHODES
& JOHNSON, LLL
120 Washington Street
Post Office Box 1006
Winnisboro, South Carolina 29180

Hoover C. Blanton, Esquire
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209

Catharine G. Griffin, Esquire
BAKER, RAVENEL & BENDER
1730 Main Street
Post Office Box 8057
Columbia, South Carolina 29202


Jennifer Atkinson

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

v.

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendants.

CIVIL ACTION NO.: 01-CP-20-334

**AMENDED NOTICE OF MOTION AND
MOTION TO INTERVENE ON BEHALF
OF AUTO-OWNERS INSURANCE
COMPANY**

TO: HOOVER C. BLANTON AND CREIGHTON COLEMAN, ATTORNEYS FOR
THE PLAINTIFF AND CATHARINE G. GRIFFIN, ATTORNEY FOR THE
DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Auto-Owners Insurance Company will move before the Presiding Judge of the Sixth Judicial Circuit at the Fairfield County Courthouse, Winnsboro, South Carolina, as soon as counsel may be heard, or at such time and place as may be set by the Court, for an Order pursuant to S.C.R.C.P. 24(a) or 24(b), allowing Auto-Owners Insurance Company ("Auto-Owners") to intervene in this action for the sole purpose of submitting at the trial of this case a special verdict form or a general verdict form accompanied by answer to interrogatories pursuant to South Carolina Rule of Civil Procedure 49.

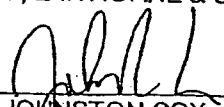
Auto-Owners Insurance Company issued an insurance policy to the Defendant with liability coverage for the period of time relevant to this action (the "Policy"). Auto-Owners has filed a declaratory judgment action, entitled, Auto-Owners Insurance Company v. Samuel W. Rhodes, Piedmont Promotions, Inc. and

EXHIBIT

Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc., filed in the York County Court of Common Pleas, civil action #02-CP-46-2369, requesting that the Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against the Defendant. Therefore, Auto-Owners has an interest in the subject of the action. In addition, if Auto-Owners is not permitted to submit a special verdict form to the jury, the disposition of the action may impair or impede Auto-Owners' ability to protect its interest in the event that the jury returns a general verdict against the Defendant. Furthermore, Auto-Owners interests are not adequately represented by the existing parties. Auto-Owners is informed and believes such request will not otherwise prejudice the adjudication of the rights of the original parties to the action since the verdict form is the only thing effected.

This Motion is based upon the pleadings filed in this case, rules of Court, the attached special interrogatories and such other matters as may be properly presented to the Court at the time of the hearing.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina
April 17, 2003

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,)

Plaintiffs,)

v.)

Marion L. Eadon, d/b/a C&B)
Fabrication,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 01-CP-20-334

**MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE ON BEHALF
OF AUTO-OWNERS INSURANCE
COMPANY**

NOW COMES Auto-Owners Insurance Company (hereinafter "Auto-Owners") and submits its Memorandum in Support of Notice of and Motion to Intervene pursuant to South Carolina Rule of Civil Procedure 24(a) and (b) and shows the Court as follows:

This case involves allegations of faulty workmanship against the Defendants, who manufactured and installed advertising signs for the Plaintiff. Auto-Owners, the moving party, is the insurance carrier for the Defendants and is presently defending the Defendants in this action under reservation of rights. The policy (# 036064416, attached to Motion) is a commercial general liability policy covering claims against the defendants for "property damage" resulting from an "occurrence." However, the policy excludes coverage for, among other things, damage resulting from the Defendants' own work product; damages claimed for any loss, cost or expense incurred by the defendants or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Defendants' product or work; property damage to impaired property or property that has not been physically injured arising out

EXHIBIT

Q

of a defect, deficiency, inadequacy or dangerous condition in Defendants' product or work; and damage expected or intended by the defendants. If a general verdict is rendered in this case, it will be difficult at a later stage for both Auto-Owners and the Court to determine what portion of any damages assessed against the defendants are covered or fall under a policy exclusion. On the other hand, if Auto-Owners is permitted to intervene for the limited purpose of requesting specific findings after the jury renders a general verdict, the doctrine of judicial economy will be promoted and Auto-Owners' interest protected.

Discussion

I. Auto-Owners should be permitted to intervene as a matter of right.

Auto-Owners should be allowed to intervene in this action pursuant to Rule 24 (a)(2). Although South Carolina courts have not directly addressed intervention by an insurance carrier in circumstances similar to this case, our Supreme Court has interpreted "the rules to permit liberal intervention particularly where as here, judicial economy will be promoted by the declaration of the rights of all parties who may be affected." Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712, 714 (1990). In addition, the Supreme Court has stated that lower courts "must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2). Each case will be examined in the context of its unique facts and circumstances." Id.

Rule 24(a)(2) provides that:

Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his

ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Accordingly, a party moving to intervene under Rule 24 (a)(2) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. Id.

A court must consider the following factors in determining whether a motion to intervene is timely:

1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

Ex parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661, 664 (1993). "The court must consider all the circumstances in each case, not just to what point the suit has progressed. The most important consideration in reviewing the decision is whether the delay prejudiced the parties." Holsey v. Armour & Co., 743 F.2d 199 (4th Cir. 1984).

Timeliness is not an issue here because of the limited nature of Auto-Owners' proposed involvement in this case. All Auto-Owners is requesting is that the court submit special interrogatories to the jury after the verdict, if the verdict is against the Defendants. This will not require the Plaintiffs to offer any additional evidence to prove their case against the Defendants. It will not require any party to engage in any additional discovery or result in any delay of the trial of this case. Therefore, granting intervention will in no way prejudice any party to the action.

As to Auto-Owners' interest in the subject transaction, the Defendants have claimed Auto-Owners is obligated to indemnify them under their commercial general liability policy for any amount for which they are found liable to the Plaintiffs. And, pursuant to the terms of the policy, Auto-Owners' liability for indemnification, if any, will depend upon which claims the jury finds that the Defendants are liable to the Plaintiff. (See Policy.) Therefore, the issues determined in this action may determine the extent that the Defendants claim Auto-Owners is liable to them for indemnification; consequently, Auto-Owners' financial interest in the rights to be determined in this action warrant intervention. See Berkeley Elec. Co-op. v. Town of Mt. Pleasant, 394 S.E.2d 712, 715 (1990).

Clearly, without intervention, the disposition of the action may impair Auto-Owners' ability to protect its interest. As discussed in Berkeley, a "prospective intervenor demonstrate that without its intervention, the disposition of the case may impair or impede its ability to protect its interest. To meet that requirement, a party need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene." Berkeley, 394 S.E.2d at 715. If the jury returns a general verdict without specifying what the damages are for, Auto-Owners' ability to determine which damages are covered under its policy may be destroyed.

Furthermore, Auto-Owners' interests are not adequately being represented by any other party to the action. As noted in Berkeley, the burden of showing that its asserted interests are not represented by any other party is "minimal," and the party need only show that the representation of its interests "may be" inadequate. Id. Clearly, no other party to this action has any interest in requesting the jury specify the damages awarded in this case. Therefore, Auto-Owners meets all of the requirements for intervention as of right and should be allowed to intervene.

II. Permissive Joinder under Rule 24(b)(2)

If the Court finds that Auto-Owners is not permitted to intervene as a matter of right, the Court should allow permissive joinder under Rule 24(b)(2). Rule 24(b) states that a party is entitled to intervene when the moving party's claim or defense and the main action have a question of law or fact in common. See, South Carolina Tax Comm'n v. Union County Treasurer, 368 S.E.2d 72, 75 (S.C. Ct. App. 1988); S.C.R.C.P. 24(b)(2). Permissive intervention is wholly discretionary and a trial court's ruling would be reversed only for an abuse of discretion. Rule 24(b) is based upon the same theory as permissive joinder of parties – including all parties with common questions of law or fact in the same action promotes judicial economy. Id.

The case at bar is typical of the type of case for which the permissive intervention rule was designed. See, Knapp v. Hankins, 106 F.Supp. 43 (D.C. Ill. 1952) (courts have allowed insurance companies to intervene in cases where they might otherwise have brought a subsequent declaratory judgment action to determine their liability). Rule 24(b) was designed for the situation where "the prospective intervenor might institute or be called upon to defend a separate proceeding that would substantially duplicate the one in question." South Carolina Tax Comm'n, 368 S.E.2d at 75-76.

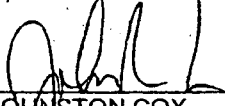
Here, the court should allow Auto-Owners to intervene because the same factual issue being determined by the jury – the amount of monetary loss sustained for each type of damage claimed – is at issue in both the present action between the Plaintiff and the Defendants and the declaratory judgment action between the Defendants and Auto-Owners.

Furthermore, Rule 24(b) provides that the Court should consider whether the intervention of Auto-Owners would "unduly delay or prejudice the adjudication of the rights of the original parties." See, S.C.R.C.P. 24(b). Here, intervention will cause no delay and no prejudice. First, no additional discovery would be required because the Plaintiff must prove each element of any claim as to which the jury awards damages, and the special interrogatories

will be consistent with the proof required of the Plaintiff. There will be no prejudice to the existing parties because intervention would have no effect on the pending action until after the jury reaches a verdict.

Allowing Auto-Owners to intervene will not cause a delay in this action or prejudice the original parties, and it would further the interests of judicial economy by reducing and possibly eliminating the issues to be determined by a jury in the declaratory judgment action. Therefore, the Court should grant Auto-Owners' motion to intervene, and Auto-Owners should be added as a defendant in this action for the limited purpose of submitting a special verdict form and special interrogatories to the jury.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

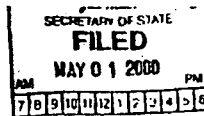
A. JOHNSTON COX
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina
7/9, 2003

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION



TYPE OR PRINT CLEARLY IN BLACK INK

1. The name of the proposed corporation is Lowcountry Signs & Fabrication, Inc.
2. The initial registered office of the corporation is Route 2, Box 823
Street Address
Marbleton Marbleton SC
City County State 29572
Zip Code

and the initial registered agent at such address is: Marion L. Eadon
Print Name

I hereby consent to the appointment as registered agent of the corporation.

Marion L. Eadon
Agent's Signature

3. The corporation is authorized to issue shares of stock as follows. Complete "a" or "b", whichever is applicable:

a. ☐ The corporation is authorized to issue a single class of shares, the total number of shares authorized is 1000

b. ☐ The corporation is authorized to issue more than one class of shares:

Class of Shares Authorized No. of Each Class

The relative right, preference, and limitations of the shares of each class, and of each series within a class, are as follows:

4. The existence of the corporation shall begin as of the filing date with the Secretary of State unless a delayed date is indicated (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended)
5. The optional provisions, which the corporation elects to include in the articles of incorporation, are as follows (See the applicable provisions of Sections 33-2-102, 35-2-105, and 35-2-221 of the 1976 South Carolina Code of Laws, as amended).

6. The name, address and signature of each incorporator are as follows (only one is required).

a. Marion L. Eadon
Name

b. X
Name

Address

Signature

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

JUN 07 2004

00-020063CC

Mark H. [Signature]
SECRETARY OF STATE OF SOUTH CAROLINA



Lowcountry Shoes & Fabrication, Inc.
Name of Corporation

B.

Name

Address

Signature

7. I, Ricci Land Welch, an attorney licensed to practice in the State of South Carolina, certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of Chapter 2, Title 33 of the 1976 South Carolina Code of Laws, as amended, relating to the articles of incorporation.

Date Aug 6, 2000

Ricci Land Welch
Signature

Ricci Land Welch
Type or Print Name

P.O. Box 138
Address

Myrtle Beach, South Carolina

803-435-8994
Telephone Number

FOLDER INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a confirmed copy, must be filed.
2. If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form.
3. Enclose the fee of \$135.00 payable to the Secretary of State.
4. THIS FORM MUST BE ACCOMPANIED BY THE ANNUAL REPORT (SEE SECTION 12-19-20 OF THE 1976 SOUTH CAROLINA CODE OF LAWS).

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-2911.

12/29/2000 12:59

8034735854

C2B FABRICATION

Marlon L. Eadon
P.O. Drawer H
Manning, SC 29102
(803)473-5808

Friday, December 29, 2000

Piedmont Promotions
Attn: Mr. Samuel Rhodes

Dear Sam:

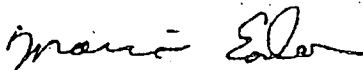
As you well know, C & B Fabricators went out of business April 03, 2000. I was trying to get Tracy Benenhaley to look at the sign and repair it.

Checking back, all of you fellows in the sign business took advantage of me not knowing enough about the business. Everyone in the sign business said that after 60 feet that the charge should have been one hundred dollars (\$100.00) per foot. We underbid this sign by \$22,000.00, plus I lost \$35,000.00 on the entire project.

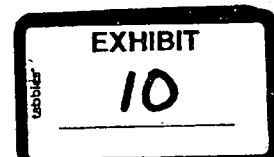
I am willing to do what it takes to correct the repairs on the leaning structure, if you will rent the crane.

If this is not satisfactory, let me know. A law suit is a waste of time due to the fact that C & B Fabricators went out of business in April and does not have any assets.

Please advise.



Marlon Eadon



BAKER, RAVENEL & BENDER, L.L.P.

CHARLES E. BAKER
D. CRAVENS RAVENEL
JAY BENDER
S. MARKBY STUBBS
CATHARINE GARDEE GRIFFIN
WILLIAM PEARCE DAVIS
SUSAN DRAKE DUBOSE
KIRBY D. SHEALY III
ELIZABETH M. DALZELL
HOLLY L. PALMER

ATTORNEYS AND COUNSELORS AT LAW
1730 MAIN STREET • POST OFFICE BOX 8057
COLUMBIA, SOUTH CAROLINA 29202

TELEPHONE
803/799-9091

TELECOPIER
803/779-3423

March 4, 2002

Creighton B. Coleman, Esquire
P.O. Box 1006
Winnsboro, SC 29180

Hoover C. Blanton, Esquire
P. O. Drawer 11209
Columbia, SC 29211-1209

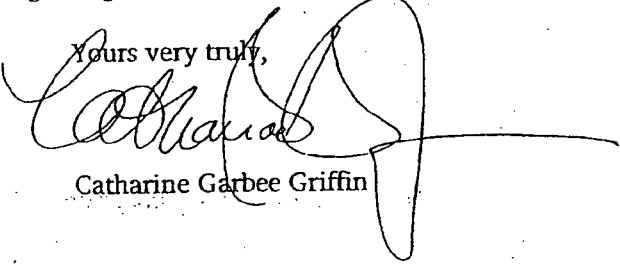
Re: Insured: C&B Fabrications, Inc. and Low Country Signs, Inc.
Claim No. 36-473-01
Date of Loss: 1-23-01
Plaintiffs: Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc.
Our File No. 8852.125

Gentlemen:

I have entered an appearance on behalf of Marion Eadon in the above-referenced case. It is my understanding that the corporate entity with whom your client was doing business was C&B Fabricators, Inc. They were incorporated on September 23, 1998. I ask that you please dismiss Marion Eadon as a defendant in this case and substitute C&B Fabricators, Inc.

I look forward to hearing from you regarding this matter.

Yours very truly,


Catharine Garbee Griffin

CGG/tkt

cc: Mr. Carl Anders
Mr. Marion Eadon



7-16-03

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF FAIRFIELD)

C/A No: 01-CP-20-334

Samuel W. Rhodes, Jr., and
Piedmont Promotions, Inc.,

Plaintiffs,

-vs-

Marion L. Eadon, d/b/a C&B
Fabrication,

Defendant.

ANSWER TO THE FIRST AMENDED
COMPLAINT
(JURY TRIAL DEMANDED)

Defendant,, Marion L. Eadon, improperly identified as Marion L. Eadon d/b/a C&B

Fabrication, answers the first amended complaint of the plaintiff as follows:

FOR A FIRST DEFENSE

1. Denies each and every allegation of the first amended complaint not herein specifically admitted, qualified or explained.
2. Admits, upon information and belief, the allegations of paragraph one (1) of the first amended complaint.
3. Admits that Marion Eadon is a citizen and resident of South Carolina, but denies the remaining allegations of paragraph two (2) of the first amended complaint.
4. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph three (3) of the first amended complaint, and therefore denies the same and demands strict proof thereof.
5. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs four (4), five (5) and six (6) of the first amended complaint, and therefore denies the

EXHIBIT

same and demands strict proof thereof.

6. Denies the allegations of paragraph seven (7) of the first amended complaint and further alleges that Eadon individually did not make the proposal to Rhodes, but C&B Fabricators, Inc. submitted a proposal to Rhodes.

7. Denies the allegations of paragraph eight (8) of the first amended complaint as it relates to Marion Eadon.

8. Denies the allegations of paragraph nine (9) of the first amended complaint.

9. Denies the allegations of paragraph ten (10) of the first amended complaint as it relates to Marion Eadon.

10. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), subparts (a) through (g), ^(h) nineteen (19) of the first amended complaint, and therefore denies the same and demands strict proof thereof.

11. Denies the allegations of paragraph twenty (20), subparts (a) through (e), of the first amended complaint.

12. Realleges and reasserts its responses to paragraphs one (1) through twenty (20) of the first amended complaint in response to paragraph twenty-one (21) of the first amended complaint as if fully reiterated herein verbatim.

13. Denies the allegations of paragraphs twenty-two (22), twenty-three (23), and twenty-four (24) of the first amended complaint.

14. Realleges and reasserts its responses to paragraphs one (1) through twenty-four (24) of the first amended complaint in response to paragraph twenty-five (25) of the first amended

complaint as if fully reiterated herein verbatim.

15. Denies the allegations of paragraphs twenty-six (26), twenty-seven (27) and twenty-eight (28) of the first amended complaint.

16. Realleges and reasserts its responses to paragraphs one (1) through twenty-eight (28) of the first amended complaint in response to paragraph twenty-nine (29) of the first amended complaint as if fully reiterated herein verbatim.

17. Denies the allegations of paragraphs thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34) and thirty-five (35) of the first amended complaint.

18. Realleges and reasserts its responses to paragraphs one (1) through thirty-five (35) of the first amended complaint in response to paragraph thirty-six (36) of the first amended complaint as if fully reiterated herein verbatim.

19. Denies the allegations of paragraph thirty-seven (37) of the first amended complaint.

20. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph thirty-eight (38) of the first amended complaint, and therefore denies the same and demands strict proof thereof.

21. Denies the allegations of paragraph thirty-nine (39) of the first amended complaint.

22. Realleges and reasserts its responses to paragraphs one (1) through thirty-nine (39) of the first amended complaint in response to paragraph forty (40) of the first amended complaint as if fully reiterated herein verbatim.

23. Denies the allegations of paragraphs forty-one (41) and forty-two (42) of the first amended complaint.

24. Realleges and reasserts its responses to paragraphs one (1) through forty-two (42) of

the first amended complaint in response to paragraph forty-three (43) of the first amended complaint as if fully reiterated herein verbatim.

25. Denies the allegations of paragraphs forty-four (44) and forty-five (45) of the first amended complaint.

26. Realleges and reasserts its responses to paragraphs one (1) through forty-five (45) of the first amended complaint in response to paragraph forty-six (46) of the first amended complaint as if fully reiterated herein verbatim.

27. Denies the allegations of paragraphs forty-seven (47) and forty-eight (48) of the first amended complaint.

28. Realleges and reasserts its responses to paragraphs one (1) through forty-eight (48) of the first amended complaint in response to paragraph forty-nine (49) of the first amended complaint as if fully reiterated herein verbatim.

29. Denies the allegations of paragraphs fifty (50) and fifty-one (51) of the first amended complaint.

30. Realleges and reasserts its responses to paragraphs one (1) through fifty-one (51) of the first amended complaint in response to paragraph fifty-two (52) of the first amended complaint as if fully reiterated herein verbatim.

31. Denies the allegations of paragraphs fifty-three (53) and fifty-four (54) of the first amended complaint.

32. Realleges and reasserts its responses to paragraphs one (1) through fifty-four (54) of the first amended complaint in response to paragraph fifty-five (55) of the first amended complaint as if fully reiterated herein verbatim.

33. Denies the allegations of paragraphs fifty-six (56), fifty-seven (57) and fifty-eight (58) of the first amended complaint.

34. Realleges and reasserts its responses to paragraphs one (1) through fifty-eight (58) of the first amended complaint in response to paragraph fifty-nine (59) of the first amended complaint as if fully reiterated herein verbatim.

35. Denies the allegations of paragraphs sixty (60), sixty-one (61) and sixty-two (62) of the first amended complaint.

FOR A SECOND DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

36. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, 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 a meaningful standard and is inconsistent with due process guarantees.

FOR A THIRD DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

37. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FOURTH DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

38. That the plaintiff's claim for punitive damages violates the equal protection clause

of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A FIFTH DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

39. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SIXTH DEFENSE TO THE
SEVENTH AND EIGHTH CAUSES OF ACTION

40. The negligence, recklessness, willfulness and wantonness of the Plaintiff, combining and concurring with this Defendant, if any, and the same is denied, was a direct and proximate cause of the Plaintiff's injuries and damages and without which the same would not have occurred, and was greater in proportion to that of the Defendant, if any, and same is denied, and, therefore, the Plaintiff may not recover from this Defendant for any of their alleged injuries or damages complained of in the first amended complaint. This Defendant, therefore, expressly pleads the contributory and comparative negligence, recklessness, willfulness and wantonness of the Plaintiff as a bar to any recovery against this Defendant.

As an alternative, this Defendant is entitled to a reduction of damages based upon the percentage of the Plaintiff's negligence, recklessness, willfulness and wantonness.

FOR A SEVENTH DEFENSE TO THE FOURTH, FIFTH, SIXTH,
SEVENTH, EIGHTH, NINTH AND TENTH CAUSES OF ACTION

41. Plaintiff has failed to set forth sufficient facts to constitute a cause of action for strict liability, fraudulent breach of contract, fraud, constructive fraud, bad faith, nuisance and unfair trade practices.

FOR AN EIGHTH DEFENSE TO ALL CAUSES OF ACTION

42. The plaintiff has failed to set forth sufficient facts to constitute a cause of action against this defendant.

FOR A NINTH DEFENSE

43. Plaintiff has failed to mitigate his damages.

FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION

44. The economic loss rule bars the plaintiff's action because the plaintiff did not suffer any injury to his person or property.

FOR AN ELEVENTH DEFENSE TO THE TENTH CAUSE OF ACTION

45. The plaintiff does not have standing to bring a cause of action for nuisance.

FOR A TWELFTH DEFENSE TO THE TENTH CAUSE OF ACTION

46. The plaintiff has failed to allege that defendant unreasonably interfered with his property, and that the interference is potentially recurring.

FOR A THIRTEENTH DEFENSE TO THE ELEVENTH CAUSE OF ACTION

47. Plaintiff's private contract with C&B Fabricators, Inc. does not affect the public interest, and, therefore, the cause of action for Unfair Trade practices should be dismissed.

FOR A FOURTEENTH DEFENSE TO ALL CAUSES OF ACTION

48. Defendant pleads collateral estoppel as a complete defense in this matter because the

issues raised by the plaintiffs have been litigated and directly determined in an administrative proceeding and the matter or facts directly in issue were necessary to support the first judgment. Therefore, the plaintiffs are barred by the doctrine of collateral estoppel in relitigating these issues.

FOR A FIFTEENTH DEFENSE TO ALL CAUSES OF ACTION

49. Defendant pleads affirmatively that the plaintiffs' business was a sham and, thus, any business loss claimed by the plaintiffs would be solely as a result of a sham operation and not recoverable because it requires that the court enforce an illegal contract.

FOR A SIXTEENTH DEFENSE TO ALL CAUSES OF ACTION

50. Defendant pleads fraud as an affirmative defense in light of the sham business of the plaintiffs.

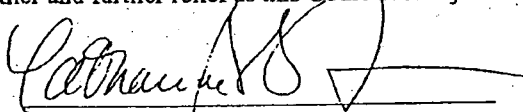
FOR A SEVENTEENTH DEFENSE TO ALL CAUSES OF ACTION

51. Defendant pleads the illegality of the conduct of the plaintiff in obtaining the billboard permits as a complete bar to any cause of action.

FOR AN EIGHTEENTH DEFENSE

52. Defendant pleads estoppel as a complete defense.

WHEREFORE, having fully answered the first amended complaint, defendants pray for the dismissal of same; costs and such other and further relief as this Court deems just and proper.



Catharine G. Griffin
Baker, Ravenel & Bender, L.L.P.
P. O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Defendant

Columbia, South Carolina

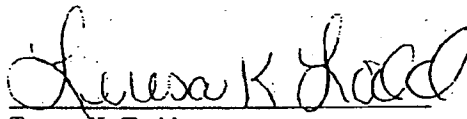
July/6, 2003

CERTIFICATE OF MAILING

I, Teresa K. Todd, Legal Assistant to Catharine Garbee Griffin, of Baker, Ravenel & Bender, LLP, do hereby certify that I have served the following with the foregoing Answer to the First Amended Complaint by depositing same in the United States mail, postage prepaid to the the attorneys at the following addresses:

Creighton B. Coleman, Esquire
P.O. Box 1006
Winnsboro, SC 29180

Hoover C. Blanton, Esquire
P. O. Drawer 11209
Columbia, SC 29211-1209


Teresa K. Todd

Columbia, South Carolina

July 16, 2003

THE NATIONAL BANK OF SOUTH CAROLINA
 LOAN DEPARTMENT
 P O BOX 310
 MANNING SC 29102

MARION L SADON JR D/B/A
 C & B FABRICATIONS

LOAN NOTICE

Mail A Copy Of This Notice and Payment To:

NAME	ADDRESS
CITY	STATE
ZIP	

BR 0000002 Officer: GWD 8WB 85

Account No.	Note No.	Rate	Original Amount	Maturity Date
	00013C	9.00%	\$48,000.00	Aug 15, 2002

BILL DATE	CURRENT BALANCE	PRINCIPAL PAYMENT	
12-29-00	\$28,301.83	INTEREST TO 01-15-01	\$1,309.48
		TOTAL DUE ON 01-15-01	\$219.34
			\$1,528.79

28542.40

13074

Mr. Joe,

When I see Brother today I will ask about
 this '79 International. \$60,000.00 was the selling
 price, but the actual loan amount at NBSC
 was \$48,000.00.

148

EXHIBIT

13

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
 08 4006 4003 14 0502
 DATE 17-Apr-00 67-66/532

PAY TO THE ORDER OF Mr. Inco \$ 314.23
Three hundred fourteen + 23/100 DOLLARS

NBS
 THE NATIONAL BANK OF SOUTH CAROLINA
 MANNING, SOUTH CAROLINA 29102

FOR Holly Walden
 50 0502 00000031423

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
 DATE 17-Apr-00 0503 67-66/532

PAY TO THE ORDER OF Sam Smith \$ 636.81
Six hundred thirty-six + 81/100 DOLLARS

NBS
 THE NATIONAL BANK OF SOUTH CAROLINA
 MANNING, SOUTH CAROLINA 29102

I, Sam Smith I SMITH CA Holly Walden
 0503 00000063681

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
 473-5808 2917 0504 67-66/532
 DATE 17-Apr-00

PAY TO THE ORDER OF Kern Faircloth \$ 102.82
One hundred two + 82/100 DOLLARS

NBS
 THE NATIONAL BANK OF SOUTH CAROLINA
 MANNING, SOUTH CAROLINA 29102

FOR Jones Holly Walden
 0504 00000010282

EXHIBIT
14

00016

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
 9-473-5808
 2917

DATE 17-Apr-00

0502 67-68/532

PAY TO THE ORDER OF Mrimco \$ 314.23

Three hundred fourteen + 23/100

NBS
 THE NATIONAL BANK OF SOUTH CAROLINA
 MANNING, SOUTH CAROLINA 29102

FOR Holly Waldman

0502 0000031423

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
 9-473-5808
 2917

DATE 17-Apr-00

0503 67-68/532

PAY TO THE ORDER OF Sam Smith \$ 636.81

Six hundred thirty-six + 81/100

NBS
 THE NATIONAL BANK OF SOUTH CAROLINA
 MANNING, SOUTH CAROLINA 29102

FOR Fuel 82 00 2770 21252 0000 I SMITH CA Holly Waldman

0503 0000006368

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
 9-473-5808
 2917

DATE 17-Apr-00

0504 67-68/532

PAY TO THE ORDER OF Ken Faircloth \$ 102.82

One hundred two + 82/100

NBS
 THE NATIONAL BANK OF SOUTH CAROLINA
 MANNING, SOUTH CAROLINA 29102

FOR Inds Holly Waldman

0504 0000001028

00012

**C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC**

0505
67-66/532

DATE 17-Apr-00

PAY TO THE ORDER OF Marion Eason \$ 1000.00

One thousand & no/100 DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Dr.

Holly Waldman
0505 670000100000

**C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC**

0507
67-66/532

DATE 18-Apr-00

PAY TO THE ORDER OF Ken Faircloth \$ 480.02

Four hundred eighty & 02/100 DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

116 0231 04/25/00 13:09 T
\$480.02 CCOU

FOR Trunk 21 & 02 E 1 212.00

Holly Waldman
0507 670000048002

**C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC**

0509
67-66/532

DATE 18-Apr-00

PAY TO THE ORDER OF Radio Shack \$ 747.20

Seven hundred forty seven & 20/100 DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Dr.

Holly Waldman
0509 670000074720

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0510

DATE 21-Apr-00 67-68/532

PAY TO THE ORDER OF Holly Haldiman \$ 175.00

One hundred seventy-five & no/100 DOLLARS

NBSO THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR PR Holly Haldiman

18501 0510 0000017500

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0511

DATE 21-Apr-00 67-68/532

PAY TO THE ORDER OF Chuck Berenhalley \$ 500.00

Five hundred & no/100 DOLLARS

NBSO 0136 0002 806 0222 04/21/00 18:28 T
0214618501 \$500.00 CCOWN

MANNING, SOUTH CAROLINA 29102

FOR PR Holly Haldiman

11 00000050000

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0512

DATE 21-Apr-00 67-68/532

PAY TO THE ORDER OF Eric Touchberry \$ 254.52

Two hundred fifty-four & 52/100 DOLLARS

NBSO THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR PR Holly Haldiman

2 00000025452

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0513
67-68/532

DATE 21-Apr-00

PAY TO THE ORDER OF Ken Haiscloth \$ 588.77

Five hundred eighty-eight & 77/100 DOLLARS

NBSO 0072 0002 102 0221 04/24/00 15:08
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Saldian

0513 000000588777

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0514
67-68/532

DATE 21-Apr-00

PAY TO THE ORDER OF Janne Erickson \$ 306.17

Three hundred six & 17/100 DOLLARS

NBSO 0650 0399 13
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Saldian

0514 000000306177

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0515
67-68/532

DATE 21-Apr-00

PAY TO THE ORDER OF Holly Saldian \$ 413.31

Four hundred thirteen & 31/100 DOLLARS

NBSO 1101 07205 04 26 00 0408 0421
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Saldian

0515 000000413311

C & B FABRICATION D/B/A
ICATION INC

0516
07-66/532

DATE 21-Apr-00

PAY TO THE ORDER OF Brian Powers \$ 484.22

Four hundred eighty-four + 22/100 DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

Holly Keldner

0516 0000048422

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0517
07-66/532

DATE 21-Apr-00

PAY TO THE ORDER OF Jimmy Cagle \$ 358.53

Three hundred fifty-eight + 53/100 DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0135 0002 806 0222 04/21/00NX 16:27
\$358.53 CCN

FOR P.R.

Holly Keldner

0517 0000035853

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0518
07-66/532

DATE 21-Apr-00

PAY TO THE ORDER OF Keith Blakemore \$ 490.20

Four hundred ninety + 20/100 DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0138 0002 806 0222 04/21/00NX 16:28 T
\$490.20 CCN

FOR P.R.

Holly Keldner

0518 0000049020

00000

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
DATE 21-Apr-00 0519
87-66/532

PAY TO THE ORDER OF Paul Gullett \$ 380.12
Three hundred eighty + 12/100 DOLLARS ☒ Security Features
NBSO THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102
FOR P.R. Holly Waldman
010 0519 60000038012

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
DATE 21-Apr-00 0520
87-66/532

PAY TO THE ORDER OF Derrick Patrick \$ 461.56
Four hundred sixty-one + 56/100 DOLLARS ☒ Security Features
NBSO THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102
FOR P.R. Holly Waldman
010 0520 60000046156

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
DATE 26-Apr-00 0526
87-66/532

PAY TO THE ORDER OF Allied Steel \$ 4981.98
Forty-nine hundred eighty-one + 98/100 DOLLARS ☒ Security Features
NBSO THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102
FOR 92821, 92842, 93153, 93208 Holly Waldman
0526 00000498198

00021

23

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
108

0529

DATE 26-Apr-00

PAY TO THE ORDER OF PHP

\$3396.59

Thirty-three hundred ninety-six & 59/100

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR # 100122106995 6-4-00

Holly Waldman

0529 00000339659

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
3-5808

0532

DATE 27-Apr-00

PAY TO THE ORDER OF Cash

\$1550.00

Fifteen hundred fifty & no/100

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0428 0002 102 0221 04/27/00 11:26
0214618501 \$1,550.00 CCOLH

FOR Almond

Holly Waldman

0532 00000155000

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
808

0535

DATE 28-Apr-00

PAY TO THE ORDER OF Chuck Benenbaley

\$500.00

Five hundred & no/100

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0333 0002 806 0222 04/28/00 12:30 T
0214618501 \$500.00 CCOLH

P.R.

Holly Waldman

0535 00000500000

00022

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0537
67-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Jimmy Cafe \$ 358.53

Three Hundred Fifty-eight + 53/100 DOLLARS

NBS 0334 0002 806 0222 04/28/00 12:30 T
0214618501 \$358.53 CROWN

THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Aldrich

0537 670000035853

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0539
67-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Ken Linclott \$ 588.77

Five Hundred Eighty-eight + 77/100 DOLLARS

NBS 0329 0002 806 0222 04/28/00 12:29 T
0214618501 \$588.77 CROWN

THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Aldrich

0539 670000058877

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0542
67-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Chuck Patnick \$ 461.56

Four Hundred Sixty-one + 56/100 DOLLARS

NBS 0103 0002 085 0232 04/28/00 10:54
0214618501 \$461.56 CROWN

THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Aldrich

0542 670000046156

00023

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0543

DATE 28-Apr-00 67-66/532

PAY TO THE ORDER OF Tim Smith \$ 441.87

Four hundred forty-one + 87/100 DOLLARS

NBS 0331 0002 906 0222 04/28/00 12:30 T
0214618501 \$441.87 CCOWN

THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR PR Holly Aldrian

0543 670000044187

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0547

DATE 28-Apr-00 67-66/532

PAY TO THE ORDER OF Ken Sinclair \$ 195.81

One hundred ninety-five + 81/100 DOLLARS

NBS 0330 0002 906 0222 04/28/00 12:30 T
0214618501 \$195.81 CCOWN

THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR fuel reimbursement Holly Aldrian

0547 670000019581

Customer Credit

ACCOUNT NAME C & B Fabrication
d/b/a Low Country Sign

DESCRIPTION Advance

James R. Sabor
PREPARED BY APPROVED BY

MONTH DAY YEAR
04 28 00

04/25/00 09:46

12/45/00 DDADP
624
TRANCODE

\$20,000.00
20 000 00

ACCOUNT NUMBER

020214618501

6290002000000

00024

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
RT 2 BOX 173, MANNING, SOUTH CAROLINA 29102

0501
67-66/532

DATE 14-Apr-2000

PAY TO THE ORDER OF John Wallace \$ 40.00

Forty & no/100 DOLLARS ☒ Security Features Included. Please see back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Water Damage repairs

Holly Saldner
0501 00000004000

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
RT 2 BOX 173, MANNING, SOUTH CAROLINA 29102

0521
67-66/532

DATE 20-Apr-00

PAY TO THE ORDER OF Mr. Dign \$ 433.65

Four Hundred Thirty Three & 65/100 DOLLARS ☒ Security Features Included. Please see back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR magnetic signs

Holly Saldner
0521 00000043365

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
RT 2 BOX 173, MANNING, SOUTH CAROLINA 29102

0522
67-66/532

DATE 21-Apr-00

PAY TO THE ORDER OF Marion Creel \$ 54.00

Fifty-four & no/100 DOLLARS ☒ Security Features Included. Please see back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Rent 10.00 S. S.

Holly Saldner
0522 0000005400

00027

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0527
67-66/532

DATE 26-Apr-00

PAY TO THE ORDER OF Hodge Systems \$ 112.50
One hundred twelve & 50/100 DOLLARS ☒ Security Features
Guaranteed for 60 days

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Tax # 81

Holly Waldman
0527 00000011250

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0528
67-66/532

DATE 26-Apr-00

PAY TO THE ORDER OF Quill Corporation \$ 69.45
Sixty-nine & 45/100 DOLLARS ☒ Security Features
Guaranteed for 60 days

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Inv # 778180

Holly Waldman
0528 00000006945

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0530
67-66/532

DATE 26-Apr-00

PAY TO THE ORDER OF Marion Creek \$ 545.00
Five hundred forty-five & 00/100 DOLLARS ☒ Security Features
Guaranteed for 60 days

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Bldg. Rep.

Holly Waldman
0530 00000054500

00029

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
3-5808
17

0531
87-66/532

DATE 26-Apr-00

PAY TO THE ORDER OF Industrial Credit \$ 534.33
Five hundred thirty-four + 33/100 DOLLARS ☐ Security Features
Detailed on back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR acc't # 2710 Holly Saldivar
0531 0000053433

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
3-5808
17

0533
87-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Holly Saldivar \$ 175.00
One hundred seventy-five + 00/100 DOLLARS ☐ Security Features
Detailed on back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR PR Holly Saldivar
0533 0000017500

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
3-5808
17

0534
87-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Bureau Parsons \$ 484.22
Four hundred eighty-four + 22/100 DOLLARS ☐ Security Features
Detailed on back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR PR Holly Saldivar
0534 0000048422

00030

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

DATE 28-Apr-00 0536
67-68/532

PAY TO THE ORDER OF Eric Jonckbery \$ 279.52
Two hundred seventy nine + 52/100 DOLLARS ☒ Security features provided. Details on back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Waldman
0536 0000027952

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

DATE 28-Apr-00 0538
67-68/532

PAY TO THE ORDER OF Keith Blakemore \$ 419.85
Four hundred nineteen + 85/100 DOLLARS ☒ Security features provided. Details on back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Waldman
0538 0000041985

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

DATE 28-Apr-00 0540
67-68/532

PAY TO THE ORDER OF Glenn Erickson \$ 306.17
Three hundred six + 17/100 DOLLARS ☒ Security features provided. Details on back.

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Waldman
0540 0000030617

00031

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0541
67-66/532

DATE 28-Apr-00

05-03-00 04:47 02-15-16
210418112 001 2102 2102 05 21

PAY TO THE ORDER OF Holly Saldívar \$ 413.31

Four hundred thirteen + 31/100

DOLLARS ☒ Security Features
See Back. Details on back.

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Saldívar

41 0000041331

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0544
67-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Wade Bryant \$ 162.47

One hundred sixty-two + 47/100

DOLLARS ☒ Security Features
See Back. Details on back.

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Saldívar

0544 0000016247

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0545
67-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Sam Smith \$ 256.65

Two hundred fifty-six + 65/100

DOLLARS ☒ Security Features
See Back. Details on back.

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Saldívar

0545 0000025665

00032

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0546
67-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Berkeley County Water + Sanitation Authority \$ 40.88
Forty + 88/100

DOLLARS ☒ Security Features
Guaranteed for 100%

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR ACCT # 791-048-00203-3

Holly Aldrich

0546 ⑆0000004088⑆

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0548
67-66/532

DATE 01-May-00

PAY TO THE ORDER OF Hamm Smith \$ 120.00
One hundred twenty + no/100

DOLLARS ☒ Security Features
Guaranteed for 100%

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0319 0002 806 0222 05/02/00 12:16 T
0214618501 \$120.00 CCNC

FOR C

Holly Aldrich

0548 ⑆0000001200⑆

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0549
67-66/532

DATE 01-May-00

PAY TO THE ORDER OF Marion Eason \$ 730.00
Seven hundred thirty + no/100

DOLLARS ☒ Security Features
Guaranteed for 100%

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0002 102 0221 05/08/00 10:22
0214618501 \$730.00 CCOWN

FOR 500.00 Eason

Holly Aldrich

0549 ⑆0000007300⑆

00033

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
5 PM 803-473-5808
DATE 09-12-00 0834-0423 15 87-66/532 0551

PAY TO THE ORDER OF Berkeley Electric Corp. \$ 66.00
Sixty-six dollars

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Electric William E. Eaker Jr.
0551 ⑈0000006600⑈

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC
DATE 9-4-00 0552 87-66/532

PAY TO THE ORDER OF Berkeley County Water + Sanitation \$ 40.88
forty dollars + 88/100

NBSO
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Water William E. Eaker Jr.
0552 ⑈0000004088⑈

EXHIBIT
15

LOW COUNTRY SIGN FABRICATION INC
FT. 2 BOX 825
MANNING, SC 29102
(803) 473-5053

THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SC 29102
87-66/532

PAY TO THE ORDER OF Marion Crowl
Five Hundred Ninety-Nine and 50/100

Marion Crowl

Office Rent Sam Smith
William E. Eaker Jr.
⑈012478⑈ ⑈0552000666102021461850⑈ ⑈00000011950⑈

SECURITY FEATURES INCLUDED. DETAILS ON BACK B





April 30, 2000
C & B Fabrication
Page 2 of 2

	Deposits/ Credits							
	Date	Description	Reference Number	Description	Amount			
	04-12	#Deposit	012064950		20,000.00	✓		
	04-25	Credit Memo	012058343		20,000.00	✓		

	Balance							
	Date	Amount	Date	Amount	Date	Amount	Date	Amount
Summary	04-12	20,000.00	04-18	11,913.88	04-21	5,771.78	04-26	21,514.77
	04-13	19,316.00	04-19	11,368.88	04-24	4,192.39	04-27	19,964.77
	04-17	13,695.81	04-20	9,181.60	04-25	22,409.25	04-28	8,725.43

00005



Statement of Account

Last statement: April 30, 2000
This statement: May 31, 2000

Page 1 of 2

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

102

**YOU'RE PUT A LOT OF MONEY INTO YOUR
HOUSE. ISN'T IT ABOUT TIME YOU GOT
SOME OUT? ASK US ABOUT NBSC'S
ENHANCED 100% ADVANCED BLANK CHECK
HOME EQUITY LINE OF CREDIT.**

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$3,749.59

Small Business Checking

Tag Identification Number

Beginning balance	8,725.43
Withdrawals/debits	47,721.65
Deposits/credits	42,745.81
Ending balance	3,749.59

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
501	05-01	40.00	011099461	12516	05-09	13.07	012010162
521	05-02	433.65	011049134	12517	05-09	343.07	012010815
522	05-05	54.00	012023314	12518	05-08	420.00	012060128
523	05-02	248.34	011045839	12519	05-09	2,569.24	012067485
524	05-01	2,067.00	011001037	12520	05-09	143.50	012067484
525	05-01	50.20	011034591	12521	05-17	58.15	012002040
527	05-01	112.50	011020661	12522	05-17	484.22	012002042
528	05-03	69.45	011030791	12523	05-12	461.56	011039737
530	05-05	545.00	012023313	12524	05-16	306.17	012050266
531	05-02	534.33	011003901	12525	05-17	588.31	012008360
533	05-03	175.00	011030091	12526	05-17	501.27	011025196
534	05-02	484.22	011055452	12529	05-16	588.77	012079221
536	05-02	279.52	011027470	12531	05-17	309.07	012007124
538	05-02	419.85	011032369	12532	05-16	419.85	012024351
540	05-05	306.17	012031592	12534	05-16	175.85	012050266
541	05-03	413.31	011030092	12535	05-16	2,000.00	012079890
544	05-02	162.47	011027472	12536	05-19	1,322.73	012025059
545	05-02	256.65	011073706	12537	05-18	64.03	011027033
546	05-03	40.88	011002592	12538	05-17	18.17	011016731
548	05-02	120.00	011073705	12539	05-16	79.38	012069087
549	05-08	730.00	012075310	12540	05-17	46.49	011016636
550	05-03	180.00	011024633	12541	05-17	605.79	011027699
12500	05-10	349.32	011031025	12542	05-19	76.60	012027055
12501	05-08	424.80	012069500	12543	05-16	1,595.55	012050166
12502	05-05	43.00	012091790	12544	05-16	1,032.06	012012813
12503	05-09	484.22	012018290	12545	05-18	22.51	011041662
12504	05-09	461.56	012013366	12546	05-16	471.77	012023501
12505	05-09	306.17	012050329	12547	05-19	1,166.00	012006303
12506	05-10	588.31	011027324	12548	05-18	1,297.84	011001123
12507	05-05	479.67	012091791	12549	05-16	530.63	012015718
12508	05-05	258.53	012091792	12550	05-17	1,313.89	012003804
12510	05-05	588.79	012091793	12551	05-15	177.91	012017088
12512	05-05	419.85	012091795	12552	05-17	48.00	012002041
12514	05-05	448.47	012091794	12553	05-19	79.00	012020438
12515	05-09	403.90	012050328	12554	05-16	33.00	012003877

00025



May 31, 2000
C & B Fabrication

Page 2 of 2

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12555	05-16	600.00	012050003	12576	05-22	2,000.00	012022130
12556	05-23	38.25	012018373	12577	05-23	523.91	012071433
12557	05-22	838.50	011027565	12578	05-25	254.28	012002626
12558	05-16	751.67	012079220	12579	05-23	490.20	012074770
12560	05-18	600.00	011040566	12580	05-31	111.24	012040552
12561	05-23	484.22	012018372	12582	05-31	144.09	012001504
12562	05-19	523.91	012062141	12583	05-31	129.47	012040547
12563	05-22	306.17	011031560	12584	05-31	484.22	012001503
12564	05-30	588.31	011037092	12585	05-31	306.17	012058753
12566	05-26	588.78	011026830	12588	05-26	588.77	011068540
12568	05-19	490.20	012062142	12592	05-31	448.47	012059351
12570	05-26	448.47	011068583	12593	05-26	308.98	011068541
12572	05-19	254.28	012062143	12594	05-26	2,000.00	011068456
12573	05-25	111.24	012002966	17591	05-26	448.47	011068584
12574	05-22	31.00	012022131	* Skip in check sequence			
12575	05-19	475.00	012062144				

Other
Debits

Date	Description	Reference Number	Description	Amount
05-08	Debit Memo	012060129		3.00
05-31	#Maintenance Fee	000000000		7.80

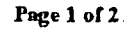
Deposits/
Credits

Date	Description	Reference Number	Description	Amount
05-05	Credit Memo	012051604		10,000.00
05-11	#Deposit	012003647		1,267.32
05-11	#Deposit	012009113		200.00
05-12	#Deposit	011039633		15,000.00
05-15	#Deposit	011083287		6,002.35
05-22	#Deposit	011052495		2,500.00
05-24	#Deposit	011047502		1,379.63
05-24	#Deposit	011047500		225.00
05-26	#Deposit	011038991		5,000.00
05-30	#Deposit	011064349		1,171.51

Balance
Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
04-30	8,725.43	05-09	3,192.05	05-17	11,526.56	05-25	4,181.32
05-01	6,455.73	05-10	2,254.42	05-18	9,542.18	05-26	4,797.85
05-02	3,516.70	05-11	3,721.74	05-19	5,154.46	05-30	5,381.05
05-03	2,638.06	05-12	18,260.18	05-22	4,478.79	05-31	3,749.59
05-05	9,494.58	05-15	24,084.62	05-23	2,942.21		
05-06	7,916.78	05-16	15,439.32	05-24	4,546.64		

00026



**NBSC Manning
P O Box 310
Manning SC 29102**

C & B FABRICATION
DRA. LOW COUNTRY SIGN FABRICATION INC

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$7,754.44

Small Business Checkings

	Beginning balance	3,749.59	✓
	Withdrawals/debits	66,465.14	
umber	Deposits/credits	70,469.99	✓
	Ending balance	7,754.44	✓

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12571	06-05	448.47	011053206	12630	06-12	46.15	011038623
12581	06-01	11.60	011036098	12631	06-12	609.50	011029451
12586	06-01	588.31	011036099	12632	06-19	70.00	011036768
12595	06-07	306.17	012034817	12633	06-12	50.38	011015762
12596	06-07	588.31	012030773	12634	06-09	174.30	012025928
12598	06-06	588.78	011095194	12635	06-12	485.52	011004983
12601	06-05	448.47	011053175	12636	06-09	14.84	012019696
12602	06-05	380.12	011053207	12637	06-13	1,166.00	012012030
12603	06-02	1,350.56	012075541	12638	06-15	306.17	011026448
12604	06-07	909.97	012034816	12639	06-14	588.31	011038474
12605	06-06	132.13	011029526	12641	06-12	588.77	011080891
12606	06-12	125.59	011028305	12644	06-09	448.47	012068487
12607	06-09	64.03	012021796	12645	06-15	414.79	011021260
12608	06-09	744.77	012010202	12646	06-09	1,350.56	012068458
12609	06-12	80.36	011041368	12647	06-13	174.42	012039583
12610	06-08	481.34	011005428	12648	06-12	541.06	011080892
12611	06-08	376.30	011031535	12649	06-21	3,089.80	012027834
12612	06-06	1,529.79	011076710	12650	06-15	267.14	011012604
12613	06-14	1,065.00	011026220	12651	06-16	40.88	011001777
12614	06-08	1,161.58	011013967	12652	06-19	22.00	011044168
12615	06-19	36.84	011033445	12653	06-15	26.66	012024660
12616	06-12	24.50	011057847	12654	06-19	26.26	011016540
12617	06-12	67.97	011032690	12655	06-14	1,528.79	011046536
12618	06-06	50.00	011076709	12656	06-16	176.40	011002643
12619	06-08	22.00	011026865	12658	06-15	1,461.93	011010677
12620	06-13	168.25	012010768	12659	06-16	1,161.58	011013894
12621	06-09	417.50	012001523	12660	06-15	1,141.02	011026443
12622	06-12	377.70	011040520	12681	06-16	2,809.33	011022724
12623	06-09	95.59	012013273	12662	06-19	890.87	011024164
12624	06-13	501.38	011040973	12663	06-19	107.20	011001763
12625	06-08	204.05	011058648	12664	06-19	114.68	011036574
12626	06-14	583.18	011028237	12665	06-15	303.91	011018550
12627	06-12	87.43	011028029	12666	06-21	599.00	012024163
12628	06-13	563.35	012018747	12667	06-15	530.63	011015499
12629	06-09	575.00	012043815	12668	06-16	1,313.89	011030601

ROA-Page 0398

June 30, 2000

ication

Page 2 of 2



Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12669	06-15	896.36	011004602	12694	06-21	5,095.52	012029885
12670	06-19	586.01	011043785	12695	06-19	3,075.84	011085320
12671	06-19	6.03	011012928	12696	06-20	453.46	011009144
12672	06-16	33.00	011006208	12697	06-23	331.26	012041672
12674	06-23	50.00	012005422	12698	06-23	50.00	012024223
12675	06-29	1,820.87	012002749	12699	06-23	377.29	012041676
12676	06-22	306.17	012026475	12700	06-26	588.31	011033693
12677	06-21	588.31	012024823	12701	06-23	388.38	012041674
12682	06-20	448.47	011017415	12703	06-27	588.77	011044726
12683	06-20	414.80	011017414	12708	06-23	340.85	012041673
12685	06-19	185.72	011012929	12709	06-27	1,350.56	012007590
12686	06-20	424.40	011017413	12710	06-23	424.40	012041671
12687	06-16	377.28	011048347	12712	06-27	205.57	011028740
12688	06-16	388.37	011048348	12714	06-23	200.00	012041676
12689	06-16	340.84	011048346	12715	06-27	306.17	011039300
12690	06-16	3,500.00	011041905	12716	06-27	448.47	011010504
12691	06-20	588.78	011050013	12717	06-27	414.79	011039919
12692	06-19	1,350.56	011071634	12724	06-30	1,350.56	011069290
12693	06-22	363.77	012016367	* Skip in check sequence			

Other
Debits

Date	Description	Reference Number	Description	Amount
06-30	#Maintenance Fee	000000000		9.60

Deposits/
Credits

Date	Description	Reference Number	Description	Amount
06-05	#Deposit	011052407		7,500.00✓
06-05	#Deposit	011128402		4,400.00✓
06-06	#Deposit	011071270		5,000.00✓
06-08	#Deposit	011042284		3,500.00✓
06-14	#Deposit	011044624		31,508.50✓
06-16	#Deposit	011048349		1,108.49✓
06-19	#Deposit	011061116		6,500.00✓
06-19	#Deposit	011061118		5,665.00✓
06-28	#Deposit	011041905		2,290.00✓
06-30	#Deposit	011035499		3,000.00✓

Balance
Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
05-31	3,749.59	06-08	14,572.84	06-16	18,389.78	06-26	8,959.80
06-01	3,149.68	06-09	10,687.58	06-19	24,082.77	06-27	5,645.47
06-02	1,799.12	06-12	7,603.65	06-20	21,752.86	06-28	7,935.47
06-05	12,422.06	06-13	5,030.25	06-21	12,380.23	06-29	6,114.60
06-06	15,122.36	06-14	32,773.47	06-22	11,710.29	06-30	7,754.44
06-07	13,317.91	06-15	23,924.86	06-23	9,548.11		

00062

NBSC

Statement of Account

Last statement: June 30, 2000

This statement: July 31, 2000

Page 1 of 2

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C & B FABRICATION
DRA. LOW COUNTRY SIGN FABRICATION INC

96

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$5,385.31

Small Business Checking

Beginning balance	7,754.44	✓
Withdrawals/debits	60,945.99	✓
Deposits/credits	58,576.86	✓
Ending balance	5,385.31	

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12657	07-05	2,982.00	0120207795	12761	07-14	225.81	012040550
12718	07-05	249.00	0120493665	12762	07-14	1,350.56	012072765
12719	07-05	363.77	012009028	12763	07-18	287.14	012004769
12720	07-05	588.31	012046611	12764	07-19	68.16	011040933
12725	07-03	205.57	011025929	12765	07-17	106.00	011004874
12726	07-05	424.40	012009029	12766	07-19	1,160.00	011017614
12728	07-05	536.77	012044825	12767	07-19	5.00	011041996
12729	07-03	212.35	011007261	12768	07-18	71.70	012041838
12730	07-13	375.82	011029389	12769	07-19	39.14	011032266
12731	07-05	20.00	012009030	12770	07-17	21.44	011010271
12732	07-07	492.05	011030028	12771	07-17	40.88	011024241
12733	07-06	540.00	012011748	12772	07-19	80.00	011038231
12734	07-06	125.00	011016606	12773	07-20	64.03	012028203
12735	07-11	338.37	011029246	12774	07-18	57.95	012001930
12736	07-13	588.31	011031937	12775	07-18	90.01	012005214
12738	07-10	467.54	011061209	12776	07-18	74.66	012047868
12740	07-10	416.09	011028207	12777	07-20	226.80	012021810
12741	07-11	317.82	011051262	12778	07-17	188.89	011036078
12742	07-10	220.07	011061092	12779	07-20	85.09	012017322
12743	07-07	1,350.56	011093034	12780	07-17	530.35	011039517
12744	07-10	274.09	011012574	12781	07-18	55.55	012020252
12745	07-11	486.94	011029247	12782	07-20	81.50	012028308
12746	07-06	8,000.00	012042614	12783	07-17	10.60	011019092
12747	07-11	742.44	011039899	12784	07-19	403.00	011032822
12748	07-11	913.21	011002994	12785	07-19	33.90	011039809
12749	07-12	3,005.98	012027914	12786	07-18	193.94	012004760
12750	07-12	530.63	012024009	12788	07-18	154.55	012004758
12751	07-13	82.45	011015187	12789	07-20	46.00	012003550
12752	07-13	967.75	011038593	12790	07-25	1,470.00	011004854
12753	07-17	148.65	011039977	12791	07-25	759.37	011048122
12754	07-18	239.85	012004761	12792	07-24	2,427.67	012029186
12755	07-19	588.31	011039810	12793	07-20	441.07	012010315
12757	07-14	588.78	012040832	12794	07-21	1,313.89	011021278
12759	07-18	280.83	012030874	12795	07-24	1,522.92	012081140
12760	07-18	423.18	012037690	12796	07-27	93.07	011022897

00099

July 31, 2000
C & D Fabrication

Page 2 of 2



Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12797	07-20	686.88	012001538	12815	07-24	324.87	012038234
12798	07-20	896.36	012013254	12816	07-21	1,350.56	011075825
12799	07-19	1,628.79	011055301	12817	07-24	336.05	012015506
12800	07-20	182.28	012013261	12819	07-25	60.00	011002680
12801	07-20	2,254.13	012000541	12820	07-25	199.13	011001829
12802	07-27	4,722.15	011012050	12822	07-28	149.00	012027999
12803	07-21	450.00	011023823	12823	07-31	16.26	011034401
12805	07-24	62.25	012034887	12824	07-31	431.87	011005621
12807	07-24	227.23	012038217	12827	07-31	544.79	011075825
12808	07-24	374.94	012015505	12830	07-31	748.63	011042006
12809	07-26	588.31	012027509	12834	07-31	439.66	011042008
12811	07-21	546.56	011046970	12835	07-28	1,350.56	012068975
12813	07-26	205.57	012017154				
12814	07-21	395.33	011046969				

* Skip in check sequence

Other
Debits

Date	Description	Reference Number	Description	Amount
07-31	#Maintenance Fee	000000000		6.30

Deposits/
Credits

Date	Description	Reference Number	Description	Amount
07-06	#Deposit	012074139		8,000.00✓
07-06	#Deposit	012039918		2,343.02✓
07-06	#Deposit	012039920		2,127.58✓
07-07	#Deposit	011042555		5,192.26✓
07-11	#Deposit	011069244		1,000.00✓
07-13	#Deposit	012030879		8,200.00✓
07-18	#Deposit	012094658		19,139.00✓
07-19	#Deposit	011077077		5,000.00✓
07-26	#Deposit	012050498		7,575.00✓

Reference
Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
06-30	7,754.44	07-11	6,150.95	07-19	23,891.39	07-27	9,072.38
07-03	7,336.52	07-12	2,614.34	07-20	18,927.25	07-28	7,572.82
07-05	2,172.27	07-13	8,800.01	07-21	14,870.91	07-31	5,385.31
07-06	5,977.87	07-14	6,634.86	07-24	9,594.98		
07-07	9,327.52	07-17	5,588.05	07-25	7,106.48		
07-10	7,949.73	07-18	22,797.69	07-26	13,887.60		

00100

THE NATIONAL BANK OF SOUTH CAROLINA

MEMBER FDIC

NBSC**Statement of Account**

Last statement: July 31, 2000

This statement: August 31, 2000

Page 1 of 2

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102C & B FABRICATION
DRA LOW COUNTRY SIGN FABRICATION INC

78

Summary of Account Balance

Account	Ending Balance
Small Business Checking	\$1,517.09

Small Business Checking

Beginning balance 5,385.31 ✓
 Withdrawals/debits 35,775.23 ✓
 Deposits/credits 31,847.01 ✓
 Ending balance 1,517.09 ✓

Checks	Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
	12821	08-02	73.57	012018636	12870	08-14	38.00	011004695
	12825	08-09	31.38	011029437	12871	08-15	125.00	011003802
	12826	08-02	238.89	012018126	12872	08-15	481.34	011019609
	12828	08-02	588.31	012021138	12873	08-21	31.90	011059275
	12832	08-01	348.58	011036569	12874	08-15	276.51	011066127
	12833	08-01	514.62	011050373	12875	08-16	43.77	012050943
	12836	08-01	525.51	011025703	12876	08-21	33.00	011013202
	12837	08-01	56.00	011025704	12877	08-21	227.23	011039296
	12838	08-04	757.85	011066195	12878	08-21	470.18	011028945
	12839	08-09	545.00	011010989	12879	08-23	588.31	011024619
	12840	08-30	500.00	011015718	12881	08-18	1,248.90	012057836
	12841	08-08	227.23	011053292	12882	08-18	662.60	012066766
	12842	08-14	378.31	011080827	12884	08-21	395.20	011028946
	12843	08-11	588.31	012022030	12885	08-18	441.66	012066767
	12845	08-04	415.54	011044247	12886	08-18	363.32	012066768
	12847	08-18	96.85	012019454	12887	08-29	215.57	012047099
	12848	08-08	360.88	011015465	12888	08-29	325.06	012038666
	12849	08-08	229.69	011015466	12889	08-30	588.31	011028127
	12850	08-04	1,350.56	011096019	12891	08-28	615.18	011051285
	12851	08-07	280.93	012001534	12893	08-29	452.90	012043669
	12852	08-09	905.98	011038302	12894	08-28	357.05	011051287
	12853	08-09	765.43	011022021	12895	08-25	1,248.92	011077496
	12854	08-08	344.00	011053293	12896	08-29	221.74	012038667
	12855	08-04	5,500.00	011039969	12897	08-29	35.00	012047100
	12856	08-10	60.95	011004486	12899	08-25	42.19	011077497
	12857	08-10	200.00	011004646	12900	08-29	22.47	012034502
	12858	08-10	211.99	011021733	12902	08-28	40.88	011018308
	12860	08-14	219.00	011043355	12903	08-30	81.00	011029839
	12861	08-14	548.06	011004644	12904	08-29	64.03	012043223
	12862	08-16	588.31	012026630	12905	08-28	26.00	011029686
	12864	08-14	653.80	011053985	12906	08-30	75.33	011033108
	12866	08-15	372.08	011003801	12908	08-28	404.05	011064391
	12867	08-11	375.81	012052032	12909	08-30	15.34	011023877
	12868	08-11	1,248.92	012088562	12910	08-29	431.87	012013875
	12869	08-14	479.62	011004645	12911	08-30	26.26	011022616

00133

August 31, 2000

Fabrication

Page 2 of 2

NBSC

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12912	08-30	362.52	011023384	12918	08-29	250.00	012037183
12913	08-28	22.97	011026327	12919	08-29	250.00	012037196
12914	08-25	1,528.79	011038493	12920	08-30	59.08	011036778
12915	08-28	726.94	011030504	* Skip in check sequence			
12917	08-28	1,166.00	011005176				

Other
Debits

Date	Description	Reference Number	Description	Amount
08-18	#NSF Fee	821080504	For Overdraft Check # 12881	25.00
08-18	#NSF Fee	821080504	For Overdraft Check # 12847	25.00
08-31	#Maintenance Fee	000000000		0.90

Deposits/
Credits

Date	Description	Reference Number	Description	Amount
08-01	#Deposit	011108752		6,150.00
08-04	#Deposit	011039980		8,849.00
08-11	#Deposit	012035538		2,500.00
08-11	#Deposit	012035540		973.01
08-15	#Deposit	011063598		200.00
08-21	#Deposit	011052552		14,175.00

Balance
Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
07-31	5,385.31	08-08	7,672.16	08-15	2,739.67	08-25	8,853.54
08-01	9,090.60	08-09	5,324.36	08-16	2,107.59	08-28	5,494.47
08-02	8,189.83	08-10	4,851.42	08-18	-755.74	08-29	3,225.83
08-04	9,014.88	08-11	6,111.39	08-21	12,261.75	08-30	1,517.99
08-07	8,733.95	08-14	3,794.60	08-23	11,673.44	08-31	1,517.09

00134



Statement of Account

Last statement: August 31, 2000

This statement: September 30, 2000

Page 1 of 2

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C & B FABRICATION
 DBA LOW COUNTRY SIGN FABRICATION INC
 RT 2 BOX 825
 MANNING SC 29102-9083

75

**BANKING SO EASY, IT JUST CLICKS.
COMING SOON.....ONLINE ACCESS,
NBSC'S INTERNET BANKING.**

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$2,787.25

Small Business Checking

Account number.

Beginning balance	1,517.09	✓
Withdrawals/debits	✓ 48,180.15	
Deposits/credits	✓ 49,450.31	
Ending balance	2,787.25	✓

Checks	Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
	551	09-12	66.00	012046895	12957	09-12	30.00	012052093
	552	09-08	40.88	011018998	12958	09-19	369.00	012045163
	12859 *	09-22	61.00	011024264	12959	09-14	677.70	011014135
	12907 *	09-01	846.98	011026282	12960	09-14	247.11	011025386
	12921 *	09-12	255.28	012027434	12961	09-15	43.11	011027930
	12922	09-14	588.31	011022583	12962	09-14	156.00	011057013
	12925 *	09-06	320.00	011055909	12963	09-15	481.34	011016116
	12926	09-06	535.00	011056738	12964	09-18	380.65	011043992
	12928 *	09-06	1,057.50	011050883	12965	09-14	106.36	011025927
	12929	09-06	781.00	011055921	12966	09-15	43.28	011057779
	12930	09-05	477.00	012131581	12967	09-15	1,000.00	011026051
	12931	09-05	1,822.32	012071081	12968	09-15	1,000.00	011026050
	12932	09-06	440.79	011056739	12969	09-15	431.87	011016117
	12933	09-07	84.01	012011077	12970	09-18	599.50	011009628
	12934	09-18	633.61	011028361	12971	09-14	530.63	011001362
	12935	09-22	48.33	011020211	12972	09-14	362.03	011014176
	12936	09-11	1,820.63	012031366	12973	09-15	214.84	011013552
	12937	09-11	203.13	012021376	12974	09-18	192.00	011046516
	12938	09-12	69.17	012044479	12975	09-18	580.00	011038253
	12939	09-12	1,313.89	012046096	12976	09-15	588.31	011046266
	12940	09-08	3,015.84	011032525	12978 *	09-19	900.00	012048728
	12941	09-12	309.84	011009309	12980	09-18	638.00	011046430
	12942	09-14	2.98	011024865	12981	09-18	220.50	011046418
	12943	09-08	368.23	011015381	12982	09-15	1,822.32	011094564
	12944	09-11	5,360.77	012015515	12983	09-18	546.00	011038250
	12945	09-13	3,005.98	011039248	12984	09-19	227.41	012048729
	12946	09-11	769.96	012043728	12985	09-18	66.53	011038251
	12947	09-11	224.00	012030090	12986	09-18	45.00	011038252
	12948	09-14	270.00	011005875	12987	09-15	263.34	011053669
	12949	09-14	588.31	011022588	12988	09-19	88.97	012109486
	12951 *	09-11	540.00	012060740	12989	09-21	31.80	011029810
	12953 *	09-12	335.50	012037720	12990	09-26	200.00	011041791
	12954	09-18	184.50	011046417	12991	09-25	600.00	012025541
	12955	09-11	1,822.32	012060949	12992	09-22	588.31	011041901
	12956	09-12	174.00	012052094	12994 *	09-22	637.50	011071497

00161

September 30, 2000

C & B Fabrication

Page 2 of 2



Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12996	09-22	451.00	011071496	13000	09-26	2,982.00	011034112
12997	09-22	400.50	011068762	13004	09-29	380.38	011006976
12998	09-26	620.00	011044920	* Skip in check sequence			

Deposits/
Credits

Date	Description	Reference Number	Description	Amount
09-05	#Deposit	012081293		33,122.30 ✓
09-07	#Deposit	012091170		11,120.00 ✓
09-15	#Deposit	011038403		973.01 ✓
09-21	#Deposit	011071511		4,235.00 ✓

Balance
Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
08-31	1,517.09	09-08	35,969.84	09-15	11,224.74	09-25	6,969.63
09-01	670.11	09-11	25,229.03	09-18	7,138.45	09-26	3,167.63
09-05	31,493.09	09-12	22,675.35	09-19	5,553.07	09-29	2,787.25
09-06	28,358.80	09-13	19,669.37	09-21	9,756.27		
09-07	39,394.79	09-14	16,139.94	09-22	7,569.63		

00162



C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC



Statement of Account

Last statement: October 31, 2000
This statement: November 30, 2000

Page 1 of 1

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C. & B FABRICATION
RY SIGN FABRICATION INC

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$718.98

Small Business Checking

Beginning balance	6,591.22
Withdrawals/debits	23,955.52
Deposits/credits	18,083.28
Ending balance	718.98

Choctaw

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
13025	11-02	3,997.19	011005880	13030	11-20	375.05	011005260
13028	11-03	1,500.00	011047260	* Skip in check sequence			
13029	11-14	18,083.28	011057606				

**Deposits/
Credits**

Date	Description	Reference Number	Description	Amount
11-14	#Deposit	011057809		18,083.28

Balance Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
10-31	6,591.22	11-03	1,094.03	11-20	718.98		
11-02	2,594.03	11-14	1,094.03				

00198

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH CIRCUIT

Auto-Owners Insurance Company,) Case No.: 02-CP-46-2369
)

Plaintiff,)
)

v.)

Samuel W. Rhodes, Jr., Piedmont)
Promotions, Inc., Marion L. Eadon,)
C&B Fabrications, Inc., and Low)
Country Signs, Inc.,)

Defendants.)

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT OF DEFENDANTS
MARION L. EADON, C&B
FABRICATION, INC. AND LOW
COUNTRY SIGNS, INC. AND IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

NATURE OF THE CASE

This is a declaratory action to determine whether there is insurance coverage under an insurance policy, number 984616-36064416-00, issued by Plaintiff Auto-Owners Insurance Company to Defendants C&B Fabrications, Inc. and Low Country Signs, Inc. for damages awarded by a Fairfield County jury in Civil Action 01-CP-20-334. The Defendant, Marion Eadon, is the president and sole owner of both corporations. The jury awarded both actual and punitive damages in the amount of \$6.5 million against Mr. Eadon. The verdict was based on damage to real property owned by Samuel W. Rhodes when one of three signs manufactured and erected by Mr. Eadon's company for Mr. Rhodes' company, Piedmont Productions, Inc., fell and Mr. Rhodes was subsequently required by the South Carolina Department of Transportation to take the other two signs down and not allowed to erect other signs on the property.

The Plaintiff has moved for summary judgment. This memorandum opposes that motion. Defendants Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc. have also moved for summary judgment. This memorandum supports these Defendants' motion.

FACTS

On August 17, 2000, Auto-Owners Insurance Company issued a renewal of a Tailored Protection Policy for C&B Fabrications, Inc. and Low County Signs, Inc. The policy, number 984616-36064416-00, was effective for the period September 17, 2000 to September 17, 2001. It is uncontroverted that the disputed events took place within the policy period. Part of the Policy was for Commercial General Liability and Defendants paid a significant premium of Six Thousand Five Hundred Twenty-One Dollars (\$6,521.00) for this liability coverage. The business description for the insureds was "sign manufacturer" and the policy specifically provided liability and products/completed operations coverage for "sign manufacturing" and "sign erection, installation or repair[r]." (Policy Dec. Pages; copy at Exhibit 1). It is uncontroverted that whatever damage occurred was within the context of sign manufacturing.

The Insuring Agreement of the policy states that, "[w]e [Auto-Owners] will pay those sums that the insured becomes legally obligated to pay as damages because of ... 'property damage' to which this insurance applies." (Form CG 00 01 11 88, p.1 of 14; copy at Exhibit 2).

The policy defines "property damage" as follows:

- 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** shall be deemed to occur at the time of the "occurrence" that caused it.

(Form CG 00 01 11 88, pp.13 and 14 of 14; copy at Exhibit 2) (emphasis added).

The "Who is an Insured" section of the commercial general liability part states, in pertinent part, the following:

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- c. An organization other than a partnership or joint venture, you are insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors.**

(Form CG 00 01 11 88, pp. 6 and 7 of 14; copy at Exhibit 2).

On January 20, 2001, during the policy period, one of three signs that Defendant C&B Fabrication had erected for Piedmont Promotions on land owned by Mr. Rhodes in Fairfield County fell. The signs were manufactured and erected pursuant to a contract entered on August 4, 1999 between C&B Fabrication and Piedmont Promotions. Installation had been completed in or around February, 2000. Each of the signs had four billboard advertising spaces which Piedmont Promotions leased to businesses; at the time the sign fell eight of the 12 available spaces had been leased. Because of the fall of the sign, the South Carolina Department of Transportation ("DOT") came to the scene and did a rare examination of the property. Shortly thereafter, DOT, having safety concerns, ordered Mr. Rhodes to take the other two signs down. The DOT later denied Mr. Rhodes' application to renew the permits because it was discovered that the putatively qualifying business on Mr. Rhodes' property was, in fact, non-conforming. Transcript, vol. III at 99. As a result of the non-renewal, Mr. Rhodes claimed property damages in the form of lost income of millions of dollars.

Mr. Rhodes and his solely-owned corporation, Piedmont Promotions, brought an action in the Court of Common Pleas for Fairfield County on or shortly after December 12, 2001

against "Marion L. Eadon 'b/a C&B Fabrication." The Compl alleged causes of action sounding in breach of contract, breach of implied warranty, strict liability, fraudulent breach of contract, fraud, constructive fraud, negligent misrepresentation, negligence, bad faith, nuisance, and unfair trade practice. Plaintiffs served an Amended Complaint in May, 2003, which included specific information that had been included in the report of Carl E. Thompson, Jr., P.E., that outlined deficiencies in the signs.

The trial of the underlying case took place over the period August 30 – September 2, 2004, in Winnsboro. Earlier, the Court had denied a motion to change venue to Clarendon County, Mr. Eadon's county of residence, on the ground that the Complaint was for injury to real property in Fairfield County. Based on pre-trial motions, the Trial Court struck all of the causes of action except negligence, breach of contract and breach of warranty.

Given the fact that the action was brought against Mr. Eadon personally, the Trial Court charged the jury that if the liability is solely that of the corporation, an officer of the corporation is not, merely because of his corporate position, liable for the acts or omissions of the corporation. Among his charges were the following:

MANY BUSINESS OWNERS CHOOSE A FORM OF CORPORATIONS BECAUSE THE SHAREHOLDERS OF A CORPORATION ENJOY LIMITED LIABILITY. THIS MEANS THAT AN OFFICER, DIRECTOR, OR A CONTROLLING PERSON IN A CORPORATION IS NOT MERELY AS A RESULT OF THE STATUS OF SUCH PERSONALLY LIABLE FOR TORTS OR CONTRACTS OF THE CORPORATION.

Transcript of Trial, Vol. IV, at pp. 355-56 (Extracts at Exhibit 5)

IF YOU FIND THAT THE ACTS COMPLAINED OF BY THE PLAINTIFFS ARE THE ACTS OF THE CORPORATION AND NOT THE DEFENDANT INDIVIDUALLY, THEN IN THAT SITUATION, OF COURSE, YOU MUST RETURN A VERDICT FOR THE DEFENDANT.

Id. at pp. 356-57.

The Trial Court's charge to the jury, however, correctly informed the fact-finder that in some situations **both** the corporation and an individual officer can be liable for the acts and omissions of the corporation. His charge included the following:

AS A CORPORATION CAN ONLY ACT THROUGH ITS OFFICERS AND AGENT, ANY ACTS OF THE OFFICERS AND AGENTS IN FURTHERANCE OF THE CORPORATION'S BUSINESS ARE CONSIDERED THE ACTS OF THE CORPORATION. FOR AN OFFICER, DIRECTOR, OR CONTROLLING PERSON TO INCUR PERSONAL LIABILITY, HE MUST BE SHOWN TO HAVE COMMITTED, PARTICIPATED IN, OR AUTHORIZED THE COMMISSION OF A TORTIOUS ACT. THIS CONCEPT CARRIES OVER INTO THE CONTRACTUAL LIABILITY AS WELL.

FURTHERMORE, A PRESIDENT OF A CORPORATION IS NOT PERSONALLY LIABLE FOR TORTS COMMITTED BY THE CORPORATION BECAUSE OF THAT PERSON'S OFFICIAL CAPACITY...UNLESS THE PRESIDENT PERSONALLY PARTICIPATES IN THE TORT.

Id. at p. 356.

I CHARGE YOU THAT AN AGENT'S LIABILITY FOR HIS OWN TORTIOUS ACTS IS UNAFFECTED BY THE FACT THAT HE ACTED IN A REPRESENTATIVE CAPACITY.

Id. at p. 365.

There was no determination in the underlying action of whether C&B Fabricators, Inc. had any liability. It was not a party and no special interrogatory sought or obtained any determination by the jury of whether liability was shared between the corporation and Mr. Eadon. There was evidence at trial from which a reasonable juror could have found that Mr. Eadon "participated in or authorized the commission of a tortious act" of the corporation, as will be addressed *supra.*, pp. 8-12. It is uncontroverted that any acts of Mr. Eadon were done in furtherance of his sign business as encompassed by his two corporations.

The jury returned a verdict against Mr. Eadon personally, awarding \$3 million in actual damages and \$3.5 million in punitive damages. Transcript of Trial, vol. IV at p. 390, copy at Exhibit 5.

When Auto-Owners Insurance Company was initially notified of the claim, on February 8, 2001, it sent to C&B Fabrications, Inc. and Low Country Signs, Inc. the reservation of rights letter at Exhibit 6. It raised no questions about whether Mr. Eadon was an insured under the policy. Approximately three months later, Auto-Owners sent another reservation of rights letter to C&B Fabrications, Inc. and Low Country Signs, Inc., a copy of which is at Exhibit 7. It likewise expressed no reservation about whether Mr. Eadon was an insured under the policy. After receiving suit papers in the underlying action, C.A. 01-CP-20-334, Auto-Owners on February 8, 2002, sent to its insureds a supplemental reservation of rights letter, a copy of which is at Exhibit 8. This letter informs Mr. Eadon that Auto-Owners will "presently" be defending him in the lawsuit brought by Rhodes and Piedmont Promotions. The attorney selected by Auto-Owners to defend Mr. Eadon was Catharine Griffin, who developed the defense strategy for and represented Mr. Eadon at the trial of the case. The third reservation of rights letter again expresses no reservation about whether Mr. Eadon, the only defendant in the underlying action, was an insured.

While litigation in C.A. 01-CP-20-334 was underway, Auto-Owners on December 23, 2002, initiated the current declaratory action against Mr. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc. The Complaint seeks declarations that there is no coverage for "Marion L. Eadon d/b/a C&B Fabrications, Inc." under the policy and that Auto-Owners had no duty to defend "Marion L. Eadon d/b/a C&B Fabrications, Inc." in the underlying, Fairfield County lawsuit. The Complaint makes no allegation that Mr. Eadon was not an insured under the policy.

for the manufacture and erection of the signs. It, in fact, asserts that, "Marion L. Eadon d/b/a C&B Fabrications, Inc. completed and installed the signs in February 2000." Complaint, Paragraph 6. Auto-Owners' Complaint asserts only that there was no "occurrence" or that one of the policy's exclusions, of which four are specifically cited, precluded coverage. The Complaint *de facto* admits that Mr. Eadon was acting for C&B Fabrications, Inc., one of the insured corporations.

The Defendants in the declaratory case at hand were prepared for trial during the September 13, 2004 term of court in York County. Auto-Owners on the day of trial requested a continuance to review the record in the tort case, which the Court in a pre-trial conference granted. At that same pre-trial conference, however, the Court instructed that there was not to be a general reopening of discovery or last-minute amendment of pleadings. The Court further instructed the parties to mediate the case.

Mediation was conducted shortly thereafter and failed.

On Friday, January 14, 2005 Auto-Owners served a Motion for Summary Judgment, which was accompanied by a Memorandum in Support. This Memorandum is submitted in opposition to that motion.

Defendants Eadon, C&B Fabricators, Inc. and Low Country Signs, Inc. have, in response to Plaintiff's motion, filed their own motion for summary judgment. This memorandum also supports these Defendants' motion.

ARGUMENT

- I. **AUTO-OWNERS' POLICY SPECIFICALLY ENVISIONS A SITUATION IN WHICH A CORPORATE EXECUTIVE CAN BE FUNCTIONING IN A DUAL CAPACITY, INCURRING PERSONAL LIABILITY WHILE ABOUT THE BUSINESS OF THE INSURED CORPORATION.**

The definition of "who is an insured" in the policy, quoted at p. 3, clearly anticipated that both an executive and the named insured corporation can have legal liability for the same incident. The cited definition does not include any caveat that the executive is an insured only if the named insured corporation is not liable for the same act or omission. The definition also does not require that the corporation also be subject to liability for the executive to be an insured under the policy as long as the executive was within the parameters of his corporate duties, which are not otherwise defined.

A. THE JURY IN THE UNDERLYING CASE NEEDED ONLY TO FIND THAT MR. EADON PARTICIPATED IN HIS CORPORATION'S TORTIOUS ACTS IN THE MANUFACTURE OR ERECTION OF THE SIGNS, OR IN HIS RESPONSE TO REPORTS OF ONE SIGN'S LEANING, TO IMPOSE PERSONAL LIABILITY.

The jury in the underlying case found that Mr. Eadon was individually liable for the tort of negligence. Contrary to the insurance company's assertion to the contrary, that holding does not mean that Mr. Eadon was acting completely independently from his corporate duties. As the Trial Court correctly instructed the jury, an executive can be personally liable if he participated in, or authorized, the commission of a tortious act by the corporation with which he is affiliated. (See, *supra*. P. 5, quotations from jury charges on pp. 356, 365 of the Transcript of Trial of 9/2/04 at Exhibit 5).

The jury decided that Mr. Eadon participated in or authorized the negligent acts of one, or both, of the corporations of which he was an officer and both of which are insureds under Auto-Owners' policy. It is uncontroverted that Mr. Eadon was acting on behalf of a sign business. The jury concluded, however, that he could not take advantage of a corporate veil because he had not taken the necessary steps to protect himself by emphasizing his corporate identity. In

addition, the jury concluded that his acts were such as to bind him personally. The corporation would also have been bound had it been sued, but the issue was whether Mr. Eadon's acts, despite his incorporation, were of a nature to make him individually as well as corporately liable.

Mr. Eadon is covered for his tortious acts as president of his corporation. At issue was whether his acts were such as to have constituted a violation of his responsibilities as president, thus making him personally liable.

A juror could reasonably conclude from the testimony that Mr. Eadon had to have noticed the vast difference between the proposed sign design and the as-built sign – and would actively or tacitly have authorized the corporate employees' deviation from the engineered design. A reasonable juror could also hold that Mr. Eadon's failure to supervise the manufacture and erection of the signs was negligence in his responsibilities as President of the corporation. There was testimony that he had no involvement with the fabrication of the signs or their installation. Transcript of Trial, vol. III at p. 132, copy at Exhibit 4. He testified that he never went out to the site of the signs' erection in Fairfield County. Id. This is participation in the tort by omission. It is also, for purposes of the policy, negligence "with respect to...duties as...[an] officer" of the insured corporation. A third stream of evidence from which a reasonable juror could conclude that Mr. Eadon participated in, or authorized, tortious acts by the corporation pertains to his lack of response when Mr. Rhodes informed him that one of the signs was leaning.

Mr. Rhodes, in calling him at his office and faxing letters to him at C&B Fabricators, was communicating with Mr. Eadon in his official capacity. As discussed *infra.*, a juror could have reasonably concluded that Mr. Eadon was acting in a corporate capacity and a reasonable juror

could have concluded that his individual response was negligent or reckless. He testified as to his response as follows:

Q. I WANT TO GO TO THE POINT IN TIME WHEN YOU GOT THE CALL FROM SAM RHODES ABOUT ONE OF THE SIGNS THAT WAS LEANING.

A. YES, SIR.

Q. AND WHAT IS YOUR RECOLLECTION OF HOW YOU FIRST HEARD ABOUT THAT?

A. I'M ASSUMING ONE OF THE GIRLS ANSWERED THE PHONE AND DISCUSSED IT WITH SAM. AND, YOU KNOW, EVIDENTLY SHE TOLD ME AND I CONVEYED IT TO CHUCK OR WHOEVER.

Q. EXCUSE ME.

A. I MEAN, SAM WOULD CALL 10 TIMES A DAY. I WOULDN'T ANSWER IT HALF THE TIME.

Q. WAS HE CALLING ABOUT ANYTHING OTHER THAN---

A. NO. IT WAS ALWAYS SOMETHING.

Q. WAS HE CALLING ---

A. HE'D CALL IT WASN'T RIGHT - SOMETHING WASN'T RIGHT ALL THE TIME.

Transcript of Trial, vol. III at pp. 159-60, copy at Exhibit 4 (emphasis added). A juror hearing these words at trial could very well have reached the eminently reasonable conclusion that Mr. Eadon participated in, and exacerbated, corporate negligence in his response to Mr. Rhode's request to correct the leaning sign.

B. IT CANNOT BE SERIOUSLY CONTENDED THAT MR. EADON WAS NOT OPERATING ON BEHALF OF HIS INSURED SIGN BUSINESS.

The jurors in the underlying trial did not conclude that the corporation was without liability for the tortious acts. It decided only that the corporation alone was not liable for the tortious acts. Their holding merely states that both Mr. Eadon and the corporation were liable for the tort. No one denies that Mr. Eadon was acting on behalf of his sign business. Mr. Eadon's testimony at trial leads to the conclusion that every action that he took in regard to his dealings with Mr. Rhodes was done in connection with his corporate duties. Transcript, vol. III at pp. 127-133. A former employee of the sign business, Joanne Erickson Taylor, has also testified by Affidavit that Mr. Eadon treated the business as a corporation. Affidavit of Joanne Taylor; copy at Exhibit 9. The only issues that created personal liability for Mr. Eadon were whether he essentially ratified the acts of his business, whether he was derelict in the performance of his obligations as a corporate officer and whether he was entitled to the corporate shield. The insurance policy clearly covers him for all of these contingencies.

C. ANY ACTIONS OR OMISSIONS BY MR. EADON IN DEALING WITH MR. RHODES AND PIEDMONT PROMOTIONS WERE DONE IN CONNECTION WITH THE BUSINESS OF THE CORPORATION.

There is no evidence in the record to contradict, or even bring into question, Mr. Eadon's testimony that he basically knew nothing about the sign business. See, Trial Transcript, vol. III, pp. 119-120, copy at Exhibit 4. He specifically testified that he did not have any experience in the sign business before Chuck Benenhaley approached him. *Id.* at p. 120. Because of his personal lack of knowledge and experience in the sign business, the first thing that he did after deciding to enter the business was to establish a corporation, C&B Fabricators, Inc.

The purpose of C & B Fabricators, Inc. and Low Country Signs, Inc. was to make and erect signs. Auto-Owners Insurance Company knew that when it contracted to insure these corporations. As cited previously, the policy described the insureds' business as sign

manufacturing and provided general liability coverage for sign manufacturing and sign erection, installation or repair. Exhibit 1 at p. 3.

Mr. Eadon was the president of C&B Fabricators, Inc. Trial Transcript, vol. III at p. 126, copy at Exhibit 4. As the chief executive of the corporation, he was responsible for everything the corporation did or failed to do, though he was not necessarily personally liable for all its acts or omissions. In this case, however, he was determined to be personally liable. Everything that Mr. Eadon has been alleged to have done that contributed to the underlying Plaintiffs' claim was done pursuant to the corporation's sign business. Transcript, vol. III at pp. 127-133. There is no direct evidence to the contrary and the jury verdict in the underlying case does not contradict this testimony of Mr. Eadon. Auto-Owners, moreover, has failed completely to meet its burden of proving, prior to denying coverage, that Mr. Eadon was not about the insured corporation's business when the relevant actions were taken or omissions occurred.

II. GIVEN THE EVIDENCE, UNDER AUTO-OWNERS' INSURANCE POLICY, MR. EADON WAS CLEARLY AN INSURED. IF THERE IS ANY AMBIGUITY, MOREOVER, THE POLICY IS CONSTRUED IN FAVOR OF THE INSURED.

It is uncontroverted that Mr. Eadon was an executive of either C&B Fabricators, Inc. or Low Country Signs, Inc. during the erection of the signs for Mr. Rhodes or after they were noticed leaning and fell. Similarly it is equally uncontroverted that everything that Mr. Eadon did in the sign business, including all his dealings with Mr. Rhodes, was done pursuant to his position with the two corporations. There is no probative evidence to the contrary. Mr. Eadon should, therefore, unquestionably be considered an insured under Auto-Owners' policy, which provides, as quoted above, p.3, that executive officers are insureds "with respect to their duties" as an insured corporation's officer.

While these Defendants consider that it is clear that Mr. Eadon is an insured under the policy's definition, if there is any ambiguity in the phrase, "with respect to their duties," that ambiguity is to be construed favorably to Mr. Eadon. Goldston v. State Farm Mut. Auto. Ins. Co., 358 S.C. 157, 170, 594 S.E.2d 511, 518 (Ct. App. 2004) ("Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted"); Mixson, Inc. v. American Loyalty Ins. Co., 349 S.C. 394, 399, 562 S.E.2d 659, 662 (Ct. App. 2002) (reh'g denied) ("It is a well settled rule that the terms of an insurance policy must be construed most liberally in favor of the insured and where the words of a policy are ambiguous, or where they are capable of two reasonable interpretations, that construction will be adopted which is most favorable to the insured").

The phrase, "with respect to their duties," is, by the plain meaning of the terms, broader than the phrase, "only for acts within the scope of their employment by [the insured]," which is used to define as insureds non-executive employees of the named insured. If Auto-Owners had intended to narrowly define executives as insureds, it could certainly have used the words, "only for acts within the scope of their employment."

"With respect to their duties" carries the meaning that executives of the named insured are insureds for any act or omission that has any connection with the business of the insured corporation. Part of any chief executive's duties is the supervision of the activities of the corporation. A chief executive is generally responsible for anything the corporation under his control does or fails to do. In the case of a corporation whose business is the manufacture and erection of signs, the chief executive has the duty to make certain that the signs produced by the corporation are manufactured correctly and efficiently; are erected safely and in a timely manner;

and that proper follow-up tone to keep customers happy. In sum, the actions of Mr. Eadon in his dealings with Mr. Rhodes, were done "with respect to his duties" as chief executive officer of C&B Fabricators, Inc. and Low Country Signs, Inc. He was, therefore, an insured under Auto-Owners' policy under the most reasonable interpretation of the phrase, "with respect to his duties."

III. AUTO-OWNERS IS ESTOPPED TO DENY, OR HAS WAIVED ANY CLAIM TO THE CONTRARY, THAT MR. EADON WAS AN INSURED UNDER THE LIABILITY POLICY ISSUED TO C&B FABRICATION, INC. AND LOW COUNTRY SIGNS, INC.

Even if Mr. Eadon was not legitimately an insured under the policy, which is vehemently denied, Auto-Owners is estopped from raising that issue. As pointed out above, Auto-Owners sent Mr. Eadon three reservation of rights letters; none of them even suggested that Mr. Eadon was not an insured. Auto-Owners did not, in the Complaint in this action, make any allegation that Mr. Eadon was not an insured. An attorney, acting solely on behalf of Auto-Owners, moreover, presented himself to the Court in the underlying tort case for the purpose of attempting to influence the verdict form on how the jury reported its decision about damages. Trial Transcript, vol. IV at pp. 335-336, copy at Exhibit 5. Auto-Owners' individual attorney, however, did not request that any question be asked of the jury about whether Mr. Eadon's acts and omissions were related to his corporate affiliations.

In the case at hand, at least by the time that Mr. Rhodes and Piedmont Promotions filed their complaint in the underlying action, Auto-Owners had actual or constructive knowledge that the underlying plaintiffs had not named either insured corporation as a defendant. That raised a possibility that Mr. Eadon might not be an insured. When Auto-Owners initiated the summons and complaint in the current action in October, 2002, they had known of the

allegations in the underlying complaint for approximately 10 months that complaint was filed on December 12, 2001.

Auto-Owners filed a motion to intervene in the underlying tort action on or about April 17, 2003. The motion seeks to intervene, *inter alia*, as a matter of right. In that motion, a copy of which is at Exhibit 10, Auto-Owners stated that it "issued an insurance policy to the Defendant with liability coverage for the time period relevant to this action." The Defendant referred to was Marion Eadon d/b/a C&B Fabrication, so the statement in the motion is an admission that Mr. Eadon is an insured. The other parties to this action, and the underlying action, have relied on Auto-Owners' repeated assertions and the inferences to be drawn from them that Mr. Eadon was an insured, and it would clearly be to their detriment if Auto-Owners is now allowed to deny that. Equitable estoppel is clearly appropriate. Based on its earlier representations to the Court in the underlying action, Auto-Owners should also be judicially estopped from denying its admissions.

Auto-Owners submitted a memorandum in support of its previously-quoted motion to intervene. In it the insurance company states that it "is the insurance carrier for the Defendants...presently defending the Defendants under a reservation of rights." Memorandum at p.1; copy at Exhibit 11. The Defendants, plural throughout, certainly include Marion Eadon. The only things that Auto-Owners cites as being reserved is coverage for some damages which it alleges are excluded by specific exclusions. Id. In asserting its right to intervene, Auto-Owners presented the following to the Court and parties:

As to Auto-Owners' interest in the subject transaction, the Defendants have claimed Auto-Owners is obligated to indemnify them under their commercial general liability policy for any amount for which they are found liable to the Plaintiffs. And, pursuant to the terms of the policy, Auto-Owners' liability for indemnification, if any, will depend upon which claims the jury finds that the Defendants are liable to the Plaintiff.

Memorandum at p. 4. The statement does not even suggest any question about whether Mr. Eadon is an insured. That is taken as a given under this statement to the Court, as the discussion is limited to which damages are covered. That issue is also the sole one addressed in the Memorandum's discussion of permissive intervention, as follows:

Here, the court should allow Auto-Owners to intervene because the same factual issue being determined by the jury – the amount of monetary loss sustained for each type of damage claimed – is at issue in both the present action between the Plaintiff and the Defendants, and the declaratory judgment action between the Defendants and Auto-Owners.

Memorandum at p. 5 (emphasis added).

Certainly at this time, and when Auto-Owners again tried to intervene on the last day of trial, Trial Transcript, vol. IV at pp. 335-336, copy at Exhibit 5, Auto-Owners knew, actually or constructively, that Mr. Rhodes' claim was against Mr. Eadon individually as a proprietor. It had to have made a conscious decision that Mr. Eadon was an insured and concomitantly have intentionally relinquished its right to challenge whether Mr. Eadon was an insured. That decision would have had to be made before Auto-Owners agreed to provide a defense to Mr. Eadon.

Auto-Owners should, therefore, be estopped from raising the issue of whether Mr. Eadon was an insured. It should not be able to state or imply one position on the issue, and thereby lead Mr. Eadon and other parties to believe that it was not an issue, and raise it for the first time now. Alternatively, Auto-Owners has waived the issue, as the insurance company intentionally relinquished it months ago.

IV. THE DAMAGES ASSESSED BY THE JURY IN THE UNDERLYING CASE ARE COVERED UNDER AUTO-OWNERS' POLICY.

A. The Policy's Insuring Statement Covers Such Damages.

As pointed out above, Auto-Owners' policy provides coverage for property damage, as defined by the policy, for which an insured is legally liable. The property damage must be caused by an "occurrence" and be incurred during the policy period. As pointed out above, there are two aspects to the policy's definition of "property damage." The first part of the definition pertains to physical injury to tangible property, including all loss of use of that property, with the loss of use being deemed to occur when the physical injury to the property occurs. The second part of the definition pertains to the loss of use of tangible property which is not physically injured, with all of the loss of use deemed to have occurred at the time of the "occurrence" that caused the loss of use.

The policy defines an "occurrence" as an accident, including continuous or repeated exposure to the same harmful conditions. Under South Carolina law, the term, "accident," is defined **from the point of view of the victim**. State Farm Mut. Auto Ins. Co. v. Moorer, 330 S.C. 46, 58, 496 S.E.2d 875, 882 (Ct. App. 1998) ("A quite simple, but by no means all inclusive, definition of the word "accident" as understood by the ordinary man is, 'An unexpected happening or event, which occurs by chance and usually suddenly, with harmful result, not intended or designed by the person suffering the harm or hurt.' Quoting Green v. United Ins. Co. of America, 254 S.C. 202, 206, 174 S.E.2d 400, 402 (1970)"). In the case at hand, there were at least five unexpected events from the point-of-view of Mr. Rhodes. First, the defective manufacture and erection of the signs; second, the leaning of the signs; third, the lack of a timely repair to the signs; fourth, the fall of the sign; and fifth, the cancellation of his permit to have signs on the property. Any one of these events would be considered an "accident" or "occurrence" from Mr. Rhodes' perspective.

Auto-Owners, in its Memorandum In Support of its motion for summary judgment, cites L-J, Inc. v. Bituminous Fire and Marine Ins. Co., 2004 WL 1775571 (S.C. 2004) to argue that there was no "occurrence" in this case. L-J, Inc. does not support Auto-Owners' argument. That case dealt with damages – to the road itself – from slow deterioration caused by negligent construction techniques. There was no claim that anything was damaged other than the road itself. In other words, there were no consequential damages. In pertinent part, the L-J Court held as follows:

We find that all of these contributing factors are examples of faulty workmanship causing **damage to the roadway system only**, which does not fall within the contractual definition of "occurrence" under Bituminous's CGL policy. This finding is consistent with the Court of Appeals' decision in C.D. Walters Construction Co., Inc. v. Fireman's Ins. Co. of Newark, NJ, 281 S.C. 593, 596-597, 316 S.E.2d 709, 711-712 (Ct. App.1984), in which the court found that a CGL insurance provider is not liable for an economic loss resulting from faulty workmanship alone. The court stated: * * * **"This liability, however, is not what the coverages in question are designed to protect against. The coverage is for tort liability for physical damages to others and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained."** [citation omitted] [emphasis in L-J].

We agree that the CGL policy may provide coverage in cases where faulty workmanship causes bodily injury or property damage to another. For instance, if a bicyclist rode through Dunes West, caught his front wheel in an alligator crack, and suffered an injury, the damages resulting from his successful negligence cause of action would likely be covered under a CGL policy. In our view, this example represents the type of insurable loss contemplated by a CGL policy definition of "occurrence" because it was an accident causing bodily injury and property damage to another, rather than damage to the road itself.

L-J, 2004 WL 1775571 at 2, 3 (emphasis in original).

In the underlying case here, the damages sought under the tort case of action, negligence, were for **consequential damages**, specifically and primarily for lost profits. The damages were not limited to the damages to the signs themselves, which significantly distinguishes this case

from the facts in L-J, Jr. Under our facts, there was an I "occurrence" that caused consequential property damage to Mr. Rhodes in the underlying case here.

The primary injury alleged in Mr. Rhodes' Complaint was **injury to the real property**, which was obviously not the work or product of C&B Fabricators, *See*. First Amended Complaint at Paragraph 4 ("action arises out of a transaction involving injuries to real property"); Paragraph 9 ("each sign became a fixture on, and a part of, the Plaintiff's real property"); Paragraph 20b ("Plaintiff...lost the opportunity to erect and maintain an economic enterprise on his real property"); and Paragraph 20c ("the Plaintiff...lost...revenue from the advertising that the signs would have displayed for years to come").

There was testimony at trial that the signs were part of the property. Trial Transcript, v. I at p. 60, copy at Exhibit 3. There was also testimony that not having the income from the signs – i.e., not having use of the property upon which signs could be placed – caused a present value loss of \$2,470, 502 over 20 years and a present value loss of \$4,212,386 over 30 years. Trial Transcript, v. II, at pp. 260-61, included in Exhibit 3. An expert likewise testified that the value of the 9.93 acres of the property was \$1.8 million with the signs erected and \$65, 500 without the signs. Transcript of Trial, vol. III, at pp. 27-28, 32, copy at Exhibit 4.

The Trial Court's charge to the jury recognized the damage-to-real-property nature of Mr. Rhode's claim. The following charge was given to the jury.

I CHARGE YOU THAT THE GENERAL RULE IS THAT IN A CASE OF INJURY OF A PERMANENT NATURE TO REAL PROPERTY, THE PROPER MEASURE OF DAMAGES IS THE DIMINUTION OF THE MARKET VALUE BY REASON OF THAT INJURY OR DAMAGE OR, IN OTHER WORDS, THE DIFFERENCE BETWEEN THE VALUE OF THE LAND BEFORE THE INJURY OR DAMAGE AND ITS VALUE AFTER.

WHERE AN INJURY OR DAMAGE RESULTS IN A TEMPORARY OR NON-PERMANENT INJURY TO REAL PROPERTY, THE LANDOWNER CAN

RECOVER THE DEPRECIATION IN THE RENTAL AND USABLE VALUE
OF THE PROPERTY, CAUSE BY SUCH INJURY.

Transcript of Trial, v. IV at p. 369, copy at Exhibit 5. The Court also charged the jury on
damages for future profits, as follows:

IF YOU FIND THAT THE PLAINTIFF IS ENTITLED TO A VERDICT FOR
ACTUAL DAMAGES, YOUR VERDICT MUST AND SHOULD INCLUDE
AN AMOUNT TO COVER ANY AND ALL DAMAGES THAT THE
EVIDENCE SHOWS YOU WILL BE REASONABLY CERTAIN TO HAVE
OCCURRED EITHER IN THE PAST, THOSE DAMAGES WHICH YOU ARE
CONVINCED MOST PROBABLY RESULTED FROM THE INJURY OR
DAMAGE...AND THAT WOULD INCLUDE NOT ONLY PAST, BUT ANY
FUTURE DAMAGES WHICH YOU FIND MOST REASONABLY CERTAIN
THAT THE PLAINTIFFS OR PLAINTIFF IS MOST LIKELY TO
EXPERIENCE OR SUSTAIN.

FUTURE DAMAGES, LIKE PAST DAMAGES, NEED NOT BE PROVEN TO
A MATHEMATICAL CERTAINTY AND OFTEN MUST BE
APPROXIMATED. THESE FUTURE DAMAGES MUST BE THE RESULT
OF, AS I TOLD YOU, ONE OF THE ALLEGED ACTIONS OR INACTIONS
ON THE PART OF THE DEFENDANT.

Trial Transcript, v. IV at pp. 371-72, copy at Exhibit 5.

At every step of the underlying action, the claim of damage to real property was
articulated and evidence was produced to support it. Even venue was determined on this basis.
The holding of the jury as to actual damages was necessarily based on the loss of use of the real
property. The only evidence presented that was close to the \$3 million verdict for actual
damages was that cited above for the future profits lost because of Mr. Rhodes' loss of use of the
real property as a platform for supporting the signs.

In this case, both aspects of the policy's definition of "property damage" are alternatively
applicable. There was physical damage to tangible property in that the land was damaged in the
physical loss, by falling or by mandatory removal, of the signs. The term "tangible property" is
not defined in the policy and common, everyday definition of "tangible" is, "that can be touched;

that can be felt by touch, having actual form and substance.”¹ Land, therefore, certainly falls within the normal definition of tangible property. There was also certainly loss of use of such property in that it could no longer be used to display signs to be seen on the Interstate highway.

If it, for some reason, is held that the land was not physically injured by the forced removal of the signs, the second prong of the definition of property damage is applicable: i.e., “[l]oss of use of tangible property that is not physically injured.” Again, Mr. Rhodes clearly lost the use of his land for purposes of displaying advertising signs to travelers on the Interstate highway. That is the sole basis for the jury’s award of damages for lost profits.

There was, therefore, “property damage,” as defined by the policy under one aspect of the definition or the other.

B. None of the Policy’s Exclusions Prevent Coverage

Auto-Owners, in its Memorandum in Support of its motion for summary judgment, cites several exclusions that it alleges would prevent coverage for the damages assessed against Mr. Eadon. It specifically cites exclusions k, l, and n as grounds for denying coverage. See, policy at p. 4 of 14, copy at Exhibit 2. Not one of these exclusions is applicable, however. Exclusion k pertains to “property damage to your product.” That does not address the damages in this case for loss of use of the real property, which is not C&B Fabrication’s product. Similarly, exclusion l pertains to “property damage to your work,” and the real property damaged is not C&B Fabrication’s “work.”

Exclusion n suffers from the same fatal defect. It precludes coverage for damages associated with, *inter alia*, “the loss of use, withdrawal, ...removal or disposal of:

1. ‘Your product’

¹Webster’s New World Dictionary of the American Language.

2. 'Your work' or
3. 'Impaired property'

if the product, work or property is withdrawn from use because of a defect, deficiency or dangerous condition in the product, work or property.

See, policy, p. 4 of 14, copy at Exhibit 2.

As pointed out above, Mr. Rhodes claim was for damage to real property, specifically loss of use of the land. Mr. Rhodes' land was not C&B's product or work, nor was it "impaired property" under the policy's definitions.² Here the property could not continue to be used for the sign business because permits for such advertising signs had been revoked, as discussed *infra*, not because of any deficiency or condition in the signs themselves. Testimony was presented at trial, in fact, that a proposed interchange on the highway would require that one of the signs be taken down and moved. Trial Transcript, vol. III at p. 86, copy at Exhibit 4. However, that sign could not be moved because its permit had been revoked; it was not because of anything *per se* wrong with the sign. Moreover, nothing could be done to restore the land's usefulness for its intended purpose by making any change to the signs or doing anything further

² The policy, p. 11 of 14, at Exhibit 2, defines impaired property as follows:

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

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract 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.

to fulfill C&B Fabrication's contract. Mr. Rhodes' property is not, therefore, "impaired property" under the policy's definition.

The primary reason that Mr. Rhodes lost the use of his land is that "the qualifying business is closed."³ Transcript of Trial, vol. III at p. 99, copy at Exhibit 4. The South Carolina Department of Transportation determined that the business, ostensibly a used car sales lot, was closed. Id. The Department of Transportation does not review qualifying businesses after an initial 12-month period after the signs permit is issued. Transcript of Trial, vol. III at p. 97, copy at Exhibit 4. The sign permits for Mr. Rhodes' signs were issued on May 6, 1999. Transcript of Trial, vol. I at p. 47, copy at Exhibit 3. DOT would, therefore, according to the evidence, not normally have come onto Mr. Rhodes' property to check the qualifying business after May 6, 2000. In other words, the loss of permits for the land was not caused by the faulty signs and the only connection is that because the signs were faulty, the DOT came to the premises and revoked the permits for an entirely different reason unrelated to the condition of the signs.

Based on the dates above, when a sign started leaning in December 2000, the 12-month period had already expired. The only reason that DOT went to that property was because of the leaning and fall of the signs. When they were on Mr. Rhodes' property – because of the signs – they investigated and determined that the land was not being used in a legitimate business. The DOT, therefore, denied Mr. Rhodes' request to erect other signs on the property. It was that denial which caused the great bulk of Mr. Rhodes' damages for lost profits. The property could not be restored to use by replacing C&B Fabrication's work or product or otherwise fulfilling its

³ There must be a qualifying business within 600 feet of the sign location. It must be open to the public at least 36 hours per week and have water, telephone, lights and electricity. Transcript of Trial, vol. III at pp. 94, 96, copy at Exhibit 4.

contract so Mr. Rhodes' land was not "impaired property." Exclusion is, therefore, ineffective to prevent coverage of the property damage to Mr. Rhodes' property.

C. Punitive Damages are Covered Damages under Auto-Owners' Policy.

The jury awarded \$3.5 million in punitive damages against Mr. Eadon, inferably for recklessness or willfulness in causing property damage to Mr. Rhodes. Auto-Owners' policy does not in any way exclude payment of punitive damages. South Carolina does not, as a matter of public policy, hold that punitive damages are outside of coverage by liability insurance policies. In fact, under the automobile liability insurance section of our statutes, "damages" is specifically defined to include punitive damages, S.C. CODE ANN. § 38-77-30 (4) (2002) ("Damages" includes both actual and punitive damages"), so, if anything, our public policy supports the proposition that liability insurance covers punitive damages.

The insuring statement in Auto-Owners' policy, in pertinent part, states that, "[w]e will pay those sums that the insured becomes legally obligated to pay as damages because of ... 'property damage' to which this insurance applies." Policy, p. 1 of 14, copy at Exhibit 2. This statement does not limit coverage to actual or compensatory damages. In similar circumstances, South Carolina courts have held that general liability policies cover punitive damages. South Carolina State Budget & Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643 (1991). The Prince Court held as follows:

The policy under consideration did not limit recovery to actual or compensatory damages. The language of the policy here is sufficiently broad enough to cover liability for punitive damages as such damages are included in the 'sums' which the insured is legally obligated to pay as damages because of bodily injury within the meaning of the policy. [Carroway v. Johnson, 245 S.C. 200, 205, 139 S.E.2d 908, 910 (1965)] Here, as in Carroway, the policy does not limit recovery to actual damages. Instead, the policy uses broader language which, under the rules of construction and interpretation of insurance policies, must be read as encompassing punitive damages. The Fund is obligated, under the language of its policy, to provide coverage for any punitive damages awarded against Prince.

304 S.C. at 249, 403 S.E.2d at 648.

In the policy here, as in Prince, the phrase, "those sums the insured becomes legally obligated to pay as damages," is broad enough to encompass punitive damages. If there is one dollar (\$1.00) in actual damages, then all the punitive damages should also be covered. Even excluding the primary loss-of-use damages, there was obviously more than one dollar in actual damages, including, *inter alia*, \$300 for "cutting sign loose on I-77," Transcript. vol. I at p. 86, \$1835 for the use of a crane to "aid in sign removal," Id. at pp. 87-88, \$5590 for 10 hours use of a crane to "take the third sign down." Id. at pp. 88-89. There appear to be no South Carolina cases that hold that a general liability policy with such broad wording fails to provide coverage for punitive damages. Auto-Owners' policy here, under the law of South Carolina, covers the award of punitive damages against Mr. Eadon.

CONCLUSION

The Motion for Summary Judgment of Marion L. Eadon, Jr., C&B Fabricators, Inc., and Low Country Signs, Inc. should be granted and that of Auto-Owners Insurance Company denied.

Mr. Eadon, as an executive of both insured corporations, was an insured because his acts and omissions were in connection with the sign business carried on by the two insured corporations.

Auto-Owners, moreover, has waived the right to assert that Mr. Eadon was not an insured.

The damages alleged and awarded were property damage as defined by the policy as they derived from loss of use of Mr. Rhodes' tangible property, his land, for the purpose of displaying outdoor advertising signs on the property. The loss of use of the property directly manifested

itself in the lost profits presented to the jury and necessarily the basis for their award of actual damages.

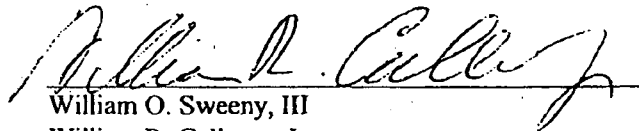
There is also coverage for punitive damages under our law.

None of the exclusions in Auto-Owners' policy are effective to deny coverage for the damages awarded in the underlying case.

Defendants' Motion for Summary Judgment should be granted.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



William O. Sweeney, III
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

**ATTORNEYS FOR MARION EADON, C7B
FABRICATIONS, INC. AND LOW COUNTRY
SIGNS, INC.**

Columbia, South Carolina

February 14, 2005

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

TAILORED PROTECTION POLICY DECLARATIONS

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81
INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

Renewal Effective 09-17-2000

POLICY NUMBER 984616-36064416-00

ADDRESS RR 2 BOX 825

MANNING, SC 29102-9083

CB

POLICY TERM
12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

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

COMMON POLICY INFORMATION

COINSURANCE CLAUSE

BUSINESS DESCRIPTION: Sign Mfg.

ENTITY: Corporation

PROGRAM: Industrial/Processing

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PART(S):	PREMIUM
THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.	
COMMERCIAL PROPERTY COVERAGE	\$172.00
COMMERCIAL GENERAL LIABILITY COVERAGE	6,521.00
TOTAL	\$6,693.00

FORMS THAT APPLY TO ALL COVERAGE PARTS SHOWN ABOVE (EXCEPT GARAGE LIABILITY, DEALER'S
BLANKET, COMMERCIAL AUTOMOBILE, IF APPLICABLE)
55003 (01-87) IL0017 (11-85)

A 7% MULTI-POLICY DISCOUNT APPLIES
Countersigned By: _____

I certify that this policy was assembled from
available records as a representation of coverage
that was in effect for the policy period shown.

Date

EXHIBIT

INSURANCE COMPANY
6101 ANACAPRI BLVD., LAN 46, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81
INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

Renewal Effective 09-17-2000

POLICY NUMBER 984616-36064416-00

ADDRESS RR 2 BOX 825

MANNING, SC 29102-9083

CB

POLICY TERM	
12:01 a.m.	12:01 a.m.
09-17-2000	to 09-17-2001

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

COMMERCIAL PROPERTY COVERAGE

COVERAGES PROVIDED

INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF
INSURANCE IS SHOWN.

LOCATION 001

ADDITIONAL FORMS THIS LOCATION: None

LOC 001 BLDG 001 Rr 2 Box 825
Manning, SC 29102

OCCUPIED AS: Sign Manufacturer

COVERAGE: Personal Prop.

Limit of Insurance \$30,000

CAUSES OF LOSS	COINSURANCE	DEDUCTIBLE	RATE	PREMIUM
Basic Group I	80%	\$250	0.206	\$62.00
Basic Group II	80%	250	0.084	25.00
Special	80%	250	0.043	13.00
Special Including Theft	80%	250	0.239	72.00

OPTIONAL COVERAGE:

Replacement Cost

ADDITIONAL FORMS THIS BUILDING: IL0249 (06-89) IL0003 (11-85) CP0090 (07-88)
CP0010 (10-91) CP1030 (10-91)

SECURED INTERESTED PARTIES: None

RATING INFORMATION

Territory: 140
Program: Industrial/Processing
Class Code: 6810

County: Clarendon
Construction: Non-Comb
Specific Rate - Contents: 0.229
Protection Class: 06

LOCATION 001 PREMIUM \$172.00

INSURANCE COMPANY
6101 ANACAPRI BLVD., LAN: 3, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81
INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

Renewal Effective 09-17-2000

POLICY NUMBER 984616-36064416-00

ADDRESS RR 2 BOX 825

MANNING, SC 29102-9083

CB

POLICY TERM
12:01 a.m. 12:01 a.m.
09-17-2000 to 09-17-2001

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

COMMERCIAL GENERAL LIABILITY COVERAGE

LIMITS OF INSURANCE

General Aggregate Limit	\$1,000,000
(Other Than Products-Completed Operations)	
Products-Completed Operations Aggregate Limit	1,000,000
Personal And Advertising Injury Limit	1,000,000
Each Occurrence Limit	1,000,000
Fire Damage Limit	100,000 Any One Fire
Medical Expense Limit	10,000 Any One Person

"General Aggregate Limit" shown above, is reinstated once per policy period at no
additional charge, in accordance with form 55050.

AUDIT TYPE: Annual Audit

FORMS THAT APPLY TO LIABILITY: 55118 (08-91) 55146 (07-96) 55091 (01-89)
IL0021 (11-85) 55029 (07-87) CG0001 (11-88) IL0249 (06-89) 55137 (06-92)
IL0017 (11-85) 55050 (07-87) 55064 (07-87) CL175 (02-86) 55069 (01-88)
CG2147 (09-89) 55167 (11-95)

LOCATION OF PREMISES YOU OWN, RENT OR OCCUPY

LOC 001 BLDG 001 Rr 2 Box 825
Manning, SC 29102

TERRITORY: 001 COUNTY: Clarendon

Classification	Subline	Premium Basis	Rates	Premium
CODE 00501 Commercial General Liability Plus Endorsement Included At 7% Of The Premises Operation Premium	Prem/Op	Prem/Op Prem Inc	Inc	Inc
CODE 59058 Sign Mfg. - Noc	Prem/Op Prod/Comp Op	Gross Sales 1,127,333 1,127,333	Each 1000 290 1.590	\$327.00 \$1,792.00
CODE 98993 Sign Erection, Installation Or Repair	Prem/Op Prod/Comp Op	Payroll 106,902 106,902	Each 1000 23.711 17.463	\$2,535.00 \$1,867.00

LOCATION 001 PREMIUM

\$6,521.00

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 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 - 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 any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in 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 payments 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"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

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

2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of

EXHIBIT

... agreement. This exclusion does not apply to liability for damages:

- (1) 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; or
 - (2) That the insured would have in the absence of the contract or agreement.
- c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:
- (1) Causing or contributing to the intoxication of any person;
 - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

- d. Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- e. "Bodily injury" to:
- (1) An employee of the insured arising out of and in the course of employment by the insured; or
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (1) whether the insured may be liable as 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. (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;
 - (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 any insured or 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:
 - (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or

monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d) (i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(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 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 from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, 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, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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

This exclusion does not apply to:

(1) 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" (Section V.8.).

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

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

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

i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. "Property damage" to:

(1) Property you own, rent or occupy;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of 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.

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

l. "Property damage" to "your work" arising out of it or any part of it and including 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. "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. 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.

Exclusions c. through n. do not apply to damage by fire to premises rented to you. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (SECTION III).

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 injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate

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 under Coverage 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:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions.

This insurance does not apply to:

a. "Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or

- (4) "or 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.

b. "Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

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 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. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefit law or similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. 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

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

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. 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.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$100 a day because of time off from work.
5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on the part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

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, 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

with respect to the conduct of your business.

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

2. Each of the following is also an insured:

- a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:

- (1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

- (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or

- (3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).

- b. Any person (other than your employee), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and

- (2) If 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 or joint venture, 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 injury" or "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 or joint venture 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 injury" and all "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 Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.
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 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 the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, 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 rec. 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, settlement or defense of the claim or "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

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

3. 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 claimant's legal representative.

4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverage 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 any of the other insurance, whether primary, excess, contingent or on any other basis:

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

(2) That is Fire insurance for premises rented to you; or

(3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

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

When this insurance is in 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. 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 term 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. "Advertising injury" means injury arising out of one or more of the following offenses:

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:

(1) The injury or damage arises out of:

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

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

(2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

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

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

If such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

6. "Insured contract" means:

- a. A lease of premises;
- 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" a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies any person or organization 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;
 - b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
 - c. 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 b. above and supervisory, inspection or engineering services; or
 - d. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.
7. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in, or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

8. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, 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 and lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing;
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise and lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

10. "Personal injury" means, other than "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 by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

11. a. "Products-completed operations hazard"

includes all "bodily injury" and "property damage" 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.
- b. "Your work" will be deemed completed at the earliest of the following times:
- (1) When all of the work called for in your contract has been completed.
 - (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
 - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
- (3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. "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 shall be deemed to occur at the time of the "occurrence" that caused it.
13. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

14. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(1) You;

(2) Others trading under your name; or

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

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

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, 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.

15. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

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

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

SAMUEL W. RHODES AND)
PIEDMONT PROMOTIONS, INC.,)

DOCKET NO. 01-CP-20-334

PLAINTIFFS,)

V.)

TRANSCRIPT OF RECORD

(JURY TRIAL)

MARION L. EADON, D/B/A)
C&B FABRICATION,)

VOLUME I

DEFENDANT.)

AUGUST 30 - SEPTEMBER 2, 2004
WINNSBORO, SOUTH CAROLINA

BEFORE:

HONORABLE R. MARKLEY DENNIS

APPEARANCES:

FOR THE PLAINTIFFS:

HOOVER C. BLANTON, ESQUIRE
CREIGHTON B. COLEMAN, ESQUIRE

FOR THE DEFENDANT:

CATHARINE GARBEE GRIFFIN, ESQUIRE
AMY MILLIGAN, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

EXHIBIT

1 (PLAINTIFF'S EXHIBIT #2-A, MARKED FOR
2 IDENTIFICATION AND ENTERED INTO EVIDENCE, PERMIT).

3 (PLAINTIFF'S EXHIBIT #2-B, MARKED FOR
4 IDENTIFICATION AND ENTERED INTO EVIDENCE, PERMIT).

5 (PLAINTIFF'S EXHIBIT #2-C, MARKED FOR
6 IDENTIFICATION AND ENTERED INTO EVIDENCE, PERMIT).

7 Q MR. RHODES, I SHOW YOU WHAT'S MARKED PLAINTIFF'S EXHIBITS
8 #2-A, #2-B, AND #2-C. IF YOU CAN, JUST TELL THE JURY WHAT
9 THOSE DOCUMENTS ARE.

10 A THESE ARE PERMITS FROM THE STATE OF SOUTH CAROLINA FOR
11 BILLBOARDS, DOUBLE-FACE, STACKED, B-TYPE SIGNS.

12 Q AND WHO IS THAT LETTER ADDRESSED TO?

13 A PIEDMONT PROMOTIONS.

14 Q AND WHO IS IT FROM?

15 A THE LETTER IS FROM KEITH MELVIN, DIRECTOR OF OUTDOOR
16 ADVERTISING FOR THE SOUTH CAROLINA DEPARTMENT OF
17 TRANSPORTATION.

18 Q AND THOSE LETTERS, WHAT'S THE DATE OF THEM?

19 A MAY 6, 1999.

20 Q AND EACH PERMIT IS SEPARATE IN AND OF ITSELF, IS THAT
21 CORRECT? EACH PERMIT IS SEPARATE?

22 A YES, SIR, YOU HAVE THREE DIFFERENT PERMITS.

23 Q OKAY.

24 MS. GRIFFIN: NO OBJECTION.

25 MR. COLEMAN: MADAM COURT REPORTER, THIS IS

Q ARE YOU AWARE OF HOW THE SIGNS WERE PUT INTO THE GROUND?

A YES. THEY HAD TO DRILL A HOLE 20 SOMETHING FEET, I THINK 27 FEET DEEP, AND THEY PUT THIS POLE IN THERE, AND THEN THEY WOULD PUT CONCRETE AROUND IT. SO IF YOU BUILD A 4-FOOT -- IF YOU PUT A 4-FOOT PIPE IN THERE, FROM MY UNDERSTANDING, AND YOU DRILL MAYBE A 5-FOOT HOLE AND PUT CONCRETE AROUND IT, IF YOU GO THAT DEEP, IT SHOULD NEVER GO ANYWHERE.

Q ONCE THEY WERE INSTALLED IN THE GROUND, WHAT DID YOU CONSIDER THOSE POLES TO BE?

A ONCE THEY WENT IN THE GROUND, THEY GO 27 FEET DEEP. I DEEMED THEM AS A PART OF THE PROPERTY.

Q PART OF THE PROPERTY?

A A PERMANENT FIXTURE OF THE PROPERTY.

Q AT THE TIME THAT THEY WERE INSTALLED, WHO OWNED THE SIGNS?

A WELL, ONCE THEY WERE INSTALLED, I OWNED THE SIGNS.

Q IS THAT REFLECTED IN YOUR LEASE AGREEMENT?

A YES, SIR.

Q WHEN THEY WERE ERECTED, WHEN THE SIGNS WERE ERECTED, SAM, HOW MANY ADVERTISING SPOTS DID YOU HAVE, TOTAL?

A I ENDED UP WITH EIGHT AND I HAD PROSPECTIVE CUSTOMERS ON THE OTHER FOUR. I JUST HADN'T GOTTEN THEM TO SIGN CONTRACTS YET.

MS. GRIFFIN: YOUR HONOR, I OBJECT TO THE SPECULATIVE NATURE OF THAT TESTIMONY.

1 MONEY TAKING THE MIDDLE SIGN DOWN, AND THAT I WAS GOING TO
2 SUE HIM ANYHOW, FOR ME TO TAKE IT DOWN.

3 Q AND WHAT DID YOU DO AS A RESULT OF YOUR CONVERSATION WITH
4 MR. EADON?

5 A I CONTRACTED WITH SOME OTHER PEOPLE TO TAKE THE SIGN DOWN.

6 Q DID YOU GET MANY BILLS ASSOCIATED WITH ALL OF THAT OUT
7 THERE ON THE INTERSTATE?

8 A (WITNESS PAUSING).

9 Q MANY BILLS? DID YOU GET MANY BILLS TO PAY CERTAIN PEOPLE?

10 A YES, I GOT BILLS, YES, SIR.

11 MR. COLEMAN: (COUNSEL SHOWING DOCUMENTS TO MS.
12 GRIFFIN).

13 MS. GRIFFIN: YOUR HONOR, MAY WE APPROACH ABOUT
14 THESE BILLS?

15 THE COURT: SURE.

16 (BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING
17 OF JURY AND COURT REPORTER).

18 MS. GRIFFIN: YOUR HONOR, I'D JUST MAINTAIN MY
19 OBJECTION TO ALL OF THESE EXHIBITS WITH RESPECT TO --

20 THE COURT: BASED ON WHAT WAS STATED OFF THE
21 RECORD?

22 MS. GRIFFIN: YES.

23 THE COURT: I MEAN, OUT OF THE JURY'S PRESENCE?

24 MS. GRIFFIN: YES, SIR.

25 THE COURT: VERY WELL. SUBJECT TO THE CONTINUING

1 OBJECTION TO CERTAIN MATTERS ON WHICH THE COURT HAS
2 ALREADY RENDERED ITS RULING.

3 Q SAM, I'D SHOW YOU EXHIBIT #10-A.

4 A THIS IS A BILL. IT SAYS, "J. A. BRANNON, P.E., RESIDENT
5 MAINTENANCE ENGINEER, S.C.D.O.T., P.O. BOX 261, WINNSBORO,
6 29180, TELEPHONE NUMBER 635-4223, CUTTING SIGN LOOSE ON
7 HIGHWAY I-77, \$300, REMIT BILL TO JAMES THOMAS, 2396 E.
8 BEACH RD., RIDGEWAY, SOUTH CAROLINA 29130, \$300, 803-635-
9 7719, MOBILE 403-0391."

10 Q I WANT TO SHOW YOU WHAT'S MARKED AS #10-B AND ASK YOU IF
11 YOU CAN IDENTIFY THAT.

12 THE COURT: (TO MR. COLEMAN) ONE SECOND, PLEASE.
13 WHAT WAS THE EXHIBIT NUMBER OF WHAT HE JUST
14 PUBLISHED?

15 MR. COLEMAN: THAT'S #10-A, YOUR HONOR.

16 THE COURT: #10-A IS ADMITTED SUBJECT TO
17 OBJECTION OF COUNSEL.

18 (PLAINTIFF'S EXHIBIT #10-A, MARKED FOR
19 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

20 Q I SHOW YOU #10-B.

21 A #10-B IS A CHECK FROM PIEDMONT PROMOTIONS, INC. TO JAMES
22 THOMAS FOR \$300 FOR "CUTTING SIGN LOOSE ON I-77".

23 THE COURT: #10-B IS ADMITTED SUBJECT TO THE
24 OBJECTION OF COUNSEL.

25 (PLAINTIFF'S EXHIBIT #10-B, MARKED FOR

1 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

2 Q AND HAVE YOU EVER BEEN REIMBURSED FOR THAT CHECK?

3 A I MAY HAVE.

4 Q I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT
5 #11. IF YOU CAN, IDENTIFY THAT DOCUMENT.

6 A THIS IS A CHECK FROM PIEDMONT PROMOTIONS, INC. TO LAVERNE
7 COOK FOR \$100, 4/1, 2000. IT SAYS "BUSH HOG", SIGNED BY ME.

8 THE COURT: (TO MR. COLEMAN) DO YOU WANT THAT
9 ADMITTED?

10 (TO MS. GRIFFIN) DO YOU OBJECT TO #11, WHICH IS
11 A CHECK FROM PIEDMONT?

12 MS. GRIFFIN: YOUR HONOR, UNDER THE SAME REASONS
13 WE DISCUSSED AT THE SIDE BENCH.

14 THE COURT: VERY WELL.

15 PLAINTIFF'S EXHIBIT #11 IS ADMITTED SUBJECT TO
16 OBJECTION.

17 (PLAINTIFF'S EXHIBIT #11, MARKED FOR
18 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

19 Q I SHOW YOU PLAINTIFF'S EXHIBIT #12-A.

20 A #12-A IS FROM THE CRANE CO., INC., P.O. BOX 12222,
21 COLUMBIA, SOUTH CAROLINA 29211, WORK ORDER/INVOICE:
22 PIEDMONT PROMOTIONS, INC., SEVEN HOURS, FOUR HOURS (SEVEN
23 HOURS THE FIRST DAY, FOUR HOURS THE SECOND DAY), PAID CHECK
24 #2221, AMOUNT \$1835.

25 Q THAT'S \$1,835?

1 A THAT'S CORRECT. THIS IS ON 4/3/01.

2 Q OKAY.

3 A AND "PROVIDE INSURANCE, LABOR AND EQUIPMENT TO AID IN SIGN
4 REMOVAL AS REQUESTED."

5 Q I SHOW YOU WHAT'S MARKED AS #12-B, AND IF YOU CAN, IDENTIFY
6 THAT.

7 A THAT'S A CHECK FROM PIEDMONT PROMOTIONS, INC. TO THE CRANE
8 COMPANY DATED 4/3/08, CHECK NUMBER 2221 IN THE AMOUNT OF
9 \$1835 FOR RIGGING.

10 THE COURT: WAIT A MINUTE, #12-A AND #12-B ARE
11 ADMITTED SUBJECT TO OBJECTION OF COUNSEL.

12 (PLAINTIFF'S EXHIBIT #12-A, MARKED FOR
13 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

14 (PLAINTIFF'S EXHIBIT #12-B, MARKED FOR
15 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

16 Q I ASK YOU IF YOU CAN IDENTIFY WHAT IS EXHIBIT #13-A?

17 A #13-A IS FROM MAXIM CRANE WORKS TO PIEDMONT PROMOTIONS,
18 DATED 4/3/01, SIX HOURS TUESDAY, FOUR HOURS WEDNESDAY, CHECK
19 NUMBER 2222, PAID IN FULL, \$5540, PIEDMONT PROMOTIONS, INC.
20 BY SAMUEL W. RHODES, JR.

21 Q I SHOW YOU #13-B AND ASK YOU IF YOU CAN IDENTIFY THAT
22 DOCUMENT.

23 A THAT'S A CHECK TO MAXIM CRANE WORKS FROM PIEDMONT
24 PROMOTIONS, INC., DATED 4/3/01, \$5590, CRANE TAKE-DOWN.

25 Q AND WHAT WERE THOSE CHECKS FOR?

1 A THOSE WERE TO TAKE THE THIRD SIGN DOWN.

2 MR. COLEMAN: AND, YOUR HONOR, I WOULD MOVE FOR
3 THE ADMISSIBILITY OF, I THINK IT WAS, #13-A AND #13-B.

4 THE COURT: SUBJECT TO OBJECTION OF COUNSEL,
5 THEY ARE ADMITTED.

6 (PLAINTIFF'S EXHIBIT #13-A, MARKED FOR
7 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

8 (PLAINTIFF'S EXHIBIT #13-B, MARKED FOR
9 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

10 Q AND WHAT WERE THOSE BILLS FOR, SAM?

11 A TAKING TE THIRD SIGN DOWN, THE NORTHERNMOST SIGN.

12 Q WHO REQUIRED YOU TO TAKE IT DOWN?

13 A THE DEPARTMENT OF TRANSPORTATION, SOUTH CAROLINA DEPARTMENT
14 OF TRANSPORTATION, DEEMED THAT THEY WERE UNSAFE.

15 Q I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT #14
16 AND ASK YOU IF YOU CAN IDENTIFY THAT DOCUMENT?

17 A THIS IS A DOCUMENT FROM THE SOUTH CAROLINA DEPARTMENT OF
18 TRANSPORTATION DATED JANUARY 23, 2001, CERTIFIED MAIL,
19 RETURN RECEIPT REQUESTED, TO MR. SAMUEL W. RHODES, JR.,
20 PIEDMONT PROMOTIONS, INC., P.O. BOX 4234, ROCK HILL, SOUTH
21 CAROLINA 29731.

22 Q DID YOU RECEIVE THAT LETTER?

23 A YES.

24 Q WHAT'S THE DATE OF THAT LETTER?

25 A THE DATE OF THE LETTER IS JANUARY 23, 2001.

1 Q AS A RESULT OF YOUR CONVERSATIONS AND ALSO THAT LETTER, DID
2 THAT PRECIPITATE YOU TAKING DOWN THE THIRD SIGN?

3 A YES, SIR.

4 MR. COLEMAN: YOUR HONOR, I'D MOVE THE
5 ADMISSIBILITY OF THAT LETTER.

6 THE COURT: ANY OBJECTION?

7 MS. GRIFFIN: NO, YOUR HONOR, NO OBJECTION.

8 THE COURT: PLAINTIFF'S EXHIBIT #14 IS ADMITTED
9 INTO EVIDENCE WITHOUT OBJECTION.

10 (PLAINTIFF'S EXHIBIT #14, MARKED FOR
11 IDENTIFICATION AND ENTERED INTO EVIDENCE, LETTER).

12 Q WOULD YOU READ THAT, IF YOU DON'T MIND, SAM?

13 A YES, SIR. THIS IS ADDRESSED TO SAMUEL RHODES, PIEDMONT
14 PROMOTIONS, INC., REGARDING CANCELLATION OF OUTDOOR
15 ADVERTISING BILLBOARD PERMITS 04-20-426994, 04-20-426995,
16 04-20-426996, FAIRFIELD COUNTY. "DEAR MR. RHODES: THE
17 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION HAS DOCUMENTED
18 THAT THE OUTDOOR ADVERTISING STRUCTURE PERMIT #04-20-
19 426994, LOCATED ON I-77 IN FAIRFIELD COUNTY, HAS BEEN
20 COMPLETELY DESTROYED. THE S.C.D.O.T. HAS INVESTIGATED AND
21 CONCLUDED THAT OUTDOOR ADVERTISING STRUCTURES PERMITTED
22 UNDER PERMITS 04-20-426995 AND 04-20-42996 ON I-77 IN
23 FAIRFIELD COUNTY ARE UNSAFE AND PRESENT A HAZARD TO THE
24 MOTORING PUBLIC. PURSUANT TO § 57-25-130, DECLARATION OF
25 PURPOSE, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED,

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD.)

IN THE COURT OF COMMON PLEAS

SAMUEL W. RHODES AND)
PIEDMONT PROMOTIONS, INC.,)

DOCKET NO. 01-CP-20-334

PLAINTIFF,)

V.)

TRANSCRIPT OF RECORD
(JURY TRIAL)
VOLUME II

MARION L. EADON, D/B/A)
C&B. FABRICATION,)

DEFENDANT.)

AUGUST 30 - SEPTEMBER 2, 2004
WINNSBORO, SOUTH CAROLINA

BEFORE:

HONORABLE R. MARKLEY DENNIS

APPEARANCES:

FOR THE PLAINTIFF:

HOOVER C. BLANTON, ESQUIRE
CREIGHTON B. COLEMAN, ESQUIRE

FOR THE DEFENDANT:

CATHARINE GARBEE GRIFFIN, ESQUIRE
AMY MILLIGAN, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

THE NEXT QUESTION WE HAVE TO ASK IS, GIVEN THAT WE NEED TO HAVE THE DOLLARS IN TODAY'S DOLLARS, HOW MUCH MONEY WOULD WE HAVE TO HAVE TODAY TO INVEST IT AT A SAFE INTEREST RATE SO THAT IT WOULD COME OUT TO THE \$1.15 MILLION DOLLARS OVER 10 YEARS. AND THAT IS THE PRESENT VALUE COLUMN OF \$946,100. IN OTHER WORDS, IF WE TOOK THE \$946,100 AND INVESTED IT, AND I USED THE SHORT-TERM TREASURY SECURITY RATE, WHICH I BELIEVE FOR THAT PERIOD OF TIME WAS ABOUT 4.33 -- YES, THAT'S CORRECT, 4.33 PERCENT, WHICH IS QUITE A BIT HIGHER THAN IT IS TODAY -- YOU COULD TAKE THE \$946,000 AND INVEST IT AND WITHDRAW EACH YEAR IN AN AMOUNT EQUAL TO WHAT HE HAD RECEIVED IN RENT, LESS HIS COSTS.

Q MOVING TO THE SECOND 20 YEARS, DID YOU DO THE SAME THING, MERELY EXTENDING AT 20 YEARS VERSUS 10?

A YES, SIR. THE NEXT TWO ENTRIES ARE SIMPLY EXTENDING THE EXPECTED LIFE OF THE SIGN, ONE GOING TO 20 YEARS AND, OF COURSE, THE THIRD ONE GOING TO 30 YEARS. AGAIN, THE SECOND COLUMN OF THE \$4,196,647 WOULD BE THE AMOUNT THAT HE WOULD RECEIVE, LESS HIS COSTS, OVER THAT 20 YEAR PERIOD OF TIME, HAD THE SIGNS LIVED FOR 20 YEARS. THE PRESENT VALUE OF THAT IS \$2,470,502, WHICH WOULD BE THE PRESENT VALUE IN TODAY'S DOLLARS.

Q AND WITH RESPECT TO THE THIRD ENTRY, HORIZONTALLY, 30 YEARS IS A REPEAT. IT'S JUST SENDING IT OVER 30 YEARS INSTEAD OF A SHORTER PERIOD?

A YES, SIR. THE ONLY DIFFERENCE IS THAT I AM EXTENDING IT ANOTHER, ADDITIONAL 10 YEARS, WHICH WOULD GIVE US A TOTAL GROSS OF \$12,189,594 AT A PRESENT VALUE OF \$4,212,386.

Q DR. THOMPSON, BEAR WITH ME ON THIS. YOU'RE NOT INTENDING THAT THE SIGNS ARE GOING TO LAST ANY NUMBER OF YEARS. YOU JUST HAVE TO LABEL A COLUMN UP HERE, ISN'T THAT CORRECT?

A THAT'S CORRECT. I AM NOT AN EXPERT ON SIGNS. I SIMPLY READ THEM AS I DRIVE DOWN THE HIGHWAY.

Q SO WE HAVE TO ASSUME 10 YEARS TO GET TO THESE FIGURES, WE HAVE TO ASSUME 20 YEARS TO GET TO THESE, AND WE HAVE TO ASSUME 30 YEARS UNDER THIS FORMULA YOU APPLIED TO THEM TO GET TO THESE FIGURES?

A YES, SIR, THAT'S CORRECT.

Q AND YOU DON'T PURPORT TO PREDICT THAT ANY OF THESE WILL COME TRUE?

A NO, SIR. IN THE TESTIMONY I HEARD, IT COULD HAVE GONE FOR 50 YEARS.

Q I HAD ASKED YOU, PLEASE, TO LOOK AT PLAINTIFF'S EXHIBIT #42-A, WHICH IS LABELED TABLE 2, AND ASK DOES THIS DEPICT ONE OF THE TABLES YOU PREPARED?

A YES, SIR. THIS SCENARIO IS A LITTLE BIT DIFFERENT. BASICALLY WHAT I DID HERE, I USED THE SAME RENTAL RATE THAT EXISTED AT THE TIME THE SIGNS FELL, WHICH GIVES AN AVERAGE OF \$805.72 PER MONTH PER BILLBOARD. I CHANGED THE ASSUMPTIONS A LITTLE BIT FOR COMPARATIVE PURPOSES. I SAID

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

COURT OF COMMON PLEAS
01-CP-20-334

SAMUEL W. RHODES, JR., AND
PIEDMONT PROMOTIONS

-VS-

MARION L. EADON
D/B/A C&B FABRICATION

TRANSCRIPT OF RECORD

WEDNESDAY, SEPTEMBER 1, 2004
WINNSBORO, SOUTH CAROLINA

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JR., JUDGE, AND A JURY

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

CREIGHTON COLEMAN, ESQUIRE
HOOVER C. BLANTON, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

CATHERINE G. GRIFFIN, ESQUIRE
AMY MILLIGAN, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

EXHIBIT

1 MS. GRIFFIN: I WOULD OBJECT TO THE VALUE WITH RESPECT
2 TO THE FUTURE INCOME, BECAUSE I DON'T BELIEVE A SUFFICIENT
3 FOUNDATION HAS BEEN LAID.

4 THE COURT: HE'S TESTIFYING, HE WILL TESTIFY. YOU CAN
5 CROSS EXAMINE HIM ON IT. HE'S BEEN QUALIFIED. HE'S GOING
6 TO RENDER HIS EXPERT OPINION IN THAT AREA. OVERRULED.
7 THANK YOU.

8 Q IF YOU WOULD, MR. DURDEN, PLEASE TELL US THE THREE
9 VALUES AND HOW YOU CAME UP WITH THOSE THREE VALUES?

10 A MY OPINION OF VALUE AS OF JANUARY 20, 2001 ---

11 Q THAT WAS THE DATE THE SIGN WAS STILL UP?

12 A THEY WERE STILL UP.

13 Q THAT MORNING.

14 A \$1.8 MILLION. AND MY OPINION OF THE VALUE OF THE
15 PROPERTY AS OF JUNE THE 1ST ---

16 Q LET'S BACK UP. LET'S BACK UP ONE SECOND. I DON'T
17 MEAN TO INTERRUPT YOU. THAT FIGURE YOU USED, YOU USED THE
18 INCOME APPROACH; IS THAT CORRECT?

19 A YES, SIR, I DID A CASH FLOW ANALYSIS, CONVERTED HIS
20 FUTURE BENEFITS THAT HE WOULD RECEIVE INTO A PRESENT DAY
21 VALUE.

22 Q AND THAT'S BASED ON THE LAND AND THE LEASES THAT HE
23 HAD AT THE TIME?

24 A YES, SIR.

25 Q OKAY. GO AHEAD. WHAT WAS THE SECOND VALUE?

RHODES VS. EADON

1 A TO RENDER AN OPINION ON THE VALUE OF THE PROPERTY AS
2 OF JUNE THE 1ST, 2001, WHICH WOULD HAVE BEEN WHEN THE
3 BILLBOARDS ARE DOWN. IT WOULD HAVE BEEN JUST ON THE LAND
4 ONLY. AND THAT OPINION OF VALUE WAS \$65,500.

5 Q AND HOW DID YOU ARRIVE AT THAT FIGURE?

6 A BY USING THE SALES COMPARISON APPROACH, FINDING THREE
7 SALES OF VACANT UNIMPROVED INDUSTRIAL PROPERTIES, COMPARING
8 SUCH PROPERTY WITH THOSE.

9 Q SIMILAR PROPERTY?

10 A YES, SIR.

11 Q AND THE THIRD -- THE THIRD VALUE?

12 A THAT WAS TO RENDER AN OPINION OF VALUE ON THE PROPERTY
13 AS OF MAY 1, 2004.

14 Q OKAY.

15 A AND THAT VALUE WAS \$64,200.

16 Q NOW, THERE IS A CONDEMNATION PROCEEDING GOING ON WITH
17 REGARD TO THIS LAND. YOU'RE AWARE OF THAT?

18 A YES, SIR.

19 Q AND DID YOU TAKE THAT INTO CONSIDERATION?

20 A IN THE OPINION OF THE VALUE AS OF MAY 1, 2004.

21 Q AND YOU USED THAT ---

22 A YES, SIR.

23 Q --- AND TOOK THAT INTO CONSIDERATION.

24 MR. COLEMAN: BEG THE COURT'S INDULGENCE, SIR.

25 THE COURT: SURE.

RHODES VS. EADON

1 Q AND ISN'T IT RIGHT THAT INITIALLY HE TOLD YOU THAT HE
2 HAD \$3,000 IN OPERATING EXPENSES AND NOT \$5,000; ISN'T THAT
3 RIGHT?

4 A I THINK HE SAID HIS EXPENSES RAN 3 TO \$5,000.

5 Q AND IN DOING YOUR APPRAISAL OF THIS PROPERTY, ISN'T IT
6 TRUE THAT YOU WERE TO VERIFY THE INFORMATION THAT'S GIVEN
7 TO YOU IN ORDER TO CONDUCT A FAIR AND ACCURATE APPRAISAL OF
8 THIS PROPERTY?

9 A YES, MA'AM, I DID VERIFY SOME DATA.

10 Q NOW, DID YOU VERIFY ANY DATA THAT HAD TO DO WITH THIS
11 BUSINESS?

12 A NO, MA'AM, THAT WAS IRRELEVANT.

13 Q WELL, MR. DURDEN, WOULD YOU AGREE WITH ME THAT THESE
14 SIGNS ARE OWNED BY A BUSINESS; ISN'T THAT RIGHT? PIEDMONT
15 PROMOTIONS?

16 A YES, MA'AM.

17 Q AND SO THE EXPENSES OF OPERATING THIS BUSINESS OF
18 PIEDMONT PROMOTIONS, THAT WOULD BE A RELEVANT CONSIDERATION
19 IN DETERMINING WHAT THE EXPENSES OF THESE SIGNS ARE; ISN'T
20 THAT CORRECT?

21 A NO, MA'AM. I'M JUST APPRAISING SIMPLY THE 9.93 ACRES
22 AND THE THREE SIGNS.

23 Q AND IN APPRAISING THOSE THREE SIGNS YOU TOLD THE JURY
24 THAT YOU DID AN ESTIMATE OF THE GROSS INCOME COMING IN, AND
25 THEN YOU SUBTRACTED OFF THE VACANCY RATE, AND THEN YOU

RHODES VS. EADON

1 A IT DOES AFFECT THE LAND OWNED BY MR. RHODES. THE
2 RHODES' PROPERTY IS RIGHT HERE. IT'S IDENTIFIED AS TRACT
3 12 ON OUR PLANS. MEMORY SERVES ME CORRECTLY, THE
4 DEPARTMENT NEEDED TO ACQUIRE APPROXIMATELY 2 ACRES FROM
5 THAT PROPERTY.

6 Q AND IN LOOKING AT THE PLANS FOR THIS INTERCHANGE,
7 WOULD THOSE 2 ACRES INCLUDE A PRE-EXISTING STRUCTURE OF A
8 BILLBOARD?

9 A IT INCLUDES THE FOUNDATION OF A FORMER BILLBOARD, YES.

10 Q AND THAT WOULD BE WITHIN THE 2 ACRES THAT THE D.O.T.
11 IS SEEKING TO ACQUIRE; IS THAT RIGHT?

12 A THAT'S CORRECT.

13 Q AND THEN THE REMAINDER OF THE PROPERTY WOULD NOT BE
14 CHANGED BY THE D.O.T. RIGHT OF WAY PROCEDURES?

15 A THAT IS CORRECT.

16 Q WITH RESPECT TO THE BILLBOARD ---

17 (THE WITNESS RETURNS TO THE WITNESS STAND.)

18 Q WITH RESPECT TO THE ONE BILLBOARD THAT WOULD HAVE BEEN
19 SUBJECT TO THIS PROCEDURE WERE IT STILL STANDING, HOW WOULD
20 THE D.O.T. COMPENSATE THE PROPERTY OWNER?

21 A THE LAND OWNER WILL BE PAID BASED ON THE VALUE OF THE
22 PROPERTY BEING ACQUIRED. THE BILLBOARD ITSELF IS
23 CONSIDERED PERSONAL PROPERTY. AND PERSONAL PROPERTY IS
24 PROVIDED FOR THROUGH THE DEPARTMENT'S RELOCATION ASSISTANCE
25 PROGRAM.

RHODES VS. EADON

1 DOCUMENTATION, ALONG WITH A CHECK FOR A PERMIT FEE AND A
2 APPLICATION FEE, THE DEPARTMENT PROCESSES THE APPLICATION
3 BY FORWARDING DOWN TO OUR COORDINATOR IN THE PARTICULAR
4 DISTRICT. IN THIS PARTICULAR LOCATION THE COORDINATOR
5 WOULD BE IN CHESTER.

6 THE INDIVIDUAL COORDINATOR TAKES THE APPLICATION OUT
7 TO THE LOCATION, WILL ACTUALLY PHYSICALLY VIEW THE LOCATION
8 TO MAKE SURE IT MEETS OUR STATE REQUIREMENT, AND ALSO THE
9 REGULATIONS THAT WE HAVE IN PLACE FOR OUTDOOR ADVERTISING.

10 THE INDIVIDUAL INSURES THAT THERE IS A QUALIFYING
11 ACTIVITY THERE. THE QUALIFYING ACTIVITY HAS TO MEET
12 CRITERIA IN TERMS OF BEING OPEN TO THE PUBLIC, HAVE WATER,
13 TELEPHONE, LIGHTS, ELECTRICITY.

14 THE COORDINATOR ALSO MAKES SURE THAT THERE IS NO OTHER
15 BILLBOARD WITHIN A CERTAIN DISTANCE OF THE SIGN LOCATION.

16 THERE MUST BE A QUALIFYING BUSINESS WITHIN 600 FEET OF
17 THE SIGN LOCATION. AND IF IT'S ON AN INTERSTATE ROUTE,
18 WHICH IS -- WHICH IS THIS LOCATION, THERE CAN BE NO OTHER
19 SIGN WITHIN 500 FEET OF THAT SIGN LOCATION.

20 ONCE THE COORDINATOR COMPLETES HIS REVIEW OF THE
21 LOCATION -- IT COULD TAKE JUST ONE VISIT OR IT MAY TAKE
22 SEVERAL VISITS TO COMPLETE THE REVIEW. ONCE THE
23 COORDINATOR MAKES HIS REVIEW, HE ALONG WITH HIS DISTRICT
24 ENGINEERING ADMINISTRATOR WILL RECOMMEND APPROVAL OR
25 DISAPPROVAL FOR THE APPLICATION.

RHODES VS. EADON

1 IF THE BUSINESS STAYS IN PLACE FOR 12 MONTHS AND THEN
2 CLOSES A YEAR -- EXCUSE ME, A DAY AFTERWARD, THE SIGN WOULD
3 BE CONSIDERED NON-CONFORMING, BUT IT WOULD BE ALLOWED TO
4 STAY IN PLACE.

5 Q CAN YOU EXPLAIN TO THE JURY WHAT IT MEANS IF A SIGN IS
6 BEING NON-CONFORMING?

7 A A SIGN IS BEING NON-CONFORMING IF IT AT THIS
8 PARTICULAR TIME THAT YOU'RE ADDRESSING THE SIGN DOES NOT
9 MEET OUR STATE LAW, OUR FEDERAL LAW, OR OUR REGULATIONS.

10 Q AND JUST GOING BACK AND STUFF, WHAT DOES IT MEAN TO
11 HAVE A QUALIFYING BUSINESS?

12 A OUR REGULATIONS STATE THAT -- ACTUALLY, GOING ALL THE
13 WAY BACK TO THE HIGHWAY BEAUTIFICATION ACT, DURING THE TIME
14 THAT THE HIGHWAY BEAUTIFICATION ACT CAME ABOUT, IT SAID
15 THAT SIGNS SHOULD BE PLACED IN COMMERCIAL LOCATIONS. AND
16 ONE OF THE IDEALS OF BEING IN A COMMERCIAL LOCATION IS THAT
17 THERE IS A BUSINESS IN THE VICINITY OF THE SIGN.

18 THE COMMERCIAL ACTIVITY FOR THE SIGN LOCATION THAT IS
19 BEING APPLIED FOR HAS TO BE WITHIN 600 FEET OF THE PROPOSED
20 SIGN SIGHT. THAT QUALIFYING ACTIVITY OR COMMERCIAL
21 BUSINESS MUST BE OPEN TO THE PUBLIC AT LEAST 36 HOURS A
22 WEEK. THE QUALIFYING ACTIVITY MUST HAVE A TELEPHONE. IT
23 MUST HAVE RUNNING WATER. IT MUST ALSO BE ACCESSIBLE BY THE
24 PUBLIC. AND IT HAS TO MEET THAT CRITERIA FOR THE FIRST 12
25 MONTHS OF ITS PERMIT PERIOD.

RHODES VS. EADON

1 Q AND WHAT TYPE OF INSPECTION DOES THE DEPARTMENT OF
2 TRANSPORTATION DO WITH RESPECT TO QUALIFYING BUSINESSES
3 AFTER THE PERMITS ARE ISSUED?

4 A AFTER THE PERMITS ARE ISSUED, THE COORDINATOR WOULD --
5 WHILE HE'S ON HIS REGULAR ROUTES OR HIS REGULAR INVENTORY,
6 HE'LL SWING BY OCCASIONALLY TO TAKE A LOOK AT THE BUSINESS,
7 TO ENSURE THEY'RE STILL IN OPERATION.

8 Q AND DOES THE DEPARTMENT OF TRANSPORTATION CONTINUE
9 THIS PROCESS FOR YEARS AFTER THE PERMITS ARE ISSUED?

10 A NO, WE DO NOT. ONCE THE 12 MONTH PERIOD GOES BY, WE
11 NO LONGER REVIEW THE BUSINESS. THE ONLY TIME WE MAY
12 ADDRESS THE BUSINESS IS DURING THE ANNUAL BILLING, WHEN WE
13 MAKE SURE THAT THE SIGN IS STILL IN PLACE BEFORE WE ISSUE A
14 BILL TO THE OCCUPANT OR THE OWNER. WE'LL ALSO OCCASIONALLY
15 LOOK AT THE SIGN TO MAKE SURE IT'S IN A STATE OF REPAIR.

16 Q AND DURING THOSE ANNUAL BILLINGS OR WHEN YOU
17 POTENTIALLY WOULD OCCASIONALLY GO LOOK AT A SIGN, IF YOU
18 FOUND THAT THE BUSINESS WAS NO LONGER IN OPERATION, WHAT
19 WOULD HAPPEN WITH THE STATE OF THE SIGNS?

20 A IF IT'S AFTER THE 12 MONTH PERIOD, IT WOULD BE A NON-
21 CONFORMING SIGN. BUT IF WE DETERMINE THAT THE SIGN WAS
22 UNSAFE, THEN WE WOULD ADDRESS THAT ISSUE WITH THE SIGN
23 OWNER.

24 Q AND YOU EXPLAINED WHAT A NON-CONFORMING SIGN IS. CAN
25 YOU TELL THE JURY WHAT THE REQUIREMENTS ARE FOR THE OWNER

RHODES VS. EADON

1 EITHER NORTHERN MOST, SOUTHERN MOST, WOULD BE THE ONE WHICH
2 WOULD BE AFFECTED BY THE RIGHT OF WAY ACTION?

3 A MY UNDERSTANDING IT WOULD BE THE NORTHERN -- NORTHERN
4 BILLBOARD.

5 Q AND THE OTHER TWO BILLBOARDS, WOULD THEIR STATUS IF
6 THEY EXISTED AS OF TODAY WHEN THE RIGHT OF WAY PROJECT WAS
7 GOING THROUGH, WOULD THEIR STATUS CHANGE?

8 A THEY WOULD BE CLASSIFIED AS NON-CONFORMING.

9 Q AND WHY WOULD THEY BE CLASSIFIED AS NON-CONFORMING?

10 A THEY WOULD BE CLASSIFIED AS NON-CONFORMING FOR TWO
11 REASONS AS OF TODAY; THAT WOULD BE ONE BECAUSE THE
12 QUALIFYING BUSINESS IS CLOSED, AND THE OTHER BECAUSE THE
13 TWO REMAINING SIGNS WOULD BE CONSIDERED IN THE RAMP ROOM --
14 OR IN THE RAMP AREA. STATE LAW AND REGULATION REQUIRES
15 THAT ALL SIGNS PERMITTED BE MORE THAN 500 FEET FROM THE
16 EDGE OF THIS RAMP AREA.

17 MS. GRIFFIN: YOUR HONOR, MAY WE APPROACH WITH ONE
18 ISSUE?

19 THE COURT: SURE.

20 (A SIDE BAR CONFERENCE WAS HELD OFF THE RECORD, OUT OF
21 THE HEARING OF THE JURY.)

22 THE COURT: WE'VE HAD A SIDE BAR CONCERNING A MATTER
23 REGARDING THIS WITNESS, WHICH WE WILL TAKE UP AT THE FIRST
24 BREAK. THANK YOU SO MUCH.

25 MS. GRIFFIN: MR. MELVIN, CAN YOU ANSWER ANY QUESTIONS

RHODES VS. EADON

1 THE COURT: IF YOU WILL PLEASE, SIR, RETURN TO THE
2 STAND. THANK YOU VERY MUCH. AND I WOULD REMIND YOU THAT
3 YOU ARE STILL UNDER OATH. THERE ARE SOME QUESTIONS THAT WE
4 NEED TO ASK OF YOU OUTSIDE OF THE PRESENCE OF THE JURY.

5 (THE WITNESS RETURNS TO THE WITNESS STAND.)

6 THE COURT: MS. GRIFFIN, YOU MAY PROCEED WITH YOUR
7 PROFFER. AND AS I UNDERSTAND, MS. GRIFFIN, FROM THE SIDE
8 BAR, WE TALKED ABOUT THIS PROFFER IS RELATIVE TO MATTERS
9 THAT ARE, I GUESS, BEST SUMMARIZED AND PERTAIN TO COURT'S
10 EXHIBIT NO. 1.

11 MS. GRIFFIN: YES, YOUR HONOR.

12 THE COURT: AND THE CIRCUMSTANCES BEFORE AND AFTER
13 THAT ORDER AS I UNDERSTAND IT.

14 MS. GRIFFIN: YES, YOUR HONOR.

15 THE COURT: VERY WELL. YOU MAY PROCEED.

16 DIRECT EXAMINATION CONTINUED BY MS. GRIFFIN:

17 Q MR. MELVIN, WHEN DID YOU FIRST GO ONTO THE PROPERTY OF
18 MR. RHODES?

19 A WE FIRST WENT ON THE PROPERTY OF MR. RHODES THE
20 WEDNESDAY BEFORE THE SIGNS FELL. AND I THINK THAT MAY HAVE
21 BEEN SOMEWHERE AROUND MAYBE DECEMBER 15 TIME FRAME,
22 THEREABOUTS. WE RECEIVED A CALL THAT A SIGN WAS LEANING ON
23 THE PROPERTY. WE WENT OUT THERE, AS WE WOULD ALWAYS DO, TO
24 INVESTIGATE THE LOCATION.

25 UPON INVESTIGATING THE LOCATION, WE DETERMINED THAT

RHODES VS. EADON

1 THERE WAS IN FACT A SIGN THAT WAS LEANING, THE MIDDLE OF
2 THE THREE SIGNS.

3 WE CONTACTED MR. RHODES AND INDICATED THAT HE NEEDED
4 TO GET OUT AND MAKE IMMEDIATE REPAIRS ON THE SIGN. WE
5 CONTACTED MR. RHODES AND DISCOVERED THAT HE WAS ALREADY
6 AWARE OF THE SITUATION.

7 HE SAID THAT HE WAS GOING TO GET SOMEONE ON IT AND
8 TAKE CARE OF IT. HE ASKED HOW MUCH TIME HE HAD, DUE TO THE
9 IDEA THAT WE THOUGHT IT WAS A SAFETY ISSUE, WE SAID IT
10 NEEDED TO BE CORRECTED IMMEDIATELY. AND HE SAID HE WOULD
11 DO THAT.

12 ON SATURDAY THE SIGN ACTUALLY FELL. THE SIGN THAT WE
13 WERE ADDRESSING WERE STILL IN PLACE. THE SOUTHERN MOST
14 SIGN FELL ONTO THE RIGHT OF WAY, ACROSS THE FIRST LANE AND
15 INTO THE MEDIAN LANE. THAT SIGN WAS DETERMINED TO BE
16 UNSAFE AND BASICALLY A DESTROYED SIGN. SO WE CANCELLED
17 THAT PERMIT.

18 AFTER REVIEWING THE TWO REMAINING SIGNS, WE DETERMINED
19 THAT THOSE SIGNS WERE BASICALLY UNSAFE ALSO. SO WE
20 CONTACTED MR. RHODES -- ACTUALLY, I TOLD HIM BY TELEPHONE
21 FIRST, AND I FOLLOWED UP WITH A LETTER INDICATING THAT WE
22 WOULD BE CANCELLING THE PERMITS AS BEING UNSAFE.

23 Q WHEN YOU WERE ON THE PREMISES THAT THE BILLBOARDS WERE
24 LOCATED, DID YOU DO AN INVESTIGATION REGARDING THE
25 QUALIFYING BUSINESS?

RHODES VS. EADON

1 A YES, WE DID. MR. RHODES ASKED COULD HE PUT THE SIGNS
2 BACK UP.

3 WE INDICATED TO MR. RHODES THAT THE LOCATION WAS NON-
4 CONFORMING, AND THE LOCATION ACTIVITY IN TERMS OF THE
5 BUSINESS WAS INTERSTATE AUTO SALES. MY UNDERSTANDING WAS
6 THAT THEY SOLD AUTOMOBILES.

7 DURING OUR INVESTIGATION WE DETERMINED THAT THERE WERE
8 ABOUT APPROXIMATELY 15 CARS ON THE LOT, ALL WERE IN A STATE
9 OF DISREPAIR. THEY HAD FLAT TIRES. THE WINDOWS HAD BEEN
10 BROKEN OUT. SEVERAL APPEARED TO BE AS BEING VANDALIZED.

11 THE LOCATION APPEARED TO HAVE BEEN CUT IN TERMS OF THE
12 GRASS, BUT THERE WAS GRASS GROWING UP AROUND THE VEHICLES
13 WHICH SHOWED THAT THEY HAD BEEN SITTING IN PLACE FOR A LONG
14 TIME.

15 THE QUALIFYING ACTIVITY ITSELF IN TERMS OF THE
16 STRUCTURE WAS A TRAILER. THE TRAILER HAD WINDOWS THAT HAD
17 BEEN BROKEN OUT. SOME WINDOWS WERE OPEN. THE BUSINESS
18 ITSELF WAS OPEN, IT WAS NOT LOCKED. THERE WAS A DESK AND
19 FILE CABINETS. THERE WAS NEWSPAPERS ON THE DESK. AS A
20 MATTER OF FACT, I THINK I TOOK PHOTOS OF THE NEWSPAPER.
21 AND THE NEWSPAPER INDICATED DATES THAT WENT ALL THE WAY
22 BACK FROM OUR ORIGINAL PERMITTING TIME. THE WATER WAS
23 TURNED OFF. THERE WAS NO ELECTRICITY. AND THERE WAS NO
24 PHONE IN THE BUSINESS.

25 FROM THAT REVIEW, WE DETERMINED THAT THE BUSINESS WAS

RHODES VS. EADON

1 NON-CON -- EXCUSE ME, NON-CONFORMING BECAUSE THERE WAS NO
2 BUSINESS THERE.

3 WE ALSO DID SOME INVESTIGATING IN TERMS OF THE TIME
4 PERIOD THAT THE TELEPHONE AND THE WATER WAS TURNED OFF.
5 AND WE DETERMINED THAT THE RECORDS THAT THEY HAD ACTUALLY
6 BEEN TURNED OFF APPROXIMATELY THREE MONTHS AFTER THE PERMIT
7 WAS ISSUED. THAT WAS FURTHER INFORMATION TO LEAD US TO THE
8 CONCLUSION THAT THE LOCATION WAS NO LONGER CONFORMING AND
9 THE BUSINESS WAS NOT OPEN.

10 Q OKAY. AND DID YOU MAKE A CONCLUSION WITH RESPECT TO
11 WHETHER OR NOT IT WAS A SHAM BUSINESS OR A VIABLE BUSINESS?

12 A OUR POSITION WAS THAT IT WAS A SHAM BUSINESS. WE ALSO
13 FOUND THROUGH OUR INVESTIGATION IN TALKING TO PUBLIC SAFETY
14 THAT THE LICENSE WAS NOT IN EFFECT FOR THAT BUSINESS THERE,
15 WHICH MEANT BASICALLY WE WOULD HAVE NEVER APPROVED THE
16 PERMIT BECAUSE IT HAS TO BE A LEGITIMATE BUSINESS AND IT
17 HAS TO BE OPEN TO THE PUBLIC DOING BUSINESS.

18 Q YOU DISCOVERED THE LICENSE WAS NOT IN EFFECT AS OF
19 WHAT DATE?

20 A THAT I DON'T REMEMBER RIGHT OFFHAND.

21 MS. GRIFFIN: THAT'S ALL I HAVE AT THIS TIME.

22 THE COURT: ALL RIGHT. BEFORE YOU ASKED HIM -- MR.
23 BLANTON, YOU'VE REQUESTED PERMISSION TO ASK THE WITNESS
24 QUESTIONS DURING THE PROFFER, AND YOU CERTAINLY MAY DO SO.
25 BUT BEFORE I DO THAT, YOU OBJECT TO THAT LINE OF TESTIMONY?

1 CORRECT?

2 A YES.

3 Q AND IF THAT SIGN HAD NOT FALLEN, YOU WOULD NOT HAVE
4 GONE TO THAT PIECE OF PROPERTY; IS THAT CORRECT?

5 A CORRECTION. THE SIGN THAT WE ORIGINALLY LOOKED AT WAS
6 NOT THE SIGN THAT FELL.

7 Q I UNDERSTAND. I UNDERSTAND. BUT THE SIGN THAT FELL,
8 WHICH IS DIFFERENT THAN THE ONE THAT WAS LEANING, IF THAT
9 SIGN DID NOT FALL, YOU WOULD NOT HAVE GONE TO THAT
10 LOCATION; IS THAT CORRECT?

11 A INCORRECT. WE WOULD HAVE GONE TO THE LOCATION BECAUSE
12 THE ---

13 Q BECAUSE IT WAS LEANING?

14 A THAT'S CORRECT.

15 Q OKAY. AND UNDER THE NON-CONFORMING USE THAT YOU HAD
16 DESIGNATED, EVEN IF THE SIGN STILL REMAINED STANDING IF
17 THEY WERE NON-CONFORMING, THEY WOULD STILL BE THERE; IS
18 THAT CORRECT? THEY WOULD STILL BE ABLE TO RENT ADVERTISING
19 SPACE; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q OKAY. NOW, THE LICENSE THAT WAS ISSUED -- I WANT TO
22 SHOW YOU WHAT'S MARKED AS ---

23 MR. COLEMAN: I GUESS THIS WOULD BE, YOUR HONOR,
24 PLAINTIFF'S EXHIBIT 32 FOR I.D.

25 THE COURT: VERY WELL.

RHODES VS. EADON

1 INDICATED. BUT DURING THE REVIEW PERIOD THEY SAID THAT THE
2 LICENSE WAS NOT UP TO DATE.

3 (PAUSE.)

4 Q DO YOU KNOW IF IT WAS AFTER FEBRUARY 2001? ARE YOU
5 AWARE OF THAT?

6 A I AM NOT SURE.

7 Q OKAY. IF WE REMOVE FROM THE FACTUAL EQUATION THAT THE
8 SIGNS WERE LEANING OR THAT THE SIGN FELL, WOULD MR. RHODES
9 STILL HAVE THE PERMIT?

10 A YES.

11 Q WOULD HE STILL BE ABLE TO HAVE THE SIGNS UP THERE OR
12 NOT?

13 A HE WOULD.

14 MR. COLEMAN: THAT'S ALL I HAVE.

15 THE COURT: DID YOU SAY HE WOULD?

16 WITNESS: HE WOULD.

17 THE COURT: OKAY. REDIRECT?

18 REDIRECT EXAMINATION BY MS. GRIFFIN:

19 Q MR. MELVIN, IF THE DEPARTMENT OF TRANSPORTATION HAD
20 GOTTEN TO THIS LOCATION DURING A PERIODIC INSPECTION DURING
21 THE FIRST YEAR AND A HALF FROM MAY OF '99 THROUGH JANUARY
22 OF 2001, IS IT POSSIBLE THAT THEY WOULD HAVE DISCOVERED
23 THAT THE BUSINESS WAS NOT QUALIFIED?

24 A IS THAT BEFORE THE ONE YEAR PERIOD?

25 Q DURING THE ONE YEAR PERIOD, AND THEN I INCLUDED THE

RHODES VS. EADON

- 1 A MANNING, SOUTH CAROLINA.
- 2 Q AND HOW LONG HAVE YOU LIVED THERE IN MANNING?
- 3 A ALL MY LIFE.
- 4 Q ARE YOU MARRIED?
- 5 A YES.
- 6 Q AND HOW MANY CHILDREN DO YOU HAVE?
- 7 A FIVE.
- 8 Q WHERE DO YOUR CHILDREN LIVE?
- 9 A BEG YOUR PARDON?
- 10 Q WHERE DO YOUR CHILDREN LIVE?
- 11 A TWO LIVE IN MANNING, THE REST LIVE IN COLUMBIA.
- 12 Q AND WHAT IS YOUR EDUCATIONAL BACKGROUND?
- 13 A HIGH SCHOOL AND WINGATE JUNIOR COLLEGE FOR TWO YEARS.
- 14 Q HOW OLD ARE YOU, MR. EADON?
- 15 A 65.
- 16 Q AND DURING YOUR LIFETIME, WHAT KIND OF WORK HAVE YOU
- 17 BEEN INVOLVED IN?
- 18 A A GREAT MANY ASPECTS, FARMING, LABOR BUSINESS, OF
- 19 COURSE, THE SIGN BUSINESS, CAR BUSINESS, PALLET BUSINESS.
- 20 I BELIEVE THAT'S ABOUT ALL.
- 21 Q HOW DID YOU DECIDE TO GO INTO THE SIGN BUSINESS?
- 22 A CHUCK BENENHALEY (PHONETIC) CAME BY TO BUY A CAR, AND
- 23 HE WAS JUST TELLING ME, YOU KNOW, HOW GOOD HE WAS AT
- 24 BUILDING SIGNS AND HOW MUCH EXPERIENCE HE HAD, THE PEOPLE
- 25 THAT HE HAD DONE BUSINESS WITH, AND HE THOUGHT IT WAS A

RHODES VS. EADON

1 VERY LUCRATIVE BUSINESS IF HE HAD SOME BACKING TO EXPAND
2 HIS BUSINESS, THAT HE THOUGHT HE COULD, YOU KNOW --
3 SOMETHING I COULD DO REAL GOOD, IT WOULD BE A REAL GOOD
4 INVESTMENT, AND THAT'S BASICALLY HOW THE CONVERSATION GOT
5 STARTED.

6 Q DID YOU HAVE ANY EXPERIENCE IN THE SIGN BUSINESS
7 BEFORE MR. BENENHALEY APPROACHED YOU?

8 A NO, MA'AM.

9 Q WHEN DID YOU DECIDE THAT YOU COULD GO INTO THE SIGN
10 BUSINESS?

11 A WELL, I, YOU KNOW, TALKED TO SEVERAL PEOPLE AND THEY
12 SAID HE PROBABLY HAD AS MUCH EXPERIENCE AS ANYBODY THEY
13 KNEW. IN REFERENCE TO THAT AFTER I DECIDED I MAY TAKE A
14 LOOK AT IT, I WENT OUT TO LOOK FOR HIM AND FOUND HIM AT A
15 COMPANY CALLED PERSONA (PHONETIC), WHICH HE WAS PUTTING UP
16 A SIGN. AND HIS WIFE WAS RUNNING THE CRANE AND HE WAS UP
17 THERE. AND I WAS FAIRLY IMPRESSED WITH THE FACT THAT HIS
18 WIFE WAS THERE HELPING HIM. AND IT LOOKED LIKE THEY WERE
19 DOING A GOOD JOB AND CONSCIENTIOUS. AND PERSONA WAS A BIG
20 COMPANY, SO I FIGURED HE MUST BE -- YOU KNOW, KNOW A GOOD
21 BIT ABOUT WHAT HE WAS DOING.

22 Q DO YOU KNOW WHAT KIND OF EXPERIENCE MR. BENENHALEY HAD
23 WITH THE SIGN BUSINESS?

24 A OH, HE HAD BEEN IN IT FOR YEARS. I THINK HE HAD
25 PROBABLY DONE WORK FOR EVERY SIGN COMPANY THAT THERE WAS.

RHODES VS. EADON

1 OF APPROXIMATELY 65 -- I THINK AROUND PROBABLY 50 TO 60,000
2 SQUARE -- SQUARE FOOT BUILDING.

3 Q DID YOU HAVE TO DO ANY RENOVATIONS TO THAT BUILDING?

4 A YES, MA'AM, WE HAD TO RE-WIRE IT. AND ALSO IT WAS AN
5 OLD LUMBER COMPANY, SO WE -- AND IT WAS OPEN ON ONE END, SO
6 WE HAD TO CLOSE IT UP AND INSTALL DOORS. YOU KNOW, THAT
7 KIND OF STUFF.

8 Q WHAT WAS YOUR POSITION WITHIN THAT COMPANY? WHAT WAS
9 YOUR TITLE?

10 A I GUESS YOU WOULD CALL ME PRESIDENT.

11 Q AND WHAT INVOLVEMENT DID YOU HAVE IN THE RUNNING OF
12 THIS COMPANY?

13 A WELL, SINCE I HAD NO PRIOR KNOWLEDGE, I TRIED TO HIRE
14 PEOPLE, YOU KNOW, SUCH AS CHUCK AND THEN AFTER CHUCK, I LET
15 HIM DO THE HIRING OF THE WELDERS AND THAT KIND OF STUFF.
16 OF COURSE, I HAD THE -- MY SECRETARY. BUT OTHER THAN THAT,
17 HE KIND OF HIRED MOST OF THE PEOPLE BECAUSE HE HAD KNOWN
18 THEM FROM PREVIOUS EXPERIENCES IN THE BUSINESS THAT THEY
19 HAD BEEN IN. SO I KIND OF RELIED ON THEM TO -- YOU KNOW,
20 TO GET THE CERTIFIED WELDERS AND THE PEOPLE THAT YOU HAD TO
21 HAVE.

22 Q WHAT TYPES OF PEOPLE WERE HIRED? WHAT TYPES OF TRADES
23 WERE HIRED TO WORK AT C&B?

24 A MOST OF THESE PEOPLE HAD WORKED WITH DIFFERENT
25 CONSTRUCTION COMPANIES IN THE WELDING ASPECT AND PIPE

RHODES VS. EADON

1 FITTING AND, YOU KNOW, BASICALLY THAT KIND OF BUSINESS.

2 Q DID YOU GET EQUIPMENT FOR THIS CORPORATION?

3 A YES, MA'AM.

4 Q WHAT TYPE OF EQUIPMENT DID YOU ALL NEED TO RUN THIS
5 BUSINESS?

6 A WELL, YOU HAD TO HAVE WELDING MACHINES, TORCHES,
7 CUTTING TABLES, ALL TYPES OF MEASURED -- YOU KNOW, RULES
8 AND MEASURING EQUIPMENT AND PIPE CUTTING EQUIPMENT, AND
9 JUST NUMEROUS THINGS YOU HAD TO HAVE.

10 Q DID YOU ALL GET ANY HEAVY EQUIPMENT ALSO?

11 A YEAH, IT WAS A GOOD BIT HEAVY EQUIPMENT INVOLVED A
12 LITTLE LATER ON.

13 Q AND WHAT TYPE OF EQUIPMENT DID THE COMPANY BUY LATER
14 ON?

15 A TWO DAIRY DIGGERS, WHICH ARE BIG TRUCKS THAT AUGER THE
16 HOLES, AND THEN A CRANE.

17 Q WHO WAS RESPONSIBLE FOR CHOOSING EQUIPMENT THAT THE
18 CORPORATION NEEDED?

19 A WELL, CHUCK WAS BECAUSE OF THE FACT THAT WE HAD HIRED
20 SOME OF THIS STUFF DONE. AND HE SAID HOW MUCH MONEY YOU
21 COULD SAVE BY OWNING THE EQUIPMENT YOURSELF, SO HE FOUND A
22 DAIRY DIGGER IN TEXAS THAT HE SAID WAS WHAT WE NEEDED. SO
23 HE FLEW OUT AND GOT IT AND DROVE IT BACK.

24 AND ALSO WHEN IT CAME TIME FOR THE CRANE, HE USED SOME
25 PEOPLE IN THE CRANE BUSINESS I THINK FROM OUT OF COLUMBIA.

RHODES VS. EADON

1 AND HE WENT UP AND LOOKED AT THE CRANE AND SAID, YOU KNOW,
2 THIS WAS THE ONE WE NEEDED TO DO THE JOB THAT WE HAD TO DO.

3 Q HOW DID C&B GET BUSINESS?

4 A WELL, A LOT OF PEOPLE, YOU KNOW, CALL CHUCK ANYWAY FOR
5 REPAIRS AND, YOU KNOW, DIFFERENT THINGS THAT HE HAD DONE.
6 AND I GUESS -- I THINK HE KNEW EVERYBODY IN THE BUSINESS,
7 AND PROBABLY TO THIS DAY HAS AS MUCH KNOWLEDGE ABOUT SIGNS
8 AS I GUESS ANYBODY AROUND, BECAUSE THAT'S ALL HE EVER DID.
9 BUT HE MOSTLY, YOU KNOW, GOT ALL THE CLIENTS BECAUSE I
10 REALLY DIDN'T KNOW HOW TO DISCUSS CERTAIN ASPECTS OF A SIGN
11 THAT HE KNEW ALL -- ALL THE INS AND OUTS OF IT. AND, YOU
12 KNOW, THERE'S PROBABLY 2 OR 300 DIFFERENT VARIATIONS OF
13 SIGNS WHICH -- I MEAN, MOST PEOPLE WOULDN'T HAVE A
14 KNOWLEDGE OF IT.

15 Q DID YOU ASSIST IN ANY WAY IN SELLING THE SIGNS?

16 A NO, BECAUSE THEY DID ALL THE COSTING. YOU KNOW, WHEN
17 -- HIS WIFE ALSO WORKED FOR US. AND THAT WAS BY HIS
18 INSISTENCE -- THAT SHE KNEW BASICALLY THE MATERIALS IT TOOK
19 TO BUILD A SIGN. SO WHEN HE WOULD CALL HER AND TELL HER
20 WHAT KIND OF SIGN THEY WERE BUILDING AND EVERYTHING, SHE
21 KNEW THE TERMINOLOGY OF GETTING THE RIGHT STEEL AND THE
22 RIGHT PIPE AND THE RIGHT WHATEVER. AND THEY HAD BEEN DOING
23 IT SO MANY YEARS. AND SO I FIGURED THEY WERE THE BEST TO
24 HANDLE THAT, ALL OF IT.

25 Q WERE YOU INVOLVED IN ORDERING ANY OF THE MATERIALS FOR

1 THE SIGNS?

2 A NO. I -- I LET THEM DO THAT.

3 Q WERE YOU INVOLVED IN ORDERING ANY BLUE PRINTS?

4 A NO. LIKE I SAY, THEY ALREADY KNEW ALL THAT STUFF AND
5 I DIDN'T, YOU KNOW.

6 Q DID YOU HAVE ANY KNOWLEDGE WHERE YOU COULD HAVE
7 ORDERED A SET OF BLUE PRINTS FOR A SIGN?

8 A NOT REALLY.

9 Q IN THE BUSINESS OF C&B WERE YOU EVER INVOLVED IN
10 DRAFTING ANY OF THE PROPOSALS?

11 A NO, MA'AM.

12 Q WERE YOU INVOLVED IN APPROVING PROPOSALS?

13 A TO A CERTAIN EXTENT. I WOULD LOOK AT THEM. AND, OF
14 COURSE, I WOULD ALWAYS SAY, WELL, CHUCK, YOU KNOW, IS THE
15 COMPANY -- ARE WE GOING TO MAKE ANY MONEY ON THIS DEAL?

16 AND HE WOULD SAY, YEAH, WE WOULD.

17 SINCE I DIDN'T REALLY KNOW WHAT I WAS LOOKING AT, I
18 TAKE HIS WORD FOR IT, THAT HE KNEW WHAT IT COST TO DO THIS.

19 Q GOING BACK TO THE BUILDING THAT YOU LEASED, WAS THERE
20 A SIGN OR ANY INFORMATION ON THE EXTERIOR OF THE BUILDING
21 SAYING WHAT BUSINESS IT WAS?

22 A YES, MA'AM, AFTER PROBABLY I'D SAY A MONTH OR TWO,
23 THEY WENT OUT AND PUT C&B FABRICATION ACROSS THE FRONT OF
24 THE BUILDING, WHICH WOULD HAVE BEEN FACING 301.

25 Q AND WHEN THE PHONE WAS ANSWERED AT C&B, HOW WAS IT

RHODES VS. EADON

1 ANSWERED?

2 A C&B FAB.

3 Q DID YOU BECOME AWARE THAT SAM RHODES WAS LOOKING AT
4 THE CORPORATION TO FABRICATE SIGNS FOR HIM?

5 A CHUCK BROUGHT SAM DOWN AND I MET HIM.

6 Q HOW MANY TIMES DID YOU MEET HIM?

7 A I DON'T REMEMBER BUT THE ONE TIME. THE ONLY REASON I
8 REMEMBER THAT IS THAT I WAS STANDING OUTSIDE AND HE PULLED
9 UP IN A -- I BELIEVE IT WAS A BLACK MERCEDES, AND I JUST,
10 YOU KNOW -- RUN THROUGH YOUR MIND, MAYBE HE WOULD BE A GOOD
11 CUSTOMER.

12 Q MR. EADON, CAN YOU SEE THIS IF I HOLD IT HERE?

13 A YEAH.

14 Q THIS IS DEFENDANT'S EXHIBIT NO. 14 MARKED FOR
15 IDENTIFICATION.

16 A RIGHT.

17 Q WERE YOU INVOLVED WITH MR. RHODES IN THE CREATION OF
18 THIS PROPOSAL?

19 A NO.

20 Q DID YOU HAVE ANY INPUT AT ALL INTO THE INFORMATION ON
21 HERE WITH RESPECT TO THE STRUCTURE DESCRIPTION?

22 A NO.

23 Q DID YOU HAVE ANY INPUT WITH RESPECT TO THE REBECO
24 (PHONETIC) PANEL, THE LIGHTS, THE INSTALLATION?

25 A NO, MA'AM.

RHODES VS. EADON